

Principles for Businesses

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PRIN Contents

Chapter 1

Introduction

1.1 Application and purpose

Application

- 1.1.1** **G** The *Principles* (see ■ PRIN 2) apply in whole or in part to every *firm*. The application of the *Principles* is modified for *firms* conducting *MiFID business* and *Annex II benchmark administrators*. ■ PRIN 3 (Rules about application) specifies to whom, to what and where the *Principles* apply.
- 1.1.1A** **G** The *Principles* also apply to certain *payment service providers* and *electronic money issuers* that are not *firms*. ■ PRIN 3.1.1AR sets out the application of the *Principles* to these *persons*. The references to a *firm* in ■ PRIN 2 includes such *persons*.

Purpose

- 1.1.2** **G** The *Principles* are a general statement of the fundamental obligations of *firms* and the other *persons* to whom they apply under the *regulatory system*. They derive their authority from the FCA's rule-making powers as set out in the Act, including as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*, and reflect the *statutory objectives*.

- 1.1.3** **G** [deleted]

Link to fit and proper standard

- 1.1.4** **G** In substance, the *Principles* express the main dimensions of the "fit and proper" standard set for *firms* in *threshold condition 5* (Suitability), although they do not derive their authority from that standard or exhaust its implications. Being ready, willing and organised to abide by the *Principles* is therefore a critical factor in applications for *Part 4A permission*, and breaching the *Principles* may call into question whether a *firm* with *Part 4A permission* is still fit and proper.

- 1.1.4A** **G** For persons authorised or registered under the *Payment Services Regulations* or the *Electronic Money Regulations*, the relevant "fit and proper standards" are the standards set in those Regulations.

- 1.1.5** **G** **Taking group activities into account**
Principles 3 (Management and control), 4 (Financial prudence) and (in so far as it relates to disclosing to the FCA) 11 (Relations with regulators) take into account the activities of members of a firm's group. Compliance by another person to whom the Principles apply with Principles 3, 4 and 11 can also be affected by the activities of other persons who are members of their group. This does not mean that, for example, inadequacy of a group member's risk management systems or resources will automatically lead to a firm contravening Principle 3 or 4. Rather, the potential impact of a group member's activities (and, for example, risk management systems operating on a group basis) will be relevant in determining the adequacy of the firm's risk management systems or resources respectively.
- 1.1.6** **G** **Standards in markets outside the United Kingdom**
As set out in ■ PRIN 3.3 (Where?), Principles 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control) apply to world-wide activities in a prudential context. Principle 5 (Market conduct) applies to world-wide activities which might have a negative effect on confidence in the UK financial system. In considering whether to take regulatory action under these Principles in relation to activities carried on outside the United Kingdom, the FCA will take into account the standards expected in the market in which the firm or other person to whom the Principles apply is operating. Principle 11 (Relations with regulators) applies to world-wide activities; in considering whether to take regulatory action under Principle 11 in relation to cooperation with an overseas regulator, the FCA will have regard to the extent of, and limits to, the duties owed by the firm or other person to that regulator. (Principle 4 (Financial prudence) also applies to world-wide activities.)
- 1.1.6A** **G** ■ PRIN 4 (Principles : MiFID Business) provides guidance on the application of the Principles to MiFID business.
- 1.1.7** **G** **Consequences of breaching the Principles**
Breaching a Principle makes a firm or other person to whom the Principles apply liable to disciplinary sanctions. In determining whether a Principle has been breached it is necessary to look to the standard of conduct required by the Principle in question. Under each of the Principles the onus will be on the FCA to show that a firm or other person has been at fault in some way. What constitutes "fault" varies between different Principles. Under Principle 1 (Integrity), for example, the FCA would need to demonstrate a lack of integrity in the conduct of a firm's or other person's business. Under Principle 2 (Skill, care and diligence) a firm or other person would be in breach if it was shown to have failed to act with due skill, care and diligence in the conduct of its business. Similarly, under Principle 3 (Management and control) a firm or other person would not be in breach simply because it failed to control or prevent unforeseeable risks; but a breach would occur if the firm or other person had failed to take reasonable care to organise and control its affairs responsibly or effectively.
- 1.1.8** **G** The Principles are also relevant to the FCA's powers of information-gathering, to vary a firm's Part 4A permission or authorisation or registration under the Payment Services Regulations or Electronic Money Regulations,

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and of investigation and intervention, and provide a basis on which the FCA may apply to a court for an *injunction* or restitution order or require a *firm* or other *person* to make restitution. However, the *Principles* do not give rise to actions for damages by a *private person* (see ■ PRIN 3.4.4 R).

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Some of the other *rules* and *guidance* in the *Handbook* deal with the bearing of the *Principles* upon particular circumstances. However, since the *Principles* are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for *guidance*, the FCA's other *rules* and *guidance* or *onshored regulations* should not be viewed as exhausting the implications of the *Principles* themselves.

Responsibilities of providers and distributors under the Principles

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RPPD contains *guidance* on the responsibilities of providers and distributors for the fair treatment of *customers* under the *Principles*.

1.2 Clients and the Principles

Characteristics of the client

1.2.1 G *Principles 6 (Customers' interests), 7 (Communications with clients), 8 (Conflicts of interest), 9 (Customers: relationships of trust), 10 (Clients' assets) and 12 (Consumer Duty) impose requirements on firms expressly in relation to their clients or customers. These requirements depend, in part, on the characteristics of the client or customer concerned. This is because what is "due regard" (in Principles 6 and 7), "fairly" (in Principles 6 and 8), "clear, fair and not misleading" (in Principle 7), "reasonable care" (in Principle 9), "adequate" (in Principle 10) or "good outcomes" (in Principle 12) will, of course, depend on those characteristics.*

Approach to client categorisation

1.2.2 G [deleted]

1.2.3 G [deleted]

1.2.4 G [deleted]

1.2.5 G [deleted]

Acting through an agent

1.2.6 G If the person with or for whom the firm is carrying on an activity is acting through an agent, the ability of the firm to treat the agent as its client under ■ COBS 2.4.3 R (Agent as client) will not be available. For example, if a general insurer is effecting a general insurance contract through a general insurance broker who is acting as agent for a disclosed policyholder, the policyholder will be a client of the firm and the firm must comply with the Principles accordingly.

Non-designated investment business - clients that a firm may treat as an eligible counterparty for the purposes of PRIN

- 1.1 A firm may categorise the following types of *client* as an *eligible counterparty* for the purposes of PRIN:
- (1) a properly constituted government (including a quasi-governmental body or a government agency) of any country or territory;
 - (2) a central bank or other national monetary authority of any country or territory;
 - (3) a supranational whose members are either countries or central banks or national monetary authorities;
 - (4) a State investment body, or a body charged with, or intervening in, the management of the public debt at national level;
 - (5) another *firm*, or an *overseas financial services institution*;
 - (6) any associate of a *firm* (except an *OPS firm*), or of an *overseas financial services institution*, if the *firm* or institution consents;
 - (7) a *client* when he is classified as an *eligible counterparty* in accordance with 1.2; or
 - (8) a *recognised investment exchange*, *EU regulated market* or *clearing house*.
- 1.2 A firm may classify a *client* (other than another *firm*, *regulated collective investment scheme*, or an *overseas financial services institution*) as an *eligible counterparty* for the purposes of PRIN under 1.1(7) if:
- (1) the *client* at the time he is classified is one of the following:
 - (a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time);
 - (b) a *body corporate* that meets (or any of whose holding companies or subsidiaries meets) two of the following tests:
 - (i) a balance sheet total of 12.5 million euros (or its equivalent in any other currency at the relevant time);
 - (ii) a net turnover of 25 million euros (or its equivalent in any other currency at the relevant time);
 - (iii) an average number of employees during the year of 250;
 - (c) [deleted]
 - (d) a *partnership* or unincorporated association which has net assets of at least £10 million (or its equivalent in any other currency at the relevant time) (and calculated, in the case of a limited *partnership*, without deducting loans owing to any of the *partners*);
 - (e) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*) with assets of at least £10 million (or its equivalent in any other currency), calculated by aggregating the value of the cash and *designated investments* forming part of the trust's assets, but before deducting its liabilities;
 - (f) a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or operator of a *personal pension scheme* or *stakeholder pension scheme* where the *scheme* has (or has had at any time during the previous two years):

- (i) at least 50 members; and
- (ii) assets under management of not less than £10 million (or its equivalent in any other currency at the relevant time); and
- (2) the *firm* has, before commencing business with the *client* on an *eligible counterparty* basis:
- (a) advised the *client* in writing that he is being categorised as an *eligible counterparty* for the purposes of PRIN;
 - (b) given a written warning to the *client* that he will lose protections under the *regulatory system*;
 - (c) for a *client* falling under (1)(a) or (b):
 - (i) taken reasonable steps to ensure that the written notices required by (a) and (b) have been delivered to a *person* authorised to take such a decision for the *client*; and
 - (ii) not been notified by the *client* that the *client* objects to being classified as an *eligible counterparty*;
 - (d) for a *client* falling under (1)(c), (d), (e) or (f):
 - (i) taken reasonable steps to ensure that the written notices required by (a) and (b) have been delivered to a *person* authorised to take such a decision for the *client*; and
 - (ii) obtained the *client's* written consent or is otherwise able to demonstrate that consent has been given.

Chapter 2

The Principles

2.1 The Principles

2.1.1

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The Principles

1 Integrity	A firm must conduct its business with integrity.
2 Skill, care and diligence	A firm must conduct its business with due skill, care and diligence.
3 Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4 Financial prudence	A firm must maintain adequate financial resources.
5 Market conduct	A firm must observe proper standards of market conduct.
6 Customers' interests	A firm must pay due regard to the interests of its customers and treat them fairly.
7 Communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
8 Conflicts of interest	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
9 Customers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
10 Clients' assets	A firm must arrange adequate protection for clients' assets when it is responsible for them.
11 Relations with regulators	A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.
12 Consumer Duty	A firm must act to deliver good outcomes for retail customers.

Chapter 2A

The Consumer Duty

2A.1 Application and purpose

Application

- 2A.1.1** **R** References in PRIN to the obligations on *firms* under Principle 12 include the obligations imposed by *rules* in ■ PRIN 2A.
- 2A.1.2** **R** References in PRIN to obligations imposed on *firms* under ■ PRIN 2A include the obligation imposed by Principle 12.
- 2A.1.3** **G** The application of Principle 12 and ■ PRIN 2A is set out in ■ PRIN 3, including ■ PRIN 3.2.6R to ■ PRIN 3.12G. Principle 12 applies in relation to a *firm's retail market business* or where the *firm communicates or approves financial promotions* which are addressed to, or disseminated in such a way that they are likely to be received by, a *retail customer*. To the extent that Principle 12 applies, Principles 6 and 7 do not apply.
- 2A.1.4** **G** The definition of a *product* for the purposes of Principle 12 and ■ PRIN 2A includes both products and services.
- 2A.1.5** **G** The definition of a *retail customer* for the purposes of Principle 12 and ■ PRIN 2A includes a prospective customer.
- 2A.1.6** **G** The *rules* in Principle 12 and ■ PRIN 2A are to be interpreted in accordance with the standard that could reasonably be expected of a prudent *firm* carrying on the same activity in relation to the same *product* and taking appropriate account of the needs and characteristics of *retail customers* as set out in ■ PRIN 2A.7.1R. Further guidance about what can reasonably be expected and the needs and characteristics of *retail customers* is set out at ■ PRIN 2A.7.2G to ■ 2A.7.5G.
- 2A.1.7** **R** References in this chapter (including those within Glossary definitions used in this chapter) to *regulated activities* include *payment services* and issuing *electronic money* (whether or not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*); and unless

otherwise stated are to be taken to include activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*).

Purpose

2A.1.8

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Principle 12 reflects a general expectation by the FCA that firms should conduct their business to a standard which ensures an appropriate level of protection for retail customers.

2A.1.9

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While recognising the general principle that *consumers* should take responsibility for their decisions, having regard to the other factors set out in s.1C of the Act, it is appropriate to require a high level of protection for *retail customers* for reasons including:

- (1) that they typically face a weak bargaining position in their relationships with *firms*;
- (2) that they are susceptible to cognitive and behavioural biases;
- (3) that they may lack experience or expertise in relation to *products* offered through *retail market business*; and
- (4) that there are frequently information asymmetries involved in *retail market business*.

2A.1.10

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- (1) The cross-cutting obligations at ■ PRIN 2A.2 set out the overarching conduct which *firms* must demonstrate when they act to deliver good outcomes for *retail customers*.
- (2) The main elements of *firms'* conduct obligations under *Principle 12* and ■ PRIN 2A are set out in ■ PRIN 2A.3 to ■ PRIN 2A.11.
- (3) The *retail customer outcome rules* and *guidance* at ■ PRIN 2A.3 to ■ PRIN 2A.6 set out *firms'* key obligations in relation to product governance, price and value, consumer understanding and supporting consumers.
- (4) There are particular provisions concerning *closed products* and *existing products* distributed to retail customers before 31 July 2023 in ■ PRIN 2A.3 and ■ PRIN 2A.4.

2A.1.11

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Principle 12 does not change the nature of a firm's relationship with any given retail customer. In particular, it does not create a fiduciary relationship where one would not otherwise exist nor require a *firm* to provide advice or carry out any other *regulated activity* where it would not otherwise have done so.

2A.1.12

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The FCA has issued guidance on the Consumer Duty in FG22/5, which *firms* should read alongside *Principle 12* and ■ PRIN 2A as a guide to the FCA's view as to how *Principle 12* and ■ PRIN 2A might be complied with.

Guidance on responsibilities of firms in a product's distribution chain	
2A	2A.1.13 G <p>(1) Principle 12 imposes obligations on <i>firms</i> towards <i>retail customers</i> of <i>products</i> irrespective of whether the customer is a <i>client</i> of the <i>firm</i>.</p> <p>(2) This extended application aims to ensure the effectiveness of obligations under Principle 12 which may properly relate to activities which determine or materially influence <i>retail customer</i> outcomes carried out by a <i>firm</i> with whom the <i>retail customer</i> is not in a <i>client relationship</i>.</p> <p>(3) A <i>firm's</i> role in the distribution chain may mean it is unable to determine or materially influence <i>retail customer</i> outcomes in connection with the <i>product</i>. If so, the <i>firm</i> may not be subject to any obligation under Principle 12.</p>
2A.1.14 G <p>Obligations on <i>firms</i> in the distribution chain of a <i>product</i> must be interpreted reasonably, in a manner that reflects the <i>firm's</i> role in that distribution chain and the degree to which it can determine or materially influence <i>retail customer</i> outcomes.</p>	
2A.1.15 G <p>The extent of a <i>firm's</i> responsibilities under Principle 12 in any one case will turn on the substance of the <i>firm's</i> role in the arrangements relating to the <i>product</i>. A <i>firm</i> which determines or has a material influence over <i>retail customer</i> outcomes is accountable notwithstanding that the <i>retail customer</i> may not be its <i>client</i> due to the indirect nature of their relationship.</p>	
2A.1.15A G <p>For example, where a <i>firm's</i> sole activity subject to obligations under Principle 12 is <i>communicating</i> or <i>approving</i> a <i>financial promotion</i>, the rules and guidance in ■ PRIN 2A.3 (products and services), ■ PRIN 2A.4 (price and value), ■ PRIN 2A.6 (customer support) and ■ PRIN 2A.11 (sale and purchase of product books) are likely to have limited relevance.</p>	
Relevance of guidance about Principles 6 and 7	
2A.1.16 G <p>Given the high-level nature and breadth of application of the <i>Principles</i>, guidance about a <i>Principle</i> cannot exhaustively cover its implications (see also ■ PRIN 1.1.9G).</p>	
2A.1.17 G <p>(1) In general terms, Principle 12 and ■ PRIN 2A impose a higher and more exacting standard of conduct in relation to a <i>firm's</i> activities relative to what <i>Principles</i> 6 or 7 would have otherwise required. Principle 12 and ■ PRIN 2A also have a broader application in relation to a <i>firm's</i> activities relative to <i>Principles</i> 6 and 7, with a greater focus on consumer protection outcomes for <i>retail customers</i>, including where those <i>retail customers</i> do not stand in a <i>client relationship</i> with that <i>firm</i> in the distribution chain.</p> <p>(2) While existing, formal guidance on <i>Principles</i> 6 and 7 will remain relevant to <i>firms</i> in considering their obligations under Principle 12, <i>firms</i> should also take due account of the inherent limits of such guidance in light of the factors in (1). See also ■ PRIN 2A.1.3G.</p>	

- (3) To the extent that a *firm* is not acting in accordance with existing guidance on *Principles* 6 and 7 and the behaviour would amount to a breach of *Principle* 6 or 7 in the event that they had continued to apply, the behaviour is likely to amount to a breach of *Principle* 12.
- (4) Where a *firm* is acting in accordance with guidance on *Principles* 6 and 7 that should not be relied on alone in considering how to comply with *Principle* 12. *Firms* also need to consider all their obligations not only under the *Principles*, but under any other applicable law, including other *FCA* rules such as those expanding upon *Principle* 12 as set out in ■ PRIN 2A.

2A.1.18

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The effect of ■ PRIN 3.2.10R is that the application of *Principles* 6 and 7 is unchanged with respect to a firm's activities insofar as they are not subject to *Principle* 12.

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2A

2A.2 Cross-cutting obligations

Act in good faith

- 2A.2.1** **R** A firm must act in good faith towards retail customers.
- 2A.2.2** **R** Acting in good faith is a standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of retail customers.
- 2A.2.3** **G** Examples of where a firm is not acting in good faith would include:
- failing to take account of retail customers' interests, for example in the way it designs a product or presents information;
 - seeking inappropriately to manipulate or exploit retail customers, for example by manipulating or exploiting their emotions or behavioural biases to mis-lead or create a demand for a product;
 - taking advantage of a retail customer or their circumstances, for example any characteristics of vulnerability, in a manner which is likely to cause detriment;
 - carrying out the same activity to a higher standard or more quickly when it benefits the firm than when it benefits the retail customer, without objective justification.
- 2A.2.4** **G** Acting in good faith does not mean a firm is prevented from pursuing legitimate commercial interests or seeking a profit, provided it does so in a manner which is compliant with Principle 12 and PRIN 2A. Acting in good faith does not require a firm to act in a fiduciary capacity where it was not already obliged to do so.
- 2A.2.5** **R** If a firm identifies through complaints, its internal monitoring or from any other source, that retail customers have suffered foreseeable harm as a result of acts or omissions by the firm, it must act in good faith and take appropriate action to rectify the situation, including providing redress where appropriate.
[Note: PRIN 2A.10 contains rules which are relevant when a firm is considering what "appropriate action" it must take.]

2A.2.6	R	<p>■ PRIN 2A.2.5 does not apply where the harm identified was caused by risks inherent in a <i>product</i>, provided the <i>firm</i> reasonably believed that <i>retail customers</i> or the relevant <i>retail customer</i> (as the context requires) understood and accepted those risks.</p>
2A.2.7	G	<p>Whether such a belief is reasonable will depend (among other things) on the nature of the <i>product</i> offered by the <i>firm</i>; the adequacy of the <i>firm's</i> product design, communications and customer services; the needs and characteristics of <i>retail customers</i> or the relevant <i>retail customer</i> (as the context requires); and the extent to which the <i>firm</i> is compliant with applicable law in relation to the sale of that <i>product</i>, including the rules set out in ■ PRIN 2A.</p>
Avoid causing foreseeable harm		
2A.2.8	R	<p>A <i>firm</i> must avoid causing foreseeable harm to <i>retail customers</i>.</p>
2A.2.9	R	<p>Foreseeable harm may be caused by both act and omission, in a <i>firm's</i> direct relationship with a <i>retail customer</i> or through its role in the distribution chain even where another <i>firm</i> in that chain also contributes to the harm.</p>
2A.2.10	G	<p>Avoiding causing foreseeable harm to <i>retail customers</i> includes:</p> <ul style="list-style-type: none">(1) ensuring all aspects of the design, terms, marketing, sale of and support for its <i>products</i> avoid causing foreseeable harm;(2) ensuring that no aspect of its business involves unfairly exploiting behavioural biases displayed or characteristics of vulnerability held by <i>retail customers</i>;(3) identifying the potential for harm that might arise if it withdraws a <i>product</i>, its products change or its understanding about the impact on <i>retail customers</i> changes;(4) responding to emerging trends that identify new sources of harm, including FCA supervisory action and/or communications; and(5) taking appropriate action to mitigate the risk of actual or foreseeable harm, including for example by:<ul style="list-style-type: none">(i) updating or otherwise amending the design of the <i>product</i> or distribution strategy;(ii) updating information about a <i>product</i> or updating <i>investment advice</i>;(iii) ensuring that <i>retail customers</i> do not face unreasonable barriers (including unreasonable additional costs), for example when they want to switch <i>products</i> or providers or to complain;(iv) allowing time and support for <i>retail customers</i> to find suitable alternatives where a <i>product</i> is withdrawn.

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2A.2.11	G	A <i>firm</i> with an ongoing relationship with a <i>retail customer</i> in relation to a <i>product</i> would need to act to avoid causing foreseeable harm to that <i>customer</i> throughout the lifecycle of that <i>product</i> .
2A.2.12	G	A <i>firm</i> which is involved with the provision of a <i>product</i> at a point in time and without an ongoing relationship with the <i>retail customer</i> does not need to act to avoid causing harm which only later becomes foreseeable.
2A.2.13	G	Avoiding causing foreseeable harm to <i>retail customers</i> does not mean a <i>firm</i> has a responsibility to prevent all harm. For example: <ul style="list-style-type: none"> (1) a <i>product</i> may have inherent risks which <i>retail customers</i> accept by selecting that <i>product</i>. Where a <i>firm</i> reasonably believes a <i>retail customer</i> understands and accepts such risks, it will not breach the <i>rule</i> if it fails to prevent them; (2) whether such a belief is reasonable will depend (among other things) on the nature of the <i>product</i> offered by the <i>firm</i>, the adequacy of the <i>firm's</i> product design, communications and customer services; and the extent to which it is compliant with applicable law in relation to the sale of that <i>product</i>, including the <i>rules</i> set out in ■ PRIN 2A; and (3) examples of risks which are inherent to a <i>product</i> include that a mortgage carries a risk of repossession and most investments carry a risk that the market may move resulting in capital loss.
Enable and support retail customers		
2A.2.14	R	A <i>firm</i> must enable and support <i>retail customers</i> to pursue their financial objectives.
2A.2.15	G	The conclusions a <i>firm</i> can properly reach about the financial objectives of <i>retail customers</i> will depend on the type of <i>product</i> it provides.
2A.2.16	G	A <i>firm</i> which provides an execution-only service or a non-advised service can assume (unless it knows or could reasonably be expected to have known otherwise) that the financial objectives of <i>retail customers</i> are to purchase, use and enjoy the full benefits of the <i>product</i> in question.
2A.2.17	G	A <i>firm</i> which provides advisory or discretionary services is entitled to rely on the objectives that <i>retail customers</i> have disclosed unless it knows or could reasonably be expected to know that information disclosed is manifestly out of date, inaccurate or incomplete.
2A.2.18	G	Information a <i>firm</i> must obtain under a provision of law (including, but not limited to, information required by ■ COBS 9.2.1R, ■ COBS 9A.2.1R, ■ COBS 10.2.1R, ■ COBS 10A.2.1R, ■ ICOBS 5.2.2R, ■ MCOB 4.7A.6 R, ■ MCOB 11.6.2R and ■ CONC 5.2A.5R) is relevant to whether a <i>firm</i> knew or could reasonably be expected to know that a customer has different financial objectives for the purposes of ■ PRIN 2A.2.16G and ■ PRIN 2A.2.17G.

2A.2.19 **G** To the extent that a *firm* becomes aware or should reasonably have become aware of a specific financial objective sought by a *retail customer* in connection with a *product*, it should consider how to support progress towards achieving that objective in its interactions with that *retail customer*.

2A.2.20 **G** Enabling and supporting *retail customers* to pursue their financial objectives includes acting to empower *retail customers* to make good choices in their interests, including by:

- (1) ensuring all aspects of the design, terms, marketing, sale of and support for its *products* meet and not frustrate the objectives and interests of *retail customers*;
- (2) making sure *retail customers* have the information and support they need, when they need it, to make and act on informed decisions;
- (3) enabling *retail customers* to enjoy the use of their *product* and to switch or exit the *product* where they want to without unreasonable barriers or delay; and
- (4) taking account of *retail customers'* behavioural biases and the impact of characteristics of vulnerability in all aspects of customer interaction.

2A.2.21 **G** Enabling and supporting *retail customers* to pursue their financial objectives may include the proactive provision of information or offer of support when a *firm* declines to provide a particular *product* to a *retail customer*. In particular:

- (1) *firms* should consider in light of the financial objectives of that *retail customer* whether it would be appropriate to provide information to enable and support that *retail customer* to achieve those objectives, and where appropriate should provide it; and
- (2) they should take reasonable steps to ensure any information they provide to a *retail customer* which is produced by an external third party such as a money advice charity, to which the *retail customer* is signposted, is independent and reliable.

2A.2.22 **G** Enabling and supporting *retail customers* to pursue their financial objectives does not mean that a *firm* is expected to go beyond what a prudent *firm* carrying out the same activity in relation to the same *product*, taking appropriate account of the needs and characteristics of *retail customers*, including in particular as set out in ■ PRIN 2A.7.4G to ■ PRIN 2A.7.5G, would do. For example, it does not require *firms* to go beyond what is reasonably expected by *retail customers* in the delivery of the *product*.

Guidance on the cross-cutting obligations

2A.2.23 **G** (1) The obligations in ■ PRIN 2A.2 apply at all stages of the customer journey and during the whole lifecycle of a *product*. *Firms* will therefore need to keep *products* under regular review and consider the impact of any changes they make to those *products*.

- 2A.2.24** **G** (2) In applying the obligations in ■ PRIN 2A.2, *firms* should note that each of the cross-cutting obligations in this section requires *firms* to act both proactively and reactively, as the context requires.
- 2A.2.24** **G** The obligations in ■ PRIN 2A.2 apply both at a *target market* and (where context requires) at an individual customer level, for example:
- (1) Where a *firm* interacts with an individual *retail customer* or is providing a bespoke service the obligations in ■ PRIN 2A.2 apply to those interactions and that service;
 - (2) Where a *firm* is not interacting with an individual *retail customer*, for example in the design of a *product*, when making pricing decisions or designing communications, the obligations in ■ PRIN 2A.2 apply at the level of that *target market*.
- 2A.2.25** **G** Each of the cross-cutting obligations in this section requires *firms* to understand and take account of cognitive and behavioural biases and the impact of characteristics of vulnerability and/or lack of knowledge on *retail customers'* needs and decisions.
- Interaction between Principle 12 and the cross-cutting obligations**
- 2A.2.26** **R** The cross-cutting obligations (the *rules* in ■ PRIN 2A.2) exhaust what is required under *Principle 12*.
- 2A.2.27** **G** The cross-cutting obligations define how *firms* should act to deliver good outcomes for *retail customers*.
- Interaction between the cross-cutting obligations and the outcomes rules**
- 2A.2.28** **G** The outcomes *rules* at ■ PRIN 2A.3 to ■ PRIN 2A.6 help to define what is required by *Principle 12* and ■ PRIN 2A.2 but do not exhaust those *rules*.

2A.3 Consumer Duty: retail customer outcome - products and services

2A

General nature of product governance obligations

2A.3.1

G

The product governance obligations on *firms* under *Principle 12* are general in nature and should be considered alongside any other legal or regulatory obligations that may apply, for example any marketing restrictions in relation to the *product*.

Manufacturer product governance arrangements

2A.3.2

R

A *manufacturer* must maintain, operate and review a process for the approval of:

- (1) a *product*; and
- (2) significant adaptations of a *product*,

in each case before it is marketed or *distributed* to *retail customers*.

2A.3.3

G

■ PRIN 2A.3.2R includes any *product* which is a new *product* manufactured on or after 31 July 2023, or an *existing product*. In relation to an *existing product* "marketing" or "distributing" includes reference to any future activity regardless of whether the *product* has previously been made available for marketing or distribution.

Manufacturers: product approval process for products that are not closed products

2A.3.4

R

For each *product* that is not a *closed product*, a *manufacturer's* product approval procedures must:

- (1) specify the *target market* for the *product* at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the *product*;
- (2) take account of any particular additional or different needs, characteristics and objectives that might be relevant for *retail customers* in the *target market* with characteristics of vulnerability;
- (3) ensure that all relevant risks to the *target market*, including any relevant risks to *retail customers* with characteristics of vulnerability, are assessed;

- (4) ensure that the design of the *product*:
- (i) meets the needs, characteristics and objectives of the *target market*;
 - (ii) does not adversely affect groups of *retail customers* in the *target market*, including groups of *retail customers* with characteristics of vulnerability; and
 - (iii) avoids causing foreseeable harm in the *target market*;
- (5) ensure that the intended distribution strategy is appropriate for the *target market*; and
- (6) require the *manufacturer* to take all reasonable steps to ensure that the *product* is *distributed* to the identified *target market*.

Manufacturers: product approval process for closed products

- 2A.3.5** **R** (1) A *manufacturer* of a *closed product* must maintain, operate and review a process to assess and regularly review whether any aspect of the *product* results in the *firm* not complying with the cross-cutting obligations (■ PRIN 2A.2) in relation to existing *retail customers*.
- (2) The manufacturer's process in (1) does not have to comply with ■ PRIN 2A.3.2R, ■ PRIN 2A.3.4R, ■ PRIN 2A.3.7R, ■ PRIN 2A.3.9R, ■ PRIN 2A.3.10R, ■ PRIN 2A.3.11R or ■ PRIN 2A.3.12R.

- 2A.3.6** **R** The *manufacturer's* process must also assess and regularly review whether the *closed product* affects groups of *retail customers* in different ways and in particular whether any *retail customers* in the *target market* with characteristics of vulnerability are adversely affected by any aspect of the *product*.

Manufacturer: review

- 2A.3.7** **R** A *manufacturer* must regularly review its *products* taking into account any event that could materially affect the potential risk to the *target market*. In doing so, the *manufacturer* must assess at least the following:
- (1) whether the *product* meets the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of *retail customers* in the *target market* with characteristics of vulnerability; and
 - (2) whether the intended distribution strategy remains appropriate, including whether the *product* is being *distributed* to the *target market* or reaching *retail customers* outside the *target market*.

Manufacturer: action following review of products

- 2A.3.8** **R** Where a *manufacturer* identifies any circumstances related to the *product* that may adversely affect *retail customers*, the *manufacturer* must:
- (1) take appropriate action to mitigate the situation and prevent any further harm; and

		(2) where appropriate, promptly inform other relevant persons in the distribution chain about the circumstances that led to action being taken and the remedial action taken.
		Manufacturers: testing products
2A.3.9	R	<p>(1) Manufacturers must test their <i>products</i> appropriately, including scenario analyses where relevant.</p> <p>(2) A manufacturer must, as part of discharging its obligations in (1), assess whether the <i>product</i> meets the identified needs, characteristics and objectives of the <i>target market</i>, including identified needs, characteristics and objectives of <i>retail customers</i> in the <i>target market</i> with characteristics of vulnerability.</p> <p>(3) Manufacturers must test their <i>products</i> in a qualitative manner and, depending on the type and nature of the <i>product</i> and the related risk of detriment to <i>retail customers</i>, quantitative manner.</p>
2A.3.10	R	<p>If the results of the testing show that the <i>product</i> does not meet the identified needs, characteristics and objectives of the <i>target market</i>, including identified needs, characteristics and objectives of any group or groups of <i>retail customers</i> in the <i>target market</i> with characteristics of vulnerability:</p> <p>(1) in relation to a new <i>product</i> or a significant adaptation of an existing <i>product</i>, the manufacturer must not bring the new or adapted <i>product</i> to the market;</p> <p>(2) in relation to an existing <i>product</i>, it must immediately:</p> <p>(a) cease marketing or distributing the <i>product</i> (whether directly or indirectly);</p> <p>(b) cease any renewals for existing <i>retail customers</i>, provided that existing <i>retail customers</i> are easily able to move to an alternative <i>product</i> that provides at least the same level of benefit at an equivalent cost to the customer, whether with the <i>firm</i> or with another <i>firm</i>; and</p> <p>(c) (where the <i>firm</i> intends to continue to market and <i>distribute</i> the <i>product</i>), make such changes as are necessary for the <i>product</i> to meet the identified needs, characteristics and objectives of the <i>target market</i>, including identified needs, characteristics and objectives of any group or groups of <i>retail customers</i> in the <i>target market</i> with characteristics of vulnerability.</p>
		Manufacturers: collaborating on manufacture
2A.3.11	R	Where <i>firms</i> collaborate to <i>manufacture</i> a <i>product</i> , they must set out in a written agreement their respective roles and responsibilities in the product approval process in ■ PRIN 2A.3.

		Manufacturer: selecting distribution channels and providing information to distributors
2A.3.12	R	<p>(1) A <i>manufacturer</i> must select distribution channels that are appropriate for the <i>target market</i>.</p> <p>(2) A <i>manufacturer</i> must provide each <i>distributor</i> with adequate information in good time to enable it to comply with the rules applicable to it in this section.</p> <p>(3) The information to be made available under (2) includes all appropriate information regarding the <i>product</i> and the product approval process from time to time to enable the <i>distributor</i> to comply with ■ PRIN 2A.3.16R.</p>
2A.3.12A	G	A <i>manufacturer</i> that is a <i>manager</i> is reminded of its obligations under ■ ESG 4.1.8R and ■ ESG 5.2.9R in meeting its obligations under ■ PRIN 2A.3.12R.
2A.3.13	R	Distributors: unregulated manufacturer
2A.3.14	R	<p>Where a <i>distributor</i> distributes a <i>product manufactured</i> by a person to whom the <i>rules</i> in ■ PRIN 2A.3 do not apply, it must take all reasonable steps to comply with ■ PRIN 2A.3.14R to ■ 2A.3.23G.</p> <p>Distributor: distribution arrangements</p> <p>A <i>distributor</i> must maintain, operate and review product distribution arrangements for each <i>product</i> it <i>distributes</i> that:</p> <ul style="list-style-type: none"> (1) avoid causing and, where that is not practical, mitigates foreseeable harm to <i>retail customers</i>; (2) support a proper management of conflicts of interest; and (3) ensure the needs, characteristics and objectives of the <i>target market</i> are duly taken into account.
2A.3.15	G	■ PRIN 2A.3.14R includes any <i>product</i> whether a new <i>product distributed</i> on or after 31 July 2023, or an <i>existing product</i> . In relation to an <i>existing product</i> , "distributes" includes reference to any future distribution activity regardless of whether the <i>product</i> has previously been made available for distribution, for example, renewing a contract with an existing <i>retail customer</i> .
2A.3.16	R	Distributors: obtaining information from manufacturers
		<p>A <i>distributor</i> must ensure that the product distribution arrangements contain effective measures and procedures to obtain sufficient, adequate and reliable information from the <i>manufacturer</i> about the <i>product</i> to:</p> <ul style="list-style-type: none"> (1) understand the characteristics of the <i>product</i>; (2) understand the identified <i>target market</i>; (3) consider the needs, characteristics and objectives of any <i>retail customers</i> in the <i>target market</i> with characteristics of vulnerability; (4) identify the intended distribution strategy for the <i>product</i>; and

		(5) ensure the <i>product</i> will be <i>distributed</i> in accordance with the needs, characteristics and objectives of the <i>target market</i> .
2A.3.16A	G	A <i>distributor</i> is reminded of its obligations under ■ ESG 4.1.16R to ■ ESG 4.1.19R in meeting its obligations under ■ PRIN 2A.3.16R.
2A.3.17	R	<p>Distributors: specific distribution strategy</p> <p>(1) This <i>rule</i> applies where a <i>distributor</i> sets up or implements a specific distribution strategy to supplement the <i>manufacturer's</i> strategy under ■ PRIN 2A.3.4R(5).</p> <p>(2) Any strategy set up or implemented by a <i>distributor</i> must be consistent with:</p> <ul style="list-style-type: none"> (a) the <i>manufacturer's</i> intended distribution strategy; and (b) the identified <i>target market</i>.
2A.3.18	R	<p>Distributors: providing sales information to manufacturers</p> <p>To support <i>product</i> reviews carried out by <i>manufacturers</i>, a <i>distributor</i> must, upon request, provide <i>manufacturers</i> with relevant information including, where appropriate, sales information and information on the regular reviews of the product distribution arrangements.</p>
2A.3.19	R	<p>Distributors: review</p> <p>(1) A <i>distributor</i> must regularly review its distribution arrangements to ensure that they are still appropriate and up to date.</p> <p>(2) When reviewing the <i>distribution</i> arrangements, a <i>distributor</i> must verify that it is only <i>distributing</i> each <i>product</i> to the identified <i>target market</i>.</p>
2A.3.20	R	<p>Distributor: action following review of products</p> <p>Where a <i>distributor</i> identifies an issue following a review, it must:</p> <p>(1) make appropriate amendments to the product distribution arrangements;</p> <p>(2) where harm has been identified, take appropriate action to mitigate the situation and prevent any further harm; and</p> <p>(3) promptly inform all relevant <i>persons</i> in the distribution chain about any action taken.</p>
2A.3.21	R	<p>Vested rights</p> <p>Where a <i>product</i> has existing contracts entered into before 31 July 2023, unless the <i>firm</i> has identified a breach of <i>rules</i> in force at the time, the appropriate action a <i>firm</i> must take under ■ PRIN 2A.3.8R or ■ PRIN 2A.3.20R does not require a <i>firm</i> to waive its vested rights under those existing contracts.</p>

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2A.3.22 **G** For the purposes of ■ PRIN 2A.3.21R, vested rights are likely to include the following:

- (1) payments already due under the terms of the contract;
- (2) remuneration for services wholly or partly provided under the contract; and
- (3) contractual charges payable on early termination of the contract.

2A.3.23 **G** Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.

Application of the product governance outcome

2A.3.24 **R** ■ PRIN 2A.3 does not apply to any *firm* subject to ■ PROD 3, ■ PROD 4, or ■ PROD 7 for any *product* they *manufacture* or *distribute* that falls within the scope of the relevant PROD chapter.

2A.3.25 **G** *Products* within scope of PROD include any *product* significantly adapted since the relevant PROD rules came into force, *legacy non-investment insurance products* and *funeral plans* which were existing products as of 29 July 2022.

2A.3.26 **R** A *closed product* not already subject to PROD must follow the *closed product rules* set out in ■ PRIN 2A.3.5R to ■ PRIN 2A.3.6R and ■ 2A.3.21R to ■ PRIN 2A.3.23G.

2A.3.27 **G** A *closed product* will already be subject to PROD if it is:

- (1) a *financial instrument* or *structured deposit* manufactured by a *firm* subject to ■ PROD 3 on or after 3 January 2018;
- (2) an *insurance product* manufactured on or after 1 October 2018 or a *legacy non-investment insurance product*; or
- (3) a *funeral plan product* manufactured on or after 29 July 2022.

2A.3.28 **R** ■ PRIN 2A.3 does not apply to both:

- (1) *units* in an *authorised fund* or the *sub-fund* of such a scheme, where the relevant authorised fund or sub-fund is in the process of winding up or termination under, or in accordance with, ■ COLL 7.3, ■ COLL 7.4, or ■ COLL 7.4A; and
- (2) *units* or *shares* in a *fund* or *sub-fund* which is not an *authorised fund* or a *sub-fund* of such a scheme or AIF, where the relevant *fund* or *sub-fund* is in a process of winding up or termination which is equivalent to that referred to in (1).

2A.3.29**G****Compliance with other Handbook provisions***A firm* which either:

- (1) conducts business in relation to *products* that would be covered by chapters in *PROD* if they were *manufactured* after the date the relevant chapter in *PROD* came into force; or
- (2) is subject to ■ PROD 1.3.2R,

*may choose whether to apply either the processes set out in the relevant chapter of *PROD* that applies to the *product* (■ PROD 3 for *financial instruments* and *structured deposits* and ■ PROD 4 for insurance products) or the processes set out in ■ PRIN 2A.3.* ■ PRIN 2A.3.30E sets out the circumstances where a *firm* that chooses to comply with the relevant chapter of *PROD* is likely to be considered in breach of ■ PRIN 2A.3.

2A.3.30**E**

- (1) This provision applies to:
 - (a) any *firm* to which ■ PROD 1.3.2R applies;
 - (b) a *manufacturer* of an *existing product* manufactured before 3 January 2018, which is a *financial instrument* or a *structured deposit*; and
 - (c) a *manufacturer* of an *existing product* manufactured before 1 October 2018 which is an *insurance product*, but which is not a *legacy non-investment insurance product*.
- (2) For *firms* within (1)(a) or (b), where the *firm* is following the provisions of ■ PROD 3, contravention of ■ PROD 3 may be relied on as tending to establish contravention of those provisions of ■ PRIN 2A.3 that apply to the *firm*.
- (3) For *firms* within (1)(c), where the *firm* is following the provisions of ■ PROD 4, contravention of ■ PROD 4 may be relied on as tending to establish contravention of those provisions of ■ PRIN 2A.3 that apply to the *firm*.

2A

2A.4 Consumer Duty: retail customer outcome on price and value

What is value?

- 2A.4.1 R** For the purposes of this outcome:
- (1) value is the relationship between the amount paid by a *retail customer* for the *product* and the benefits they can reasonably expect to get from the *product*; and
 - (2) a *product* provides fair value where the amount paid for the *product* is reasonable relative to the benefits of the *product*.

Price and value: manufacturers general obligation

- 2A.4.2 R** A manufacturer must:
- (1) ensure that its *products* provide fair value to *retail customers* in the *target markets* for those *products*; and
 - (2) carry out a value assessment of its *products* and review that assessment on a regular basis appropriate to the nature and duration of the *product*.

- 2A.4.3 R** An initial value assessment must be carried out for:
- (1) a *product*; and
 - (2) any significant adaptation of a *product*,
- in each case before it is marketed or *distributed* to a *retail customer*.

- 2A.4.4 G** ■ PRIN 2A.4.2R and ■ PRIN 2A.4.3R include any *product* whether a new *product* manufactured on or after 31 July 2023, an *existing product* or a *closed product*. In relation to an existing product or a closed product, “marketing” or “distributing” includes reference to any future activity regardless of whether the *product* has previously been made available for marketing or distribution.

- 2A.4.5 R** In ensuring that a *product* provides fair value, a *manufacturer* must be satisfied that this will be the case from the point at which the *manufacturer* completes the assessment for a reasonably foreseeable period, including, where the *product* is one that renews, following renewal.

2A.4.6 **G** What constitutes a 'reasonably foreseeable period' will depend on the type of *product*. This could include the expected length of time a *retail customer* in the *target market* will keep it, including, where relevant, the number of occasions the *firm* would reasonably expect that a *retail customer* would renew the *product*.

2A

Product packages

2A.4.7 **R** Where a *product* is intended to be provided with one or more other *products*, a *manufacturer* must ensure that:

- (1) each component *product*; and
- (2) the package as a whole,

provides fair value to *retail customers* in the *target market*.

The value assessment

2A.4.8 **R** A *manufacturer's* assessment of whether or not a *product* provides fair value must include (but is not limited to) consideration of the following:

- (1) the nature of the *product*, including the benefits that will be provided or may be reasonably expected and its quality;
- (2) any limitations that are part of the *product*;
- (3) the expected total price to be paid by the *retail customer* or that may become due from the *retail customer*. The expected total price includes:
 - (a) the price paid or agreed to be paid by the *retail customer* on entering into a contract for the *product*, including by way of repayments;
 - (b) any regular charges or fees payable over the lifetime of the *product*, for example an annual management charge;
 - (c) any contingent fees or charges, for example, administrative charges for changes of address, charges for falling into arrears on a loan, or charges for transferring investments; and
 - (d) any non-financial costs the *retail customer* is asked or required to provide to the *firm*; and
- (4) any characteristics of vulnerability that *retail customers* in the *target market* display and the impact these characteristics have on the likelihood that *retail customers* may not receive fair value from its *products*.

Guidance on the value assessment: factors that may be considered

2A.4.9 **G** A *manufacturer* may consider one or more of the following in its assessment of whether or not a *product* is providing fair value:

- (1) the costs incurred by the *firm* in *manufacturing* or *distributing* the *product*;

- (2) the market rate and charges for a comparable *product*;
- (3) any accrued costs and/or benefits for *existing or closed products*; and
- (4) whether there are any *products* that are priced significantly lower for a similar or better benefit.
- Guidance on the value assessment: benefits and costs**
- 2A.4.10** **G** (1) The types of benefits that *retail customers* may reasonably expect to obtain may include non-financial benefits such as an enhanced level of customer service providing extra assistance to *retail customers* in using the *product*.
- (2) Examples of non-financial costs include the provision of personal data and the granting of permission to use that data.
- Guidance on the value assessment: characteristics of retail customers**
- 2A.4.11** **G** In considering the value assessment and how it applies when *manufacturers* have different groups of *retail customer* in their target market for a *product*, they should have regard in particular to the following:
- (1) whether any *retail customers* who have characteristics of vulnerability may be less likely to receive fair value; and
- (2) whether the *product* provides fair value for each of the different groups of *retail customer* in the *target market*, including in circumstances where the pricing structure of the *product* involves different prices being charged to different groups of *retail customers*.
- Guidance on the value assessment: interaction with the Duty and the retail customer outcomes**
- 2A.4.12** **G** In ensuring that a *product* provides fair value, a *manufacturer* should have regard to how the cross-cutting obligations (■ PRIN 2A.2) and the other *retail customer outcome rules* (■ PRIN 2A.3 to ■ PRIN 2A.6) are met in respect of the *product*.
- Manufacturers: collaboration with another firm or with unregulated persons**
- 2A.4.13** **R** Where *firms* collaborate to *manufacture* a *product*, they must set out in a written agreement their respective roles and responsibilities in the value assessment in ■ PRIN 2A.4.
- 2A.4.14** **R** Where a *firm* collaborates with a *person* who is not a *firm* to *manufacture* a *product*, it remains fully responsible for discharging all its obligations under ■ PRIN 2A.4.

		Manufacturers: information for distributors
2A.4.15	R	The manufacturer of a <i>product</i> must ensure that firms <i>distributing</i> the product have all necessary information to understand the value that the <i>product</i> is intended to provide to a <i>retail customer</i> .
		Price and value: distributors general obligation
2A.4.16	R	<p>(1) A <i>distributor</i> must not <i>distribute a product</i> unless its distribution arrangements are consistent with the <i>product</i> providing fair value to <i>retail customers</i>.</p> <p>(2) Arrangements will be consistent with providing fair value to <i>retail customers</i> where they enable the <i>distributor</i> to obtain enough information from the <i>manufacturer</i> to understand the outcome of the value assessment and in particular to identify:</p> <ul style="list-style-type: none"> (a) the benefits the <i>product</i> is intended to provide to a <i>retail customer</i>; (b) the characteristics, objectives and needs of the <i>target market</i>; (c) the interaction between the price paid by the <i>retail customer</i> and the extent and quality of any services provided by the <i>distributor</i>; and (d) whether the impact that the <i>distribution</i> arrangements (including any remuneration it or (so far as the <i>distributor</i> is aware of it) another person in the distribution chain receives) would result in the <i>product</i> ceasing to provide fair value to <i>retail customers</i>.
		Distributors: unregulated manufacturer
2A.4.17	R	Where a <i>distributor distributes a product manufactured by a person</i> to whom the <i>rules</i> in PRIN 2A.4 do not apply, it must take all reasonable steps to comply with PRIN 2A.4.16R.
		Distribution chains
2A.4.18	R	<p>(1) A <i>firm</i> which <i>distributes products to retail customers</i> is responsible for ensuring the fair value obligations in relation to distribution are met in respect of any <i>product</i> it distributes to a <i>retail customer</i>.</p> <p>(2) A <i>firm</i> which <i>distributes products to other distributors</i> must ensure that all information relevant to the value assessment is passed to the distributor at the end of the <i>distribution chain</i>.</p> <p>(3) A <i>firm</i> which <i>distributes products to other firms in the distribution chain</i> must consider whether they are also a <i>co-manufacturer</i> of the <i>product</i> they are <i>distributing</i> and if they are, apply the <i>manufacturer rules</i> in this section.</p>
		When must a manufacturer and a distributor consider the value assessment?
2A.4.19	R	Manufacturers and <i>distributors</i> are responsible for the value assessment as follows:

- (1) A *manufacturer* must consider the fair value assessment at every stage of the product approval process, including in particular when:
- designing the *product*;
 - identifying *retail customers* in the *target market* for whom the *product* needs to provide fair value; and
 - selecting distributions methods/channels.
- (2) A *distributor* must consider the fair value assessment when determining the distribution strategy for the *product* and in particular where the *product* is to be *distributed* with another *product* whether as part of a package or not.

The value assessment: general

2A.4.20 **R** In determining whether a *product* provides fair value, or distribution arrangements are consistent with fair value being provided, a *firm* must not rely on individual *retail customers* to consider whether they believe the *product* provides fair value in place of the *firm's* own assessment.

Closed products

2A.4.21 **R**

- The obligation on *manufacturers* in ■ PRIN 2A.4.2R to ensure that a *product* provides fair value applies to *closed products* as well as new and *existing products*.
- In the case of a *closed product*, the reference to a *target market* in ■ PRIN 2A.4.2R should be read as referring to the *retail customers* who are *customers* of the *closed product*.

Guidance on the value assessment: closed and existing products

2A.4.22 **G** The assessment of whether a *closed product* or an *existing product* provides fair value should be on a forward-looking basis only. Unless required to do so by any other *rule*, *manufacturers* do not need to consider whether their *closed products* or *existing products* provided fair value prior to these *rules* coming into force.

2A.4.23 **G** In assessing whether a *closed product* or an *existing product* provides fair value, a *manufacturer* may take into account the benefits provided, the costs charged to the *retail customer* and the costs incurred by the *firm* prior to these *rules* coming into effect.

[**Note:** See also ■ PRIN 2A.4.29R regarding appropriate action for *closed products* if the *product* no longer provides fair value.]

Reviewing the value assessment

2A.4.24 **R**

- A *manufacturer* must regularly review the value assessment throughout the life of the *product* to ensure that the *product* continues to provide fair value to *retail customers* in the *target market*.

		(2) A <i>distributor</i> must regularly review its distribution arrangements throughout the life of the <i>product</i> to ensure that they remain consistent with the <i>product</i> providing fair value to <i>retail customers</i> in the <i>target market</i> .	2A
2A.4.25	R	Where a <i>manufacturer</i> identifies in its review of its value assessment that the <i>product</i> no longer provides fair value, it must take appropriate action to:	
		(1) mitigate, and where appropriate, remediate any harm caused to existing <i>retail customers</i> ; and	
		(2) prevent harm to new <i>retail customers</i> .	
2A.4.26	R	Appropriate action under ■ PRIN 2A.4.25R includes notifying the <i>distributor(s)</i> of the <i>product</i> of the issue and of any changes to the <i>product</i> and the <i>distribution strategy</i> that the <i>manufacturer</i> has put place to mitigate and prevent further harm.	
2A.4.27	R	Where a <i>distributor</i> identifies that the <i>product</i> no longer provides fair value, whether that is due to aspects of the <i>product</i> or the distribution arrangements, it must take appropriate action to:	
		(1) mitigate the situation and prevent further occurrences of any possible harm to <i>retail customers</i> , including, where appropriate, amending the distribution strategy for that <i>product</i> (and, where relevant, the package);	
		(2) redress any foreseeable harm that has been caused to <i>retail customers</i> by faults in the <i>distributor's</i> distribution arrangements; and	
		(3) inform any relevant <i>manufacturers</i> and other <i>distributors</i> in the chain promptly about any concerns they have and any action the <i>distributor</i> is taking.	
2A.4.28	G	The appropriate action that a <i>distributor</i> may need to take under ■ PRIN 2A.4.27R will depend on the role the <i>distributor</i> has in the distribution chain and in relation to the <i>product</i> being <i>distributed</i> . A <i>distributor</i> who is a <i>co-manufacturer</i> of the <i>product</i> being <i>distributed</i> is likely to be able to do more to mitigate the situation than <i>distributors</i> who are not <i>co-manufacturers</i> .	
		Vested rights	
2A.4.29	R	In the case of a <i>closed product</i> , or an <i>existing product</i> held by a <i>retail customer</i> before 31 July 2023, unless the <i>firm</i> has identified a breach of <i>rules</i> in existence before 31 July 2023, the appropriate action a <i>firm</i> may take does not require a <i>firm</i> to waive its vested contractual rights.	
2A.4.30	G	For the purposes of ■ PRIN 2A.4.29R, vested contractual rights include the following:	
		(1) payments already due under the terms of the contract;	

		(2) remuneration for services wholly or partly provided under the contract; and
		(3) contractual charges payable on early termination of the contract.
2A.4.31	G	Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.
2A.4.32	R	<p>Application of the price and value outcome</p> <p>(1) The rules in ■ PRIN 2A.4 do not apply to:</p> <ul style="list-style-type: none"> (a) a firm which manufactures or distributes a non-investment insurance product or a legacy non-investment insurance product; (b) a firm which manufactures or distributes any funeral plan product subject to ■ PROD 7; and (c) an authorised fund manager in relation to products subject to ■ COLL 6.6.19R to ■ 6.6.26G, ■ COLL 8.5.16R to ■ 8.5.22R, or ■ COLL 15.7.16R to ■ 15.7.24R. <p>(2) A firm in (1) must continue to apply ■ PROD 4 and ■ PROD 7 or the relevant COLL rules .</p>
2A.4.33	R	■ PRIN 2A.4 does not apply to both:
2A.4.34	R	<p>(1) units in an authorised fund or the sub-fund of such a scheme, where the relevant authorised fund or sub-fund is in the process of winding up or termination under, or in accordance with, ■ COLL 7.3, ■ COLL 7.4, or ■ COLL 7.4A; and</p> <p>(2) units or shares in a fund or sub-fund which is not an authorised fund or a sub-fund of such a scheme or AIF, where the relevant fund or sub-fund is in a process of winding up or termination which is equivalent to that referred to in (1).</p> <p>(1) A manufacturer of a funeral plan product which is a closed product and was manufactured before 29 July 2022 must apply the closed product rules and guidance in ■ PRIN 2A.4..</p> <p>(2) The closed product rules and guidance are ■ PRIN 2A.4.1R to ■ 2A.4.2R, ■ 2A.4.4G to ■ 2A.4.6G, ■ 2A.4.8R to ■ 2A.4.12G ■ 2A.4.20R to ■ 2A.4.25R and ■ 2A.4.29R to ■ 2A.4.31G.</p>
2A.4.35	E	Where a manufacturer of a closed product which is a funeral plan product manufactured before 29 July 2022 is following the provisions of ■ PROD 7 concerning the fair value of funeral plan products, contravention of ■ PROD 7 may be relied on as tending to establish contravention of those provisions of ■ PRIN 2A.4 that apply to the firm.

2A.4.36

R**2A****Application to pension scheme operators and providers of pathway investments**

- (1) This *rule* applies to a *firm* that is required to comply with ■ COBS 19.5 (Independent Governance Committees (IGCs) and publication and disclosure of costs and charges).
- (2) A *firm* to which this *rule* applies must use the value for money assessment carried out by the *IGC* or the *governance advisory arrangement* when carrying out its value assessment under ■ PRIN 2A.4.2R.
- (3) Where a *firm* disagrees with the value for money assessment carried out by the *IGC* or the *governance advisory arrangement* it must:
 - (a) explain why it disagrees with the assessment; and
 - (b) set out how it considers the *relevant scheme* or *pathway investment* provides fair value.
- (4) In setting out how it considers the *relevant scheme* or *pathway investment* provides fair value the *firm* must use the framework set out in ■ COBS 19.5.
- (5) A *firm* that is unable to adequately explain why it disagrees with a value for money assessment conducted under ■ COBS 19.5 must apply ■ PRIN 2A.4.25R to the *relevant scheme* or *pathway investment*.

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2A.5 Consumer Duty: retail customer outcome on consumer understanding

Application

2A.5.1

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- (1) Other than ■ PRIN 2A.5.15R, this section applies to:
- (a) all *firms* to whom *Principle 12* and ■ PRIN 2A apply, involved in the production, *approval* or distribution of *retail customer* communications, regardless of whether the *firm* has a direct relationship with a *retail customer*, and including where a *firm* produces, *approves* or distributes *financial promotions* or other advertisements, sales-related communications, and post-sale communications (and references to a *firm's* communications or a *firm* communicating are to be read accordingly);
 - (b) all communications throughout a *firm's* interactions with *retail customers*, including:
 - (i) before, during, and after any sale of a *product*; and
 - (ii) interactions that do not relate to a specific *product*; and
 - (c) all communications including verbal, visual or in writing, from a *firm* to a *retail customer*, regardless of the channel used or intended to be used for the communication, including *electronic communications*, such as on social media.
- (2) ■ PRIN 2A.5.15R applies to all *firms* to whom *Principle 12* and ■ PRIN 2A apply.

2A.5.2

G

Retail customers in this section means the *retail customers* intended to receive the communication.

Communications to retail customers

2A.5.3

R

- (1) A *firm* must support *retail customer* understanding so that its communications:
- (a) meet the information needs of *retail customers*;
 - (b) are likely to be understood by *retail customers*; and
 - (c) equip *retail customers* to make decisions that are effective, timely and properly informed.
- (2) A *firm* must communicate information to *retail customers* in a way which is clear, fair and not misleading.

- 2A.5.4** **R** With regard to ■ PRIN 2A.5.3R(1):
- (1) for *product-specific* communications, a *firm* should consider the *target market* for that *product*; or
 - (2) for non *product-specific* communications, a *firm* should consider its *retail customers*.
- 2A.5.5** **R** With regard to ■ PRIN 2A.5.3R(1)(c), for a *firm* to provide information on a timely basis, it must communicate in good time for *retail customers* to make effective decisions, including:
- (1) before the purchase of a *product*; and
 - (2) at suitable points throughout the lifecycle of the *product*.
- 2A.5.6** **R** In considering the methods of communicating with *retail customers*, a *firm* must satisfy itself that the communication channel:
- (1) enables the communication of relevant information which *retail customers* are likely to need in a way that supports effective decision making; and
 - (2) provides an appropriate opportunity for *retail customers* to review the information and, where relevant, assess their options.
- 2A.5.7** **G** In supporting the understanding of *retail customers* through its communications, a *firm* should:
- (1) explain or present information in a logical manner;
 - (2) use plain and intelligible language and, where use of jargon or technical terms is unavoidable, explain the meaning of any jargon or technical terms as simply as possible;
 - (3) make key information prominent and easy to identify, including by means of headings and layout, display and font attributes of text, and by use of design devices such as tables, bullet points, graphs, graphics, audio-visuals and interactive media;
 - (4) avoid unnecessary disclaimers; and
 - (5) provide relevant information with an appropriate level of detail, to avoid providing too much information such that it may prevent *retail customers* from making effective decisions.
- 2A.5.8** **R** In supporting the understanding of *retail customers*, the *firm* must tailor communications provided to *retail customers*, taking into account:
- the characteristics of *retail customers*, including any characteristics of vulnerability;
 - (2) the complexity of the *product*;

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		(3) the communication channel(s) used; and
		(4) the role of the <i>firm</i> , including whether the <i>firm</i> is providing regulated advice or information only.
		Interacting on a one-to-one basis
2A.5.9	R	<p>When a <i>firm</i> is interacting directly with a <i>retail customer</i> on a one-to-one basis, such as in branch, during a telephone conversation or other interactive dialogue, the <i>firm</i> must, where appropriate:</p> <ul style="list-style-type: none"> (1) tailor the communication to meet the information needs of that <i>retail customer</i>, taking into account whether they have characteristics of vulnerability; and (2) ask the <i>retail customer</i> whether they understand the information and if they have any further questions, particularly if the information is reasonably regarded as key information, such as where it prompts that <i>retail customer</i> to make a decision.
		Testing, monitoring and adapting communications
2A.5.10	R	<p>(1) Where appropriate, a <i>firm</i> must:</p> <ul style="list-style-type: none"> (a) test communications before communicating them to <i>retail customers</i>; and (b) (as set out in ■ PRIN 2A.9) regularly monitor the impact of the communications once they have been communicated, to identify whether they are supporting good outcomes for <i>retail customers</i>. <p>(2) Where a <i>firm</i> has identified any issues in its communications through ■ PRIN 2A.5.10R(1), it must:</p> <ul style="list-style-type: none"> (a) investigate the issue; (b) correct any deficiencies through: <ul style="list-style-type: none"> (i) adapting its communications; and (ii) (where appropriate) adapting its <i>products</i> or processes, for example its sales processes, if it is aware or ought to reasonably be aware that adapting its communications would not be sufficient in isolation to support good outcomes for <i>retail customers</i>; and (c) (where appropriate) follow the requirements in relation to remedies and other action in ■ PRIN 2A.2.5R and ■ PRIN 2A.10.
2A.5.11	G	<p>With regard to the <i>firm's</i> role, it would be more appropriate for the <i>firm</i> to:</p> <ul style="list-style-type: none"> (1) test communications if the <i>firm</i> is or ought to reasonably be responsible for: <ul style="list-style-type: none"> (a) the production of those communications; or (b) adapting those communications after testing; and

2A.5.12

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- (2) monitor the impact of communications where the *firm* has direct interactions with *retail customers*, such as through the provision of customer services (whether outsourced in whole or in part).

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In determining whether testing of a communication is appropriate, a *firm* should consider factors such as:

- (1) the purpose of the communication and, in particular, if it is designed to prompt or inform a decision, and the relative importance of that decision;
- (2) the context of the communication, its timing, and its frequency (for example, it is likely to be more appropriate to test communications that could impact many *retail customers*);
- (3) the information needs of *retail customers*;
- (4) the characteristics of vulnerability of *retail customers*;
- (5) whether the scope for harm to *retail customers* is likely to be significant, including if the information being conveyed were misunderstood or overlooked by *retail customers*; and
- (6) whether, to support good outcomes for *retail customers*, it is more important to communicate information urgently, rather than carrying out testing beforehand.

2A.5.13

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A *firm* should adapt its communications in accordance with

■ PRIN 2A.5.10R(2)(b)(i) to support *retail customer* understanding if it identifies that:

- (a) there are areas of common misunderstanding among *retail customers*; or
- (b) *retail customers* are not experiencing good outcomes, including particular groups of *retail customers* such as those with characteristics of vulnerability.
- (2) For the purposes of ■ PRIN 2A.5.13G(1)(a), if there is a notably different response by *retail customers* than was reasonably anticipated by the *firm* or ought to have been reasonably anticipated, including a notably lower response rate, following a communication prompting *retail customers* to take action, then this would suggest that the communication has not been understood.

2A.5.14

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Where a *firm* identifies or becomes aware of a communication produced by another *firm* in its distribution chain that is not delivering good outcomes for *retail customers*, it must promptly notify the issue to the relevant *firm* in the distribution chain, such as a *manufacturer*.

Providing information to other firms

2A.5.15

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A *firm* must provide information in good time to another *firm* in the same distribution chain, where such information is:

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|--|---|
| | <p>(1) requested by the other <i>firm</i> and is reasonably required; or</p> <p>(2) otherwise considered to be reasonably required by the <i>firm</i>,
so that it can be communicated to <i>retail customers</i>.</p> |
|--|---|

2A.6 Consumer Duty: retail customer outcome on consumer support

2A

Application

2A.6.1

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- (1) Other than in PRIN 2A.6.6R, this section applies:
 - (a) to all *firms* to whom Principle 12 and PRIN 2A apply, who are responsible for interacting directly with, and providing support to, *retail customers*, such as through its customer services functions and including where the *firm* outsources its interactions with *retail customers* to a third party (in whole or part);
 - (b) regardless of the channel used or intended to be used when interacting with, or providing support to, *retail customers*, including via *electronic communications* such as on social media; and
 - (c) to all support provided by a *firm* to *retail customers*, such as in the course of or in connection with the *firm* providing customer services, including:
 - (i) before, during, and after any sale of a *product*; and
 - (ii) support that does not relate to a specific *product*.
- (2) PRIN 2A.6.6R applies to all *firms* to whom Principle 12 and PRIN 2A apply.

Design and delivery of customer support

2A.6.2

R

A *firm* must design and deliver support to *retail customers* such that it:

- (1) meets the needs of *retail customers*, including those with characteristics of vulnerability;
- (2) ensures that *retail customers* can use their *product* as reasonably anticipated;
- (3) ensures that it includes appropriate friction in its customer journeys to mitigate the risk of harm and give *retail customers* sufficient opportunity to understand and assess their options, including any risks; and
- (4) ensures that *retail customers* do not face unreasonable barriers (including unreasonable additional costs) during the lifecycle of a *product*, such as when they want to:
 - (a) make general enquiries or requests to the *firm*;

- (b) amend or switch the *product*;
- (c) transfer to a new *product provider*;
- (d) access a benefit which the *product* is intended to provide;
- (e) submit a claim;
- (f) make a *complaint*; or
- (g) cancel a contract, agreement or arrangement or otherwise terminate their relationship with the *firm*.

2A.6.3

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For the purposes of ■ PRIN 2A.6.2R(4):

- (1) unreasonable barriers are those which are likely to cause *retail customers* to take unreasonable additional steps to progress their objectives, including:
 - (a) steps which are:
 - (i) unreasonably onerous or time consuming;
 - (ii) complex for a *retail customer* to carry out; or
 - (iii) difficult for a *retail customer* to understand; and
 - (b) asking *retail customers* for unnecessary information or evidence;
- (2) where a firm has included appropriate friction in its customer journeys to comply with ■ PRIN 2A.6.2R(3), this would not amount to an unreasonable barrier; and
- (3) unreasonable additional costs includes where *retail customers* incur unreasonable exit fees or other charges, delays, distress or inconvenience.

2A.6.4

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A *firm* would be unlikely to meet its obligations in ■ PRIN 2A.6.2R if its support to *retail customers* causes or would be likely to cause:

- (1) prospective *retail customers* to be prioritised over existing *retail customers*;
- (2) unreasonable delays when *retail customers* attempt to engage with the *firm*, including disproportionately longer call waiting times to cancel or make changes to an existing *product* than to purchase a new *product*; or
- (3) unreasonable delays to:
 - (a) any payments due to *retail customers* after they have been agreed;
 - (b) the *firm* requesting necessary information or evidence from *retail customers*; or
 - (c) the *firm* processing information or evidence received from *retail customers*.

2A.6.5**Dealing with representatives****R**

- (1) Where a *person* is authorised by a *retail customer* or by law to assist in the conduct of the *retail customer's* affairs (such as a power of attorney), the *firm* must provide the same level of support to that *person* that they would have provided to the *retail customer*.
- (2) ■ PRIN 2A.6.5R(1) does not apply where the *person* assisting in the conduct of the *retail customer's* affairs is also a *firm*.

2A**2A.6.6****Dealing with requests from other firms****R**

A *firm* must deal with reasonable requests from another *firm* in an effective way and in good time to enable the other *firm* to support *retail customers*.

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2A.7 General

Expected standards under Principle 12 and PRIN 2A

2A.7.1

R

Principle 12 and the obligations in PRIN 2A must be interpreted in accordance with the standard that could reasonably be expected of a prudent firm:

- (1) carrying on the same activity in relation to the same product; and
- (2) taking appropriate account of the needs and characteristics of retail customers based on the needs and characteristics of retail customers in the relevant target market or of individual retail customers as the context requires.

2A.7.2

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What is reasonable depends on all the relevant circumstances, including:

- (1) the nature of the product being offered or provided, in particular:
 - (a) the risk of harm to retail customers. For example, if a product is higher risk, firms should take additional care to ensure it meets retail customers' needs, characteristics and objectives and is targeted appropriately;
 - (b) the product's relative complexity. Retail customers may find it more difficult to assess the features, suitability or value offered by more complicated products. Long-term products where the outcome is not easy to predict, or non-standard charging structures, or other features which may not be easy for retail customers to understand may require greater care from a firm to promote, monitor and support consumer understanding;
 - (c) the costs, fees and charges involved with the product;
 - (d) the relative utility to retail customers of the product as a whole and of specific features, options, or services within the product, if subject to separate fees or charges;
- (2) the characteristics of the retail customer or retail customers including (to the extent that a firm either knows about or should reasonably have known about them), in particular:
 - (a) their reasonable expectations in relation to the product; and
 - (b) their resources, degree of financial capability or sophistication, characteristics of vulnerability and corporate structure (where relevant).
- (3) the firm's role in relation to the product, including:

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- (a) the *firm's* relationship with the *retail customer*. Acting reasonably does not require a *firm* to assume a fiduciary duty or require an advisory service where it does not already exist;
- (b) whether the *firm* has provided or will provide advice to the *retail customer*. What is reasonable may be different where advice is being provided;
- (c) the *firm's* role in the *product's* distribution chain, in particular its role in determining or materially influencing outcomes for *retail customers* in relation to the *product*;
- (d) the stage in the *firm's* relationship with the *retail customer*. There will be times when retail customers are particularly exposed to harm, for example when they fall into arrears or are considering long-term investment decisions. The actions a *firm* needs to take to be acting reasonably in such circumstances may be greater than when a *retail customer* is making decisions which carry a lesser risk of adverse outcomes.
- 2A.7.3** **G** Acting in a way that could reasonably be expected of a prudent *firm* requires more than adopting a single solution that is reasonable. It includes (among other things) considering whether the preferred solution provides good outcomes for all *retail customers* affected or only some; and if only some, why it does not work for all, and how best to identify additional actions which might mitigate the outcome for those adversely affected.
- 2A.7.4** **G** In relation to the needs and characteristics of *retail customers*, a *firm* should, among other things:
- (1) pay appropriate regard to the nature and scale of characteristics of vulnerability that exist in any relevant *target market*;
- (2) pay appropriate regard to the impact of characteristics of vulnerability on the needs of *retail customers* in any relevant *target market*;
- (3) when dealing with a particular *retail customer* pay appropriate regard to the needs and characteristics of that *retail customer*, such as characteristics of vulnerability;
- (4) assist frontline staff to understand how to actively identify information that could indicate vulnerability and, where relevant, seek information from *retail customers* with characteristics of vulnerability that will allow staff to respond to their needs; and
- (5) set up systems and processes in a way that supports and enables *retail customers* with characteristics of vulnerability to disclose their needs.
- 2A.7.5** **G** (1) *Firms* should be aware that groups of *retail customers* with specific protected characteristics may have, or be more likely to have, characteristics of vulnerability, for example older customers. In addition, where health is a driver of vulnerability it will likely have substantial overlap with the protected characteristic of 'disability' under the Equality Act 2010. *Firms* should be mindful of this when

considering whether they are compliant with *Principle 12* and ■ PRIN 2A and their obligations under the Equality Act 2010 or equivalent legislation.

- (2) *Firms* should keep themselves apprised of any evidence that may emerge that *retail customers* with specific protected characteristics are more likely to have characteristics of vulnerability. *Firms* should take account of any such evidence when considering whether they are compliant with *Principle 12* and ■ PRIN 2A and their obligations under the Equality Act 2010 or equivalent legislation.

2A.8 Governance and culture

2A

Governance, strategy and policies

2A.8.1

R

A firm must:

- (1) ensure that Principle 12 and the obligations in this chapter are reflected in their strategies, governance, leadership and people policies, including incentives at all levels; and
- (2) ensure that *retail customer* outcomes are a central focus of:
 - (a) the *firm's* risk control arrangements under SYSC; and
 - (b) the *firm's* internal audit function.

Staff incentives

2A.8.2

G

A firm should not use staff incentives, performance management or remuneration structures in a way that conflicts with their obligations under Principle 12 and PRIN 2A. Firms should be aware that these structures are capable of causing harm to *retail customers* and should design their structures in a way that is consistent with ensuring good outcomes for *retail customers*.

Governing body report

2A.8.3

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A firm must prepare a report for its governing body setting out the results of its monitoring under PRIN 2A.9 and any actions required as a result of the monitoring.

2A.8.4

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At least annually, the governing body of a firm must:

- (1) review and approve the *firm's* report on the outcomes being received by *retail customers*;
- (2) confirm whether it is satisfied that the firm is complying with its obligations under Principle 12 and PRIN 2A; and
- (3) assess whether the *firm's* future business strategy is consistent with its obligations under Principle 12 and PRIN 2A.

2A.8.5

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When approving the *firm's* report under PRIN 2A.8.4R(1), the governing body of the *firm* must also agree:

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- (1) any action required to address any identified risk that *retail customers* may not receive good outcomes;
 - (2) any action required to address any identified instance where *retail customers* have not received good outcomes; and
 - (3) any amendments to the *firm's* business strategy to ensure that it remains consistent with meeting the *firm's* obligations under *Principle 12* and ■ PRIN 2A.



2A.9 Monitoring of consumer outcomes

2A

General

- 2A.9.1**  This section sets out the general obligation on *firms* to monitor under *Principle 12* and  **PRIN 2A** the outcomes that *retail customers* are experiencing from their *products*.
- 2A.9.2**  The purpose of the monitoring obligation is to enable *firms* to identify whether there are any risks that they are not meeting the requirements of the cross-cutting obligations and the *retail customer* outcomes, and consequently they are not acting to deliver good outcomes for *retail customers*.
- 2A.9.3**  The frequency of monitoring, and the nature of the information a *firm* must collect to effectively monitor the outcomes received by *retail customers* depends on the type of *firm* and its role in the distribution chain, the nature of the *product*, and the *target market*.
- 2A.9.4**  (1) The monitoring obligation applies proportionately to a *firm's* role in the distribution chain. Where a *firm* does not have direct contact with *retail customers* it should monitor the outcomes of the service it provides, having regard to any information it has about the outcomes experienced by *retail customers* at the end of the distribution chain.
(2) A *firm* that does not have direct contact with *retail customers* should act reasonably to obtain information about the outcomes experienced by *retail customers* of the *products* the *firm* has distributed.
- 2A.9.5**  To the extent that a *firm* is also required to carry out specific monitoring or reviews under any of the outcomes in  **PRIN 2A.3** to  **PRIN 2A.6**, the specific monitoring or reviews form part of the general monitoring required by this section and *firms* may utilise the information gathered through these processes in preparing the report required under  **PRIN 2A.8.3R**.
- 2A.9.6**  In relation to communications,  **PRIN 2A.5.10R** to  **PRIN 2A.5.14R** set out specific requirements on the testing and monitoring of communications.
- 2A.9.7**  Where a *firm's* compliance with any other *rules* replaces their requirement to comply with provisions of  **PRIN 2A**, or tends to show compliance with

2A

provisions of ■ PRIN 2A, the *firm* may use any monitoring or reviews it carries out under those other *rules* in complying with its monitoring obligations under this section.

Requirement to monitor retail customer outcomes

2A.9.8 R A *firm* must regularly monitor the outcomes *retail customers* receive from:

- (1) the *products* the *firm manufactures* or *distributes*;
- (2) the communications the *firm* has with *retail customers*; and
- (3) the customer support the *firm* provides to *retail customers*.

2A.9.9 R The monitoring carried out by a *firm* must enable it to determine at least:

- (1) whether *retail customers* are being, or have been, sold *products* that have been designed to meet their needs, characteristics and objectives;
- (2) whether the *products* that *retail customers* purchase provide fair value and appropriate action has been taken to address *products* identified as not providing fair value;
- (3) whether *retail customers* are equipped with the right information to make effective, timely and properly informed decisions; and
- (4) whether *retail customers* receive the support they need.

2A.9.10 R The *firm's* monitoring must also enable it to identify:

- (1) whether the *firm* is complying with Principle 12 and the cross-cutting obligations in ■ PRIN 2A.2;
- (2) whether for any *product* the *firm manufactures* or *distributes*, any group of *retail customers* is experiencing different outcomes compared to another group of *retail customers* of the same *product*; and
- (3) whether any *retail customers* have suffered harm as a result of the *firm's* acts or omissions.

Action required of firms

2A.9.11 R A *firm* must have in place processes to identify the root causes of any failure to deliver the outcomes listed in ■ PRIN 2A.9.R for *retail customers*.

2A.9.12 R Where a *firm* identifies that:

- (1) *retail customers* are not receiving the outcomes listed in ■ PRIN 2A.9.R, or there is a risk that *retail customers* will not receive these outcomes;

(2) any group of *retail customers* for a *product* are receiving worse outcomes than another group of *retail customers* for the same *product*;

(3) the *firm* is not complying with *Principle 12* and the cross-cutting obligations in ■ PRIN 2A.2,

it must take appropriate action to address the situation.

2A.9.13 **G** ■ PRIN 2A.9.12R does not require a *firm* to take action to remove the effects of risks inherent in a *product* that the *firm* reasonably believed the *retail customer* understood and accepted.

2A.9.14 **G** *Firms* should have regard to ■ PRIN 2A.10 in considering what may be appropriate action under ■ PRIN 2A.9.12R.

Record keeping

2A.9.15 **G** ■ SYSC 3 and ■ SYSC 9 contain high level requirements in relation to record keeping. *Firms* will need to decide, in line with these requirements, what records they need to keep in relation to their obligations under *Principle 12*, the cross-cutting obligations and the consumer outcomes.

Obligation to notify the FCA

2A.9.16 **G** *Firms* are reminded of their obligations under *Principle 11* to inform the *FCA* of anything relating to the *firm* of which the *FCA* would reasonably expect notice.

2A.9.17 **R** A *firm* in a distribution chain must notify the *FCA* if it becomes aware that any other *firm* in that distribution chain is not or may not be complying with *Principle 12* or ■ PRIN 2A.

2A

2A.10 Redress or other appropriate action

Purpose

2A.10.1 G The purpose of this section is to set out the conduct required of *firms* where they identify foreseeable harm has been caused to *retail customers*.

Appropriate action

2A.10.2 R Where a *firm* is considering what action may be appropriate under ■ PRIN 2A.2.5R:

- (1) if a *complaint* or *MiFID complaint* has been received a *firm* shall follow the *rules* in *DISP* as applicable;
- (2) if no *complaint* or *MiFID complaint* has been received the following *rules* and *guidance* apply with the modifications set out below:
 - (a) ■ *DISP 1.1A.20R* as if it read:

Once foreseeable harm has been identified by a *MiFID investment firm*, the *firm* must:

- (1) investigate the circumstances which led to the foreseeable harm competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
 - (a) the subject matter of the foreseeable harm;
 - (b) [does not apply]
 - (c) what remedial action or redress (or both) may be appropriate;
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *firm* may be solely or jointly responsible for causing the foreseeable harm;
- (3) comply promptly with any offer of remedial action or redress accepted by the *retail customer*.

- (b) ■ *DISP 1.1A.21G* as if it read:

Factors that may be relevant in the assessment of the foreseeable harm under *DISP 1.1A.20R(2)* include the following:

- (1) all the evidence available and the particular circumstances of the foreseeable harm;
- (2) similarities with complaints received by the *firm* and with other instances in which foreseeable harm has been caused without a complaint;
- (3) relevant guidance published by the FCA, other relevant regulators, the *Financial Ombudsman Service* or former schemes; and
- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning *complaints* which were similar in their fact pattern or outcomes to the circumstances which led to the foreseeable harm in question.

(c) ■ DISP 1.4.1R as if it read:

Once foreseeable harm has been identified by a *firm*, it must:

- (1) investigate the circumstances which led to the foreseeable harm competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
 - (a) the subject matter of the foreseeable harm;
 - (b) [does not apply]
 - (c) what remedial action or redress (or both) may be appropriate;
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *firm* may be solely or jointly responsible for causing the foreseeable harm;

taking into account all relevant factors.

- (3) offer redress or remedial action when it decides this is appropriate;
- (4) explain to the *retail customer* promptly and in a way that is fair, clear and not misleading that harm has been identified, its assessment of the harm, its decision as to what action is appropriate and the fact that the *retail customer* has a right to make a *complaint* if it is not satisfied with that decision;
- (5) comply promptly with any offer of remedial action or redress accepted by the *retail customer*.

(d) ■ DISP 1.4.2G as if it read:

Factors that may be relevant in the assessment of the foreseeable harm under DISP 1.4.1R(2) include the following:

- (1) all the evidence available and the particular circumstances of the foreseeable harm;
- (2) similarities with *complaints* received by the *firm* and with other instances in which foreseeable harm has been caused without a *complaint*;

2A

- (3) relevant guidance published by the FCA, other relevant regulators, the *Financial Ombudsman Service* or former schemes; and
- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning complaints which were similar in their fact pattern or outcomes to the circumstances which led to the foreseeable harm in question (the procedures for which are described in DISP 1.3.2AG).

- 2A.10.3 R** A firm, MiFID investment firm or third country investment firm which identifies that it has caused retail customers foreseeable harm but which does not have a client relationship with that customer or the means to contact them shall take all reasonable steps to notify a customer of the matters in ■ DISP 1.4.1R as modified by ■ PRIN 2A.10.2R(2).
- 2A.10.4 G** Reasonable steps for the purposes of ■ 2A.10.3R might include (among other things) contacting the distributor of the relevant product and asking whether information can be passed on to the retail customer.
- 2A.10.5 R** Where a firm, MiFID investment firm or third country investment firm identifies that a retail customer has been caused harm but concludes that another firm in the distribution chain was the sole or joint cause of that harm, it shall promptly notify that other firm and provide appropriate information about the harm caused.



2A.11 Sale and purchase of product books

2A

2A.11.1 **R** This section applies where:

- (1) a *firm* has purchased or purchases a *product book* from another *firm*; and
- (2) a *firm* sells a *product book*.

2A.11.2 **R** (1) Where the *product book* was purchased before 31 July 2023, the *firm* must comply with *Principle 12* and ■ PRIN 2A.

- (2) Unless:
- (a) the *firm* was a *co-manufacturer* of the *product*; or
 - (b) the *firm* has significantly adapted the *product* on or after 31 July 2023,
- the requirement in (1) to comply with ■ PRIN 2A.3 and ■ PRIN 2A.4 is a requirement on the *firm* to use its best endeavours to comply with the applicable *rules* in those chapters.

2A.11.3 **G** A *firm* that is required to apply ■ PRIN 2A.3 or ■ PRIN 2A.4 to a *product book* on a 'best endeavours' basis should continue to have regard to the *RPPD* and should read references in the *RPPD* to *Principles 6* and *7* as referring to *Principle 12*.

- 2A.11.4** **R**
- (1) This *rule* applies where a *product book* is sold for the first time after 31 July 2023.
 - (2) The *firm* selling the *product book* must provide relevant information to the purchasing *firm* to enable the purchasing *firm* to comply with *Principle 12* and ■ PRIN 2A from the date of purchase.
 - (3) A *firm* which purchases a *product book* after 31 July 2023 must carry out sufficient due diligence to ensure they understand in particular:
 - (a) whether any group or groups of *retail customers* of the *product* have characteristics of vulnerability or as a group have in common a specific protected characteristic in the same form (for example customers of the same sex or race);

2A.11.5**R**

- (b) the outcome of the selling *firm's* product approval process for the *product book* and the outcome of any *product reviews* carried out by the selling *firm* under ■ PRIN 2A.3;
- (c) the benefits the *product* is intended to provide and the costs the *retail customer* pays for the *product*; and
- (d) the basis on which the *product* has been assessed as providing fair value under ■ PRIN 2A.4.
- (4) The due diligence conducted by the purchasing *firm* must be sufficient to enable the purchasing *firm* to comply with Principle 12 and ■ PRIN 2A in respect of the *product book*.

Where a *firm* purchases a *product book* after 31 July 2023 and the first sale of that *product book* took place before 31 July 2023, the *firm* must apply ■ PRIN 2A.11.2R.

Chapter 3

Rules about application



3.1 Who?

- 3.1.1** **R** PRIN applies to every *firm*, except that it does not apply to a *firm* in relation to its carrying on of *auction regulation bidding*.
- 3.1.1A** **R** PRIN also applies:
- (1) to an *electronic money institution*, an *authorised payment institution*, a *small payment institution* or a *registered account information service provider*; and
 - (2) [deleted]
- 3.1.1B** **R**
- (1) Principle 7 applies to a *registered person communicating a financial promotion* relating to one or more *qualifying cryptoassets* (in reliance on the exemption in article 73ZA of the *Financial Promotion Order*) as it applies to an *authorised person communicating a financial promotion* relating to one or more *qualifying cryptoassets* (■ PRIN 3.2.2R), disregarding the effect of ■ PRIN 3.2.10R.
 - (2) For the purpose of (1), relevant references in this sourcebook to a *firm* include reference to a *registered person*.
- 3.1.2** **G** [deleted]
- 3.1.3** **G** [deleted]

3.1.4	G	[deleted]
3.1.5	G	[deleted]
3.1.6	R	A firm will not be subject to a Principle or ■ PRIN 2A to the extent that it would be contrary to the requirements of an EU measure passed or made before IP completion day, to the extent that those requirements continue to have effect after IP completion day under the EUWA.
3.1.7	G	■ PRIN 4 provides specific guidance on the application of the Principles and ■ PRIN 2A for MiFID business.
3.1.8	G	The Principles will not apply to the extent that they purport to impose an obligation which is inconsistent with requirements which implemented the Payment Services Directive, the Consumer Credit Directive or the Electronic Money Directive. For example, there may be circumstances in which Principle 12 and ■ PRIN 2A may be limited by the conduct of business obligations derived from the Payment Services Directive and the Electronic Money Directive and applicable to payment service providers and electronic money issuers (see Parts 6 and 7 of the Payment Services Regulations and Part 5 of the Electronic Money Regulations) or derived from the Consumer Credit Directive (see, for example, the information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)).
3.1.9	R	PRIN applies to a TP firm, except that Principle 4 only applies to the extent that a TP firm is subject to rules relating to capital adequacy.
3.1.10	R	<ul style="list-style-type: none"> (1) Only Principles 1, 2, 3, 9, 11, 12 and ■ PRIN 2A apply to a TP UCITS qualifier, and only with respect to the activities in ■ PRIN 3.2.2R (Communication and approval of financial promotions). (2) Where Principle 12 and ■ PRIN 2A do not apply, Principle 7 also applies to a TP UCITS qualifier with respect to the activities in ■ PRIN 3.2.2R.
3.1.11	G	For the purposes of ■ PRIN 3.1.9R, a TP firm should refer to ■ GEN 2.2.30R and ■ GEN 2.2.31G to determine which rules relating to capital adequacy apply to it.
3.1.12	R	Principle 12 and ■ PRIN 2A only apply where a client is a retail customer, or there is distribution chain which involves a retail customer.
3.1.13	R	<p>Principle 12 and ■ PRIN 2A apply to:</p> <ul style="list-style-type: none"> (1) a TP firm; and (2) a Gibraltar-based firm.

3.2 What?

- 3.2.1A** **R** PRIN (other than Principle 12 and ■ PRIN 2A) applies with respect to the carrying on of:
- (1) *regulated activities*;
 - (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc);
 - (3) *ancillary activities* in relation to *designated investment business*, *home finance activity*, *regulated funeral plan activity*, *credit-related regulated activity*, *insurance distribution activity*, *regulated pensions dashboard activity* and *accepting deposits*; and
 - (4) activities directly arising from *insurance risk transformation*.
- 3.2.1B** **R** Other than with respect to a *firm* that is a *credit union*, PRIN also applies with respect to:
- (1) the provision of *payment services*;
 - (2) issuing of *electronic money* (where not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*); and
 - (3) activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*).
- 3.2.1C** **G** Issuing of *electronic money* will therefore be covered under either ■ PRIN 3.2.1AR(1) where it is the regulated activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*, or under ■ PRIN 3.2.1BR where it is not that *regulated activity*.
- 3.2.2** **R** PRIN also applies with respect to the *communication and approval of financial promotions* which:
- (1) if *communicated by an unauthorised person without approval* would contravene section 21(1) of the Act (Restrictions on financial promotion); and

		(2) may be communicated by a firm without contravening section 238(1) of the Act (Restrictions on promotion of collective investment schemes).
3.2.2-A	G	<i>PRIN applies to the communication of promotions concerning payment services and electronic money.</i>
3.2.2A	R	[deleted]
3.2.3	R	Subject to ■ PRIN 3.2.4R, <i>Principles 3, 4 and (in so far as it relates to disclosing to the FCA) 11 (and this chapter) also:</i> <ul style="list-style-type: none"> (1) apply to firms with respect to the carrying on of unregulated activities (for Principle 3 this is only in a prudential context); and (2) for firms and other persons that are subject to the Principles, take into account any activity of other members of a group of which the firm is a member.
3.2.4	R	In relation to an Annex II benchmark administrator which: <ul style="list-style-type: none"> (1) administers only benchmarks which are subject to Annex II to the benchmarks regulation; and (2) does not have permission to carry on any other regulated activities in relation to which Principle 11 applies, <p><i>Principle 11 (in so far as it relates to disclosing to the FCA) applies only to the regulated activity of administering a benchmark.</i></p>
3.2.5	G	The FCA only expects an Annex II benchmark administrator subject to ■ PRIN 3.2.4R to disclose information under Principle 11 which is relevant to the firm's compliance with its obligations under the benchmarks regulation.
3.2.6	R	<p>Principle 12 and PRIN 2A: additional application provisions</p> <ul style="list-style-type: none"> (1) Principle 12 and ■ PRIN 2A apply to a firm's retail market business, including in respect of existing products and closed products. (2) (a) Subject to (b), Principle 12 and ■ PRIN 2A apply to a firm with respect to the communication or approval of a financial promotion (see ■ PRIN 3.2.2R), but only if the financial promotion is addressed to, or disseminated in such a way that it is likely to be received by, a retail customer. (b) Principle 12 and ■ PRIN 2A do not apply to the communication or approval of a financial promotion to the extent that the financial promotion relates to an activity that is excluded from the definition of retail market business by virtue of limbs (1) to (6) of that definition.

- (3) If the *firm* is a *credit union*, and except insofar as *Principle 12* and ■ PRIN 2A apply by virtue of (2), then *Principle 12* and ■ PRIN 2A do not apply to the following activities:
- payment services* and activities connected to the provision of *payment services*, except where the activity is an *ancillary activity* in relation to a *regulated activity* other than *issuing electronic money*; and
 - activities connected to or *ancillary activities* in relation to *issuing electronic money*, but only insofar as the activity is not an *ancillary activity* in relation to another *regulated activity*.
- 3.2.7** **R** Where *Principle 12* and ■ PRIN 2A apply to the activities of a *firm* operating in a distribution chain, *Principle 12* and ■ PRIN 2A apply only to the extent that the *person* is responsible in the course of carrying out those activities for determining or materially influencing *retail customer* outcomes.
- 3.2.8** **R** Subject to ■ PRIN 3.2.7R, *Principle 12* and ■ PRIN 2A do not apply to activities to the extent that those activities are not included in a *rule* which sets out the scope of protections offered to *retail customers* by COBS, ICOBS, MCOB, BCOBS, CMCOB, FPCOB, PROD or CONC.
- 3.2.9** **G** [deleted]
- Interaction between Principle 12 and Principles 6 and 7**
- 3.2.10** **R** *Principles 6 and 7* do not apply to a *firm's* activities to the extent that *Principle 12* and ■ PRIN 2A apply.
- 3.2.11** **G** Activities to which *Principles 6 and 7* rather than *Principle 12* and ■ PRIN 2A may apply include, for example, services provided to *professional clients*.
- 3.2.12** **G** *Principle 12* and ■ PRIN 2A have a broader application than *Principles 6 and 7*, for example they apply to *firms* in the distribution chain for whom the *retail customer* may not be a *client*.

3.3 Where?

3.3.1

R

Territorial application of the Principles

Principle	Territorial application
<i>Principles 1, 2 and 3</i>	in a <i>prudential context</i> , apply with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> , or in respect of <i>regulated claims management activities</i> , apply with respect to activity carried on in <i>Great Britain</i> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see PERG 2.4A), unless another applicable <i>rule</i> or <i>onshored regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>onshored regulation</i> .
<i>Principle 4</i>	applies with respect to activities wherever they are carried on.
<i>Principle 5</i>	if the activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the <i>UK financial system</i> , applies with respect to activities wherever they are carried on; otherwise, applies with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> , or in respect of <i>regulated claims management activities</i> , applies with respect to activity carried on in <i>Great Britain</i> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see PERG 2.4A).
<i>Principles 6, 7, 8, 9 and 10</i>	<i>Principle 8</i> , in a prudential context, applies with respect to activities wherever they are carried on; otherwise these <i>Principles</i> apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> , or in respect of <i>regulated claims management activities</i> , apply with respect to activity carried on in <i>Great Britain</i> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see PERG 2.4A), unless another applicable <i>rule</i> or <i>onshored regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in re-

Principle	Territorial application
	lation to the activity described in that <i>rule</i> or <i>on-shored regulation</i> .
<i>Principle 11</i>	applies with respect to activities wherever they are carried on.
<i>Principle 12 and PRIN 2A</i>	apply with respect to activities carried on with <i>retail customers</i> located in the <i>United Kingdom</i> unless another applicable rule or <i>onshored regulation</i> which is relevant to the activity has a different territorial scope, in which case <i>Principle 12</i> and <i>PRIN 2A</i> apply with that scope in relation to the activity described in that <i>rule</i> or <i>on-shored legislation</i> .

3.3.2 **G** [deleted]

3.3.3 **R** ■ PRIN 3.3.1R applies to *electronic money institutions*, *payment institutions* and *registered account information service providers* as if the references to a *firm* were references to a *person* within that description, and references to an *appointed representative* were to an *agent* of such a *person* within the meaning of the *Payment Services Regulations*.

3.3.4 **R** Notwithstanding ■ PRIN 3.3.1R, PRIN applies to:

- (1) a *TP firm* with respect to activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*;
- (2) a *TP firm* with respect to services provided into the *United Kingdom* by the *firm* (or its *appointed representative*) from an establishment in an *EEA State*; and
- (3) a *TP UCITS qualifier* with respect to the *firm's* activities in relation to the *AIF* or *scheme* in question, in the *United Kingdom*.

3.4 General

3.4.-1

R

■ PRIN 3.4.1R, ■ PRIN 3.4.2R and ■ PRIN 1 Annex 1 do not apply with respect to:

- (1) *credit-related regulated activities*; or
- (2) *regulated claims management activities*; or
- (3) *regulated funeral plan activities*; or
- (4) *payment services*; or
- (4A) *regulated pensions dashboard activity*; or
- (5) the issuing of *electronic money* (where not a *regulated activity*).

3.4.1

R

For business other than *MiFID or equivalent third country business*, the only requirement of *Principle 7* relating to *eligible counterparties* is that a *firm* must communicate information to *eligible counterparties* in a way that is not misleading.

3.4.1A

G

Principle 7 applies in full to *MiFID or equivalent third country business*.

3.4.2

R

For the purposes of *PRIN*, a *firm* intending to carry on, or carrying on, activities that do not involve *designated investment business*, may treat a *client* as an *eligible counterparty* in accordance with ■ PRIN 1 Annex 1 R.

3.4.3

G

[deleted]

Guarantors etc

3.4.3A

R

- (1) Paragraph (2) applies in relation to an *individual* who:
 - (a) has provided, or is to provide, a guarantee or an indemnity (or both) in relation to a *regulated credit agreement*, a *regulated consumer hire agreement* or a *P2P agreement*; and
 - (b) is not the *borrower* or the *hirer*.
- (2) If the *individual* is not a *customer*, they are to be treated as if they were a *customer* for the purposes of *Principles 6 and 7* and as if they were a *retail customer* for the purposes of *Principle 12* and ■ PRIN 2A.

- (3) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.
- Actions for damages**
- 3.4.4 R** A contravention of the *rules* in PRIN does not give rise to a right of action by a *private person* under section 138D of the Act (and each of those *rules* is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).
- Reference to "regulators" in Principle 11**
- 3.4.5 R** Where *Principle 11* refers to regulators, this means, in addition to the FCA, other regulators with recognised jurisdiction in relation to *regulated activities, payment services* and *electronic money* whether in the *United Kingdom* or abroad.

Chapter 4

Principles: MiFID business

4.1 Principles: MiFID business

- 4.1.1** **G** ■ PRIN 3.1.6 R gives effect to the provisions of the EUWA concerning the continuing application of the principle of the supremacy of EU law. It ensures that the *Principles* and ■ PRIN 2A do not impose obligations upon *firms* which are inconsistent with a relevant EU measure. If a *Principle* or ■ PRIN 2A does purport to impose such an obligation ■ PRIN 3.1.6 R disapplies that *Principle* or provision of ■ PRIN 2A, but only to the extent necessary to ensure compatibility with the relevant EU measure. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.
- Where?**
- 4.1.2** **G** Under ■ PRIN 3.3.1 R, the territorial application of a number of *Principles* and ■ PRIN 2A to a UK *MiFID investment firm* is extended to the extent that another applicable *rule* or *onshored regulation* which is relevant to an activity has a wider territorial scope.
- 4.1.3** **G** *Principles* 4, 5 and 11 will have the same scope of territorial application for *MiFID business* as for other business.
- What?**
- 4.1.4** **G**
- (1) Certain requirements derived from *MiFID* are disapplied for:
 - (a) *eligible counterparty business*;
 - (b) transactions concluded under the rules governing a *multilateral trading facility* between its members or participants or between the *multilateral trading facility* and its members or participants in relation to the use of the *multilateral trading facility*;
 - (c) transactions concluded on a *regulated market* between its members or participants.
 - (2) Under ■ PRIN 3.1.6 R, these disapplications may affect *Principles* 1, 2, 6, 9, 12 and ■ PRIN 2A. ■ PRIN 3.1.6 R applies only to the extent that the application of a *Principle* or ■ PRIN 2A would be contrary to the UK's obligations under a relevant EU measure in respect of a particular transaction or matter. In line with *MiFID*, these limitations relating to *eligible counterparty business* and transactions under the rules of a *multilateral trading facility* or on a *regulated market* only apply in relation to a *firm's* conduct of business obligations to its clients derived from *MiFID*. They do not

limit the application of those *Principles* or ■ PRIN 2A in relation to other matters, such as *client asset* protections, systems and controls, prudential requirements and market integrity. Further information about these limitations is contained in ■ COBS 1 Annex 1.

(3) *Principles* 3, 4, 5, 7, 8, 10 and 11 are not limited in this way.

4.1.5**G**

[deleted]

4

Principles for Businesses

PRIN TP 1 Transitional provisions

	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
1.	PRIN 1 Annex 1 R 1.2(2)	R	A firm need not comply with PRIN Ann 1R 1.2(2) in relation to an eligible counterparty if the client was correctly categorised as a market counterparty on 31 October 2007 and the firm complied with COB 4.1.12 R (2) (Large intermediate customer classified as market counterparty).	From 1 November 2007 indefinitely	1 November 2007
2	Principle 12 and PRIN 2A	R	Principle 12 and PRIN 2A apply in relation to ancillary activities or other connected activities in accordance with PRIN 3.2 where those activities are carried on after 31 July 2023 regardless of whether the underlying activities were carried on before or after 31 July 2023.	From 31 July 2023 indefinitely	31 July 2023
3	Principle 12 and PRIN 2A	G	An example of how PRIN TP 1.1 paragraph 2 applies is that a firm which has accepted a deposit prior to 31 July 2023 would be subject to Principle 12 and PRIN 2A in respect of customer services or other ancillary activities related to that deposit carried on after 31 July 2023.	From 31 July 2023 indefinitely	31 July 2023
4	Principle 12 and PRIN 2A	R	Except to the extent specified in PRIN TP5 and TP6, the provisions listed in column 2 only apply to a closed product from 31 July 2024.	From 31 July 2023 indefinitely	31 July 2023
5	PRIN 2A.3 and PRIN 2A.4	R	A manufacturer of a closed product must review the closed product by 31 July 2024 and ensure it meets the requirements of PRIN 2A.3 and PRIN 2A.4, including taking any appropriate mitigating action required by those rules.	From 31 July 2023 to 31 July 2024	31 July 2023
6	PRIN 2A.11.4R	R	Where a firm proposes to sell a book of closed products between 31 July 2023 and 30 July 2024 inclusive:	From 31 July 2023 to 31 July 2024	31 July 2023
			(1)the purchasing firm will only be		

Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
7	PRIN 2A.8.3R-2A.8.5R and PRIN 2A.9	<p>required to comply with Principle 12 and PRIN 2A from 31 July 2024;</p> <p>(2) the selling <i>firm</i> is not required to provide the information specified in PRIN 2A.11.4R(3)(b) and (d); and</p> <p>(3) the selling <i>firm</i> must provide relevant information to enable the purchasing <i>firm</i> to comply with the obligations that will apply to it from 31 July 2024.</p> <p>Where a <i>firm</i> has both <i>existing</i> and <i>closed products</i> the first annual report compiled by the <i>firm</i> under PRIN 2A.8.3R-2A.8.5R using its monitoring under PRIN 2A.9 need only refer to the <i>firm</i>'s new and <i>existing products</i>.</p>	From 31 July 2023 indefinitely	31 July 2023

Principles for Businesses

Schedule 1 Record Keeping Requirements

Sch 1.1 G

There are no record keeping requirements in PRIN.

Principles for Businesses

Schedule 2 Notification requirements

Sch 2.1 G

The aim of the *guidance* in the following table is to give the reader a quick over-all view of the relevant requirements for notification and reporting.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
Principle 11 (PRIN 2.1.1 R)	Anything relating to the firm of which the <i>appropriate regulator</i> would reasonably expect notice	Appropriate disclosure	Anything relating to the firm of which the <i>appropriate regulator</i> would reasonably expect notice	Appropriate

Principles for Businesses

Schedule 3 Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in PRIN.

Principles for Businesses

Schedule 4 Powers Exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

Principles for Businesses

Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in PRIN contravention of which by an *authorised person* may be actionable under section 138D of the Act (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G

If a "Yes" appears in the column headed "For private person?", the rule may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A "Yes" in the column headed "Removed" indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed "For other person?" indicates whether the *rule* may be actionable by a person other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of Action		
			For private person?	Removed?	For other person?
All <i>rules</i> in PRIN			No	Yes PRIN 3.4.4 R	No

Principles for Businesses

Schedule 6 Rules that can be waived

Sch 6.1A G

As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the Act.

Conduct of Business Sourcebook

Conduct of Business Sourcebook

COBS 1	Application
1.1	General application
1.2	Markets in Financial Instruments Directive
1.3	Insurance distribution
1 Annex 1	Application (see COBS 1.1.2R)
COBS 2	Conduct of business obligations
2.1	Acting honestly, fairly and professionally
2.2	Information disclosure before providing services (other than MiFID and insurance distribution)
2.2A	Information disclosure before providing services (MiFID and insurance distribution provisions)
2.2B	SRD requirements
2.3	Inducements relating to business other than MiFID, equivalent third country or optional exemption business and insurance-based investment products
2.3A	Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products
2.3B	Inducements and research
2.3C	Research and execution services
2.4	Agent as client and reliance on others
2.5	Optional additional products
COBS 3	Client categorisation
3.1	Application
3.2	Clients
3.3	General notifications
3.4	Retail clients
3.5	Professional clients
3.6	Eligible counterparties
3.7	Providing clients with a higher level of protection
3.8	Policies, procedures and records
COBS 4	Communicating with clients, including financial promotions
4.1	Application
4.2	Fair, clear and not misleading communications
4.3	Financial promotions to be identifiable as such
4.4	Compensation information
4.5	Communicating with retail clients (non-MiFID provisions)

COBS Contents

4.5A	Communicating with clients (including past, simulated past and future performance) (MiFID provisions)
4.6	Past, simulated past and future performance (non-MiFID provisions)
4.7	Direct offer financial promotions
4.8	Cold calls and other promotions that are not in writing
4.9	Financial promotions with an overseas element
4.10	Approving and confirming compliance of financial promotions
4.11	Record keeping: financial promotion
4.12	[deleted]
4.12A	Promotion of restricted mass market investments
4.12B	Promotion of non-mass market investments
4.13	UCITS
4.14	[deleted]
4.15	Promotion of OFR recognised schemes
4 Annex 1	Risk summaries
4 Annex 2	Certified high net worth investor statement
4 Annex 3	Certified sophisticated investor statement
4 Annex 4	Self-certified sophisticated investor statement
4 Annex 5	Restricted investor statement
 COBS 5	 Distance communications
5.1	The distance marketing disclosure rules
5.2	E-Commerce
5 Annex 1	Distance marketing information
5 Annex 2	Abbreviated distance marketing disclosure
 COBS 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)
6.1ZA	Information about the firm and compensation information (MiFID and insurance distribution provisions)
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider, operator of an electronic system in relation to lending, and platform service provider requirements relating to adviser charging and remuneration
6.1C	Consultancy charging and remuneration
6.1D	Product provider requirements relating to consultancy charging and remuneration
6.1E	Platform services: platform charges and using a platform service for advising
6.1F	Using a platform service for arranging and advising
6.1G	Re-registration of title to retail investment products
6.1H	Platform switching
6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
6 Annex 1	Services and costs disclosure document described in COBS 6.3.7G(1) [deleted]
6 Annex 2	Combined initial disclosure document described in COBS 6.3, ICOBS 4.5 and MCOB 4.4A.20G [deleted]
6 Annex 3	[deleted]
6 Annex 4	[deleted]
6 Annex 5	[deleted]

COBS Contents

6 Annex 6	Calculating commission equivalent
6 Annex 7	Identified costs that should form part of the costs to be disclosed to clients
COBS 7	Insurance distribution
7.1	Application
7.3	Additional insurance distribution obligations
7.4	Insurance distribution: Means of communication to clients
COBS 8	Client agreements (non-MiFID provisions)
8.1	Client agreements: non-MiFID designated investment business
COBS 8A	Client agreements (MiFID provisions)
8A.1	Client agreements (MiFID, equivalent third country or optional exemption business)
COBS 9	Suitability (including basic advice) (other than MiFID and insurance-based investment products)
9.1	Application and purpose provisions
9.2	Assessing suitability
9.3	Guidance on assessing suitability
9.4	Suitability reports
9.5	Record keeping and retention periods for suitability records
9.5A	Additional guidance for firms with insistent clients
9.6	Special rules for giving basic advice on a stakeholder product
9 Annex 1	Basic advice initial disclosure information
9 Annex 2	Sales processes for stakeholder products
COBS 9A	Suitability (MiFID and insurance-based investment products provisions)
9A.1	Application and purpose
9A.2	Assessing suitability: the obligations
9A.3	Information to be provided to the client
9A.4	Record keeping and retention periods for suitability records
COBS 10	Appropriateness (for non-advised services) (non-MiFID and non-insurance-based investment products provisions)
10.1	Application
10.2	Assessing appropriateness: the obligations
10.3	Warning the client

COBS Contents

10.4	Assessing appropriateness: when it need not be done
10.5	Assessing appropriateness: guidance
10.6	When a firm need not assess appropriateness
10.7	Record keeping and retention periods for appropriateness records
10 Annex 1	Assessing appropriateness: non-readily realisable securities
10 Annex 2	Assessing appropriateness: P2P agreements and P2P portfolios
10 Annex 3	Assessing appropriateness: units in a long-term asset fund
10 Annex 4	Assessing appropriateness: qualifying cryptoassets

COBS 10A	Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)
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10A.1	Application
10A.2	Assessing appropriateness: the obligations
10A.3	Warning the client
10A.4	Assessing appropriateness: when it need not be done due to type of investment
10A.5	Assessing appropriateness: guidance
10A.6	Assessing appropriateness: when a firm need not assess appropriateness due to suitability assessment
10A.7	Record keeping and retention periods for appropriateness records

COBS 11	Dealing and managing
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11.1	Application
11.2	Best execution for AIFMs and residual CIS operators
11.2A	Best execution – MiFID provisions
11.2B	Best execution for UCITS management companies
11.2C	Quality of execution
11.3	Client order handling
11.4	Client limit orders
11.5A	Record keeping: client orders and transactions
11.7	Personal account dealing
11.7A	Personal account dealing relating to MiFID, equivalent third country or optional exemption business
11 Annex 1UK	Regulatory Technical Standard 28 (RTS 28) [deleted]

COBS 11A	Underwriting and placing
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11A.1	Underwriting and placing
11A.2	Prohibition of future service restrictions

COBS 12	Investment research
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12.1	Purpose and application
12.2	Investment research and non-independent research
12.4	Investment recommendations

COBS Contents

COBS 13	Preparing product information
13.1	The obligation to prepare product information
13.2	Product information: production standards, form and contents
13.3	Contents of a key features document
13.4	Contents of a key features illustration
13.5	Preparing product information: other projections
13.6	Preparing product information: adviser and consultancy charges
13 Annex 1	Solvency II Directive Information
13 Annex 2	Projections
13 Annex 3	Charges information for a non-PRIIP packaged product
13 Annex 4	Charges information for a personal pension scheme and a stakeholder pension scheme
COBS 14	Providing product information to clients
14.1	Interpretation
14.2	Providing product information to clients
14.3	Information about designated investments (non-MiFID provisions)
14.3A	Information about financial instruments (MiFID provisions)
14.4	Provision of information by an intermediate Unitholder
14 Annex 1	Lifetime ISA information
COBS 15	Cancellation
15.1	Application
15.2	The right to cancel
15.3	Exercising a right to cancel
15.4	Effects of cancellation
15.5	Special situations
15 Annex 1	Exemptions from the right to cancel
COBS 16	Reporting information to clients (non-MiFID provisions)
16.1	Application
16.2	Occasional reporting
16.3	Periodic reporting
16.4	Statements of client designated investments or client money
16.5	Quotations for surrender values
16.6	Communications to clients – life insurance, long term care insurance and drawdown pensions
16 Annex 1R	Trade confirmation and periodic information
16 Annex 2R	Information to be included in a periodic report
COBS 16A	Reporting information to clients (MiFID and insurance-based investment products provisions)
16A.1	Application
16A.2	General client reporting and record keeping requirements
16A.3	Occasional reporting: MiFID business

COBS Contents

16A.4	Periodic reporting
16A.5	Statements of client financial instruments or client funds
COBS 17	Claims handling for long-term care insurance
17.1	Providing information to claimants, dealing with claims and warranties in policies
COBS 18	Specialist Regimes
18.1	Trustee Firms
18.2	Energy market activity and oil market activity
18.3	Corporate finance business
18.4	Stock lending activity
18.5	Residual CIS operators and small authorised UK AIFMs
18.5A	Full-scope UK AIFMs and incoming EEA AIFM branches
18.5B	UCITS management companies
18.6	Lloyd's
18.6A	Insurance Special Purpose Vehicles (ISPVs)
18.7	Depositaries
18.8A	OPS firms
18.9	ICVCs
18.10	Service companies
18.11	Authorised professional firms
18.12	Operating an electronic system in relation to lending
18 Annex 1	Research and inducements for collective portfolio managers
18 Annex 2	Record keeping: client orders and transactions
COBS 19	Pensions supplementary provisions
19.1	Pension transfers, conversions, and opt-outs
19.1A	Abridged advice on pension transfers and pension conversions
19.1B	Ban on contingent charging for pension transfers and conversions
19.2	Personal pensions, FSAVCs and AVCs
19.3	Product disclosure to members of occupational pension schemes
19.4	Open market options
19.5	Independent governance committees (IGCs) and publication and disclosure of costs and charges
19.6	Restriction on charges in qualifying schemes
19.6A	Restrictions on early exit charges in personal pension schemes and stakeholder pension schemes
19.7	Pensions nudge and retirement risk warnings
19.8	Disclosure of transaction costs and administration charges in connection with workplace pension schemes
19.9	Pension annuity comparison information
19.10	Drawdown, investment pathways and cash warnings
19.11	Pensions dashboards
19.12	Non-workplace pensions: default options and cash warnings
19 Annex 1	Pensions nudge and retirement risk warnings - steps to take
19 Annex 2	Communications about options to access pension savings
19 Annex 3	Format for annuity information
19 Annex 4A	Appropriate pension transfer analysis

COBS Contents

- 19 Annex 4B Transfer value comparator
- 19 Annex 4C Assumptions
- 19 Annex 5 Format for provision of transfer value comparator
- 19 Annex 6 Value data requirements

COBS 20	With-profits
20.1	Application
20.1A	The with-profits fund
20.2	Treating with-profits policyholders fairly
20.3	Principles and Practices of Financial Management
20.4	Communications with with-profits policyholders
20.5	With-profits governance
COBS 21	Permitted Links and conditional permitted links
21.1	Application
21.2	Rules for firms engaged in linked long-term insurance business
21.3	Further rules for firms engaged in linked long-term insurance business
COBS 22	Restrictions on the distribution of certain complex investment products
22.2	Restrictions on the retail distribution of mutual society shares
22.3	Restrictions on the retail distribution of contingent convertible instruments and CoCo funds
22.4	Prohibition on the retail marketing, distribution and sale of derivative contracts of a binary or other fixed outcomes nature
22.5	Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative investments
22.6	Prohibition on the retail marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes
Transitional provisions and Schedules	
TP 1	Transitional Provisions relating to Client Categorisation
TP 2	Other Transitional Provisions
Sch 1	Record keeping requirements
Sch 2	Notification requirements
Sch 3	Fees and other required payments
Sch 4	Powers exercised
Sch 5	Rights of action for damages
Sch 6	Rules that can be waived

Chapter 1

Application

1.1 General application

Designated investment business and long-term insurance business in relation to life policies

1.1.1

R

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

- (1) [deleted]
- (2) *designated investment business*;
- (3) *long-term insurance business in relation to life policies*;

and activities connected with them.

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) Rules in this sourcebook which implemented articles 24, 25, 26, 28 and 30 of MiFID (and related provisions of the MiFID Delegated Directive) (see COBS 1.1.1ADG).	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.
(2) COBS 4.6 (Past, simulated past and future performance)	Communication or approval of a financial promotion relating to a structured deposit that is addressed to, or disseminated in such a way that it is likely to be received by, a retail client.
(3) COBS 4.7 (Direct offer financial promotions)	Communication or approval of a financial promotion relating to a cash deposit ISA, cash-only lifetime ISA or cash deposit CTF that is addressed to, or disseminated in such a way that it is likely to be received by, a retail client.

(4)	COBS 4.10 Approving and confirming compliance of financial promotions)	To the extent that other rules in COBS 4 apply.
(5)	COBS 13 (Preparing product information)	Producing a cash-deposit ISA, cash-only lifetime ISA or cash-deposit CTF.
(6)	COBS 14 (Providing product information to clients)	Selling, personally recommending or arranging the sale of a cash-deposit ISA, cash-only lifetime ISA or cash-deposit CTF to a retail client.
(7)	COBS 15 (Cancellation)	A cancellable contract between a consumer and a firm.

Structured deposits: further provisions

1.1.1AA R

Except in ■ COBS 6.2B, in the rules referred to in ■ COBS 1.1.1AR(1) (and in any related guidance), references to:

- (1) *investment services and designated investment business* include selling, or advising *clients* in relation to, *structured deposits*; and
- (2) *financial instruments and designated investments* include *structured deposits*.

1.1.1AB UK

Article 1(2) of the *MiFID Org Regulation* specifies how its provisions should be read where they apply to firms selling, or 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 (so far as relevant) in Chapters II to IV of this Regulation.

1.1.1AC R

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*.

1.1.1AD G

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':

COBS chapter	Description
COBS 2	Conduct of business obligations
COBS 3	Client categorisation
COBS 4	Communicating with clients, including financial promotions
COBS 6	Information about the firm, its services and remuneration
COBS 8A	Client agreements
COBS 9A	Suitability (MiFID provisions)

COBS 10A	Appropriateness (for non-advised services) (<i>MiFID</i> provisions)
COBS 11	Dealing and managing
COBS 14	Providing product information to clients
COBS 16A	Reporting information to clients (<i>MiFID</i> provisions)

[Note: article 1(4) of *MiFID*]

Electronic money

- 1.1.1B** **R** ■ COBS 4.4.3 R, ■ COBS 5 (Distance communications), ■ COBS 15.2 (The right to cancel), ■ COBS 15.3 (Exercising a right to cancel), ■ COBS 15.4 (Effects of cancellation) and ■ COBS 15 Annex 1 (Exemptions from the right to cancel) apply to a *firm* with respect to the activity of *issuing electronic money* as set out in those provisions.

Application to TP firms and Gibraltar-based firms

- 1.1.1C** **R** In addition to the application rules in *COBS* as relevant, *TP firms* and Gibraltar-based firms carrying on business from an establishment in the *United Kingdom* must also comply with the provisions in:
- (1) ■ COBS 16.6.7AR (drawdown pensions: annual statements) and ■ COBS 16.6.8R to ■ COBS 16.6.13G (income withdrawals – annual statements);
 - (2) ■ COBS 19.10 (Drawdown, investment pathways and cash warnings).
 - (3) ■ COBS TP 2 paragraphs 2.8G to 2.8J (Other Transitional Provisions)

- 1.1.1D** **G** Unless the contrary intention appears, a reference to Gibraltar-based firm in ■ COBS 1.1.1CR has the same meaning as in the *Gibraltar Order*.

Auction regulation bidding

- 1.1.1E** **R** ■ COBS 5 (Distance communications) applies to a *firm* in relation to its carrying on of *auction regulation bidding*.

- 1.1.1C** **R** [deleted]

Modifications to the general application rule

- 1.1.2** **R** The application of this sourcebook is modified in ■ COBS 1 Annex 1 according to the activities of a *firm* (Part 1) and its location (Part 2).
- 1.1.3** **R** The application of this sourcebook is also modified in the chapters to this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

		Guidance	1
1.1.4	<input type="checkbox"/> G	<i>Guidance on the application provisions is in COBS 1 Annex 1 (Part 3).</i>	
1.1.5	<input type="checkbox"/> G	<i>PERG 13 contains general guidance on the persons and businesses to which the UK provisions which implemented MiFID apply.</i>	
1.1.6	<input type="checkbox"/> G	<i>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.</i>	

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 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 those requirements which implemented *MiFID* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the *MiFID Org Regulation*, marked with the status letters "UK".
- (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 and as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

1.2.2

G

- (1) In some cases, this sourcebook applies provisions of the *MiFID Org Regulation* to *firms* in relation to business other than their *MiFID* business as if those provisions were *rules*.
- (2) *Third country investment firms* should also have regard to the rule in ■ GEN 2.2.22AR which concerns the application of the *MiFID Org Regulation* to such *firms*.

1.2.3

R

- (1) Where this sourcebook, or the rule in ■ GEN 2.2.22AR, applies provisions of the *MiFID Org Regulation* as if they were *rules*, (2) applies to enable *firms* to correctly interpret and understand the application of those provisions.
- (2) In this sourcebook, a word or phrase found in a provision marked "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)
"ancillary services"	<i>ancillary service</i>
"client" and "potential client"	<i>client</i>
"competent authority"	<i>FCA</i>

"conditions specified in Article 3(2)"	<i>website conditions</i>
"derivative"	those <i>financial instruments referred to</i> in paragraphs 4 to 10 of <u>Part 1</u> of Schedule 2 to the <i>Regulated Activities Order</i>
"Directive 2009/65/EC"	<i>UCITS Directive</i>
"Directive 2014/65/EU"	<i>MiFID</i>
"distributing units in collective investment undertakings"	distributing units in a <i>UCITS</i>
"durable medium"	<i>durable medium</i>
"eligible counterparty"	<i>eligible counterparty</i>
"financial analyst"	<i>financial analyst</i>
"financial instrument"	<i>financial instrument</i> and (if the context requires) <i>designated investment</i> and <i>structured deposit</i>
"funds"	<i>client money</i> that a <i>firm</i> receives or holds for, or on behalf of, a <i>client</i> in the course of, or in connection with, its <i>MiFID business</i> and (if the context requires) its <i>equivalent business of a third country investment firm</i> .
"group"	as defined in <u>section 421</u> of the Act
"investments"	<i>financial instrument</i> and (if the context requires) <i>designated investment</i> and <i>structured deposit</i>
"investment advice"	<i>personal recommendation</i>
"investment firm" and "firm"	<i>firm</i>
"investment research"	<i>investment research</i>
"investment service" and "investment services and activities"	<i>investment service</i> and <i>investment services and/or activities</i> or (if the context requires) <i>designated investment business</i>
"market maker"	<i>market maker</i>
"periodic statement"	<i>periodic statement</i>
"PRIIPs KID"	<i>key information document</i>
"portfolio management" and "portfolio management service"	<i>portfolio management</i>
"professional client"	<i>professional client</i>
"professional client covered by Part 2 of Schedule 1 to Regulation (EU) No 600/2014"	<i>per se professional client</i>
"professional client in accordance with Part 3 of Schedule 1 to Regulation (EU) No 600/2014"	<i>elective professional client</i>
"Regulation (EU) No. 1286/2014"	<i>PRIIPs Regulation</i>
"relevant person"	<i>relevant person</i>
"retail client"	<i>retail client</i>
"shall"	<i>must</i>

"tied agent"	<i>tied agent</i>
"UCITS KIID"	<i>key investor information document</i>

- (3) In this sourcebook, where a reproduced provision of an article of the *MiFID Org Regulation* refers to another part of the *MiFID Org Regulation*, that other provision must also be read with reference to the table in (2).

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 "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 implemented *MiFID* require *firms* to provide *clients* with information "in good time".
 - (2) In determining what constitutes the provision of information "in good time", a *firm* should take into account, having regard to the urgency of the situation, the *client's* need for sufficient time to read and understand the information before taking an investment decision.
 - (3) A *client* is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a *client* has no experience with, than a *client* considering a simpler or more familiar product or service, or where the *client* has relevant prior experience.

[**Note:** recital 83 of *MiFID*]

[**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);

guidelines on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN); and

guidelines on complex debt instruments and *structured deposits*, 4 February 2016/ESMA/2015/1787 (EN)].

1.3 Insurance distribution

[deleted]

1.3.1 **G** [deleted]

1.3.2 **G** [deleted]

1.3.3 **R** [deleted]

1.3.4 **G** [deleted]

Interpretation – “in good time”

- 1.3.5 **G**
- (1) Certain provisions in this sourcebook require *firms* to provide *clients* with information “in good time”, for example, ■ COBS 6.1ZA.19AR.
 - (2) In determining what constitutes the provision of information “in good time”, a *firm* should take into account, having regard to the urgency of the situation, the *client’s* need for sufficient time to read and understand the information before taking an investment decision.
 - (3) A *client* is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a *client* has no experience with, than a *client* considering a simpler or more familiar product or service, or where the *client* has relevant prior experience.

Application (see COBS 1.1.2R)

Part 1: What?

Modifications to the general application of COBS according to activities

1. Eligible counterparty business

1.1	R	The COBS 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 implemented the <i>IDD</i> continue to apply.
		COBS provision
		Description
	COBS 2 (other than COBS 2.1.1AR, COBS 2.2A and COBS 2.4)	Conduct of business obligations
	COBS 4 (other than COBS 4.2, COBS 4.4.1 R, COBS 4.5A.9UK and COBS 4.7.-1AUK)	Communicating with clients including financial promotions
	COBS 6.1	Information about the firm, its services and remuneration (non-MiFID and non insurance distribution provisions)
	COBS 6.1ZA.16R	Information about costs and charges of different services or products (MiFID provisions)
	COBS 6.1ZA.22R	Compensation information (MiFID provisions)
	COBS 8	Client agreements (non-MiFID provisions)
	COBS 8A (other than COBS 8A.1.5UK to COBS 8A.1.8G)	Client agreements (MiFID provisions)
	COBS 10	Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)
	COBS 10A	Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)
	COBS 11.2A, COBS 11.2B and COBS 11.3	Best execution, quality of execution and client order handling
	COBS 12.2.18UK	Labelling of non-independent research
	COBS 14.3	Information about designated investments (non-MiFID provisions)
	COBS 16	Reporting information to clients (non-MiFID provisions)

[Note: paragraphs 1 and 2 of article 30(1) of *MiFID*]

2. Transactions between an MTF operator and its users

2.1	R	The COBS provisions (applicable to <i>MiFID business</i>) shown below do not apply to a transaction between an operator of an <i>MTF</i> and a member or participant in relation to the use of the <i>MTF</i> .
		COBS provision
		Description
		COBS 2 (other than COBS 2.4) Conduct of business obligations
		COBS 4 (other than COBS 4.4.1R) Communicating with clients, including financial promotions
		COBS 6.1ZA Information about the firm and compensation information (<i>MiFID provisions</i>)
		COBS 8A Client agreements (<i>MiFID provisions</i>)
		COBS 10A Appropriateness (for non-advised services) (<i>MiFID provisions</i>)
		COBS 11.2A, COBS 11.2B, COBS 11.3 and COBS 11.4 Best execution, quality of execution, client order handling and client limit orders
		COBS 14.3A Information about financial instruments (<i>MiFID provisions</i>)
		COBS 16A Reporting information to clients (<i>MiFID provisions</i>)
		[Note: article 19(4) of <i>MiFID</i>]
3.		Transactions concluded on an MTF
3.1	R	The COBS provisions in paragraph 2.1R do not apply to transactions concluded under the rules governing an <i>MTF</i> between members or participants of the <i>MTF</i> . However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on an <i>MTF</i> .
		[Note: article 19(4) of <i>MiFID</i>]
3A.		Operators of OTFs
3A.1	G	A firm which operates an organised trading facility should refer to MAR 5A.3.9R which specifies how the provisions in this sourcebook apply to that activity.
4.		Transactions concluded on a regulated market
4.1	R	In relation to transactions concluded on a <i>regulated market</i> , members and participants of the <i>regulated market</i> are not required to apply to each other the COBS provisions in paragraph 2.1R. However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on a <i>regulated market</i> .
		[Note: article 53(4) of <i>MiFID</i>]
5.		Consumer credit products
5.1	R	If a firm, 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 EU-derived 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 implemented articles 24(3), (4) and (5) of <i>MiFID</i> .
		[Note: article 24(6) of <i>MiFID</i>]
5.2	G	This exclusion for consumer credit products is intended to apply on a narrow basis in relation to cases in which the <i>investment service</i> is a part of another financial product. It does not apply where the <i>investment service</i> is the essential or leading part of the financial product. It also does not apply where the service provided is a combination of an <i>investment service</i> and an <i>ancillary service</i> (for example, granting a credit for the execution of an order where the credit is instrumental to the buying or the selling of a <i>financial instrument</i> .) The exclusion also does not apply in relation to the sale of a <i>financial instrument</i> for the pur

		pose of enabling a <i>client</i> to invest money to repay his obligations under a loan, mortgage or home reversion.
5A.	Mortgages and mortgage bonds	
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> (which were 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 implemented article 25 of <i>MiFID</i> .
5A.3	R	<p>The conditions in paragraph 5A.2R are that the mortgage bonds:</p> <p>(1) are specifically issued to secure the financing of the <i>MCD credit agreement</i> in paragraph 5A.1R; and</p> <p>(2) have terms which are identical to the <i>MCD credit agreement</i> in paragraph 5A.1R.</p>
[Note: article 25(7) of MiFID]		
6.	Use of third party processors in life insurance distribution activities	
6.1	R	<p>If a <i>firm</i> (or its <i>appointed representative</i> or, where applicable, its <i>tied agent</i>) outsources <i>insurance distribution activities</i> to a <i>third party processor</i>:</p> <p>(1) the <i>firm</i> must accept responsibility for the acts and omissions of that <i>third party processor</i> conducting those outsourced activities; and</p> <p>(2) any <i>COBS rule</i> requiring the <i>third party processor's</i> identity to be disclosed to <i>clients</i> must be applied as a requirement to disclose the <i>firm's</i> identity;</p> <p>unless the <i>third party processor</i> is giving <i>personal recommendations</i> in relation to <i>advising on investments</i> (except P2P agreements).</p>
7.	Modified meaning of regulated activities for UK AIFMs and UK UCITS management companies	
7.1	R	In determining whether a provision in <i>COBS</i> applies to a <i>UK AIFM</i> or a <i>UK UCITS management company</i> , an activity carried on by the <i>firm</i> which would be a <i>regulated activity</i> but for article 72AA (Managers of UCITS and AIFs) of the <i>Regulated Activities Order</i> , must be treated as a <i>regulated activity</i> carried on by the <i>firm</i> .
8.	PRIIPs Regulation [deleted]	

Part 2: Where?**Modifications to the general application according to location**

- EEA territorial scope rule: compatibility with European law [deleted]**
- Business with UK clients from overseas establishments**
 - R (1) This sourcebook applies to a *firm* which carries on business with a *client* in the *United Kingdom* from an establishment overseas.
 - (2) But the sourcebook does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:

- | | |
|-----|---|
| (a) | would fall within the overseas persons exclusions in article 72 of the <i>Regulated Activities Order</i> ; or |
| (b) | would not be regarded as carried on in the <i>United Kingdom</i> . |

2.2 G [deleted]

Part 3: Guidance

1. The main extensions, modifications and restrictions to the general application

- 1.1 G The general application of this sourcebook is modified in Parts 1 and 2 of Annex 1 and in certain chapters of the *Handbook*. The modification may be an extension of the general application. For example, [COBS 4](#) (Communicating with clients, including financial promotions) has extended the general application.
- 1.2 G [deleted]
- 1.3 G Certain chapters of this sourcebook apply only to *firms* in relation to their *MiFID, equivalent third country or optional exemption business* and, in some of these chapters, specified *insurance distribution activities* (sometimes only in relation to *insurance-based investment products*) while others apply only to *firms' designated investment business* which is not *MiFID, equivalent third country or optional exemption business* or, in some of these chapters, certain *insurance distribution activities*.
- 1.4 G [COBS 18](#) (Specialist regimes) contains specialist regimes which modify the application of the provisions in this sourcebook for particular types of *firm* and business. To the extent that they are in conflict, the *rules* in [COBS 18](#) on the application of the provisions in this sourcebook should be understood as overriding any other provision (whether in [COBS 1](#) or an individual chapter) on the application of *COBS*.

2. The Single Market Directives and other directives [deleted]

3. MiFID: effect on territorial scope [deleted]
4. Insurance Distribution Directive: effect on territorial scope [deleted]
5. Solvency II Directive: effect on territorial scope [deleted]
6. Distance Marketing Directive: effect on territorial scope [deleted]
7. Electronic Commerce Directive: effect on territorial scope [deleted]
8. Investor Compensation Directive [deleted]
9. UCITS Directive: effect on territorial scope [deleted]
10. AIFMD: effect on territorial scope [deleted]
11. SRD: effect on territorial scope[deleted]

Chapter 2

Conduct of business obligations

2.1 Acting honestly, fairly and professionally

The client's best interests rule

2.1.1

R

- (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client's best interests rule*).
- (2) This *rule* applies:
 - (a) in relation to *designated investment business* carried on for a *retail client*;
 - (b) in relation to *MiFID, equivalent third country or optional exemption business*, for any *client*; and
 - (c) in relation to *insurance distribution*, for any *client*.
- (3) For a *management company*, this *rule* applies in relation to any *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*]

Business with eligible counterparties

2.1.1A

R

In relation to its *eligible counterparty business*, a *firm* must act honestly, fairly and professionally, taking into account the nature of the *eligible counterparty* and its business.

[**Note:** article 30(1) of *MiFID*]

Exclusion of liability

2.1.2

R

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

- (1) exclude or restrict; or
- (2) rely on any exclusion or restriction of;

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

2.1.3

G

- (1) In order to comply with the *client's best interests rule*, a *firm* should not, in any communication to a *retail client* relating to *designated investment business*:
 - (a) seek to exclude or restrict; or

2.1.4**R****AIFMs' best interests rules**

A full-scope UK AIFM must, for all AIFs it manages:

- (1) act honestly, fairly and with due skill care and diligence in conducting their activities;
- (2) act in the best interests of the AIF it manages or the investors of the AIF it manages and the integrity of the market;
- (3) treat all investors fairly; and
- (4) not allow any investor in an AIF to obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF's instrument constituting the fund.

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

2.1.5**G****Subordinate measures for alternative investment fund managers**

Articles 16 to 29 of the AIFMD level 2 regulation provide detailed rules supplementing the relevant provisions of Article 12(1) of AIFMD.

2.2 Information disclosure before providing services (other than MiFID and insurance distribution)

Application

2.2.-1

R

- (1) [deleted]
- (2) This section applies in relation to *designated investment business* (other than *MiFID*, *equivalent third country or optional exemption business* or *insurance distribution activities*), carried on for a *retail client*:
 - (a) in relation to a *derivative*, a *warrant*, a *non-readily realisable security*, a *non-mass market investment*, a *P2P agreement*, or *stock lending activity*, but as regards the matters in ■ COBS 2.2.1R (1)(b) only; and
 - (b) in relation to a *retail investment product*, but as regards the matters in ■ COBS 2.2.1R (1)(a) and ■ (d) only.
- (3) Where a *rule* in this section applies to a *firm* carrying on *designated investment business* in relation to a *non-mass market investment* the *rule* also applies to:
 - (a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of ■ GEN 2.2.26R); and
 - (b) *Gibraltar-based firm* to the extent that the *rule* does not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R.

2.2.-1A

G

■ COBS 2.2A (Information disclosure before providing services (MiFID and insurance distribution)) contains the information disclosure requirements applying to a *firm* carrying on *MiFID*, *equivalent third country or optional exemption business* and *insurance distribution activities*.

Information disclosure before providing services

2.2.1

R

- (1) A *firm* must provide appropriate information in a comprehensible form to a *client* about:
 - (a) the *firm* and its services;
 - (b) *designated investments* and proposed investment strategies; including appropriate guidance on and warnings of the risks associated with investments in those *designated investments* or in respect of particular investment strategies;

- (c) execution venues; and
- (d) costs and associated charges;

so that the *client* is reasonably able to understand the nature and risks of the service and of the specific type of *designated investment* that is being offered and, consequently, to take investment decisions on an informed basis.

- (2) That information may be provided in a standardised format.
- (3) [deleted]
- (4) [deleted]

2.2.2

G

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

Disclosure of commitment to the Financial Reporting Council's Stewardship Code

2.2.3

R

A *firm*, other than a *venture capital firm*, which is *managing investments* for a *professional client* that is not a natural person must disclose clearly on its website, or if it does not have a website in another accessible form:

- (1) the nature of its commitment to the Financial Reporting Council's Stewardship Code; or
- (2) where it does not commit to the Code, its alternative investment strategy.

2.2A Information disclosure before providing services (MiFID and insurance distribution provisions)

Application

- 2.2A.1 R** This section applies to a *firm*:
- in relation to its *MiFID, equivalent third country or optional exemption business*;
 - carrying on *insurance distribution activities* in relation to:
 - (a) an *insurance-based investment product* for any *client*; and/or
 - (b) any other *life policy* for a *retail client* but as regards the matters in ■ COBS 2.2A.2R(1)(a) and (d) only.
- 2.2A.2 R**
- Information disclosure in good time**
- (1) A *firm* must provide appropriate information in good time to a *client* with regard to:
 - (a) the *firm* and its services;
 - (b) (for *financial instruments*) the *financial instruments*, proposed investment strategies and execution venues;
 - (c) (for *insurance-based investment products*) the distribution of *insurance-based investment products* including at least appropriate guidance on, and warnings of, the risks associated with the *insurance-based investment product* or in respect of particular investment strategies proposed; and
 - (d) all costs and related charges.
 - [**Note:** article 24(4) of *MiFID* and article 29(1)(b) of the *IDD*]
 - (2) That information may be provided in a standardised format.
- 2.2A.2A R**
- For an *insurance-based investment product*, a *firm* must provide the information in good time prior to the conclusion of the contract.
- [**Note:** first paragraph of article 29(1) of the *IDD*]
- 2.2A.3 R**
- (1) A *firm* must provide the information required by this section in a comprehensible form in such a manner that a *client* is reasonably able to understand the nature and risks of the *investment service* and of

the specific type of *financial instrument or life policy* that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

[Note: article 24(5) of *MiFID* and last paragraph of article 29(1) the *IDD*]

Related rules

2.2A.4**G**

A firm to which the rule on providing appropriate information (■ COBS 2.2A.2R) applies should also consider the rules on disclosing information about a firm, its services, costs and associated charges, *financial instruments* and *life policies* ■ COBS 6.1ZA, ■ COBS 9A.3, ■ COBS 14.3 and ■ COBS 14.3A.

Disclosure of commitment to the Financial Reporting Council's Stewardship Code

2.2A.5**R**

A firm must comply with the rule in ■ COBS 2.2.3R (Disclosure of commitment to the Financial Reporting Council's Stewardship Code).

2.2B SRD requirements

Application: Who?

- 2.2B.1** **R** This section applies to:
- (1) a *UK MiFID investment firm* that provides *portfolio management services* to investors;
 - (2) a *third country investment firm* that provides *portfolio management services* to investors;
 - (3) a *UK UCITS management company*;
 - (4) an *ICVC* that is a *UCITS scheme* without a separate *management company*; and
 - (5) a *full-scope UK AIFM*.

[Note: article 2(f) of *SRD*]

Application: What?

- 2.2B.2** **R** This section applies to the extent that the *firm* is investing (or has invested) on behalf of investors in *shares traded on a regulated market*.

- 2.2B.3** **G** The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the *United Kingdom*.

Application: Where?

- 2.2B.4** **R**
- (1) This section applies in relation to activities carried on by a *firm* from an establishment in the *United Kingdom*.
 - (2) [deleted]

Engagement policy and disclosure of information

- 2.2B.5** **R** A *firm* must either:
- (1) (a) develop and publicly disclose an *engagement policy* that meets the requirements of ■ COBS 2.2B.6R (an “*engagement policy*”); and

(b) publicly disclose on an annual basis how its *engagement policy* has been implemented in a way that meets the requirements of ■ COBS 2.2B.7R; or

(2) publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).

[Note: article 3g(1) and (1)(a) of SRD]

2.2B.6

R

The *engagement policy* must describe how the *firm*:

- (1) integrates shareholder engagement in its investment strategy;
- (2) monitors investee companies on relevant matters, including:
 - (a) strategy;
 - (b) financial and non-financial performance and risk;
 - (c) capital structure; and
 - (d) social and environmental impact and corporate governance;
- (3) conducts dialogues with investee companies;
- (4) exercises voting rights and other rights attached to *shares*;
- (5) cooperates with other shareholders;
- (6) communicates with relevant stakeholders of the investee companies; and
- (7) manages actual and potential conflicts of interests in relation to the *firm's* engagement.

[Note: article 3g(1)(a) of SRD]

2.2B.7

R

- (1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and reporting on the use of the services of *proxy advisors*.
- (2) (a) Subject to (b), a *firm* must publicly disclose how it has cast votes in the general meetings of companies in which it holds *shares*.
(b) A *firm* is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[Note: article 3g(1)(b) of SRD]

2.2B.8

R

The applicable disclosures or information referred to in ■ COBS 2.2B.5R to ■ COBS 2.2B.7R must be made available free of charge on the *firm's* website.

[Note: article 3g(2) of SRD]

2.2B.9

R

Transparency of asset managers

- (1) This *rule* applies where a *firm* invests on behalf of an *SRD institutional investor*, whether on a discretionary client-by-client basis or through a collective investment undertaking.
- (2) The *firm* must disclose to the relevant *SRD institutional investor*, on an annual basis, how its investment strategy and the implementation of it:
 - (a) complies with the arrangement referred to in (1); and
 - (b) contributes to the medium- to long-term performance of the assets of the *SRD institutional investor* or of the *fund*.
- (3) The disclosure must include reporting on:
 - (a) the key material medium- to long-term risks associated with the investments;
 - (b) portfolio composition;
 - (c) turnover and turnover costs;
 - (d) the use of *proxy advisors* for the purpose of engagement activities;
 - (e) the *firm's* policy on securities lending and how that policy is applied to supports the *firm's* engagement activities if applicable, particularly at the time of the general meeting of the investee companies;
 - (f) whether and, if so, how, the *firm* makes investment decisions based on evaluation of medium- to long-term performance of an investee company, including non-financial performance; and
 - (g) whether and, if so, which conflicts of interests have arisen in connection with engagement activities and how the *firm* has dealt with these conflicts.

[Note: article 3i(1) of SRD]

2.2B.10

G

A *firm* may provide the disclosure in □ COBS 2.2B.9R by making the relevant information publicly available.

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

Interpretation

2.3.-1

R

In this section 'giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*' includes:

- (1) giving advice or assistance to an employer on the operation of such a scheme;
- (2) taking, or helping the employer to take, the steps that must be taken to enable an employee to become a member of such a *scheme*; and
- (3) giving advice to an employee, pursuant to an agreement between the employer and the adviser, about the benefits that are, or might be, available to the employee as an actual or potential member of such a scheme.

Application

2.3.-1A

R

This section does not apply to:

- (1) giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* where that scheme is a *qualifying scheme*;
- (2) a *firm* in relation to *MiFID, equivalent third country or optional exemption business* (but see ■ COBS 2.3A (Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products)); or
- (3) a *firm* carrying on an *insurance distribution activity* in relation to an *insurance-based investment product*.

2.3.-1B

G

The rules governing fees, commissions and non-monetary benefits which may be paid or provided in respect of *qualifying schemes* are found in ■ COBS 19.6.

2.3.1C	G This section does not apply to the provision of <i>independent advice</i> or <i>restricted advice</i> on a <i>retail investment product</i> in the course of <i>MiFID</i> , <i>equivalent third country</i> or <i>optional exemption business</i> . A <i>firm</i> providing such a service should refer instead to ■ COBS 2.3A (Inducements relating to MiFID, equivalent third country or optional exemption business) and ■ COBS 6.1A (Adviser charging and remuneration).
2.3.1	R Rule on inducements A <i>firm</i> must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to <i>designated investment business</i> carried on for a <i>client</i> other than: <ul style="list-style-type: none">(1) a fee, commission or non-monetary benefit paid or provided to or by the <i>client</i> or a <i>person</i> on behalf of the <i>client</i>; or(2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a <i>person</i> acting on behalf of a third party, if:<ul style="list-style-type: none">(a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the <i>firm's</i> duty to act in the best interests of the <i>client</i>; and(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 <i>client</i>, 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 <i>UK UCITS management company</i> of the <i>collective portfolio management</i> activities of investment management and administration for the relevant <i>scheme</i> if it includes:<ul style="list-style-type: none">(A) giving a <i>personal recommendation</i> in relation to a <i>retail investment product</i>, <i>pension transfer</i>, <i>pension conversion</i>, <i>pension opt-out</i> or <i>P2P agreement</i>; or(B) giving advice, or providing services, to an employer in connection with a <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i>;(ii) where this requirement applies to business other than the carrying on by a <i>UK UCITS management company</i> of the <i>collective portfolio management</i> activities of investment management and administration for the relevant <i>scheme</i>, a <i>firm</i> is not required to make a disclosure to the <i>client</i> in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-monetary benefits in ■ COBS 2.3.15 G as though that table were part of this rule for this purpose only;(iii) this requirement does not apply to a <i>firm</i> giving <i>basic advice</i>; and(c) in relation to the carrying on by a <i>UK UCITS management company</i> or <i>EEA UCITS management company</i> of the <i>collective portfolio management</i> activities of investment management and administration for the relevant <i>scheme</i> or when carrying on a

regulated activity in relation to a *retail investment product* or a *pension transfer*, *pension conversion* or *pension opt-out* 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

- (3) proper fees which enable or are necessary for the provision of *designated investment business*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the *firm's* duties to act honestly, fairly and professionally in accordance with the best interests of its *clients*; or
- (4) an *employer or trustee funded pension advice charge*.

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

2.3.1A

R

■ COBS 2.3.1 R applies to a *UK 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*]

2.3.2

R

A *firm* will satisfy the disclosure obligation under this section if it:

- (1) discloses the essential arrangements relating to the fee, commission or non-monetary benefit in summary form;
- (2) undertakes to the *client* that further details will be disclosed on request; and
- (3) honours the undertaking in (2).

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

2.3.2A

R

■ COBS 2.3.2 R applies to a *UK 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*]

Guidance on inducements

2.3.3

G

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

2.3.4

G

[deleted]

2.3.4A

G

A *UCITS management company* is subject to specific *rules* on inducements and research in ■ COBS 18.5B when executing orders for *financial instruments*

		for, or on behalf of, the <i>UCITS</i> it manages (see ■ COBS 18.5B.6R and ■ COBS 18 Annex 1).
2.3.5	G	For the purposes of this section, a non-monetary benefit would include the direction or referral by a <i>firm</i> of an actual or potential item of <i>designated investment business</i> to another <i>person</i> , whether on its own initiative or on the instructions of an <i>associate</i> .
2.3.6	G	[deleted]
2.3.6A	G	<p>■ COBS 6.1A (Adviser charging and remuneration), ■ COBS 6.1B (Retail investment product provider and operator of an electronic system in relation to lending and platform service provider requirements relating to adviser charging and remuneration), ■ COBS 6.1C (Consultancy charging and remuneration) and ■ COBS 6.1D (Product provider requirements relating to consultancy charging and remuneration) set out specific requirements as to when it is acceptable for a <i>firm</i> to pay or receive commissions, fees or other benefits:</p> <ol style="list-style-type: none">(1) relating to the provision of a <i>personal recommendation</i> on <i>retail investment products, pension transfers, pension conversions, pension opt-outs or P2P agreements</i>; or(2) for giving advice, or providing services, to an employer in connection with a <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i>.
2.3.7	G	The fact that a fee, commission or non-monetary benefit is paid or provided to or by an <i>appointed representative</i> does not prevent the application of the <i>rule</i> on inducements.
2.3.8	G	[deleted]
2.3.9	G	Paying commission on non-advised sales of packaged products The following <i>guidance</i> and <i>evidential provisions</i> provide examples of arrangements the FCA believes will breach the <i>client's best interests rule</i> if a <i>firm</i> sells or arranges the sale of a <i>packaged product</i> for a <i>retail client</i> .
2.3.10	E	<ol style="list-style-type: none">(1) If a <i>firm</i> is required to disclose <i>commission</i> (see ■ COBS 6.4) to a <i>client</i> in relation to the sale of a <i>packaged product</i> (other than in relation to arrangements between firms that are in the same <i>immediate group</i>) the firm should not enter into any of the following:<ol style="list-style-type: none">(a) volume overrides, if <i>commission</i> paid in respect of several transactions is more than a simple multiple of the <i>commission</i> payable in respect of one transaction of the same kind; and(b) an agreement to indemnify the payment of <i>commission</i> on terms that would or might confer an additional financial benefit on the recipient in the event of the <i>commission</i> becoming repayable.

2.3.11

G

- (2) Contravention of (1) may be relied upon as tending to establish contravention of the *rule* on inducements (■ COBS 2.3.1 R).

2

- (1) If a *firm* enters into an arrangement with another firm under which it makes or receives a payment of *commission* in relation to the sale of a *packaged product* that is increased in excess of the amount disclosed to the *client*, the *firm* is likely to have breached the *rules* on disclosure of charges, remuneration and commission (see ■ COBS 6.4) and, where applicable, the *rule* on inducements in ■ COBS 2.3.1R (2)(b), unless the increase is attributable to an increase in the *premiums* or contributions payable by that *client*.

Providing credit and other benefits to firms that give personal recommendations on retail investment products or P2P agreements

2.3.11A

G

The following *guidance* and *evidential provisions* provide examples of arrangements the FCA believes will breach the *client's best interests rule* in relation to a *personal recommendation* of a *retail investment product* or *P2P agreement* to a *retail client*.

2.3.12

E

- (1) This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations to retail clients on retail investment products or P2P agreements*, except where the relevant transaction is between persons who are in the same *immediate group*.

- (2) A *retail investment product provider or operator of an electronic system in relation to lending* should not take any step which would result in it:

- (a) having a direct or indirect holding of the capital or *voting power* of a *firm* in (1); or
(b) providing *credit* to a *firm* in (1) (other than continuing to facilitate the payment of an *adviser charge* or *consultancy charge* where it is no longer payable by the *retail client*, as described in ■ COBS 6.1A.5 G or ■ COBS 6.1C.6 G);

unless all the conditions in (4) are satisfied. A *retail investment product provider or operator of an electronic system in relation to lending* should also take reasonable steps to ensure that its associates do not take any step which would result in it having a holding as in (a) or providing *credit* as in (b).

- (3) A *firm* in (1) should not take any step which would result in a *retail investment product provider or operator of an electronic system in relation to lending* having a holding as in (2)(a) or providing *credit* as in (2)(b), unless all the conditions in (4) are satisfied.

- (4) The conditions referred to in (2) and (3) are that:

- (a) the holding is acquired, or *credit* is provided, on commercial terms, that is terms objectively comparable to those on which an independent person unconnected to a *retail investment product provider or operator of an electronic system in relation to*

- lending* would, taking into account all relevant circumstances, be willing to acquire the holding or provide credit;
- (b) the *firm* (or, if applicable, each of the *firms*) taking the step has reliable written evidence that (a) is satisfied;
 - (c) there are no arrangements, in connection with the holding or *credit*, relating to the channelling of business from the *firm* in (1) to the *retail investment product provider or operator of an electronic system in relation to lending*; and
 - (d) the *retail investment product provider or operator of an electronic system in relation to lending* is not able, and none of its *associates* is able, because of the holding or *credit*, to exercise any influence over the *personal recommendations* made in relation to *retail investment products* or *P2P agreements* given by the *firm* or the advice given, or services provided to, an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.
- (5) In this *evidential provision*, in applying (2) and (3) any holding of, or *credit* provided by, a *retail investment product provider's or operator of an electronic system in relation to lending's associate* is to be regarded as held by, or provided by, that *retail investment product provider or operator of an electronic system in relation to lending*. .
- (6) [deleted]
- (7) Contravention of (2) or (3) may be relied upon as tending to establish contravention of the *rule* on inducements (■ COBS 2.3.1 R).

2.3.12A

■ G

Where a *retail investment product provider or operator of an electronic system in relation to lending*, or its *associate*, provides *credit* to a *retail client* of a *firm* making *personal recommendations* in relation to *retail investment products* or *P2P agreements* or giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*, this may create an indirect benefit for the *firm* and, to the extent that this is relevant, the provider of *retail investment products or operator of an electronic system in relation to lending* may need to consider the examples in ■ COBS 2.3.12E as if it had provided the *credit* to the *firm*.

2.3.13

■ G

In considering the compliance of arrangements between members of the same *immediate group* with the *rule* on inducements (■ COBS 2.3.1 R), *firms* may wish to consider the *evidential provisions* in ■ COBS 2.3.10 E and ■ COBS 2.3.12 E, to the extent that these are relevant.

Reasonable non-monetary benefits

2.3.14

■ G

- (1) In relation to the sale of *retail investment products*, the table on reasonable non-monetary benefits (■ COBS 2.3.15 G) indicates the kind of benefits which are capable of enhancing the quality of the service provided to a *client* and, depending on the circumstances, are capable of being paid or received without breaching the *client's best interests rule*. However, in each case, it will be a question of fact whether these conditions are satisfied.

- (2) The guidance in the table on reasonable non-monetary benefits is not relevant to non-monetary benefits which may be given by a *retail investment product provider* or its associate to its own representatives. The guidance in this provision does not apply directly to non-monetary benefits provided by a *firm* to another *firm* that is in the same *immediate group*. In this situation, the rules on *commission equivalent* (■ COBS 6.4.3 R), the requirements on a *retail investment product provider* making a *personal recommendation* in respect of its own *retail investment products* (■ COBS 6.1A.9 R) or the requirements on a *firm* giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* produced by the *firm* (■ COBS 6.1C.8 R) will apply.

2.3.15

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This table belongs to ■ COBS 2.3.14 G.

Gifts, Hospitality and Promotional Competition Prizes

- 1 A *retail investment product provider* giving and a *firm* receiving gifts, hospitality and promotional competition prizes of a reasonable value.
- 2 Promotion
- 3 A *retail investment product provider* assisting another *firm* to promote its *retail investment products* so that the quality of its service to *clients* is enhanced. Such assistance should not be of a kind or value that is likely to impair the recipient *firm's* ability to pay due regard to the interests of its *clients*, and to give advice on, and recommend, *retail investment products* available from the recipient *firm's* whole range or ranges.
- 4 Joint marketing exercises
- 5 A *retail investment product provider* providing generic product literature (that is, letter heading, leaflets, forms and envelopes) that is suitable for use and distribution by or on behalf of another *firm* if:
 - (a) the literature enhances the quality of the service to the *client* and is not primarily of promotional benefit to the *retail investment product provider*; and
 - (b) the total costs (for example, packaging, posting, mailing lists) of distributing such literature to its *client* are borne by the recipient *firm*.
- 6 A *retail investment product provider* supplying another *firm* with 'freepost' envelopes, for forwarding such items as completed applications, medical reports or copy client agreements.
- 7 A *retail investment product provider* supplying product specific literature (for example, key features documents, minimum information) to another *firm* if:
 - (a) the literature does not contain the name of any other *firm*; or
 - (b) if the name of the recipient *firm* is included, the literature enhances the quality of the service to the *client* and is not primarily of promotional benefit to the recipient *firm*.
- 8 A *retail investment product provider* supplying draft articles, news items and *financial promotions* for publication in another *firm's* magazine, only if in each case any costs paid by the *product provider* for placing the articles and *financial promotions* are not more than market rate, and exclude distribution costs.

- Seminars and conferences
- 7 A *retail investment product* provider taking part in a seminar organised by another *firm* or a third party and paying toward the cost of the seminar, if:
- (a) its participation is for a genuine business purpose; and
 - (b) the contribution is reasonable and proportionate to its participation and by reference to the time and sessions at the seminar when its staff play an active role.
- Technical services and information technology
- 8 A *retail investment product* provider supplying a 'freephone' link to which it is connected.
- 9 A *retail investment product* provider supplying another *firm* with any of the following:
- (a) quotations and *projections* relating to its *retail investment products* and, in relation to specific *investment transactions* (or for the purpose of any scheme for review of past business), advice on the completion of forms or other *documents*;
 - (b) access to data processing facilities, or access to data, that is related to the *retail investment product* provider's business;
 - (c) access to third party electronic dealing or quotation systems that are related to the *retail investment product* provider's business; and
 - (d) software that gives information about the *retail investment product* provider's *retail investment products* or which is appropriate to its business (for example, for use in a scheme for review of past business or for producing *projections* or technical product information).
- 10 A *retail investment product* provider paying cash amounts or giving other assistance to a *firm* not in the same *immediate group* for the development of software or other computer facilities necessary to operate software supplied by the *retail investment product* provider, but only to the extent that by doing so it will generate equivalent cost savings to itself or *clients*.
- 11 A *retail investment product* provider supplying another *firm* with information about sources of mortgage finance.
- 12 A *retail investment product* provider supplying another *firm* with generic technical information in writing, not necessarily related to the *product provider*'s business, when this information states clearly and prominently that it is produced by the *product provider* or (if different) supplying *firm*.
- Training
- 13 A *retail investment product* provider providing another *firm* with training facilities of any kind (for example, lectures, venue, written material and software).
- Travel and accommodation expenses
- 14 A *retail investment product* provider reimbursing another *firm*'s reasonable travel and accommodation expenses when the other *firm*:
- (a) participates in market research conducted by or for the *retail investment product* provider;
 - (b) attends an annual national event of a *United Kingdom* trade association, hosted or co-hosted by the *retail investment product* provider;

- (c) participates in the *retail investment product provider's* training facilities (see 13);
- (d) visits the *retail investment product provider's* United Kingdom office in order to:
 - (i) receive information about the *retail investment product provider's* administrative systems; or
 - (ii) attend a meeting with the *retail investment product provider* and an existing or prospective *client* of the receiving *firm*.

2.3.16

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In interpreting the table of reasonable non-monetary benefits, *retail investment product providers* should be aware that where a benefit is made available to one *firm* and not another, this is more likely to impair compliance with the *client's best interests rule* and that, where any benefits of substantial size or value (such as adviser training programmes or significant software) are made available to *firms* that are subject to the *rules* on adviser charging and remuneration (**■ COBS 6.1A**) or consultancy charging and remuneration (**■ COBS 6.1C**), these benefits should be made available equally across those *firms* if they are provided at all.

2.3.16A

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In interpreting the table of reasonable non-monetary benefits, a *firm* that provides a *personal recommendation* in relation to a *retail investment product* to a *retail client* or gives advice, or provides a service, to an employer in connection with a *group personal pension scheme* or a *group stakeholder pension scheme* should be aware that acceptance of benefits on which the *firm* will have to rely for a period of time is more likely to impair compliance with the *client's best interests rule*. For example, accepting services which provide access to another *firm's* systems or software on which the *firm* will need to rely to gain access to the *firm's client* data in the future, would be likely to conflict with the *rule* on inducements (**■ COBS 2.3.1R**).

Application of guidance on reasonable non-monetary benefits...

2.3.16B

R

The *guidance* on reasonable non-monetary benefits in **■ COBS 2.3.14G** to **■ COBS 2.3.16AG** does not apply to a *firm* which:

- (1) makes *personal recommendations* to *retail clients* in relation to *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs* or *P2P agreements*, and to which **■ COBS 6.1A** (Adviser charging and remuneration) applies; or
- (2) is a *retail investment product provider*, a *platform service provider* or a *firm* which is an *operator of an electronic system in relation to lending* to which **■ COBS 6.1B** (Retail investment product provider, operator of an electronic system relating to lending, and platform service provider requirements relating to adviser charging and remuneration) applies.

2.3.16C

G

However, **■ COBS 6.1A** and **■ COBS 6.1B** do permit minor non-monetary benefits which meet the relevant requirements set out in **■ COBS 6.1A.5AR(2)**.

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2.3.17

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Record keeping: inducements

- (1) A *firm* must make a record of the information disclosed to the *client* in accordance with □ COBS 2.3.1R (2)(b) and must keep that record for at least five years from the date on which it was given.
- (2) A *firm* must also make a record of each benefit given to another *firm* which does not have to be disclosed to the *client* in accordance with □ COBS 2.3.1R (2)(b)(ii), and must keep that record for at least five years from the date on which it was given.

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

Application

2.3A.1**R**

This section applies to a *firm*:

- (1) in relation to its *MiFID, equivalent third country or optional exemption business*; and
- (2) carrying on *insurance distribution activities* in relation to an *insurance-based investment product*.

Relationship with the adviser charging, product provider and platform service provider rules in COBS 6.1A, COBS 6.1B and COBS 6.1E

2.3A.2**G**

A *firm* which makes a *personal recommendation* to a *retail client* in the *United Kingdom* in relation to:

- (a) a *retail investment product* in the course of carrying on *MiFID, equivalent third country or optional exemption business* with or for that *client*; or
- (b) an *insurance-based investment product*, is also required to comply with the *rules* in ■ COBS 6.1A (Adviser charging and remuneration).

2.3A.3**G**

■ COBS 6.1A provides, amongst other things, that a *firm* must only be remunerated for a *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*.

2.3A.4**G**

Where:

- (1) the *firm*:
 - (a) is a *retail investment product provider* or a *platform service provider*; and
 - (b) carries on *MiFID, equivalent third country or optional exemption business*, or carries on *insurance distribution activities*, in relation to those activities; and

- (2) the *client* is a *retail client* in the *United Kingdom*,
the *firm* is required to comply with the *rules* in this section and in
■ COBS 6.1B (Retail investment product provider, operator of an electronic system relating to lending, and platform service provider requirements relating to adviser charging and remuneration) and, where relevant, ■ COBS 6.1E (Platform services: platform charges using a platform service for advising).

Rules on inducements

2.3A.5

R

- (1) Except where ■ COBS 2.3A.6R applies, a *firm* must not:
- (a) pay to or accept from any party (other than the *client* or a *person* on behalf of the *client*) any fee or commission; or
 - (b) provide to or receive from any party (other than the *client* or a *person* on behalf of the *client*) any non-monetary benefit.
- (2) (1)(a) and (b) only apply in relation to fees, commissions or non-monetary benefits paid or accepted, or provided or received, in connection with:
- (a) the provision of an *investment service* or an *ancillary service*; or
 - (b) the distribution of an *insurance-based investment product* or an *ancillary service*.

[Note: article 24(9) of *MiFID*, articles 22(3), 29(2) and 29(3) of the *IDD*]

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.9AR); and
 - (ii) does not impair compliance with the *firm's* duty to act honestly, fairly and professionally in the best interests of the *client*;
 - (b) a payment or benefit which enables or is necessary for the provision of an *investment service*, or the distribution of an *insurance-based investment product*, by the *firm*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees and which, by its nature, cannot give rise to conflicts with the *firm's* duty to act honestly, fairly and professionally in the best interests of the *client*; or
 - (c) (in relation to *MiFID*, *equivalent third country or optional exemption business*) third party research received in accordance with ■ COBS 2.3B (see ■ COBS 2.3B.3R).
- (2) Where a *firm* pays, provides, accepts or receives, a fee, commission or non-monetary benefit which falls within (1)(a), the *firm* must clearly disclose to the *client*:
- (a) the existence and nature of the payment or benefit; and
 - (b) the amount of the payment or benefit or, where the amount cannot be ascertained, the method for calculating that amount.

- (3) That information must be disclosed:
- prior to the provision of the relevant service; and
 - in a manner that is comprehensive, accurate and understandable (see also ■ COBS 2.3A.10R (Disclosure of payments or benefits received from, or paid to, third parties)).
- (4) Where applicable, a *firm* must inform a *client* of the mechanisms for transferring to the *client* the fee, commission, monetary or non-monetary benefit received in relation to the provision of the relevant service.

[Note: article 24(9) of *MiFID*, article 22(3) and 29(3) of the *IDD*]

2.3A.7

E

A *firm* which fails to comply with ■ COBS 2.3A.5R is to be regarded as not fulfilling its obligations in relation to:

- conflicts of interest (see ■ SYSC 3.3 (for *insurers* and *managing agents*) and ■ SYSC 10 (for other *firms*)); and
- acting honestly, fairly and professionally in accordance with the best interests of its *clients* (see ■ COBS 2.1.1R).

[Note: article 24(9) of *MiFID*, article 29(2) and 29(3) of the *IDD*]

Fees, commissions or non-monetary benefits which are designed to enhance the quality of a service

2.3A.8

R

- For the purposes of ■ COBS 2.3A.6R(1)(a)(i), a fee, commission or non-monetary benefit is designed to enhance the quality of the relevant service to a *client* only if :
 - it is justified by the provision of an additional or higher level service to the *client* and is proportional to the level of inducements received;
 - it does not directly benefit the recipient *firm*, its *shareholders* or *employees* without tangible benefit to the *client*;
 - it is justified by the provision of an ongoing benefit to the *client* in relation to an ongoing inducement; and
 - the provision of the service by the *firm* to the *client* is not biased or distorted as a result of the fee, commission or non-monetary benefit.
- A *firm* must fulfil these conditions on an ongoing basis as long as the *firm* continues to pay or receive the fee, commission or non-monetary benefit.

[Note: article 11(2) and (3) of the *MiFID Delegated Directive*]

2.3A.9

R

A fee, commission or non-monetary benefit may be justified for the purposes of ■ COBS 2.3A.8R(1)(a) where, for example, the *firm* provides:

- restricted advice* on, and access to, a wide range of suitable *financial instruments* or *insurance-based investment products* including an

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appropriate number of *financial instruments* or *insurance-based investment products* from third party product providers having no close links with the *firm*; or

- (2) *restricted advice* combined with:
 - (a) an offer to the *client*, at least on an annual basis, to assess the continuing suitability of the *financial instruments* or *insurance-based investment products* in which the *client* has invested; or
 - (b) another ongoing service that is likely to be of value to the *client* such as advice about the suggested optimal asset allocation of the *client*; or
- (3) access, at a competitive price, to a wide range of *financial instruments* or *insurance-based investment products* that are likely to meet the needs of the *client*, including an appropriate number of *financial instruments* or *insurance-based investment products* from third party product providers having no close links with the *firm*, together with either the provision of added-value tools, such as objective information tools helping the *client* to take investment decisions or enabling the *client* to monitor, model and adjust the range of *financial instruments* or *insurance-based investment products* in which they have invested, or providing periodic reports of the performance and costs and charges associated with the *financial instruments* or *insurance-based investment products*.

[Note: article 11(2) of the *MiFID Delegated Directive*]

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

2.3A.9A

R

- (1) An inducement or inducement scheme will have a detrimental impact on the quality of the relevant service to the *client* where it is of such a nature and scale that it provides an incentive to carry out *insurance distribution activities* in a way that is not in compliance with the obligation to act honestly, fairly and professionally in accordance with the best interests of the *client*.
- (2) For the purposes of assessing whether an inducement or inducement scheme has a detrimental impact on the quality of the relevant service to the *client*, an *insurance intermediary* or an *insurer* must perform an overall analysis taking into account all relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the *client*, and any organisational measures taken by the *firm* carrying out *insurance distribution activities* to prevent the risk of detrimental impact.
- (3) A *firm* must, in particular, consider the following criteria:
 - (a) whether the inducement or inducement scheme could provide an incentive to the *firm* to offer or recommend a particular *insurance-based investment product* or a particular service to the *client* despite the fact that the *firm* would be able to offer a different *insurance-based investment product* or service which would better meet the *client's* needs;
 - (b) whether the inducement or inducement scheme is solely or predominantly based on quantitative commercial criteria or

whether it takes into account appropriate qualitative criteria, reflecting compliance with applicable legal requirements, the quality of services provided to *clients* and *client satisfaction*;

- (c) the value of the inducement paid or received in relation to the value of the *insurance-based investment product* and the services provided;
- (d) whether the inducement is entirely or mainly paid at the moment of the conclusion of the *policy* or extends over the whole term of that contract;
- (e) the existence of an appropriate mechanism for reclaiming the inducement in case the *insurance-based investment product* lapses or is surrendered at an early stage or in case the interests of the *client* have been harmed;
- (f) the existence of any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales.

- (4) For the purposes of (1) to (3):

- (a) 'inducement' means any fee, commission, or any non-monetary benefit provided by or to an *insurance intermediary* or *insurer* in connection with the distribution of an *insurance-based investment product*, to or by any party except the *client* involved in the transaction in question or a *person* acting on behalf of that *client*;
- (b) 'inducement scheme' means a set of rules governing the payment of inducements, including the conditions under which the inducements are paid.

[Note: articles 2(2), 2(3) and 8 of the *IDD Regulation*]

2.3A.9B R [deleted]

Disclosure of payments or benefits received from, or paid to, third parties

- 2.3A.10** R
- (1) Prior to the provision of the relevant service, the *firm* must disclose to the *client* the information set out in ■ COBS 2.3A.6R(2) and, where applicable, ■ COBS 2.3A.6R(4).
 - (2) For these purposes, minor non-monetary benefits may be described in a generic way, but other non-monetary benefits received or paid by the *firm* in connection with a service provided to the *client* must be priced and disclosed separately.

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

- 2.3A.11** R Where a *firm* is unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead discloses to the *client* the method of calculating the relevant amount, the *firm* must also inform the *client* of the exact amount of the payment or benefit received or paid on an ex-post basis.

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

- 2.3A.12 R**
- (1) Where inducements are received by the *firm* on an ongoing basis in relation to an *investment service* provided or in relation to the distribution of an *insurance-based investment product* to a *client*, the *firm* must inform, at least annually, that *client* about the actual amount of payments or benefits received.
- (2) For these purposes, minor non-monetary benefits may be described in a generic way.
- [Note: article 11(5)(c) of the *MiFID Delegated Directive*]
- 2.3A.13 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* in:
- (1) (for *MiFID, equivalent third country or optional exemption business*) ■ COBS 6.1ZA.11R and ■ COBS 6.1ZA.12R and article 50 of the *MiFID Org Regulation* (see ■ COBS 6.1ZA.14UK); and
- (2) (for *insurance-based investment products*) ■ COBS 6.1ZA.11R to ■ COBS 6.1ZA.13R and ■ COBS 6.1ZA.15AR.
- [Note: article 11(5) of the *MiFID Delegated Directive*]
- 2.3A.14 R**
- Each *firm* involved in a distribution channel which provides an *investment service*, an *ancillary service* or distributes an *insurance-based investment product* must comply with its obligations to make disclosures to its *clients*.
- [Note: article 11(5) of the *MiFID Delegated Directive*]
- Inducements relating to the provision of independent advice, restricted advice and portfolio management services to retail clients in the United Kingdom**
- 2.3A.15 R**
- (1) This *rule* applies where a *firm* provides a *retail client* in the *United Kingdom* with:
- (a) *independent advice*; or
- (b) *restricted advice*; or
- (c) *portfolio management services*.
- (2) The *firm* must not accept any fees, commission, monetary or non-monetary benefits which are paid or provided by:
- (a) any third party; or
- (b) a person acting on behalf of a third party,
- in relation to the provision of the relevant service to the *client*.
- (2A) Where the *firm* provides *independent advice* or *restricted advice*, the *rule* in (2) applies in connection with:

2.3A.16 R

- (a) the *firm's business of advising*; or
- (b) any other related service, where 'related service' has the same meaning as in ■ COBS 6.1A.6R.
- (3) Paragraph (2) does not apply to:
- (a) acceptable minor non-monetary benefits (see ■ COBS 2.3A.19R in relation to the provision of *investment services* and ■ COBS 6.1A.5AR in relation to the distribution of an *insurance-based investment product*); or
- (b) third party *research* received in accordance with ■ COBS 2.3B (see ■ COBS 2.3B.3R).

[Note: see articles 24(7)(b) and 24(8) of *MiFID*; article 12(2) of the *MiFID Delegated Directive*]

Inducements relating to the provision of independent advice and portfolio management services to retail clients outside the United Kingdom or to professional clients

- (1) This rule applies where a *firm* provides *independent advice* or *portfolio management* services to:
- (a) a *retail client* outside the *United Kingdom*; or
- (b) (for *investment services*) a *professional client*.
- (2) In relation to the provision of the relevant service to the *client*, the *firm* must not:
- (a) accept and retain any fees, commission or monetary benefits; or
- (b) accept any non-monetary benefits other than acceptable minor non-monetary benefits (see ■ COBS 2.3A.19R and, in relation to the distribution of an *insurance-based investment product*, ■ COBS 6.1A.5AR) or third party *research* received in accordance with ■ COBS 2.3B (see ■ COBS 2.3B.3R),
where these are paid or provided by any third party or a *person* acting on behalf of a third party.
- (3) With regard to paragraph (2), the *firm* must:
- (a) return to the *client* as soon as reasonably possible after receipt any fees, commission or any monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the services provided to that *client*;
- (b) transfer in full to the *client* all fees, commission or monetary benefits received from third parties in relation to the services provided to the *client*;
- (c) establish and implement a policy to ensure that any fees, commission or any monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the provision of the services to the *client* are allocated and transferred to that *client*; and
- (d) inform the *client* about the fees, commission or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the *client*.

2.3A.17

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[**Note:** articles 24(7)(b) and 24(8) of *MiFID*; article 12(1) and (2) of the *MiFID Delegated Directive*]

2.3A.18

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Fees, commission, and non-monetary benefits paid or provided by a person on behalf of the client

Fees, commission or non-monetary benefits paid or provided by a *person* on behalf of the *client* are acceptable only if that *person* is aware that such payments have been made on that *client's* behalf and the amount and frequency of any payment is agreed between the *client* and the *firm* and not determined by a third party. This could be the case where:

- (1) a *client* pays a *firm's* invoice directly or it is paid by an independent third party who has no connection with the *firm* regarding the *investment service* provided to the *client* and is acting only on the instructions of the *client*; or
- (2) cases where the *client* negotiates a fee for a service provided by a *firm* and pays that fee.

This would generally be the case for accountants or lawyers acting under a clear payment instruction from the *client* or where a *person* is acting as a mere conduit for the payment.

[**Note:** recital 75 to *MiFID*]

Acceptable minor non-monetary benefits

2.3A.19

R

An acceptable minor non-monetary benefit is one which:

- (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 ■ COBS 2.3A.10R);
- (2) is capable of enhancing the quality of service provided to the *client*;
- (3) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;
- (4) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and
- (5) consists of:
 - (a) information or documentation relating to a *financial instrument* or an *investment service*, that is generic in nature or personalised to reflect the circumstances of an individual *client*;
 - (b) written material from a third party that is commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company, or where the third party *firm* is contractually engaged and paid by the *issuer* to produce such

- material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any *firms* wishing to receive it, or to the general public;
- (c) participation in conferences, seminars and other training events on the benefits and features of a specific *financial instrument* or an *investment service*;
 - (d) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under paragraph (c);
 - (e) research relating to an issue of *shares, debentures, warrants or certificates representing certain securities* by an *issuer*, which is:
 - (i) produced:
 - (A) prior to the issue being completed; and
 - (B) by a person that is providing underwriting or placing services to the *issuer* on that issue; and
 - (ii) made available to prospective investors in the issue;
 - (f) research that is received so that the *firm* may evaluate the research provider's research service, provided that:
 - (i) it is received during a trial period that lasts no longer than three *months*;
 - (ii) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;
 - (iii) the trial period is not commenced with the research provider within 12 *months* from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and
 - (iv) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record of how the conditions in (i) to (iii) were satisfied for each such trial period;
 - (g) [deleted]
 - (h) third party research that is received by a *firm* providing *investment services* or *ancillary services* to *clients* where it relates to fixed income, currency or commodity instruments;
 - (i) research received from a research provider where the research provider is not engaged in execution services and is not part of a financial services group that includes an *investment firm* that offers execution or brokerage services;
 - (j) written material that is made openly available from a third party to any firm wishing to receive it or to the general public. "Openly available" in this context means that there are no conditions or barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a firm or a member of the public in order to access that material;

- (k) corporate access services which relate to listed or unlisted companies with a market capitalisation below £200m; or
- (l) short-term trading commentary that does not contain substantive analysis, and bespoke trade advisory services intrinsically linked to the execution of a transaction in *financial instruments*.

[**Note:** articles 24(7)(b) and 24(8) of *MiFID*; article 12(2) and (3) of the *MiFID Delegated Directive* and article 72(3) of the *MiFID Org Regulation*]

2.3A.20

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■ COBS 2.3A.8R sets out the conditions to be met if a fee, commission or non-monetary benefit is designed to enhance the quality of the service to a *client*. Those conditions are also likely to be relevant to *firms* considering whether a non-monetary benefit is capable of enhancing the quality of the service to a *client* for the purposes of the *rule* on acceptable minor non-monetary benefits (see ■ COBS 2.3A.19R(2)).

[**Note:** articles 24(7) and (8) of *MiFID* refer to minor non-monetary benefits that are capable of enhancing the quality of service provided to the *client*]

2.3A.21

G

A non-monetary benefit that involves a third party allocating valuable resources to the *firm* is not a minor non-monetary benefit and accordingly is considered to impair compliance with the *firm's* duty to act in the *client's* best interest.

[**Note:** recital 30 to the *MiFID Delegated Directive*]

2.3A.22

G

For the purposes of ■ COBS 2.3A.19R(4) and ■ (5)(a), non-substantive material or services consisting of short term market commentary on the latest economic statistics or company results or information on upcoming releases or events which are provided by a third party and which:

- (1) contain only a brief unsubstantiated summary of the third party's own opinion on the information; and
- (2) do not include any substantive analysis (e.g. where the third party simply reiterates a view based on an existing recommendation or substantive research),

can be deemed to be information relating to a *financial instrument* or *investment service* of a scale and nature such that it constitutes an acceptable minor non-monetary benefit.

[**Note:** recital 29 to the *MiFID Delegated Directive*]

2.3A.22A

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In relation to ■ COBS 2.3A.19R 5(h), since the particular features of the fixed income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on

competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account research services.

Paying commission on non-advised sales of packaged products

2.3A.23 **G** The following *guidance* and *evidential provisions* provide examples of arrangements the FCA believes will breach the *client's best interests rule* if a *firm* sells or *arranges* the sale of a *packaged product* for a *retail client*.

- 2.3A.24** **E**
- (1) If a *firm* is required to disclose commission (see ■ COBS 6.4 (Disclosure of charges, remuneration and commission)) to a *client* in relation to the sale of a *packaged product* (other than in relation to arrangements between *firms* that are in the same *immediate group*) the *firm* should not enter into any of the following:
 - (a) volume overrides, if commission paid in respect of several transactions is more than a simple multiple of the commission payable in respect of one transaction of the same kind; and
 - (b) an agreement to indemnify the payment of commission on terms that would or might confer an additional financial benefit on the recipient in the event of the commission becoming repayable.
 - (2) Contravention of (1) may be relied upon as tending to establish contravention of ■ COBS 2.3A.5R.

2.3A.25 **G** If a *firm* enters into an arrangement with another *firm* under which it makes or receives a payment of commission in relation to the sale of a *packaged product* that is increased in excess of the amount disclosed to the *client*, the *firm* is likely to have breached the *rules* on disclosure of charges, remuneration and commission (see ■ COBS 6.4) and, where applicable, the rules on inducements in ■ COBS 2.3A.6R(2) and ■ (3), unless the increase is attributable to an increase in the *premiums* or contributions payable by that *client*.

Providing credit and other benefits to firms that advise retail clients on retail investment products

2.3A.26 **G** The following *guidance* and *evidential provisions* provide examples of arrangements the FCA believes will breach the *client's best interests rule* in relation to a *personal recommendation* of a *retail investment product* to a *retail client*.

2.3A.27 **E** This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations* to *retail clients* on *retail investment products*, except where the relevant transaction is between *persons* who are in the same *immediate group*.

A *retail investment product* provider should not take any step which would result in it:

- (a) having a direct or indirect holding of the capital or *voting power* of a *firm* in (1); or

- (b) providing *credit* to a *firm* in (1) (other than continuing to facilitate the payment of an *adviser charge* or *consultancy charge* where it is no longer payable by the *retail client*, as described in ■ COBS 6.1A.5G or ■ COBS 6.1C.6G);

unless all the conditions in (4) are satisfied. A *retail investment product* provider should also take reasonable steps to ensure that its *associates* do not take any step which would result in it having a holding as in (a) or providing *credit* as in (b).

A *firm* in (1) should not take any step which would result in a *retail investment product* provider having a holding as in (2)(a) or providing *credit* as in (2)(b), unless all the conditions in (4) are satisfied.

The conditions referred to in (2) and (3) are that:

- (a) the holding is acquired, or *credit* is provided, on commercial terms, that is terms objectively comparable to those on which an independent *person* unconnected to a *retail investment product* provider would, taking into account all relevant circumstances, be willing to acquire the holding or provide *credit*;
- (b) the *firm* (or, if applicable, each of the *firms*) taking the step has reliable written evidence that (a) is satisfied;
- (c) there are no arrangements, in connection with the holding or *credit*, relating to the channelling of business from the *firm* in (1) to the *retail investment product* provider; and
- (d) the *retail investment product* provider is not able, and none of its *associates* is able, because of the holding or *credit*, to exercise any influence over the *personal recommendations* made in relation to *retail investment products* given by the *firm*.

In this *evidential provision*, in applying (2) and (3) any holding of, or *credit* provided by, a *retail investment product* provider's *associate* is to be regarded as held by, or provided by, that *retail investment product* provider.

Contravention of (2) or (3) may be relied upon as tending to establish contravention of ■ COBS 2.3A.15R.

2.3A.28

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Where a *retail investment product* provider, or its *associate*, provides *credit* to a *retail client* of a *firm* making *personal recommendations* in relation to *retail investment products*, this may create an indirect benefit for the *firm* and, to the extent that this is relevant, the provider of *retail investment products* may need to consider the examples in ■ COBS 2.3A.27E as if it had provided the *credit* to the *firm*.

2.3A.29

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In considering the compliance of arrangements between members of the same *immediate group* with ■ COBS 2.3A.15R, *firms* may wish to consider the *evidential provisions* in ■ COBS 2.3A.24E and ■ COBS 2.3A.27E, to the extent that these are relevant.

Guidance on inducements

2.3A.30 **G** A firm which fails to comply with the rules on inducements will not meet its obligations in relation to conflicts of interest (see ■ SYSC 10) or the obligation to act honestly, professionally and fairly in accordance with the best interests of its clients.

[Note: article 24(9) of MiFID]

2.3A.31 **G** A firm is unlikely to meet its obligations relating to best execution (see ■ COBS 11.2A), inducements (in this section), and conflicts of interest (see ■ SYSC 10) where it receives payment, remuneration or commission from third parties (including those entities to whom or which it directs orders for execution) in relation to the execution of client orders. Firms should also have regard to the FSA's Guidance on the practice of 'Payment for Order Flow'.

[Note: for the FSA's Guidance on the practice of 'Payment for Order Flow' see: <http://www.fca.org.uk/publication/finalised-guidance/fq12-13.pdf>]

Record keeping: inducements

2.3A.32 **R** A firm must hold evidence that any fees, commission or non-monetary benefits paid or received by the firm are designed to enhance the quality of the relevant service to the client by:

- (1) keeping an internal list of all fees, commission and non-monetary benefits received by the firm from a third party in relation to the provision of the service; and
- (2) recording how the fees, commission and non-monetary benefits paid or received by the firm, or that the firm intends to use, enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the firm's compliance with the duty to act honestly, fairly and professionally in the best interests of the client.

[Note: article 11(4) of the MiFID Delegated Directive]

2.3A.33 **G** In relation to the MiFID business of a firm, article 72 and Annex 1 of the MiFID Org Regulation also make provision for the keeping of records on inducements.

[Note: article 72 and Annex 1 of the MiFID Org Regulation]

2.3A.34 **R** In relation to the equivalent business of a third country investment firm and MiFID optional exemption business, information disclosed to the client in accordance with ■ COBS 2.3A.6R(2), ■ (3) and ■ (4) and ■ COBS 2.3A.10R to ■ COBS 2.3A.12R must be retained in a medium that allows the storage of information in a way accessible for future reference by the FCA, and in such a form and manner that:

- (1) the FCA is able to access it readily and to reconstitute each key stage of the processing of each transaction;

- (2) it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
- (3) it is not possible for the records otherwise to be manipulated or altered;
- (4) it can be exploited through information technology or any other efficient method of exploitation when analysis of the data cannot be easily carried out due to the volume and nature of the data; and
- (5) the *firm's* arrangements comply with the record keeping requirements irrespective of the technology used.

2.3A.35

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In relation to the distribution of an *insurance-based investment product*, a firm should refer to ■ SYSC 3 (for insurers and managing agents) and ■ SYSC 9 (for other firms) for its obligations in relation to record keeping.

2.3B Inducements and research

Application

- 2.3B.1** **R** This section applies to a *firm* carrying on *MiFID, equivalent third country or optional exemption business*.
- 2.3B.2** **G**
- (1) A *firm* providing *independent advice, restricted advice or portfolio management services to retail clients in the United Kingdom, or which provides independent advice or portfolio management services to retail clients outside the United Kingdom or to professional clients* is prohibited from receiving inducements (other than acceptable minor non-monetary benefits) in relation to those services under **■ COBS 2.3A.15R** and **■ COBS 2.3A.16R**. Compliance with **■ COBS 2.3B** allows such a *firm* to receive third party *research* without breaching that prohibition.
 - (2) In addition, **■ COBS 2.3B** enables *investment firms* other than those in (1) to receive *research* without subjecting it to an assessment under the inducements rule in **■ COBS 2.3A**, as *research* acquired in accordance with this section will not constitute an inducement.

Receiving third party research without it constituting an inducement

- 2.3B.3** **R** Third party *research* that is received by a *firm* providing *investment services or ancillary services to clients* will not be an inducement under **■ COBS 2.3A.5R**, **■ COBS 2.3A.15R** or **■ COBS 2.3A.16R** if it is received in return for one of the following:
- (1) direct payments by the *firm* out of its own resources;
 - (2) payments from a separate *research* payment account controlled by the *firm*, provided that the *firm* meets the requirements in **■ COBS 2.3B.4R** relating to the operation of the account; or
 - (3) joint payments for third-party *research* and execution services, provided that the *firm* meets the requirements in **■ COBS 2.3B.25R** to **■ COBS 2.3B.33G** relating to the operation of such joint payments.

[Note: article 13(1)(a) and (b)(excl. (i) – (iv)) of the *MiFID Delegated Directive*]

2.3B.4

R

Conditions relating to the operation of the research payment account

- The requirements referred to in ■ COBS 2.3B.3R(2) for the operation of a *research payment account* are:
- (1) the *research payment account* must only be funded by a specific *research charge* to *clients*, which must:
 - (a) only be based on a *research budget* set by the *firm* for the purpose of establishing the amount needed for third party *research* in respect of *investment services* rendered to its *clients*; and
 - (b) not be linked to the volume or value of transactions executed on behalf of *clients*;
 - (2) (a) the *firm* must set and regularly assess a *research budget* as an internal administrative measure as part of establishing a *research payment account* and agreeing the *research charge* with its *clients*; and
(b) the *research budget* must comply with ■ COBS 2.3B.7R, ■ COBS 2.3B.8R(2) and ■ COBS 2.3B.11R;
 - (3) the *firm* must be fully responsible for the *research payment account*; and
 - (4) the *firm* must regularly assess the quality of the *research* purchased, based on robust quality criteria, and its ability to contribute to better investment decisions for the *clients* who pay the *research charge*.

[**Note:** article 13(1)(b)(i-iv) and (2)(a) and (b) of the *MiFID Delegated Directive*]

2.3B.5

R

A *firm* using a *research payment account* must provide the following information to *clients*:

- (1) before the provision of an *investment service* or *ancillary service* to *clients*, information about the budgeted amount for *research* and the amount of the estimated *research charge* for each of them; and
- (2) annual information on the total costs that each of them has incurred for third party *research*.

[**Note:** article 13(1) second subparagraph of the *MiFID Delegated Directive*]

2.3B.6

G

In accordance with *Principle 7* (communications with clients), a *firm* should inform *clients* in the annual information in ■ COBS 2.3B.5R(2) that they are entitled to request the information set out in ■ COBS 2.3B.20R(1).

2.3B.7

R

A *firm* must ensure that:

- (1) the total amount of *research charges* collected from *clients* under ■ COBS 2.3B.4R(1) does not exceed the *research budget* established under ■ COBS 2.3B.4R(2) (and, where relevant, amended under ■ COBS 2.3B.8R(2)); and
- (2) the *research budget* and *research payment account* are not used to fund *research* generated internally by the *firm* itself.

[**Note:** article 13(4) and (6) of the *MiFID Delegated Directive*]

- 2.3B.8** **R** (1) A *firm* must agree with *clients*, in the *firm's* investment management agreement or general terms of business:
- the *research* charge as budgeted by the *firm*; and
 - the frequency with which the specific *research* charge will be deducted from the resources of the *client* over the year.
- (2) A *firm* must not increase its *research* budget unless it has provided, in advance, clear information to relevant *clients* about such intended increases.
- (3) If there is a surplus in a *research* payment account at the end of a period, the *firm* must have a process to:
- rebate those funds to relevant *clients*; or
 - offset it against the *research* budget and charge for relevant *clients* calculated for the following period.
- [Note: article 13(5) of the *MiFID Delegated Directive*]
- (4) In calculating a rebate or offset as set out in (3), a *firm* must take reasonable steps to maintain a fair allocation of costs between *clients*.
- 2.3B.9** **G** Information on increases in the *research* budget under **■ COBS 2.3B.8R(2)** should be provided to relevant *clients* in good time before such increases are to take effect.
- 2.3B.10** **G** A *firm* that operates arrangements for collecting *research* charges by deducting charges from those *clients'* resources should ensure that those arrangements comply with **■ CASS 8** (Mandates), as applicable.
- Governance and oversight of research payment accounts**
- 2.3B.11** **R** For the purposes of **■ COBS 2.3B.4R(2)**, a *firm* must ensure that:
- the *research* budget is managed solely by the *firm* and is based on a reasonable assessment of the need for third party *research*;
 - the allocation of the *research* budget to purchase third party *research* is subject to appropriate controls and *senior management* oversight to ensure it is managed and used in the best interests of the *firm's* *clients*; and
 - the controls under (2) include a clear audit trail of:
 - payments made to *research* providers; and
 - how the amounts paid were determined with reference to:
 - the quality criteria required by **■ COBS 2.3B.4R(4)**; and
 - the *firm's* policy for using third party *research* established under **■ COBS 2.3B.12R**.

2

[Note: article 13(6) of the *MiFID Delegated Directive*]

- 2.3B.12 R**
- (1) A *firm* using a *research payment account* must establish a written policy that sets out how the *firm* will:
- comply with all elements of ■ COBS 2.3B.4R(4); and
 - address the extent to which *research* purchased through the *research payment account* may benefit *clients'* portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the *firm* will take to allocate such costs fairly to the various *clients'* portfolios.
- (2) A *firm* must provide the policy established under (1) to their *clients*.

[**Note:** article 13(8) of the *MiFID Delegated Directive*]

- 2.3B.13 G**
- A *firm* should retain control over the overall spending for *research*, the collection of *client research charges* and the determination of payments.

[**Note:** recital (28) to the *MiFID Delegated Directive*]

- 2.3B.14 G**
- In setting a budget under ■ COBS 2.3B.4R(2), and in light of the obligation to fairly allocate costs under ■ COBS 2.3B.12R(1)(b), a *firm* may wish to consider setting a budget for a group of *clients* who would benefit from the same *research*, for example because they have portfolios that are managed according to similar investment strategies. It may be appropriate to operate a dedicated *research payment account* for such a group.

- 2.3B.15 G**
- Where a *firm* charges a *client* under ■ COBS 2.3B.4R(1), that charge should be for an amount of *money* owed to the *firm*. Therefore, provided it is collected by the *firm* only when that charge becomes due and payable, that *money* will not be *client money* held by the *firm* for the *client* who owed that charge (see ■ CASS 7.11.25R).

Other operational arrangements for research payment accounts

- 2.3B.16 R**
- If a *firm* uses an operational arrangement for the collection of the charge under ■ COBS 2.3B.4R(1) where that charge is not collected separately but alongside a transaction *commission*, the *firm* must still indicate a separately identifiable *research* charge and ensure that the arrangements comply fully with the conditions in ■ COBS 2.3B.4R and ■ COBS 2.3B.5R.

[**Note:** article 13(3) of the *MiFID Delegated Directive*]

- 2.3B.17 G**
- A *firm* should ensure that the cost of *research* funded by *client charges* is not:
- linked to the volume or value of services or benefits that are not *research*; or
 - used to cover anything other than *research*, such as charges for execution.

[**Note:** recital 27 to the *MiFID Delegated Directive*]

- 2.3B.18 R** For the purposes of ■ COBS 2.3B.3R and ■ COBS 2.3B.4R, a *firm* may delegate the administration of the *research* payment account to a third party, provided that the arrangement facilitates payments to *research* providers, in the name of the *firm*, for the purchase of third party *research*, without any undue delay and in accordance with the *firm's* instruction.

[Note: article 13(7) of the *MiFID Delegated Directive*]

- 2.3B.19 G**
- (1) In order that a *firm* retains sufficient control, and is responsible for, a *research* payment account when relying on a third party to administer it, the *firm* should consider whether its arrangements with that third party will ensure that:
 - (a) the *firm* can collect *client research* charges relating to a specific *research* budget into a separate *research* payment account for that budget, as cleared funds, without undue delay (and, in any event, no later than 30 days after deduction from the *client's* account);
 - (b) the *firm* retains sole, full and absolute discretion over the use of the account and the making of payments or rebates;
 - (c) *research* payment account monies are ring-fenced and separately identifiable from the assets of the third party or, where the third party administrator is a *bank*, are held on deposit for the *firm*; and
 - (d) the third party provider has, or its creditors on insolvency have, no right of access or recourse to the *research* payment account for its own benefit, for example to offset other fees owed by the *firm* or for use as collateral.
 - (2) The *firm* remains fully responsible for discharging all of its obligations to its *clients* set out in ■ COBS 2.3B regardless of any arrangements it makes with third parties, and should ensure it acts in the best interests of its *clients* when deducting *research* charges from their accounts and procuring *research*.

Disclosure on request of payments made from a research payment account

- 2.3B.20 R**
- (1) Where a *firm* operates a *research* payment account, it must provide on request to its *clients* a summary of:
 - (a) the providers paid from this account;
 - (b) the total amount they were paid over a defined period;
 - (c) the benefits and services received by the *firm*; and
 - (d) how the total amount spent from the account compares to the budget set by the *firm* for that period, noting any rebate or carry-over if residual funds remain in the account.
 - (2) A *firm* must also be able to provide the information in paragraph (1) to the FCA on request for all *research* payment accounts.

[Note: article 13(2) of the *MiFID Delegated Directive*]

- 2.3B.21 R** A firm must only use monies in a *research* payment account established under ■ COBS 2.3B.3R(2) to pay for *research* or to pay a rebate to *clients* in accordance with ■ COBS 2.3B.8R(3)(a), and must use the separately identifiable *research* charge of joint payments for *research* and execution services under ■ COBS 2.3B.3R(3) only to pay for *research*.
- 2.3B.22 G** A firm should also consider whether the goods or services it is looking to receive are acceptable minor non-monetary benefits under ■ COBS 2.3A.19R or ■ COBS 2.3A.22G, which can be received without breaching the inducements rules under ■ COBS 2.3A.15R or ■ COBS 2.3A.16R.
- 2.3B.23 G** Examples of goods or services that the FCA does not regard as *research*, and as a result could not be paid for from *research* payment accounts or joint payments for *research* and execution services, include:
- (1) post-trade analytics;
 - (2) price feeds or historical price data that have not been analysed or manipulated in order to present the firm with meaningful conclusions;
 - (3) services relating to the valuation or performance measurement of portfolios;
 - (4) seminar fees;
 - (5) corporate access services;
 - (6) subscriptions for publications;
 - (7) travel, accommodation or entertainment costs;
 - (8) order and execution management systems;
 - (9) membership fees to professional associations;
 - (10) direct money payments;
 - (11) administration of a *research* payment account; and
 - (12) administration of:
 - (a) an account for joint payments for *research* and execution services; or
 - (b) a *research* provider payment allocation structure.
- 2.3B.24 G** A firm should not enter into any arrangements relating to the receipt of, and payment for, third party *research*, whether acquired in accordance with ■ COBS 2.3B.3R(1), ■ (2) or ■ (3), that would compromise its ability to meet its best execution obligations as applicable under ■ COBS 11.2A.
- 2.3B.25 R** The requirements referred to in ■ COBS 2.3B.3R(3) for the operation of joint payments for third-party *research* and execution services are:

- (1) the *firm* must have a written policy on joint payments that:
 - (a) describes the *firm's* approach to joint payments, and how the *firm* will ensure compliance with the requirements in ■ COBS 2.3B.25R(2) to ■ COBS 2.3B.33G; and
 - (b) specifies how the *firm's* governance, decision-making and controls in respect of third-party *research* purchased using joint payments operate, including how these are maintained separately from those for trade execution;
- (2) the *firm* must establish arrangements which stipulate the methodology for how the *research* costs will be calculated and identified separately within total charges for such joint payments;
- (3) the *firm* must have a *research* provider payment allocation structure for the allocation of payments between different *research* providers, including:
 - (a) third-party providers of *research* and execution services; and
 - (b) *research* providers not engaged in execution services and not part of a financial services group that includes an *investment firm* which offers execution or brokerage services;
- (4) the *firm* is fully responsible for:
 - (a) the administration of accounts for purchasing *research* from joint payments;
 - (b) ensuring that the operation of such accounts do not interfere with the compliance of the *firm's* obligations under this chapter; and
 - (c) ensuring timely payments to *research* providers;
- (5) the *firm* must set a budget for the purchase of *research* using joint payments:
 - (a) based on the expected amount needed for third-party *research* in respect of *investment services* rendered to its *clients*, and not linked to the expected volumes or values of transactions executed on behalf of *clients*; and
 - (b) at least annually, and at a level of aggregation that is:
 - (i) appropriate to its investment process, *investment products*, *investment services*, and *clients*; and
 - (ii) does not compromise its ability to meet the requirements of ■ COBS 2.3B.25R(6) and ■ (8).
- (6) the *firm* must allocate the costs of *research* purchased using joint payments fairly between *clients*;
- (7) the *firm* must periodically, but at least annually:
assess the value, quality and use of *research* purchased using joint payments and its contribution to the investment decision-making process; and

		<p>ensure that the amount of <i>research charges</i> to <i>clients</i> is reasonable compared with those for comparable services; and</p> <p>(8) the <i>firm</i> must disclose to its <i>clients</i> the items listed in ■ COBS 2.3B.30R.</p>
2.3B.26	R	<p>If the amount of <i>research charges</i> to <i>clients</i> exceeds the budget set out under ■ COBS 2.3B.25R(5), or the budget is increased, the <i>firm's</i> policy must set out:</p> <p>(1) the relevant actions to be taken in such circumstances; and</p> <p>(2) the information to be disclosed to <i>clients</i>.</p>
2.3B.27	G	<p>For the purposes of ■ COBS 2.3B.25R(6), the <i>firm</i> should determine a cost allocation level appropriate to its business model. The specific cost of individual investment <i>research</i> items need not be discretely attributable to individual <i>clients</i>. The approach should be reasonable and its outcome fair across all <i>clients</i>, such that relative costs incurred are commensurate with relative benefits received. This includes:</p> <p>(1) across:</p> <p>(a) <i>clients</i> with which the <i>firm</i> has different payment arrangements for the purchase of <i>research</i>;</p> <p>(b) <i>clients</i> that are managed according to similar investment strategies; and</p> <p>(c) different <i>clients</i> or groups of <i>clients</i> that benefit from the same <i>research</i>; or</p> <p>(2) across other allocation levels provided that these are appropriate to a <i>firm's</i> investment process, <i>investment products</i>, <i>investment services</i>, and <i>clients</i>.</p>
2.3B.28	R	<p>Where a <i>firm</i> delegates the administration of a <i>research provider</i> payment allocation structure or joint payments <i>research</i> account, it retains responsibility for complying with the requirements for its administration under this chapter. The <i>firm</i> must ensure that the reconciliation and reporting for such accounts and structures is undertaken with an appropriate frequency and timeliness, and continue to monitor and manage risks from unspent surplus amounts and <i>research provider</i> concentrations of these surplus amounts.</p>
2.3B.29	R	<p><i>Research services</i> must not be treated as an <i>execution factor</i> under ■ COBS 11.2A.2R.</p>
2.3B.30	R	<p>For the purposes of ■ COBS 2.3B.25R(8), the <i>firm</i> must disclose to relevant <i>clients</i>:</p> <p>(1) the <i>firm's</i> use of joint payments for <i>research</i>, including, where relevant, how the use of joint payments is combined with the use of other payments permitted under ■ COBS 2.3B.3R;</p>

- (2) the key features of the *firm's* policy on joint payments in ■ COBS 2.3B.25R(1), or the policy itself, having regard to the information needs of its *clients*. This information must be communicated to them in a way which is clear, fair and not misleading;
- (3) the expected annual costs to the *client*, provided as part of ex ante disclosures on costs and charges, and based on the most appropriate of either:
- the budget-setting and cost allocation procedures set out in ■ COBS 2.3B.25R(5), ■ COBS 2.3B.25R(6) and ■ COBS 2.3B.27G; or
 - the actual costs for prior annual periods disclosed under ■ COBS 2.3B.30(5);
- (4) the most significant of the items in (a) and (b), at a level of aggregation appropriate to the *firm's* investment processes, *investment products*, *investment services* and *clients*:
- benefits and services received from *research providers* (measured by total amounts paid); and
 - types of *research providers* from which such services are purchased;
- (5) the total costs incurred by the *client*, disclosed on an annual basis, reflecting the total payments made for *research* purchased using joint payments over that period, and provided as part of ex post reporting on costs and charges; and
- (6) where relevant, the disclosures set out in ■ COBS 2.3B.26R(2).

2.3B.31 R For the purposes of the disclosures in ■ COBS 2.3B.25R(8), *firms* must make the disclosures in:

- COBS 2.3B.30R(1) to ■ (4) before providing an *investment service* or *ancillary service*, and thereafter upon request, and at least annually;
- COBS 2.3B.30R(5) as part of the *firm's* costs and charges disclosures, separately identifying joint payment *research* charges in such disclosures; and
- COBS 2.3B.30R(6) as soon as reasonably practicable, and in any case in the *firm's* next periodic disclosure to *clients* on costs and charges.

2.3B.32 G For the purposes of disclosing the types of *research providers* from which services are purchased under ■ COBS 2.3B.30R(4)(b), a *firm* may provide a breakdown (measured by total amounts paid) according to the *research provider* types specified in ■ COBS 2.3B.25R(3).

2.3B.33 G For the purposes of ensuring that *research charges* to *clients* are reasonable under ■ COBS 2.3B.25R(7)(b), a *firm* may benchmark prices paid for *research services* purchased using joint payments against relevant comparators.

2.3C Research and execution services

Application

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

- (1) a *firm* carrying on *MiFID, equivalent third country or optional exemption business*; or
- (2) an *investment firm* authorised under the *UK provisions* which implemented *MiFID* that is not within (1); or
- (3) a *UCITS management company*; or
- (4) a *full-scope UK AIFM*; or
- (5) a *small authorised UK AIFM*; or
- (6) a *residual CIS operator*; or
- (7) [deleted]
- (8) an *OPS firm*.

Requirement on a firm that executes orders and provides research to price and supply services separately

2.3C.2 **R** A *firm* providing execution services must:

- (1) identify separate charges for its execution services that only reflect the cost of executing the transaction;
- (2) subject each other benefit or service (other than an acceptable minor non-monetary benefit in **COBS 2.3A.19R**) which it provides to *persons* listed in **COBS 2.3C.1R(1)** to **(6)** to a separately identifiable charge; and
- (3) ensure that the supply of, and charges for, other benefits or services under (2) is not influenced or conditioned by levels of payment for execution services.

[**Note:** article 13(9) of the *MiFID Delegated Directive*]

2.3C.3 **R** A *firm* providing both execution and *research* services must price and supply them separately.

2.3C.4

G

Compliance with □ COBS 2.3C.2R is intended to enable a *firm* subject to □ COBS 2.3A.15R and □ COBS 2.3A.16R to comply with its obligation not to accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the provision of the service to *clients*.

[Note: recital 26 to the *MiFID Delegated Directive*]

2.4 Agent as client and reliance on others

2.4.1

R

This section applies to a *firm* that is conducting *designated investment business or ancillary activities* or, in the case of *MiFID*, *equivalent third country or optional exemption business*, other *ancillary services*.

2.4.2

G

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

- (1) the question of who is the *firm's* counterparty for prudential purposes; or
- (2) any obligation a *firm* may owe to any other *person* under the general law; or
- (3) any obligation imposed on a *firm* by article 26 of *MiFIR* or *MiFID RTS 22*.

Agent as client

2.4.3

R

- (1) If a *firm* (F) is aware that a *person* (C1) with or for whom it is providing services is acting as agent for another person (C2) in relation to those services, C1, and not C2, is the *client* of F in respect of that business.
- (2) Paragraph (1) does not apply if:
 - (a) F has agreed with C1 in writing to treat C2 as its *client*; or
 - (b) C1 is neither a *firm* nor an *overseas financial services institution* and the main purpose of the arrangements between the parties is the avoidance of duties that F would otherwise owe to C2.

If this is the case, C2 is the *client* of F in respect of that business and C1 is not.

- (3) If there is an agreement under (2)(a) in relation to more than one C2 represented by C1, F may discharge any requirement to notify, obtain consent from, or enter into an agreement with each C2 by sending to, or receiving from, C1 a single communication expressed to cover each C2, except that the following will be required for each C2:
 - (a) separate risk warnings required under this sourcebook;
 - (b) separate confirmations under the requirements on occasional reporting (**■ COBS 16.2** or **■ COBS 16A.3**); and
 - (c) separate *periodic statements*.

2.4.4**R****Reliance on other investment firms: MiFID and equivalent business**

- (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:
 - (a) a *MiFID investment firm* or a *third country investment firm*; or
 - (b) an *investment firm* that is:
 - (i) a *firm*; and
 - (ii) subject to equivalent relevant requirements.
- (2) F1 may rely upon:
 - (a) any information about C transmitted to it by F2; and
 - (b) any recommendations in respect of the service or transaction that have been provided to C by F2.
- (3) F2 will remain responsible for:
 - (a) the completeness and accuracy of any information about C transmitted by it to F1; and
 - (b) the suitability for C of any advice or recommendations provided to C.
- (4) F1 will remain responsible for concluding the services or transaction based on any such information or recommendations in accordance with the applicable requirements under the *regulatory system*.

[Note: article 26 of *MiFID*]

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*) 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 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
- (2) an appropriateness assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing appropriateness in ■ COBS 10A.2,

		<p>in performing that assessment.</p> <p>[Note: article 30(2) of the <i>IDD</i>]</p>
		<p>Reliance on others: other situations</p>
2.4.6	R	<p>(1) This <i>rule</i> applies if the applicable <i>rule</i> on reliance on other <i>investment firms</i> or <i>insurance distributors</i> (COBS 2.4.4 R and COBS 2.4.5AR) does not apply.</p> <p>(2) A <i>firm</i> will be taken to be in compliance with any <i>rule</i> in this sourcebook that requires it to obtain information to the extent it can show it was reasonable for it to rely on information provided to it in writing by another <i>person</i>.</p>
2.4.7	E	<p>(1) In relying on COBS 2.4.6 R, a <i>firm</i> should take reasonable steps to establish that the other <i>person</i> providing written information is not connected with the <i>firm</i> and is competent to provide the information.</p> <p>(2) Compliance with (1) may be relied upon as tending to establish compliance with COBS 2.4.6 R.</p> <p>(3) Contravention of (1) may be relied upon as tending to establish contravention of COBS 2.4.6 R.</p>
2.4.8	G	<p>It will generally be reasonable (in accordance with COBS 2.4.6R (2)) for a <i>firm</i> to rely on information provided to it in writing by an unconnected <i>authorised person</i> or a <i>professional firm</i>, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information.</p>
2.4.9	R	<p>Any information that a <i>rule</i> in <i>COBS</i> or <i>CASS</i> requires to be sent to a <i>client</i> may be sent to another <i>person</i> on the instruction of the <i>client</i> so long as the recipient is not connected to the <i>firm</i>.</p>
2.4.10	R	<p>In the case of business that is not <i>MiFID</i> or equivalent <i>third country business</i>, if a <i>rule</i> in <i>COBS</i> or <i>CASS</i> requires information to be sent to a <i>client</i>, a <i>firm</i> need not send that information so long as it takes reasonable steps to establish that it has been or will be supplied by another <i>person</i>.</p>

2.5 Optional additional products

Restriction on marketing or providing an optional product for which a fee is payable

2.5.1

R

- (1) A *firm* must not enter into an agreement with a *client* under which a charge is, or may become, payable for an optional additional product unless the *client* has actively elected to obtain that specific product.
- (2) A *firm* must not impose a charge on a *client* for an optional additional product under an agreement entered into on or after 1 April 2016 unless the *client* has actively elected to obtain that specific product before becoming bound to pay the charge.
- (3) A *firm* must not invite or induce a *client* to obtain an optional additional product for which a charge will be, or may become, payable if the *firm* knows or has reasonable cause to suspect that:
 - (a) a contravention of (1) or (2) will take place with respect to the product; or
 - (b) the *person* supplying the optional additional product will act in a way that would contravene (1) or (2) if that *person* were a *firm*.
- (4) An omission by a *client* is not to be regarded as an active election for the purposes of this *rule*.
- (5) It is immaterial for the purposes of (3) whether or not the *firm* would or might be a party to the agreement for the optional additional product.
- (6) A charge includes a financial consideration of any kind, whether payable to the *firm* or any other *person*.
- (7) An optional additional product is a good, service or right of any description, whether or not financial in nature, that a *client* may obtain (or not, as the case may be) at his or her election in connection with, or alongside, a *designated investment*.
- (8) If the *client* is required to obtain the additional product as a condition of the transaction related to the *designated investment*, then that product is an optional additional product if the *client* is given a choice:
 - (a) as to the seller or supplier of that product; or
 - (b) which specific product to obtain.

- (9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the *firm* or another person.
- (10) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the *client* actively elected before entering into the initial agreement or a preceding renewal to obtain the product.
- (b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).
- (c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.
- (11) A *client* may make an active election for the purposes of this rule through an intermediary in the sales process and through a *person* acting on behalf of the *firm*.

2.5.2

G

An example of an omission by a *client* which is not to be regarded as an active election is the failure by the *client* to change a default option such as a pre-ticked box on a website.

2.5.3

G

Firms are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.

2.5.4

G

Firms are reminded that they must ensure that their *appointed representatives* comply with this section ■ COBS 2.5.

Chapter 3

Client categorisation

3.1 Application

Scope

3.1.1 **R** The scope of this chapter is the same as that of the *rules* in the *Handbook* to which it relates.

3.1.2 **G** This chapter relates to parts of the *Handbook* whose application depends on whether a *person* is a *client*, a *retail client*, a *professional client* or an *eligible counterparty*. However, it does not apply to the extent that another part of the *Handbook* provides for a different approach to *client* categorisation. For example, a separate approach to *client* categorisation is set out in the definition of a *retail client* for a *firm* that gives *basic advice*.

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

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

- (1) conducting *designated investment business*; nor
- (2) in the case of *MiFID or equivalent third country business* providing an *ancillary service* that does not constitute *designated investment business*.

Mixed business

3.1.4 **R** If a *firm* conducts business for a *client* involving both:

- (1) *MiFID or equivalent third country business*; and
- (2) other *regulated activities* subject to this chapter;

it must categorise that *client* for such business in accordance with the provisions in this chapter that apply to *MiFID or equivalent third country business*, including those provisions applied to the *equivalent business of a third country investment firm* as a result of ■ COBS 3.1.2AR.

3.1.5 **G** (1) For example, the requirement concerning mixed business will apply if a *MiFID investment firm* or *third country investment firm* advises a

client on whether to invest in a *scheme* or a *life policy*. This is because the former is within the scope of *MiFID* and the latter is not. In such a case, the *MiFID client* categorisation requirements prevail.

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

3.2 Clients

General definition

3.2.1

R

- (1) A person to whom a firm provides, intends to provide or has provided:
 - (a) a service in the course of carrying on a regulated activity; or
 - (b) in the case of MiFID or equivalent third country business, an ancillary service,is a "client" of that firm.
- (2) A "client" includes a potential client.
- (3) In relation to the financial promotion rules, a person to whom a financial promotion is or is likely to be communicated is a "client" of a firm that communicates or approves it.
- (4) A client of an appointed representative or, if applicable, a tied agent is a "client" of the firm for whom that appointed representative, or tied agent, acts or intends to act in the course of business for which that firm has accepted responsibility under the Act or MiFID (see sections 39 and 39A of the Act).

[Note: article 4(1)(9) of MiFID]

3.2.2

G

- (1) A corporate finance contact or a venture capital contact is not a client under the first limb of the general definition. This is because a firm does not provide a service to such a contact. However, it will be a client under the third limb of the general definition for the purposes of the financial promotion rules if the firm communicates or approves a financial promotion that is or is likely to be communicated to such a contact.
- (2) Communicating or approving a financial promotion that is or is likely to be communicated to such a contact is not MiFID or equivalent third country business. In such circumstances, the "non-MiFID" client categorisations are relevant and, in categorising elective professional clients, the "quantitative test" will not need to be satisfied.

3.2.3**R****3****Who is the client?**

- (1) If a *firm* provides services to a *person* that is acting as an agent, the identity of its client will be determined in accordance with the *rule* on agents as clients (see ■ COBS 2.4.3 R).
- (2) In relation to a *firm* establishing, operating or winding up a *personal pension scheme* or a *stakeholder pension scheme*, a member or beneficiary of that scheme is a *client* of the *firm*.
- (3) If a *firm* that does not fall within (2) provides services to a *person* that is acting as the trustee of a trust, that *person* will be the *firm's client* and the underlying beneficiaries of the trust will not.
- (4) In relation to business that is neither *MiFID* or equivalent *third country business*, if a *firm* provides services to a fund that does not have separate legal personality, that fund will be the *firm's client*.
- (5) If a *firm* provides services relating to a contribution to or interest in a *CTF* (except for a *personal recommendation* relating to a contribution to a *CTF* or in relation to the *communication* or *approval* of a *financial promotion*), the *firm's only client* is:
 - (a) the *registered contact*, if there is one;
 - (b) otherwise, the *person* to whom the statement must be sent in accordance with Regulation 10 of the *CTF Regulations*.

3.3 General notifications

- 3.3.1** **R** [deleted]
- 3.3.1A** **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 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.
- (2) Investment firms shall inform clients in a durable medium about any right that client has to request a different categorisation and about any limitations to the level of client protection that a different categorisation would entail.
- [**Note:** articles 45(1) and (2) of the *MiFID Org Regulation*]
- 3.3.1B** **R** The information referred to in article 45(2) of the *MiFID Org Regulation* (as reproduced at **COBS 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*]
- 3.3.2** **G** This chapter requires a *firm* to allow a *client* to request re-categorisation as a *client* that benefits from a higher degree of protection (see **COBS 3.7.1 R**). A *firm* must therefore notify a *client* that is categorised as a *professional client* or an *eligible counterparty* of its right to request a different categorisation whether or not the *firm* will agree to such requests. However, a *firm* need only notify a *client* of a right to request a different categorisation involving a lower level of protection if it is prepared to consider such requests.



3.4 Retail clients

3

3.4.1**R**

A *retail client* is a *client* who is not a *professional client* or an *eligible counterparty*.

[Note: article 4(1)(11) of *MiFID*]

3.4.2**R**

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

3.5 Professional clients

- 3.5.1** **R** A *professional client* is a *client* that is either a *per se professional client* or an *elective professional client*.
- [Note: article 4(1)(10) of *MiFID*]
- 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 in the UK or a third country:
 - (a) a *credit institution*;
 - (b) an *investment firm*;
 - (c) any other authorised or regulated financial institution;
 - (d) an insurance company;
 - (e) a collective investment scheme or the management company of such a scheme;
 - (f) a pension fund or the management company of a pension fund;
 - (g) a commodity or commodity derivatives dealer;
 - (h) a local;
 - (i) any other institutional investor;
 - (2) in relation to *MiFID or equivalent third country business* a large undertaking meeting two of the following size requirements on a company basis:
 - (a) balance sheet total of EUR 20,000,000;
 - (b) net turnover of EUR 40,000,000;
 - (c) own funds of EUR 2,000,000;
 - (3) in relation to business that is not *MiFID or equivalent third country business* a large undertaking meeting anyof the following conditions:
 - (a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) (or

- has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);
- (b) an undertaking that meets (or any of whose *holding companies* or *subsidiaries* meets) two of the following tests:
- (i) a balance sheet total of EUR 12,500,000;
- (ii) a net turnover of EUR 25,000,000;
- (iii) an average number of employees during the year of 250;
- (c) a *partnership* or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited *partnership* without deducting loans owing to any of the *partners*;
- (d) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and *designated investments* forming part of the trust's assets, but before deducting its liabilities;
- (e) a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or *operator* of a *personal pension scheme* or *stakeholder pension scheme* where the scheme has (or has had at any time during the previous two years):
- (i) at least 50 members; and
- (ii) assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
- (4) a national or regional government, including a public body that manages public debt at national or regional level, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECB, the EIB) or another similar international organisation;
- (5) another institutional investor whose main activity is to invest in *financial instruments* (in relation to the *firm's MiFID or equivalent third country business*) or *designated investments* (in relation to the *firm's other business*). This includes entities dedicated to the securitisation of assets or other financing transactions.

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

3.5.2A **R** [deleted]

3.5.2B **R** A *firm* must categorise a local public authority or municipality which (in either case) does not manage public debt as a *retail client*, unless it is permitted to treat such a *person* as an *elective professional client* in accordance with ■ COBS 3.5.3BR to ■ COBS 3.5.3ER.

3.5.2C **G** As a result of ■ COBS 3.5.2BR, a local public authority or municipality which (in either case) does not manage public debt should not be treated as a *per se professional client*.

Elective professional clients

3.5.3 **R** A *firm* may treat a *client* other than a local public authority or municipality as an *elective professional client* if it complies with (1) and (3) and, where applicable, (2):

- (1) the *firm* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved (the "qualitative test");
- (2) in relation to *MiFID or equivalent third country business* in the course of that assessment, at least two of the following criteria are satisfied:
 - (a) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - (b) the size of the *client's financial instrument* portfolio, defined as including cash deposits and *financial instruments*, exceeds EUR 500,000;
 - (c) the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged;
 (the "quantitative test"); and
- (3) the following procedure is followed:
 - (a) the *client* must state in writing to the *firm* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;
 - (b) the *firm* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and
 - (c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

[Note: first, second, third and fifth paragraphs of section II.1 and first paragraph of section II.2 of annex II to *MiFID*]

3.5.3A **G** (1) As a result of ■ COBS 3.5.3BR and ■ COBS 3.5.3ER a *firm* should always assess a local public authority or municipality against a "quantitative test" to treat it as an *elective professional client*, regardless of whether the *firm* intends to conduct business involving *MiFID or equivalent third country business* or other *regulated activities* subject to ■ COBS 3.

		(2) The “quantitative test” that a <i>firm</i> should use depends on the application of ■ COBS 3.5.3BR (which applies for <i>UK clients</i>) and ■ COBS 3.5.3ER (which applies for non- <i>UK clients</i>).
3.5.3B	R	<p>(1) A <i>firm</i> may treat a <i>UK local public authority</i> or <i>municipality</i> as an <i>elective professional client</i> if it complies with ■ COBS 3.5.3R(1) and ■ COBS 3.5.3R(3) and, in addition, paragraph (2) of this <i>rule</i>.</p> <p>(2) In the course of the assessment under ■ COBS 3.5.3R(1) the criterion in (a) below is satisfied as well as one of the criteria in (b) below (the “quantitative test”):</p> <ul style="list-style-type: none"> (a) the size of the <i>client’s financial instrument</i> portfolio defined as including cash deposits and <i>financial instruments</i>, exceeds £10,000,000; and (b) either: <ul style="list-style-type: none"> (i) the <i>client</i> has carried out transactions, in significant size, on the relevant market at an average frequency of ten per quarter over the previous four quarters; or (ii) the <i>person</i> authorised to carry out transactions on behalf of the <i>client</i> works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the provision of services envisaged; or (iii) the <i>client</i> is an ‘administering authority’ of the Local Government Pension Scheme within the meaning of the version of Schedule 3 of The Local Government Pension Scheme Regulations 2013 or, (in relation to Scotland) within the meaning of the version of Schedule 3 of The Local Government Pension Scheme (Scotland) Regulations 2014 in force at 1 January 2018, and is acting in that capacity.
3.5.3C	R	<p>(1) This <i>rule</i> applies where a <i>firm</i> is subjecting a <i>UK local public authority</i> or <i>municipality</i> to the tests and is following the procedure required as a result of ■ COBS 3.5.3BR in respect of the <i>firm’s business</i> carried on in relation to that <i>person’s</i>:</p> <ul style="list-style-type: none"> (a) business in the course of or connected to its administration of a <i>pension scheme</i>; and (b) other business as a <i>local public authority</i> or <i>municipality</i>. <p>(2) A <i>firm</i> must apply the qualitative and quantitative tests required as a result of ■ COBS 3.5.3BR separately and independently in relation to the <i>client’s business</i> under (1)(a) and (1)(b).</p> <p>(3) A <i>firm</i> must follow the procedure in ■ COBS 3.5.3R(3) required as a result of ■ COBS 3.5.3BR separately and independently in relation to the <i>client’s business</i> under (1)(a) and (1)(b).</p>
3.5.3D	G	As a result of ■ COBS 3.5.2BR and ■ COBS 3.5.3CR, and depending on the outcome of the qualitative and quantitative tests required as a result of ■ COBS 3.5.3BR, a <i>firm</i> may be required to categorise a <i>UK local public authority</i> or <i>municipality</i> differently in relation to the two sorts of business described at ■ COBS 3.5.3CR(1)(a) and (b).

3	<p>3.5.3E R</p> <p>(1) A <i>firm</i> may treat a non-UK local public authority or municipality as an <i>elective professional client</i> if it complies with ■ COBS 3.5.3R(1) and ■ COBS 3.5.3R(3) and, in addition, applies the “quantitative test” that is applied in relation to <i>MiFID or equivalent third country business</i> under ■ COBS 3.5.3R(2).</p> <p>(2) [deleted]</p>
3.5.4	<p>R</p> <p>If the <i>client</i> is an entity, the qualitative test should be performed in relation to the <i>person</i> authorised to carry out transactions on its behalf.</p> <p>[Note: fourth paragraph of section II.1 of annex II to <i>MiFID</i>]</p>
3.5.5	<p>G</p> <p>The fitness test applied to managers and directors of relevant <i>firms</i> is an example of the assessment of expertise and knowledge involved in the qualitative test.</p> <p>[Note: fourth paragraph of section II.1 of annex II to <i>MiFID</i>]</p>
3.5.6	<p>R</p> <p>Before deciding to accept a request for re-categorisation as an <i>elective professional client</i> a <i>firm</i> must take all reasonable steps to ensure that the <i>client</i> requesting to be treated as an <i>elective professional client</i> satisfies the qualitative test and, where applicable, the relevant quantitative test.</p> <p>[Note: second paragraph of section II.2 of annex II to <i>MiFID</i>]</p>
3.5.7	<p>G</p> <p>An <i>elective professional client</i> should not be presumed to possess market knowledge and experience comparable to a <i>per se professional client</i></p> <p>[Note: second paragraph of section II.1 of annex II to <i>MiFID</i>]</p>
3.5.8	<p>G</p> <p><i>Professional clients</i> are responsible for keeping the <i>firm</i> informed about any change that could affect their current categorisation.</p> <p>[Note: fourth paragraph of section II.2 of annex II to <i>MiFID</i>]</p>
3.5.9	<p>R</p> <p>(1) If a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i>, the <i>firm</i> must take the appropriate action.</p> <p>(2) Where the appropriate action involves re-categorising that client as a <i>retail client</i>, the <i>firm</i> must notify that <i>client</i> of its new categorisation.</p> <p>[Note: fourth paragraph of section II.2 of annex II to <i>MiFID</i>]</p>

3.6 Eligible counterparties

3.6.1

R

- (1) An *eligible counterparty* is a *client* that is either a *per se eligible counterparty* or an *elective eligible counterparty*.
- (2) A *client* can only be an *eligible counterparty* in relation to *eligible counterparty business* (■ PRIN 1 Annex 1 R is an exception to this).

[Note: article 30(1) of *MiFID*]

Per se eligible counterparties

3.6.2

R

Each of the following is a *per se eligible counterparty* (including an entity that is not from the *UK* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

- (1) an *investment firm*;
- (2) a *credit institution*;
- (3) an *insurance company*;
- (4) a *collective investment scheme* authorised under the *UK provisions* which implemented the *UCITS Directive* or its management company;
- (5) a *pension fund* or its management company;
- (6) another financial institution authorised or regulated under the law of the *United Kingdom*;
- (7) [deleted]
- (8) a national government or its corresponding office, including a public body that deals with public debt at national level;
- (9) a central bank; and
- (10) a supranational organisation.

[Note: first paragraph of article 30(2) and first paragraph of article 30(4) of *MiFID*]

3.6.3

G

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

3.6.4**R****Elective eligible counterparties**

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

- (1) the *client* is an undertaking and:
 - (a) is a *per se professional client* (except for a *client* that is only a *per se professional client* because it is an institutional investor under ■ COBS 3.5.2 R (5)) and:
 - (i) is a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time); or
 - (ii) meets the criteria in the *rule* on meeting two quantitative tests (■ COBS 3.5.2 R (3)(b)); and
 - (b) requests such categorisation; and
- (2) the *firm* adheres to the procedure set out at ■ COBS 3.6.4BUK.

3.6.4A**R**

Provided that it adheres to the procedure set out at ■ COBS 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*:

- (1) is an undertaking;
- (2) is a *per se professional client*, except for a *client* that is only a *per se professional client* because it is an institutional investor under ■ COBS 3.5.2R(5); and
- (3) requests such categorisation.

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

3.6.4B**UK**

Article 71(5) of the MiFID Org Regulation sets out the procedure 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 [■ COBS 3.6.4AR], the following procedure shall be followed:

- (a)the investment firm shall provide the client with a clear written warning of the consequences for the client of such a request, including the protections they may lose;
- (b)the client shall confirm in writing the request to be treated as an eligible counterparty either generally or in respect of one or more investment services or a transaction or type of transaction or product and that they are aware of the consequences of the protection they may have lost as a result of the request.

3.6.4C**R**

[deleted]

- 3.6.5 **G** The categories of *elective eligible counterparties* include an equivalent undertaking that is not from the *United Kingdom* provided the above conditions and requirements are satisfied.
- 3.6.6 **R** A *firm* may obtain a prospective counterparty's confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.
[Note: second paragraph of article 30(3) of *MiFID*]

Client and firm located in different jurisdictions

- 3.6.7 **R** [deleted]

3.7 Providing clients with a higher level of protection

- 3.7.1** **R** A firm must allow a *professional client* or an *eligible counterparty* to request re-categorisation as a *client* that benefits from a higher degree of protection.
[**Note:** second paragraph of article 30(2) of, and the second paragraph of section I of annex II to, *MiFID*]
- 3.7.2** **G** It is the responsibility of a *professional client* or *eligible counterparty* to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.
[**Note:** third paragraph of section I and fourth paragraph of section II.2 of annex II to *MiFID*]
- 3.7.3** **R** [deleted]
- 3.7.3A** **UK** Article 45(3) of the *MiFID Org Regulation* sets out provisions in 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 [■ COBS 3.6.2R];
 - (b) a retail client where that client is considered a professional client pursuant to Part 2 of Schedule 1 to Regulation (EU) No 600/2014.
- 3.7.3B** **UK** Article 71(2) to (4) of the *MiFID Org Regulation* sets out provisions applying to *eligible counterparties* requesting a higher level of protection.
71(2) Where, pursuant to [■ COBS 3.7.1R], an eligible counterparty requests treatment as a client whose business with an investment firm is subject to 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 IP completion 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 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 paragraph 4 of Schedule 1 to Regulation (EU) No 600/2014.

3.7.4 **R** [deleted]

3.7.5 **R**

(1) If, in relation to *MiFID* or equivalent third country business a *per se professional client* requests treatment as a *retail client*, the *client* will be classified as a *retail client* if it enters into a written agreement with the *firm* to the effect that it will not be treated as a *professional client* or *eligible counterparty* for the purposes of the applicable conduct of business regime.

(2) This agreement must specify the scope of the re-categorisation, such as whether it applies to one or more particular services or transactions, to one or more types of product or transaction or to one or more *rules*.

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

3.7.6 **G**

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

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

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

(1) on a general basis; or

(2) on a trade by trade basis; or

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

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

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

[Note: second paragraph of article 30(2) of *MiFID*]

3.7.8**G**

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

3.8 Policies, procedures and records

3.8.1

R

Policies and procedures

A firm must implement appropriate written internal policies and procedures to categorise its clients.

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

3.8.2

R

Records

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

This record must be made at the time of categorisation and should be retained for the relevant period after the firm ceases to carry on business with or for that client.

- (3) The relevant periods are:
 - (a) indefinitely, in relation to a pension transfer, pension conversion, pension opt-out or FSAVC;
 - (b) at least five years, in relation to a life policy or pension contract;
 - (c) five years in relation to MiFID or equivalent third country business; and
 - (d) three years in any other case.

[Note: article 16(6) of MiFID]

3.8.3

G

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

Chapter 4

Communicating with clients, including financial promotions

4.1 Application

Who? What?

4.1.1

R

This chapter applies to a *firm*:

- (1) communicating with a *client* in relation to its *designated investment business* (other than *MiFID*, *equivalent third country* or *optional exemption business*);
- (1A) communicating with a *client* in relation to its *MiFID*, *equivalent third country* or *optional exemption business*;
- (2) *communicating or approving a financial promotion* other than:
 - (a) a *financial promotion of qualifying credit*, a *home purchase plan* or a *home reversion plan*; or
 - (b) a *financial promotion* in respect of a *non-investment insurance contract*; or
 - (c) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the Act if made by an *authorised person* (*firms* may not *communicate or approve* such promotions); or
 - (d) a *financial promotion* in relation to a *credit agreement*, a *consumer hire agreement* or a *credit-related regulated activity*; or
 - (e) a *financial promotion* in relation to a *funeral plan contract* or a *regulated funeral plan activity*.
- (3) when a *MiFID investment firm* or a *credit institution* is communicating in connection with selling, or advising *clients* in relation to, *structured deposits* as specified by ■ COBS 1.1.1AAR.

4.1.1A

R

■ COBS 4.4.3R applies to a *firm* with respect to the activity of *issuing electronic money*.

4.1.1B

R

- (1) *TP firms* must comply with the *rules* in (3) and (4) to the extent that those *rules* do not already apply to those *TP firms* as a result of ■ GEN 2.2.26R.
- (2) *Gibraltar-based firms* must comply with the *rules* in (3) and (4) to the extent that those *rules* do not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R.
- (3) The *rules* are those in:

		<p>(a) ■ COBS 4.5.2R (communicating with retail clients – general rule);</p> <p>(b) ■ COBS 4.10 (approving and confirming compliance of financial promotions); and</p> <p>(c) ■ COBS 4.11 (Record keeping: financial promotion).</p>
		<p>(4) The <i>rules</i> are those in this chapter in so far as they relate to the <i>communication and approval of financial promotions</i> relating to <i>qualifying cryptoassets</i>.</p>
4.1.1C	G	<p>■ COBS 4.12A.3R and ■ COBS 4.12B.1R apply the <i>rules</i> on promoting <i>restricted mass market investments</i> and <i>non-mass market investments</i> to <i>TP firms</i> and <i>Gibraltar-based firms</i>.</p>
4.1.1D	G	<p>A <i>firm</i> is reminded of its obligations under the naming and marketing <i>rules</i> in ■ ESG 4.3 (in particular, ■ ESG 4.3.1R) when it:</p> <p>(1) <i>communicates or approves a financial promotion</i> that references the <i>sustainability characteristics</i> of a product or service; or</p> <p>(2) <i>undertakes sustainability in-scope business</i> in relation to a <i>sustainability product</i>.</p>
4.1.2	G	<p>(1) This chapter applies in relation to an <i>authorised professional firm</i> in accordance with ■ COBS 18 (Specialist regimes).</p> <p>(2) This chapter applies, to a limited extent, in relation to <i>communicating or approving a financial promotion</i> that relates to a <i>deposit</i> if the <i>deposit</i> is a <i>structured deposit</i>, <i>cash deposit ISA</i> or <i>cash deposit CTF</i>.</p>
4.1.3	G	<p>A <i>firm</i> is required to comply with the <i>financial promotion rules</i> in relation to a <i>financial promotion communicated by its appointed representative</i> even where the <i>financial promotion</i> does not require <i>approval</i> because of the exemption in article 16 of the <i>Financial Promotion Order</i> (Exempt persons).</p> <p>[Note: see <u>section 39</u> of the Act]</p>
4.1.4	G	<p>(1) In ■ COBS 4.3.1 R, the defined term "<i>financial promotion</i>" includes:</p> <p>(a) in relation to <i>MiFID, equivalent third country or optional exemption business</i>, all communications that are marketing communications within the meaning of <i>MiFID</i>; and</p> <p>(b) in relation to <i>insurance distribution</i>, all communications that are marketing communications within the meaning of <i>IDD</i>.</p> <p>(2) In the case of <i>MiFID, equivalent third country or optional exemption business</i>, certain requirements in this chapter are subject to an exemption for the communication of a <i>third party prospectus</i> in certain circumstances (see recital 73 of the <i>MiFID Org Regulation</i>). This has a similar effect to the exemption in article 70(1)(c) of the <i>Financial Promotion Order</i>, which is referred to in the definition of an <i>excluded communication</i>.</p>

		<p>(3) In this chapter "<i>financial promotion</i>" and "<i>direct offer financial promotion</i>" include communications that are marketing communications for the purposes of the <i>UCITS Directive</i>.</p>
4.1.5	G	<p>A <i>firm</i> communicating with an <i>eligible counterparty</i> should have regard to the application of <i>COBS</i> to <i>eligible counterparty business</i> (■ <i>COBS 1 Annex 1 Part 1</i>).</p>
4.1.6	G	<p>Approving a <i>financial promotion</i> without communicating it (which includes causing it to be communicated) is not <i>MiFID, equivalent third country or optional exemption business</i>. Communicating a <i>financial promotion</i> to a person, such as a <i>corporate finance contact</i> or a <i>venture capital contact</i>, who is not a <i>client</i> within the meaning of ■ <i>COBS 3.2.1 R (1)</i>, ■ <i>COBS 3.2.1 R (2)</i> or ■ <i>COBS 3.2.1 R (4)</i> in respect of the <i>MiFID, equivalent third country or optional exemption business</i> to which the <i>financial promotion</i> relates, is also not <i>MiFID, equivalent third country or optional exemption business</i>. Further guidance on what amounts to <i>MiFID business</i> may be found in ■ <i>PERG 13</i>.</p>
4.1.7	G	<p>A reference in this chapter to <i>MiFID, equivalent third country or optional exemption business</i> includes a reference to communications that occur before an agreement to perform services in relation to <i>MiFID, equivalent third country or optional exemption business</i>.</p> <p>[Note: see recital 16 to the <i>MiFID Org Regulation</i>]</p>
4.1.7A	R	<p>What? Modification relating to the KII Regulation</p> <p>The <i>rules</i> in this chapter do not apply in relation to the form or content of a <i>key investor information document</i>, an <i>EEA key investor information document</i> or a <i>NURS-KII document</i>.</p>
4.1.7B	G	<p>(1) The <i>KII Regulation</i> specifies in an exhaustive manner the form and content of the <i>key investor information document</i> for a <i>UCITS scheme</i>.</p> <p>(2) The form and content of a <i>NURS-KII document</i> is specified by ■ <i>COLL 4.7.3AR</i> (Form and content of a <i>NURS-KII document</i>) and in ■ <i>COLL Appendix 2R</i> (Modifications to the <i>KII Regulation</i> for <i>KII-compliant NURS</i>).</p> <p>[Note: see article 3(1) of the <i>KII Regulation</i>]</p>
4.1.7C	R	<p>Who? What? Application to registered persons promoting qualifying cryptoassets</p> <p>(1) This chapter applies to a <i>registered person</i> communicating a <i>financial promotion</i> relating to one or more <i>qualifying cryptoassets</i> (in reliance on the exemption in article 73ZA of the <i>Financial Promotion Order</i>) as it applies to an <i>authorised person</i> communicating a <i>financial promotion</i> relating to one or more <i>qualifying cryptoassets</i>.</p> <p>(2) For the purpose of (1), relevant references in this chapter to a <i>firm</i> include reference to a <i>registered person</i>.</p>

- (3) Where a *rule* in the *Handbook* applies to a *registered person communicating a financial promotion* relating to one or more *qualifying cryptoassets*, relevant references to a *client* include reference to a *person* to whom a *financial promotion* is, or is likely to be, *communicated* by the relevant *registered person*.
- (4) A *registered person* must establish, implement and maintain adequate policies and procedures sufficient to ensure its compliance with its obligations under the *rules* when *communicating financial promotions* relating to *qualifying cryptoassets*.

4

4.1.7D

G

- (1) ■ COBS 4.1.7CR(1) requires a *registered person* to comply with the relevant *rules* in this chapter on the form and content of *financial promotions* (including those in ■ COBS 4.12A). It also requires a *registered person* to make records of the *financial promotions* it *communicates* in compliance with the relevant *rules* in ■ COBS 4.11 (Record keeping: financial promotion).
- (2) There are other requirements outside this chapter which apply to *registered persons communicating financial promotions* relating to *qualifying cryptoassets*, including:
 - (a) *Principle 7* (Communications with clients);
 - (b) ■ GEN 1.2 (Referring to approval by the FCA); and
 - (c) ■ GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator).

4.1.7E

G

The exemption in article 73ZA of the *Financial Promotion Order* does not give rise to a type of *excluded communication*.

Where? General position

4.1.8

R

- (1) In relation to communications by a *firm* to a *client* in relation to its *designated investment business* this chapter applies in accordance with the *general application rule* and the *rule* on business with *UK clients* from an overseas establishment (■ COBS 1 Annex 1 Part 2 paragraph 2.1R).
- (2) In addition, the *financial promotion rules* apply to a *firm* in relation to:
 - (a) the *communication* of a *financial promotion* to a *person* inside the *United Kingdom*;
 - (b) the *communication* of a *cold call* to a *person* outside the *United Kingdom*, unless:
 - (i) it is made from a place outside the *United Kingdom*; and
 - (ii) it is made for the purposes of a business which is carried on outside the *United Kingdom* and which is not carried on in the *United Kingdom*; and
 - (c) the *approval* of a *financial promotion* for *communication* to a *person* inside the *United Kingdom*.

- 4.1.9 **G** [deleted]
- 4.1.10 **G** Firms should note the territorial scope of this chapter is also affected by:
- (1) the disapplication for *financial promotions* originating outside the *United Kingdom* that are not capable of having an effect within the *United Kingdom* ([Section 21\(3\)](#) of the Act (Restrictions on financial promotion)) (see the defined term "*excluded communication*");
 - (2) the exemptions for overseas communicators (see the defined term "*excluded communication*"); and
 - (3) the *rules on financial promotions* with an overseas element (see [■ COBS 4.9](#)).

4.2 Fair, clear and not misleading communications

4

The fair, clear and not misleading rule

4.2.1

R

- (1) A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.
- (2) This *rule* applies in relation to:
 - (a) a communication by the *firm* to a *customer* in relation to *designated investment business* which is not *MiFID, equivalent third country or optional exemption business*, other than a *third party prospectus*;
 - (aa) a communication to an *eligible counterparty* that is in relation to:
 - (i) *MiFID or equivalent third country business* other than a *third party prospectus*; or
 - (ii) *insurance distribution*;
 - (ab) a communication by the *firm* to a *customer* in relation to *MiFID, equivalent third country or optional exemption business*, other than a *third party prospectus*;
 - (b) a *financial promotion* communicated by the *firm* that is not:
 - (i) an *excluded communication*;
 - (ii) a *non-retail communication*;
 - (iii) a *third party prospectus*; and
 - (c) a *financial promotion* approved by the *firm*.
- (3) As part of complying with (1), a *firm* must take into account the nature of the *client*.

[**Note:** ,article 24(3) and article 30(1) of *MiFID*, article 17(2) of the *IDD* and article 77 of the *UCITS Directive*]

4.2.2

G

- (1) The *fair, clear and not misleading rule* applies in a way that is appropriate and proportionate taking into account the means of communication, the information the communication is intended to convey and the nature of the *client* and of its business, if any. So a communication addressed to a *professional client* or an *eligible counterparty* may not need to include the same information, or be presented in the same way, as a communication addressed to a *retail client*.

- 4.2.3** **G** (2) ■ COBS 4.2.1R(2)(b) does not limit the application of the *fair, clear and not misleading rule* under ■ COBS 4.2.1R (2) (a). So, for example, a communication in relation to *designated investment business* that is both a communication to a *professional client* and a *financial promotion*, will still be subject to the *fair, clear and not misleading rule*.
- [Note: article 30(1) of *MiFID* and recital 65 to the *MiFID Org Regulation*, article 17(2) of the *IDD*]
- 4.2.4** **G** Part 7 (Offences relating to Financial Services) of the **Financial Services Act 2012** creates criminal offences relating to certain misleading statements and practices.
- Fair, clear and not misleading financial promotions**
- A firm should ensure that a *financial promotion*:
- (1) for a product or service that places a *client's capital* at risk makes this clear;
 - (2) that quotes a yield figure gives a balanced impression of both the short and long term prospects for the *investment*;
 - (3) that promotes an *investment* or service whose charging structure is complex, or in relation to which the *firm* will receive more than one element of remuneration, includes the information necessary to ensure that it is fair, clear and not misleading and contains sufficient information taking into account the needs of the recipients;
 - (4) that names the *FCA*, *PRA* or both as its regulator and refers to matters not regulated by either the *FCA*, *PRA* or both makes clear that those matters are not regulated by the *FCA*, *PRA* or either;
 - (5) that offers *packaged products* or *stakeholder products* not produced by the *firm*, gives a fair, clear and not misleading impression of the producer of the product or the manager of the underlying investments.
- 4.2.5** **G** A communication or a *financial promotion* should not describe a feature of a product or service as "guaranteed", "protected" or "secure", or use a similar term unless:
- (1) that term is capable of being a fair, clear and not misleading description of it; and
 - (2) the *firm* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

4.2.6

R

The reasonable steps defence to an action for damages.....

If, in relation to a particular communication or *financial promotion*, a firm takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the Act.

4.3 Financial promotions to be identifiable as such

4.3.1

R

- (1) A *firm* must ensure that a *financial promotion* addressed to a *client* is clearly identifiable as such.
[Note: article 24(3) of MiFID, article 17(2) of the IDD and article 77 of the UCITS Directive]
- (2) If a *financial promotion* relates to a *firm's MiFID, equivalent third country or optional exemption business*, this *rule* does not apply to the extent that the *financial promotion* is a *third party prospectus*.
- (3) If a *financial promotion* relates to a *firm's business* that is not *MiFID or equivalent third country business*, this *rule* applies to communicating or approving the *financial promotion* but does not apply:
 - (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a *prospectus advertisement* to which article 22 of the *Prospectus Regulation* applies;
 - (c) if it is *image advertising*;
 - (d) if it is a *non-retail communication*;
 - (e) [deleted]
- (4) In the case of a marketing communication that relates to:
 - (a) a *UCITS scheme*, or
 - (b) *insurance distribution*,(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 is limited to a factual reference to the scheme.
[Note: article 10(3) of the *Investor Compensation Directive*]
- 4.4.2** **G** [deleted]
- 4.4.3** **R** To ensure that a *firm* pays due regard to the information needs of its *clients*, and communicates information to them in a way which is clear, fair and not misleading with respect to the activity of *issuing electronic money*, a *firm* must ensure that, in good time before the *firm* issues *electronic money* to a *person*, it has been communicated to that *person* on paper or in another *durable medium* that the *compensation scheme* does not cover claims made in connection with *issuing electronic money*.

4.5 Communicating with retail clients (non-MiFID provisions)

Application

4.5.1

R

- (1) Subject to (2) and (3), this section applies to a *firm* in relation to:
- (a) the provision of information in relation to its *designated investment business*; and
 - (b) the *communication or approval* of a *financial promotion*; where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.
- (2) This section does not apply to a *firm* communicating in relation to its *MiFID, equivalent third country or optional exemption business*.
- (3) This section does not apply in relation to a communication:
- (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
 - (c) if it is *image advertising*.

General rule

4.5.2

R

A *firm* must ensure that information:

- (1) includes the name of the *firm* (and also, where relevant, the name of the *firm* that has confirmed the compliance of the *financial promotion* for the purposes of ■ COBS 4.10.9AR(3)(a));
- (1A) where relevant, includes the date on which the *financial promotion* was *approved*;
- (2) is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of *relevant business* or a *relevant investment*;
- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;
- (4) does not disguise, diminish or obscure important items, statements or warnings.

- (5) uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout that ensures that such indication is prominent;
- (6) is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each *client*, unless the *client* has agreed to receive information in more than one language; and
- (7) is up-to-date and relevant to the means of communication used.

4

4.5.2A

R

- (1) This *rule* applies:
- (a) to a *financial promotion* communicated by way of a website, mobile application or other digital medium; and
- (b) where the format is such that, where relevant:
- (i) the name of the *firm* that *approved* or confirmed the compliance of the *financial promotion*; or
- (ii) the date on which the *financial promotion* was *approved*, cannot reasonably be included in the *financial promotion*.
- (2) The information in (1)(b) may be provided on a webpage to which a link is clearly provided in the *financial promotion*.
- (3) The link in (2) must be in the format: 'Approver FRN [firm reference number of the *firm* that *approved* or confirmed the compliance of the *financial promotion*]'.

4.5.3

G

- (1) The effect of ■ COBS 4.5.2R(1) is that, where relevant and subject to ■ COBS 4.5.2AR, the name of the *firm* that *approved* or confirmed the compliance of a *financial promotion* must be included in that *financial promotion*.
- (2) The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *retail client* can identify the *firm* communicating the information and, if different, the *firm* that *approved* or confirmed the compliance of the *financial promotion*.
- (3) The name of the *firm* (and any link provided pursuant to ■ COBS 4.5.2AR) should be given sufficient prominence to enable the *retail client* to easily identify the *firm* responsible for the compliance of the *financial promotion* with applicable *rules*.

4.5.4

G

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

4.5.5

G

When communicating information, a *firm* should consider whether omission of any relevant fact will result in the information being insufficient, unclear,

		<p>unfair or misleading. When considering whether a fact should be included in the communication or omitted from it, a <i>firm</i> should bear in the mind the guidance in ■ COBS 4.2.2G to provide information which is appropriate and proportionate.</p>
4.5.6	R	<p>Comparative information</p> <p>If information compares <i>relevant business</i>, <i>relevant investments</i>, or persons who carry on <i>relevant business</i>, a <i>firm</i> must ensure that the comparison is meaningful and presented in a fair and balanced way</p>
4.5.7	R	<p>Referring to tax</p> <p>(1) If any information refers to a particular tax treatment, a <i>firm</i> must ensure that it prominently states that the tax treatment depends on the individual circumstances of each <i>client</i> and may be subject to change in future.</p> <p>(2) This <i>rule</i> applies in relation to a <i>financial promotion</i> except to the extent that it relates to a <i>pure protection contract</i> that is a <i>long-term care insurance contract</i>.</p>
4.5.8	R	<p>Consistent financial promotions</p> <p>(1) A <i>firm</i> must ensure that information contained in a <i>financial promotion</i> is consistent with any information the <i>firm</i> provides to a <i>retail client</i> in the course of carrying on <i>designated investment business</i>.</p> <p>(2) This <i>rule</i> does not apply to a <i>financial promotion</i> to the extent that it relates a <i>pure protection contract</i> that is a <i>long-term care insurance contract</i>.</p>
4.5.9	G	<p>Innovative finance ISA</p> <p>Examples of information about relevant risks (■ COBS 4.5.2R) that a <i>firm</i> should give a <i>retail client</i> in relation to an <i>innovative finance ISA</i> include:</p> <p>(1) an explanation of the tax consequences if:</p> <p class="list-item-l1">(a) the <i>innovative finance component</i> is a <i>P2P agreement</i> that is not repaid; and</p> <p class="list-item-l1">(b) an <i>operator of an electronic system in relation to lending</i> which facilitates a <i>P2P agreement</i> fails;</p> <p>(2) the procedure for, timing and tax consequences of:</p> <p class="list-item-l1">(a) withdrawing a <i>P2P agreement</i> from the <i>innovative finance ISA</i>; and</p> <p class="list-item-l1">(b) a request for transfer of all or part of the <i>innovative finance components</i> in the <i>innovative finance ISA</i>;</p> <p>(3) a warning, as relevant, that it may, or will, not be possible to sell or trade <i>P2P agreements</i> at market value on a secondary market; and</p>

- (4) an express warning that holding an *investment* within an *innovative finance ISA* does not reduce the risks associated with that *investment* or guarantee returns and that it is possible to lose all of the money invested. This warning should be additional to any more general warning that a product or service places a *client's capital* at risk (■ COBS 4.2.4G(1)).

4.5.10

G

Operators of electronic systems in relation to lending and firms which advise on P2P agreements should also have regard to the guidance in ■ COBS 14.3.7AG and ■ COBS 14.3.7BG regarding the types of information they should provide to *clients* to explain the specific nature and risks of *P2P agreements*.

Lifetime ISA

4.5.11

G

Information about relevant risks (■ COBS 4.5.2R) that a *firm* should give a *retail client* in relation to a *lifetime ISA* may include:

- (1) an explanation of:
 - a *retail client's* eligibility to subscribe to a *lifetime ISA* (including annual subscription limits) and to claim the *lifetime ISA government bonus*;
 - (b) the *lifetime ISA government withdrawal charge* and the circumstances in which it might arise; and
 - (c) the process by which a *retail client* can transfer a *lifetime ISA*; and
- (2) warnings that, if the *retail client*:
 - (a) incurs a *lifetime ISA government withdrawal charge*, the *retail client* may get back less than they paid in to a *lifetime ISA*;
 - (b) saves in a *lifetime ISA* instead of enrolling in, or contributing to a *qualifying scheme, occupational pension scheme, or personal pension scheme*:
 - (i) the *retail client* may lose the benefit of contributions by an employer (if any) to that scheme; and
 - (ii) the *retail client's* current and future entitlement to means tested benefits (if any) may be affected.

Authorised fund managers' communications in relation to benchmarks

4.5.11A

R

The *rules* in ■ COBS 4.5.12R to ■ COBS 4.5.15R apply to:

- (1) a *financial promotion* relating to an *authorised fund*;
- (2) a communication which contains a statement referring to or concerning the past performance of an *authorised fund*; and
- (3) any other communication about an *authorised fund* that refers in any way to the aims of the *fund* or describes the benefits or risks of investing in it.

4	<p>4.5.11B G As a result of ■ COBS 4.5.11AR, ■ COBS 4.5.12R to ■ COBS 4.5.15R would not normally be expected to apply to administrative communications if those communications do not refer in any way to the aims of an <i>authorised fund</i> or describe the benefits or risks of investing in it. Examples of such communications might include contract notes that simply set out details of the <i>unitholder's</i> purchase or <i>redemption</i> of <i>units</i>, statements of income distributions or accumulations, and confirmations of a change of <i>unitholder</i> registration details.</p>
	<p>4.5.12 R Subject to ■ COBS 4.5.13R, an <i>authorised fund manager</i> must include in any communication about an <i>authorised fund</i> to which this <i>rule</i> applies:</p> <ul style="list-style-type: none">(1) a short explanation, in terms consistent with the relevant <i>prospectus</i>, of the choice and use of every <i>target benchmark</i>, <i>constraining benchmark</i> or <i>comparator benchmark</i> used in relation to the <i>scheme</i>; or(2) where no <i>target benchmark</i>, <i>constraining benchmark</i> or <i>comparator benchmark</i> is referred to in the <i>prospectus</i>, a statement to that effect and a short explanation of how investors can assess the performance of the <i>scheme</i>.
	<p>4.5.13 R Where an <i>authorised fund manager</i> includes, in any communication about an <i>authorised fund</i> to which this <i>rule</i> applies, an indication of past performance for any <i>authorised fund</i> it manages, it must (in addition to complying with ■ COBS 4.6.2R where applicable):</p> <ul style="list-style-type: none">(1) include the corresponding past performance record of any <i>target benchmark</i> or <i>constraining benchmark</i> referred to in the <i>prospectus</i> of the <i>scheme</i>; and(2) not include an indication of past performance for any index, indices or similar factor that is not referred to in the <i>prospectus</i> of the <i>scheme</i>.
	<p>4.5.14 R</p> <ul style="list-style-type: none">(1) Subject to paragraph (2), if a communication to which ■ COBS 4.5.13R applies includes information comparing past performance of the <i>scheme</i> against one or more <i>comparator benchmarks</i>, the <i>authorised fund manager</i> must, for the period specified in paragraph (3) and in every subsequent communication it makes that is also subject to ■ COBS 4.5.13R:<ul style="list-style-type: none">(a) include a comparison against the same <i>comparator benchmark</i> or <i>comparator benchmarks</i>; and(b) not include a comparison against any other benchmark.(2) Paragraph (1) does not apply if such a comparison would not be compliant with ■ COBS 4.5.13R as a result of a change to the <i>prospectus</i> of the <i>scheme</i>.(3) The period specified for the purposes of paragraph (1) is:<ul style="list-style-type: none">(a) twelve <i>months</i> after a one-off communication is made; or

4.5.15

R

- (b) for as long as the communication remains available to the public in a *durable medium* and has not been superseded by a revised version.

4.5.16

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Funds investing in inherently illiquid assets (FIAs)

- (1) This *rule* applies to any *financial promotion* relating to a *FIA* except the *FIA's prospectus*.
- (2) A *firm* must ensure that the following risk warning is given:

"[Name of fund] invests in assets that may at times be hard to sell. This means that there may be occasions when you experience a delay or receive less than you might otherwise expect when selling your investment. For more information on risks, see the *prospectus* and *key investor information document*."

- (3) If the *financial promotion* is a *non-real time financial promotion*, a *firm* must ensure that the risk warning is prominently placed in the *financial promotion* in a font size that is at least equal to the predominant font size used throughout the communication.

4.5.17

G

The *rules* in ■ COBS 4.5 do not apply to the form or content of a *NURS-KII document* (see ■ COBS 4.1.7AR (Modification relating to the KII Regulation)).

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

Application

4.5A.1

R

- (1) This section applies to a *firm* in relation to:
- (a) the provision of information; or
 - (b) the *communication of a financial promotion*, which relates to the *firm's MiFID, equivalent third country or optional exemption business*.
- (2) This section does not apply to a communication:
- (a) to the extent that it is a *third party prospectus*; or
 - (b) if it is *image advertising*.

[Note: article 24(3) of *MiFID*]

4.5A.2

R

Provisions in this section marked "UK" apply in relation to *MiFID optional exemption business* as if they were *rules* (see ■ COBS 1.2.2G).

4.5A.2A

G

The effect of ■ GEN 2.2.22AR is that provisions in this section marked "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

UK

- 44(1) Investment firms shall ensure that all information they address to, or disseminate in such a way that it is likely to be received by, retail or professional clients or potential retail or professional clients, including marketing communications, satisfies the conditions laid down in paragraphs 2 to 8.
- 44(2) Investment firm shall ensure that the information referred to in paragraph 1 complies with the following conditions:

- (a) the information includes the name of the investment firm,
- (b) the information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument,

- (c) the information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout ensuring such indication is prominent,
- (d) the information is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received,
- (e) the information does not disguise, diminish or obscure important items, statements or warnings,
- (f) the information is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each client, unless the client has accepted to receive information in more than one language,
- (g) the information is up-to-date and relevant to the means of communication used.

[Note: article 44(1) and (2) of the *MiFID Org Regulation*]

- 4.5A.4** **G** The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *client* can identify the *firm* communicating the information.
- 4.5A.5** **G** In deciding whether, and how, to communicate information to a particular target audience, a *firm* should take into account the nature of the product or business, the risks involved, the *client's* commitment, the likely information needs of the average recipient, and the role of the information in the sales process.
- 4.5A.6** **G** When communicating information, a *firm* should consider whether omission of any relevant fact will result in the information being insufficient, unclear, unfair or misleading.

Comparative information

- 4.5A.7** **UK** 44(3) Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, investment firms shall ensure that the following conditions are satisfied:
- (a) the comparison is meaningful and presented in a fair and balanced way;
 - (b) the sources of the information used for the comparison are specified;
 - (c) the key facts and assumptions used to make the comparison are included.

[Note: article 44(3) of the *MiFID Org Regulation*]

		Referring to tax
4.5A.8	UK	44(7) Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future. [Note: article 44(7) of the <i>MiFID Org Regulation</i>]
4.5A.9	UK	Consistent financial promotions 46(5) Investment firms shall ensure that information contained in a marketing communication is consistent with any information the firm provides to clients in the course of carrying on investment and ancillary services. [Note: article 46(5) of the <i>MiFID Org Regulation</i>]
4.5A.10	UK	Past performance 44(4) Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, investment firms shall ensure that the following conditions are satisfied: <ul style="list-style-type: none">(a) that indication is not the most prominent feature of the communication;(b) the information must include appropriate performance information which covers the preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided where less than five years, or such longer period as the firm may decide, and in every case that performance information is based on complete 12-month periods;(c) the reference period and the source of information is clearly stated;(d) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;(e) where the indication relies on figures denominated in a currency other than pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;(f) where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed. [Note: article 44(4) of the <i>MiFID Org Regulation</i>]
4.5A.11	G	The obligations relating to describing performance should be interpreted in the light of their purpose and in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey. For example, a <i>periodic statement</i> in relation to <i>managing investments</i> that is sent in accordance with the <i>rules</i> on

reporting information to *clients* (see ■ COBS 16 and ■ COBS 16A) may include past performance as its most prominent feature.

[Note: recital 65 to the *MiFID Org Regulation*]

Simulated past performance

4.5A.12 UK

44(5) Where the information includes or refers to simulated past performance, investment firms shall ensure that the information relates to a financial instrument or a financial index, and the following conditions are satisfied:

44(5)(a) the simulated past performance is based on the actual past performance of one or more financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the financial instrument concerned;

44(5)(b) in respect of the actual past performance referred to in point (a), the conditions set out in points (a) to (c), (e) and (f) of paragraph 4 are satisfied;

44(5)(c) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

[Note: article 44(5) of the *MiFID Org Regulation*]

4.5A.13 G

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

Future performance

4.5A.14 UK

44(6) Where the information contains information on future performance, investment firms shall ensure that the following conditions are satisfied:

(a) the information is not based on or refer to simulated past performance;

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

(c) where the information is based on gross performance, the effect of commissions, fees or other charges is disclosed;

(d) the information is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specific types of instruments included in the analysis;

(e) the information contains a prominent warning that such forecasts are not a reliable indicator of future performance.

[Note: article 44(6) of the *MiFID Org Regulation*]

4.5A.15 **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 future performance in **COBS 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.16 **UK** 44(8) The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the investment firm.

[**Note:** article 44(8) of the *MiFID Org Regulation*]

Funds investing in inherently illiquid assets (FIAs).....

4.5A.17 **R** (1) This *rule* applies to any *financial promotion* relating to a *FIA* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*, except the *FIA's prospectus*.

(2) A *firm* must ensure that the following risk warning is given:

"[Name of fund] invests in assets that may at times be hard to sell. This means that there may be occasions when you experience a delay or receive less than you might otherwise expect when selling your investment. For more information on risks, see the prospectus and key investor information document."

(3) If the *financial promotion* is a *non-real time financial promotion*, the risk warning must be prominently placed in the *financial promotion* in a font size that is at least equal to the predominant font size used throughout the communication.

4.5A.18 **G** The *rules* in **COBS 4.5A** do not apply to the form or content of a *NURS-KII document* (see **COBS 4.1.7AR** (Modification relating to the KII Regulation)).

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

Application

4.6.1

R

- (1) Subject to (2) and (3), this section applies to a *firm* in relation to:
- (a) [deleted]
 - (b) the *communication or approval of a financial promotion*, where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.
- (2) This section does not apply to a *firm* communicating in relation to its *MiFID, equivalent third country or optional exemption business*
- (3) This section does not apply in relation to a communication:
- (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
 - (c) if it is *image advertising*;
 - (d) to the extent that it relates to a *deposit* that is not a *structured deposit* (see also ■ COBS 4.1.1R(3));
 - (e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

Past performance

4.6.2

R

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

- (1) that indication is not the most prominent feature of the communication;
- (2) the information includes appropriate performance information which covers the preceding five years, or the whole period for which the investment has been offered, the financial index has been established, or the service has been provided (where less than five years, or such longer period as the *firm* may decide), and in every case that performance information must be based on complete 12-month periods;
- (3) the reference period and the source of information are clearly stated;

- (4) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
- (5) if the indication relies on figures denominated in a currency other than pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- (6) if the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed.

4.6.3

G

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

4.6.4

G

If a *financial promotion* includes information referring to the past performance of a *packaged product* that is not a *financial instrument*, a firm will comply with the *rule* on appropriate performance information (■ COBS 4.6.2R (2)) if the *financial promotion* includes, in the case of a *scheme*, unit-linked *life policy*, unit-linked *personal pension scheme* or unit-linked *stakeholder pension scheme* (other than a unitised with-profits *life policy* or *stakeholder pension scheme*) past performance information calculated and presented in accordance with the table in ■ COBS 4.6.4A G.

4.6.4A

G

This Table belongs to ■ COBS 4.6.4 G

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

Notes:

1. The table should show performance information for five (or if performance information for fewer than five is available, all) complete 12-month periods, the most recent of which ends with the last full quarter preceding the date on which the firm first communicates or approves the *financial promotion*.
2. For products with performance data for fewer than five 12-month periods, firms should clearly indicate that performance data does not exist for the relevant periods.
3. No allowance should be made for tax recoveries on income for *pension contracts*, *ISAs* or *PEPs*.
4. pgr is the percentage growth rate for the year, where: $pgr = ((P1 - P0)/P0)*100$ and rounded to the nearest 0.1%, with exact 0.05% rounded to the nearest even 0.1%; and where P0 is the price at the start of the 12-month period and P1 is the price on the same day in the following 12-month period.
5. The prices should allow for any net distributions to be reinvested.

6. The price at P1 must be adjusted for any charges since the date of P0 which are based on a proportion of the fund and are levied by the cancellation of units.
7. The *firm* should use single pricing, or (if this is not available) bid to bid prices, unless the *firm* has reasonable grounds to be satisfied that another basis would better reflect the past performance of the fund.

4.6.4B

G

- (1) The *firm* should present the information referred to in ■ COBS 4.6.4 G no less prominently than any other past performance information.
- (2) This *guidance* does not apply to a *prospectus*, *key investor information document* or *NURS-KII document* drawn up in accordance with *COLL*.

4.6.5

G

- (1) In relation to a *packaged product* (other than a *scheme*, a unit-linked *life policy*, unit-linked *personal pension scheme* or a unit-linked *stakeholder pension scheme* (that is not a unitised with-profits *life policy* or *stakeholder pension scheme*)), the information should be given on:
 - (a) an offer to bid basis (which should be stated) if there is an actual return or comparison of performance with other *investments*; or
 - (b) an offer to offer, bid to bid or offer to bid basis (which should be stated) if there is a comparison of performance with an index or with movements in the price of *units*; or
 - (c) a single pricing basis with allowance for charges.
- (2) If the pricing policy of the *investment* has changed, the prices used should include such adjustments as are necessary to remove any distortions resulting from the pricing method.

Simulated past performance

4.6.6

R

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

- (1) it relates to an investment or a financial index;
- (2) the simulated past performance is based on the actual past performance of one or more investments or financial indices which are the same as, substantially the same as, or underlie, the investment concerned;
- (3) in respect of the actual past performance referred to in (2), the conditions set out in paragraphs (1) to (3), (5) and (6) of the *rule* on past performance (■ COBS 4.6.2 R) are complied with; and
- (4) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

4.6.7

R

Future performance

- (1) A *firm* must ensure that information that contains an indication of future performance of *relevant business*, a *relevant investment*, a *structured deposit* or a financial index, satisfies the following conditions:
 - (a) it is not based on and does not refer to simulated past performance;
 - (b) it is based on reasonable assumptions supported by objective data;
 - (c) where the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed;
 - (ca) it is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specified types of investments included in the analysis; and
 - (d) it contains a prominent warning that such forecasts are not a reliable indicator of future performance.
- (2) This *rule* only applies in relation to *financial promotions* that relate to a *financial instrument* (or a financial index that relates exclusively to *financial instruments*) or a *structured deposit*.

4.6.8

G

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

4.6.9

R

- (1) A *firm* that communicates to a *client* a *projection* for a *packaged product* which is not a *financial instrument* must ensure that the *projection* complies with the *projections rules* in ■ COBS 13.4, ■ COBS 13.5 and ■ COBS 13 Annex 2.
- (2) A *firm* must not communicate a *projection* for a highly volatile product to a *client* unless the product is a *financial instrument*.

4.7 Direct offer financial promotions

4

Application

4.7.-2

R

This section (other than ■ COBS 4.7.-1AEU to ■ COBS 4.7.-1DG) does not apply in relation to a communication:

- (1) to the extent that it is an *excluded communication*;
- (2) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
- (3) if it is *image advertising*;
- (4) to the extent that it relates to a *deposit* that is not a *cash deposit ISA, cash-only lifetime ISA or cash deposit CTF*;
- (5) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

4.7.-1

G

- (1) ■ COBS 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.-1AUK is relevant to a *firm* communicating a *direct offer financial promotion* in relation to its *MiFID, equivalent third country or optional exemption business*;
 - (b) ■ COBS 4.7.1R is relevant to a *firm* communicating a *direct offer financial promotion* that does not relate to its *MiFID, equivalent third country or optional exemption business*; and
 - (c) the application of the other operative provisions in this section is not affected by reference to *MiFID, equivalent third country or optional exemption business*.
 - (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.-1AUK may be subject to the rule in ■ COBS 4.7.1R to the extent that it communicates a *direct offer financial promotion*:
 - (a) which is not a marketing communication; or
 - (b) which does not relate to its *MiFID, equivalent third country or optional exemption business*.

4.7.-1A

UK

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

46(6) Marketing communications containing an offer or invitation of the following nature and specifying the manner of response or including a form by which any response may be made, shall include such of the information referred to in Articles 47 to 50 as is relevant to that offer or invitation:

- (a) an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service with any person who responds to the communication;
- (b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service.

However, the first subparagraph shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential client must refer to another document or documents, which, alone or in combination, contain that information.

[**Note:** article 46(6) of the *MiFID Org Regulation*]

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

4.7.-1B

R

Provisions in this section marked “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 “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.-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.

Other direct offer financial promotions

4.7.1

R

- (1) Subject to (3) and (4), a *firm* must ensure that a *direct offer financial promotion* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client* contains:
 - (a) the information referred to in the *rules* on information disclosure (■ COBS 6.1.4 R, ■ COBS 6.1.6 R, ■ COBS 6.1.7 R, ■ COBS 6.1.9 R, ■ COBS 14.3.2 R, ■ COBS 14.3.3 R, ■ COBS 14.3.4 R and ■ COBS 14.3.5 R) as is relevant to that offer or invitation; and
 - (b) additional appropriate information about the *relevant business* and *relevant investments* so that the *client* is reasonably able to understand the nature and risks of the *relevant business* and *relevant investments* and consequently to take investment decisions on an informed basis.
- (2) This *rule* does not require the information in (1) to be included in a *direct offer financial promotion* if, in order to respond to an offer or invitation contained in it, the *retail client* must refer to another

4.7.2

G

Guidance

Although ■ COBS 4.7.1R (1)(b) does not apply in relation to *MiFID, equivalent third country or optional exemption business*, similar requirements may apply under ■ COBS 2.2A.

4.7.2A

G

- (1) ■ BCOBS 2A contains *rules and guidance* about the inclusion of a summary box in a *direct offer financial promotion* relating to a *cash deposit ISA* or *cash deposit CTF* provided by a *firm* other than a *credit union*.
- (2) Where ■ BCOBS 2A applies, ■ COBS 4.7.1R(1)(b) does not require a *firm* to include information outside a summary box in a *direct offer financial promotion* to the extent that this would simply repeat information included in a summary box in the same *financial promotion*.

4.7.3

G

- (1) ■ COBS 4.7.1R (2) allows a *firm* to communicate a *direct offer financial promotion* that does not contain all the information required by ■ COBS 4.7.1R (1), if the *firm* can demonstrate that the *client* has referred to the required information before the *client* makes or accepts an offer in response to the *direct offer financial promotion*.
- (2) A *firm communicating or approving a direct offer financial promotion* may also be subject to:
 - (a) the *rules* on providing product information in ■ COBS 14.2, including the exceptions in ■ COBS 14.2.5R to ■ 14.2.9R; and
 - (b) the requirement in the *PRIIPs Regulation* to provide a *key information document*.

4.7.4

G

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

- (1) a summary of the taxation of any *investment* to which it relates and the taxation consequences for the average member of the group to whom it is directed or by whom it is likely to be received;
- (2) a statement that the recipient should seek a *personal recommendation* if he has any doubt about the suitability of the *investments* or services being promoted; and

		(3) (in relation to a promotion for a <i>non-PRIIP packaged product</i> that is not a <i>financial instrument</i>) a <i>key features illustration</i> , in which a <i>generic projection</i> may generally be used.
4.7.5	G	[deleted]
4.7.5A	G	<ul style="list-style-type: none"> ■ COBS 4.13.2 R (Marketing communications relating to UCITS schemes) and ■ COBS 4.13.3 R (Marketing communications relating to feeder UCITS) contain additional disclosure requirements for <i>firms</i> in relation to marketing communications (other than <i>key investor information</i>) that concern particular investment strategies of a <i>UCITS scheme</i>
		Warrants and derivatives
4.7.6	R	<p>(1) A <i>firm</i> must not <i>communicate or approve a direct offer financial promotion</i>:</p> <ul style="list-style-type: none"> (a) relating to a <i>warrant or derivative</i>; (b) to or for <i>communication to a retail client</i>; and (c) where the <i>firm</i> will not itself be required to comply with the <i>rules</i> on appropriateness (see ■ COBS 10 and ■ 10A); <p>unless the <i>firm</i> has adequate evidence that the condition in (2) is satisfied.</p> <p>(2) The condition is that the <i>person</i> who will <i>arrange or deal</i> in relation to the <i>derivative or warrant</i> will comply with the <i>rules</i> on appropriateness or equivalent requirements for any application or order that the <i>person</i> is aware, or ought reasonably to be aware, is in response to the <i>direct offer financial promotion</i>.</p>
4.7.6A	G	<i>Firms</i> are reminded of their obligations in relation to the marketing, distribution and sale of <i>restricted speculative investments</i> in ■ COBS 22.5.
4.7.6B	G	<i>Firms</i> are reminded of the prohibitions in relation to the marketing, distribution and sale of <i>cryptoasset derivatives</i> and <i>cryptoasset exchange traded notes</i> in ■ COBS 22.6.
4.7.6C	R	[deleted]
4.7.6D	R	[deleted]
4.7.6E	R	[deleted]
4.7.6F	G	[deleted]
4.7.6G	G	[deleted]

4.7.6H **R** [deleted]**4.7.6I** **G** [deleted]**4.7.6J** **R** [deleted]**4.7.6K** **G** [deleted]**4.7.6L** **R** [deleted]**4.7.6M** **G** [deleted]**4.7.6N** **R** [deleted]**4.7.6O** **G** [deleted]**4.7.7** **R** [deleted]**4.7.8** **R** [deleted]**4.7.9** **R** [deleted]**4.7.10** **R** [deleted]**4.7.11** **G** [deleted]**4.7.11A** **G****4.7.11A** **G** [deleted]**4.7.12** **G** [deleted]**4.7.13** **G** [deleted]**4.7.14** **R** [deleted]**4.7.15** **G** [deleted]

4.8 Cold calls and other promotions that are not in writing

Application

4.8.1

R

This section applies to a *firm* in relation to the communication of a *financial promotion* that is not in writing, but it does not apply:

- (1) to the extent that the *financial promotion* is an *excluded communication*;
- (2) if the *financial promotion* is *image advertising*;
- (3) if the *financial promotion* is a *non-retail communication*;
- (4) [deleted]
- (5) to the extent that the *financial promotion* relates to a *pure protection contract* that is a *long-term care insurance contract*.

Restriction on cold calling

4.8.2

R

A *firm* must not make a *cold call* unless:

- (1) the recipient has an established existing client relationship with the *firm* and the relationship is such that the recipient envisages receiving *cold calls*; or
- (2) the *cold call* relates to a generally marketable *packaged product* which is not:
 - (a) a *higher volatility fund*; or
 - (b) a *life policy* with a link (including a potential link) to a *higher volatility fund*; or
- (3) the *cold call* relates to a *controlled activity* to be carried on by an *authorised person* or *exempt person* and the only *controlled investments* involved or which reasonably could be involved are:
 - (a) *readily realisable securities* (other than warrants); and
 - (b) generally marketable non-geared *packaged products*.

4.8.3

R

Promotions that are not in writing

- A firm must not communicate a solicited or unsolicited *financial promotion* that is not in writing, to a *client* outside the *firm's* premises, unless the *person communicating* it:
- (1) only does so at an appropriate time of the day;
 - (2) identifies himself and the *firm* he represents at the outset and makes clear the purpose of the communication;
 - (3) clarifies if the *client* would like to continue with or terminate the communication, and terminates the communication at any time that the *client* requests it; and
 - (4) gives a contact point to any *client* with whom he arranges an appointment.

4.9 Financial promotions with an overseas element

Application

4.9.1

R

- (1) Subject to (2) and (3), this section applies to a *firm* in relation to the *communication or approval* of a *financial promotion* that relates to the business of an *overseas person*.
- (2) This section does not apply to a *firm* in relation to its *MiFID or equivalent third country business*.
- (3) If a communication relates to a *firm's business* that is not *MiFID or equivalent third country business*, this section does not apply:
- (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
 - (c) if it is *image advertising*;
 - (d) if it is a *non-retail communication*;
 - (e) [deleted]
 - (f) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

4.9.2

G

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

Financial promotions for the business of an overseas person

4.9.3

R

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

- (1) the *financial promotion* makes clear which *firm* has *approved or communicated* it and, where relevant, explains:
 - (a) that the *rules* made under the *Act* for the protection of *retail clients* do not apply;
 - (b) the extent and level to which the *compensation scheme* will be available, or if the scheme will not be available, a statement to that effect; and
 - (c) if the communicator wishes, the protection or compensation available under another system of regulation; and

4.9.4

R

- (2) the *firm* has taken reasonable steps to satisfy itself that the *overseas person* will deal with *retail clients* in the *United Kingdom* in an honest and reliable way.

Financial promotions for an overseas long-term insurer.....

A firm may only communicate or approve a *financial promotion* to enter into a *life policy* with a person who is:

4.9.5

R

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

- (1) the full name of the *overseas long-term insurer*, the country where it is registered, and, if different, the country where its head office is situated;
- (2) a prominent statement that 'holders of policies issued by the company will not be protected by the Financial Services Compensation Scheme if the company becomes unable to meet its liabilities to them'; and
- (3) if any trustee, investment manager or *United Kingdom* agent of the *overseas long-term insurer* is named which is not independent of the *overseas long-term insurer*, a prominent statement of that fact.

4.9.6

R

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

- (1) the full name of any trustee of property of any description which is retained by the *overseas long-term insurer* in respect of the promoted contracts;
- (2) an indication whether the investment of such property (or any part of it) is managed by the *overseas long-term insurer* or by another person and the full name of any *investment manager*;
- (3) the registered office of any such trustee and of any *investment manager* and of his principal office (if different); and
- (4) where any person in the *United Kingdom* takes, or may take, any steps on behalf of the *overseas long-term insurer* to enter into a promoted contract, the following details:
 - (a) the full name of the *overseas long-term insurer*;

4.9.7

R

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

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

4.10 Approving and confirming compliance of financial promotions

Systems and controls

4.10.1

[G]

The rules in ■ SYSC 3 (and also for Solvency II firms, the PRA Rulebook: Solvency II firms: Conditions Governing Business) and ■ SYSC 4 require a firm that communicates with a client in relation to designated investment business, or communicates or approves a financial promotion, to put in place systems and controls or policies and procedures, or an effective internal control system, in order to comply with the rules in this chapter.

Approving financial promotions

4.10.1A

[G]

The purpose of ■ COBS 4.10.2R is to ensure that a firm that approves a financial promotion for communication by an unauthorised person:

- (1) satisfies itself of the compliance of that financial promotion with the financial promotion rules; and
- (2) having approved that financial promotion, takes appropriate steps to ensure that the financial promotion remains compliant for the lifetime of its communication.

4.10.1B

[G]

- (1) The effect of section 55NA of the Act is that a firm is unable to approve a financial promotion unless:
 - (a) the firm is a permitted approver in relation to the financial promotion; or
 - (b) an approver permission exemption applies.
- (2) ■ SUP 6A contains guidance on applying for approver permission.
- (3) The requirements in this section that apply to a firm after it has approved a financial promotion continue to apply even where the firm ceases to be entitled to approve that financial promotion, for example because it ceases to be a permitted approver in respect of that financial promotion. This includes the requirement to monitor continuing compliance of the financial promotion. In such a scenario, if the firm became aware that the financial promotion no longer complied with the financial promotion rules, it could withdraw its approval but could not approve amendments to the financial promotion.

4.10.2

R

- (1) Before a *firm approves a financial promotion for communication by an unauthorised person*, it must confirm that the *financial promotion* complies with the *financial promotion rules*.
- (1A) After a *firm* has complied with (1), and for as long as the *financial promotion* is *communicated*, the *firm* must take reasonable steps to monitor the continuing compliance of that *financial promotion* with the *financial promotion rules*.

[**Note:** for the FCA's guidance on 'Ongoing monitoring' see: <https://www.fca.org.uk/firms/financial-promotions-and-adverts/approving-financial-promotions>]

A *firm* that has *approved a financial promotion issued, and for communication by, an unauthorised person* must require from that *person*, a written quarterly attestation that there has been no material change:

- (a) to the *financial promotion*; or
(b) in circumstances which might affect the continuing compliance of the *financial promotion* with the *financial promotion rules*.

For the purpose of (1B), a *firm* must:

- (a) require the first attestation no less than 3 *months* after it *approves the financial promotion*; and
(b) thereafter, require attestations at least once every 3 *months* for as long as the *financial promotion* is *communicated*.

- (2) If, at any time after a *firm* has complied with (1), a *firm* becomes aware that a *financial promotion* no longer complies with the *financial promotion rules*, it must withdraw its *approval* and notify any *person* that it knows to be relying on its *approval* as soon as reasonably practicable.
- (3) When *approving a financial promotion*, the *firm* must confirm compliance with the *financial promotion rules* that would have applied if the *financial promotion* had been communicated by a *firm* other than in relation to MiFID or equivalent third country business.

4.10.2A

R

- (1) This *rule* applies to a *firm* that *approves*:
- (a) a *direct offer financial promotion* relating to a *restricted mass market investment*; or
(b) a *financial promotion* relating to a *non-mass market investment*, for *communication to a retail client*.
- (2) A *firm* must take reasonable steps to ensure, on a continuing basis:
- (a) that the conditions specified in:
- (i) ■ COBS 4.12A.15R(1)(b) are being satisfied in relation to each *communication of the direct offer financial promotion* relating to the *restricted mass market investment*;
- (ii) ■ COBS 4.12B.10R(2)(b) are being satisfied in relation to each *communication of the financial promotion* relating to the *non-mass market investment*; and

4.10.2B

G

(b) if the *firm* will not itself carry out the appropriateness assessment required by ■ COBS 4.12A.28R, that the appropriateness assessments undertaken comply with the *rules* specified in ■ COBS 4.12A.28R.

(3) If the *firm* is not satisfied that the relevant conditions are being satisfied or that the appropriateness assessments undertaken comply with the relevant *rules* then it must withdraw its *approval* of the *financial promotion* in accordance with ■ COBS 4.10.2R(2).

4.10.2C

G

■ COBS 4.11.6R requires a *firm* that *approves* a *direct offer financial promotion* relating to a *restricted mass market investment* for *communication* to a *retail client* to take reasonable steps to ensure that it is provided with, or has ready access to, information relating to the *communication* of the *direct offer financial promotion*. These records should assist the *firm* in complying with ■ COBS 4.10.2AR.

4.10.3

G

- (1) **Section 21(1)** of the Act (Restrictions on financial promotion) prohibits an *unauthorised person* from *communicating* a *financial promotion*, in the course of business, unless an exemption applies or the *financial promotion* is *approved* by a *firm*. Many of the *rules* in this chapter apply when a *firm approves* a *financial promotion* in the same way as when a *firm communicates* a *financial promotion* itself.
- (2) A *firm* may also wish to *approve* a *financial promotion* that it *communicates* itself. This would ensure that an *unauthorised person* who then also *communicates* the *financial promotion* to another person will not contravene the restriction on *financial promotion* in the Act (section 21).
- (3) *Approving* a *financial promotion* for *communication* by an *unauthorised person* is not *MiFID*, *equivalent third country* or *optional exemption business*.
- (4) A *firm* may not *approve* a *financial promotion* relating to an *unregulated collective investment scheme* unless the *firm* would be able to *communicate* the *promotion* without breaching **section 238(1)** of the Act (see **section 240** of the Act). The exemptions from that section in the **Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001** (as amended from time to time) are relevant.
- (5) The *rules* in ■ COBS 4.12B prevent a *firm* from *approving* a *financial promotion* for a *non-mass market investment* for *communication* to *retail clients* unless an exemption applies. Where an exemption requires a preliminary assessment of suitability, the effect of ■ COBS 4.12B.7R is that this assessment must be undertaken by the *firm approving* the *financial promotion*.
- (6) For the purposes of ■ COBS 4.10.2R(1B), a *financial promotion* should be considered to be issued by an *unauthorised person* where that

- 4.10.3A** **G** *unauthorised person* is responsible for the overall contents of the *financial promotion* (see also ■ PERG 8.6.1G).
- (7) The effect of ■ COBS 4.10.2R(1A) and ■ (2) and ■ COBS 4.10.2AR(3) is that where a *firm* identifies that a *financial promotion* that it has approved is no longer compliant with the *financial promotion rules*, the *firm* must withdraw its *approval*.
- (8) A *registered person* is not able to approve a *financial promotion*.
- 4.10.4** **R** If a *firm*:
- (1) is unable to obtain an attestation required by ■ COBS 4.10.2R(1B), that *firm* should consider whether to withdraw its *approval*;
- (2) in response to a request to provide an attestation, is informed of changes which indicate that the *financial promotion* no longer complies with the *financial promotion rules*, it must withdraw its *approval*,
- in each case in accordance with ■ COBS 4.10.2R(2).
- 4.10.5** **R** A *firm* must not approve a *financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.
- 4.10.6** **G** If a *firm approves a financial promotion* in circumstances in which one or more of the *financial promotion rules*, or the prohibition on approval of promotions for *collective investment schemes* in section 240(1) of the Act (Restriction on approval), are expressly disapplied, the *approval* must be given on terms that it is limited to those circumstances.
- 4.10.7** **G** For example, if a *firm approves a financial promotion* for communication to a *professional client* or an *eligible counterparty*, the *approval* must be limited to communication to such persons.
- 4.10.7A** **G** If an *approval* is limited, and an *unauthorised person* communicates the *financial promotion* to persons not covered by the *approval*, the *unauthorised person* may commit an offence under the restriction on financial promotion in the Act (section 21). A *firm* giving a limited *approval* may wish to notify the *unauthorised person* accordingly.
- An *approved financial promotion* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client* is required to include the name of the *firm* that *approved* it and the date on which it was *approved* (■ COBS 4.5.2R).

Communicating financial promotions

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

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

Competence and expertise

4.10.9A **R** (1) A firm must not communicate or approve a financial promotion unless the individual or individuals responsible for the compliance of the financial promotion with the financial promotion rules has or have appropriate competence and expertise.

(2) Appropriate competence and expertise for the purposes of (1) means competence and expertise in the investment or financial service to which the financial promotion relates. It does not necessarily, for example, require competence or expertise in the day-to-day commercial activities of a company issuing securities for the purposes of raising capital.

(3) If a firm (A) determines that it lacks appropriate competence and expertise in relation to a financial promotion, it must:

- have another firm (B) confirm that the financial promotion complies with the financial promotion rules before A communicates that financial promotion; or
- decline to approve that financial promotion.

(4) A registered person is not permitted to confirm the compliance of a financial promotion for the purpose of ■ COBS 4.10.9AR(3).

4.10.9B **R** A firm must not confirm the compliance of a financial promotion for the purpose of ■ COBS 4.10.9AR(3)(a) unless:

- it is satisfied that the financial promotion complies with the financial promotion rules; and
- the individual or individuals responsible for providing that confirmation has or have appropriate competence and expertise.

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

Relying on another firm's confirmation of compliance

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

- (a) A takes reasonable care to establish that another *firm* (B) has confirmed that the *financial promotion* complies with the *financial promotion rules*;
- (b) A takes reasonable care to establish that it *communicates* the *financial promotion* only to recipients of the type for whom it was intended at the time B carried out the confirmation exercise;
- (c) so far as A is, or ought reasonably to be, aware:
- (i) the *financial promotion* has not ceased to be fair, clear and not misleading since that time; and
 - (ii) B has not withdrawn the *financial promotion*; and
- (d) A takes reasonable care to establish that B did not breach the *approver permission requirement* in the context of confirming compliance.
- (2) This rule does not apply in relation to *MiFID, equivalent third country or optional exemption business*.

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

Conflicts of interest

4.10.12 R

(1) This rule applies to a *firm* that:

- (a) *approves* a *financial promotion* for *communication* by an *unauthorised person*; or
- (b) confirms the compliance of a *financial promotion* for the purposes of ■ COBS 4.10.9AR(3)(a).

(2) A *firm* must take all appropriate steps to identify and to prevent or manage conflicts of interest between the *firm*, including its managers, *employees* and *appointed representatives* (or, where applicable, *tied agents*), or any person directly or indirectly linked to them by *control*, and a person for whom the *firm*:

- (a) *approves* a *financial promotion*; or
- (b) confirms the compliance of a *financial promotion*.

4.11 Record keeping: financial promotion

4

General

4.11.1

R

- (1) A *firm* must make an adequate record of any *financial promotion*:
 - (a) it *communicates*;
 - (b) it *approves*; or
 - (c) of which it confirms compliance (**■ COBS 4.10.9AR(3)(a)**), other than a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.
- (2) For a telemarketing campaign, a *firm* must make an adequate record of copies of any scripts used.
- (2A) [deleted] [*Editor's note*: This provision now appears with minor amendments at COBS 4.11.4R]
- (2B) In respect of each *financial promotion* in (1), a *firm* must make an adequate record demonstrating how it has satisfied itself that it has the necessary competence and expertise required by **■ COBS 4.10.9AR**.
- (3) A *firm* must retain the record in relation to a *financial promotion* relating to:
 - (a) a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely;
 - (b) a *life policy*, *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*, for six years;
 - (c) *MiFID* or equivalent *third country business*, for five years; and
 - (d) any other case, for three years.
- (4) If a communication relates to a *firm's MiFID*, *equivalent third country or optional exemption business*, this section does not apply:
 - (a) to the extent that the communication is a *third party prospectus*;
 - (b) if it is *image advertising*;
 - (c) if it is a *non-retail communication*.
- (5) If a communication relates to a *firm's business* that is not *MiFID* or *equivalent third country business*, this section does not apply:
 - (a) to the extent that it is an *excluded communication*;

- 4.11.1A** **G** (b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
(c) if it is *image advertising*;
(d) if it is a *non-retail communication*;
(e) [deleted]
(f) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.
- 4.11.2** **G** A *MiFID investment firm*, *third country investment firm* or *MiFID optional exemption firm* should refer to the requirements on record keeping in the *MiFID Org Regulation* and ■ SYSC 9.
- 4.11.3** **G** A *firm* should consider maintaining a record of why it is satisfied that the *financial promotion* complies with the *financial promotion rules*.
- 4.11.4** **R** If a *firm communicates or approves a financial promotion* which relates to a *non-mass market investment* where that *financial promotion* is addressed to or disseminated in such a way that it is likely to be received by a *retail client*:
- (1) the *person allocated the compliance oversight function* in the *firm* must make a record at or near the time of the *communication or approval* certifying that the promotion complies with the restrictions set out in section 238 of the Act and in ■ COBS 4.12B, as applicable;
 - (2) the making of the record required in (1) may be delegated to one or more *employees* of the *firm* who report to and are supervised by the *person allocated the compliance oversight function*, provided the process for certification of compliance has been reviewed and approved by the *person allocated the compliance oversight function* no more than 12 *months* before the date of the *communication or approval* of the promotion;
 - (3) as part of the record required in (1), the *firm* must make a record of which exemption was relied on for the purposes of the promotion, together with the reason why the *firm* is satisfied that that exemption applies;
 - (4) where the *firm* relies on an exemption that requires investor certification and warnings to investors, the record required in (1) must include a record of any certificate or investor statement (as signed by the investor) and of any warnings or indications required by the exemption;
 - (5) if the *rules* in ■ COBS 4.12B do not apply because the promotion is an *excluded communication* (■ COBS 4.12B.4R), the *firm* must identify in

- the record required in (1) which type of *financial promotion* defined as an *excluded communication* corresponds to the promotion being made, including, where applicable, which article in the *Financial Promotion Order* or in the *Promotion of Collective Investment Schemes Order* was relied on for the purposes of the promotion, together with the reason why the *firm* is satisfied that the exemption applies.
- 4.11.5 R** (1) This *rule* applies to a *firm* that *communicates* or may *communicate* a *direct offer financial promotion* in relation to a *restricted mass market investment* to which ■ COBS 4.12A.15R applies.
- (2) A *firm* must make an adequate record of:
- (a) the categorisation of each *retail client* (■ COBS 4.12A.21R) and the evidence obtained in support of that categorisation;
 - (b) where an appropriateness assessment is undertaken (■ COBS 4.12A.28R):
 - (i) the total number of assessments undertaken;
 - (ii) the number of assessments resulting in a determination that the *investment* was appropriate;
 - (iii) the number of assessments resulting in a determination that the *investment* was not appropriate;
 - (iv) in respect of each *retail client*, the outcome of the appropriateness process; and
 - (v) in respect of each *retail client*, the number of times that *retail client* was subject to an appropriateness assessment in respect of the same *investment*.
- 4.11.6 R** A *firm* that *approves* a *direct offer financial promotion* in relation to a *restricted mass market investment* to which ■ COBS 4.12A.15R applies must take reasonable steps to ensure that:
- (1) adequate records of the information required by ■ COBS 4.11.5R are made in connection with the *communication* of the *direct offer financial promotion*; and
 - (2) the *firm* is provided with, or otherwise has ready access to, the records in (1).
- 4.11.7 R** A *firm* must retain the records required by ■ COBS 4.11.4R and ■ COBS 4.11.5R for 5 years.
- 4.11.8 R** Where a *firm* is required by ■ COBS 4.12A.44R(2)(b) or ■ COBS 4.12B.13R(2)(b) to maintain a record of its grounds for using an alternative form of risk summary, it must retain the record of its decision for 5 years.

4.12 [deleted]

[Editor's note: The substance of the provisions in COBS 4.12 are now incorporated in, and appear at, COBS 4.12B.]

4.12A Promotion of restricted mass market investments

Purpose

4.12A.1 G

The *rules* in this section:

- (1) require that any *financial promotion* relating to a *restricted mass market investment* includes a prescribed form of risk warning;
- (2) restrict the *communication and approval* of *direct offer financial promotions* in relation to *restricted mass market investments* except where certain conditions are satisfied; and
- (3) require that a *financial promotion* which relates to a *restricted mass market investment* does not offer to any *retail client* any form of incentive. The purpose of this *rule* (■ COBS 4.12A.7R) is to ensure that *retail clients* are not persuaded or incited to *engage in investment activity* relating to a *restricted mass market investment* other than by reference to the features of the investment activity that is the subject of the *financial promotion*.

Application

4.12A.2 R

This section applies to a *firm* when *communicating a financial promotion, or approving a financial promotion for communication*, to a *retail client* in relation to a *restricted mass market investment*.

4.12A.3 R

In this section, reference to a *firm* includes:

- (1) *TP firms*, to the extent that this section does not already apply to those *TP firms* as a result of ■ GEN 2.2.26R; and
- (2) *Gibraltar-based firms*, to the extent that this section does not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R.

4.12A.4 R

This section does not apply to:

- (1) *excluded communications*;
- (2) *image advertising*; or
- (3) *financial promotions* to the extent that they relate to *local authority securities*.

- 4.12A.5** **G** ■ COBS 4.12A.15R does not apply in relation to *credit union subordinated debt* or to deferred shares issued by a *credit union*. Firms are reminded that ■ CREDs 3A contains requirements regarding the retail distribution and *financial promotion* of these instruments.
- 4.12A.6** **G** The requirements in this section relating to the provision of risk warnings are in addition, and without prejudice, to *firms'* other obligations in relation to the provision of information.
- 4.12A.7** **R** **Restrictions on monetary and non-monetary incentives**
- (1) A *firm* must not *communicate or approve a financial promotion* which relates to a *restricted mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive.
 - (2) The *rule* in (1) does not apply where the conditions in paragraph (3) or (4) are satisfied.
 - (3) The conditions are that:
 - (a) the relevant incentive is a product or service produced or provided by the *person*, or a member of the *group* of the *person*, who will benefit from the proceeds of the investment; and
 - (b) the *financial promotion* relates to a *non-readily realisable security*, *P2P agreement*, *P2P portfolio* or a unit in a *long-term asset fund*.
 - (4) The conditions are that the incentive is:
 - (a) offered for the exclusive purpose of encouraging a *retail client* to transfer their existing holding of one or more *restricted mass market investments* from an existing arrangement with one *person* to a different arrangement with another *person*; and
 - (b) not structured in such a way as to encourage further investment in any *restricted mass market investment*.
- 4.12A.8** **G** For the purposes of ■ COBS 4.12A.7R, monetary and non-monetary incentives include, but are not limited to:
- (1) offering bonuses when investing in a *restricted mass market investment*;
 - (2) offering bonuses where the *client* refers another *person*;
 - (3) offering cashback when investing in a *restricted mass market investment*;
 - (4) offering discounts or rebates on fees paid that are linked to volumes of trades made in *restricted mass market investments*;
 - (5) offering free gifts once an investment in a *restricted mass market investment* has been made such as laptops or mobile telephones; or
 - (6) offering any additional free *investments* or offering discounts on *investments*.

- 4.12A.9** **G**
- (1) Information and research tools do not constitute non-monetary incentives.
 - (2) Lower fees or charges not linked to volumes of trades, made available to all *retail clients*, do not constitute a monetary incentive.
 - (3) The effect of ■ COBS 4.12A.7R(4) is that a *financial promotion* may offer an incentive to transfer an existing holding of a *restricted mass market investment* (for example, from one platform to another). However, the incentive must relate solely to the transfer and must not be used to encourage *retail clients* to otherwise engage in investment activity in relation to *restricted mass market investments*.

4.12A.9A **G** Subject to ■ COBS 4.12A.8G and ■ COBS 4.12A.9G, the following factors are otherwise relevant in determining whether a benefit is an incentive:

- (1) A benefit which is intrinsically connected with the *investment* or investment activity that is the subject of the *financial promotion* is unlikely to constitute an incentive – for example, voting rights which are carried by a share. However, a benefit which is entirely separable from the *investment* or investment activity that is the subject of the *financial promotion* is likely to be an incentive.
- (2) A benefit which is only available for a fixed period of time, or is contingent upon investing in a *restricted mass market investment* in the future, is likely to constitute an incentive. This would not include, for example, a benefit which is offered in connection with a specified event, such as the first close of an investment.
- (3) A benefit which is only available to *retail clients* who invest through a particular medium is likely to constitute an incentive – for example, a benefit which is only offered to *retail clients* who invest via a social media link.

- 4.12A.9B** **G**
- (1) ■ COBS 4.12A.7R applies irrespective of the nature of the investment activity. This means that the *rule* applies not only in relation to incentives to *buy restricted mass market investments* but also, for example, to incentives to enter into agreements for the purposes of transacting in *restricted mass market investments*.
 - (2) The rationale for offering the incentive is immaterial. This means that the *rule* applies to incentives which are intended, for example, to encourage *retail clients* to make investments ahead of the end of the tax year.

Risk warning

4.12A.10 **R** A firm must not communicate or approve a *financial promotion* which relates to a *restricted mass market investment* unless it contains a risk warning that complies with ■ COBS 4.12A.11R.

- 4.12A.11** **R**
- (1) For the purposes of ■ COBS 4.12A.10R, the *financial promotion* must contain:
 - (a) the following risk warning if the *financial promotion* relates to one or more *non-readily realisable securities*:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong.

- (b) the following risk warning if the *financial promotion* relates to one or more *P2P agreements* or *P2P portfolios*:

Don't invest unless you're prepared to lose money. This is a high-risk investment. You may not be able to access your money easily and are unlikely to be protected if something goes wrong.

- (c) the following risk warning if the *financial promotion* relates to a *unit* in a *long-term asset fund*:

This is a high-risk investment, and assets may take a long time to buy and sell. Only invest if you can wait (possibly several years) to get your money back. You do not have protection against poor performance.

the following risk warning if the *financial promotion* relates to one or more *qualifying cryptoassets*:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you should not expect to be protected if something goes wrong.

- (2) Where the number of characters contained in the risk warning in (1) exceeds the number of characters permitted by a third-party marketing provider:

- (a) the following risk warning must be used if the *financial promotion* relates to one or more *non-readily realisable securities* or *qualifying cryptoassets*:

Don't invest unless you're prepared to lose all the money you invest.

- (b) the following risk warning must be used if the *financial promotion* relates to one or more *P2P agreements* or *P2P portfolios*:

Don't invest unless you're prepared to lose money.

- (c) the following risk warning must be used if the *financial promotion* relates to a *unit* in a *long-term asset fund*:

This is a high-risk investment, so only invest if you can wait to get your money back.

- (3) Where the *financial promotion* is, or is to be, *communicated* by way of a website, mobile application or other digital medium:

- (a) the risk warning in (1) or (2) must also include a link:

- (i) in the form of the text: Take 2 mins to learn more; and
(ii) which, when activated, delivers an appropriate risk summary in a pop-up box (or equivalent) relating to the type of *investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R;

- (b) the link required by (3)(a) need not be:

- (i) in the form required by (3)(a)(i) if the inclusion of that additional text would exceed the number of characters permitted by a third-party marketing provider;

- (ii) provided if the medium of communication does not allow the incorporation of a link.
- (4) Where the *financial promotion* is communicated other than by way of a website, mobile application or other digital medium (and including where the *financial promotion* is a *real time financial promotion*), the risk warning in (1) must be:
- (a) provided:
- (i) in a *durable medium*; or
 - (ii) if the medium of communication means that the risk warning cannot be provided in a *durable medium*, in a manner appropriate to the medium of communication; and
- (b) however the *financial promotion* is communicated, accompanied by an appropriate risk summary:
- (i) in a *durable medium*; and
 - (ii) relating to the type of *investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R,
unless it is not possible to obtain the information necessary to enable the risk summary to be provided in a *durable medium*.
- (5) (a) A *firm* must omit the words "and you are unlikely to be protected if something goes wrong" from the risk warnings required by (1)(a), (1)(b) or (1)(d) if the conditions in (5)(b) apply.
- (b) The conditions are that:
- (i) the *financial promotion* relates to an *investment*:
 - (A) that is issued by; or
 - (B) the provision of which involves a, *participant firm* or an *appointed representative* of a *participant firm*; and
 - (ii) the activity of the person in (i) is of a type that could give rise to a *protected claim*.
- (c) A *firm* that omits the words in (a) must make a record of the basis on which the conditions in (b) are met.
- (6) The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with ■ COBS 4.12A.36R and ■ COBS 4.12A.38R.
- (7) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12A.40R and ■ COBS 4.12A.42R.
- (8) Where the *financial promotion* relates to a *unit* in a *long-term asset fund*, the appropriate risk summary required by (3)(a)(ii) or (4)(b) (see ■ COBS 4 Annex 1R(7) (Risk summary for units in a long-term asset fund)) must be adapted to reflect the characteristics of the relevant *LTAF*, particularly the *dealing arrangements* for the *LTAF* and the applicable *notice period*.

4.12A.12 [G]

- (1) Reference in ■ COBS 4.12A.11R(5)(b)(i)(B) to the 'provision' of an *investment* is to a person developing, managing or packaging an *investment* such as an *operator*. It does not refer to persons involved

4.12A.13 G

in distributing, or intermediating the sale of, an *investment* such as a financial adviser, a *person arranging investments* or an *operator of an electronic system in relation to lending*.

- (2) A *firm* relying on ■ COBS 4.12A.11R(5) should consider obtaining external legal advice (from legal advisers with relevant expertise and experience) on the appropriateness of omitting the words in that *rule* from a risk warning. Any such advice should be recorded as part of the *firm's* compliance with ■ COBS 4.12A.11R(5)(c).

- (1) Even where it is not possible to provide a risk warning in a *durable medium* (for example, because the *financial promotion* is a *real time financial promotion*), the recipient of the *financial promotion* must still ordinarily be provided with an appropriate risk summary in a *durable medium* at or around the time that the *financial promotion* is communicated (■ COBS 4.12A.11R(4)(b)).

- (2) It is unlikely to be possible to comply with ■ COBS 4.12A.11R(4)(b) where the *financial promotion* is *communicated* by means of (without limitation) a television or radio broadcast. In such a case, the *financial promotion* must still include the relevant risk warning specified in ■ COBS 4.12A.11R(1).

Direct offer financial promotions

4.12A.14 G

- (1) ■ COBS 4.12A.15R to ■ COBS 4.12A.35G apply in relation to *direct offer financial promotions* to *retail clients* in relation to *restricted mass market investments*.

- (2) A *firm* may communicate information about a *P2P agreement* or a *P2P portfolio* to a *retail client* before ■ COBS 4.12A.15R applies, provided that the defining elements of a *direct offer financial promotion* are not present in that communication. This information may comprise, without limitation, mandatory disclosures applicable to that *firm*, such as those set out in ■ COBS 18.12.24R to ■ COBS 18.12.28R, including information about:
 - (a) the identity of the borrower(s);
 - (b) the *price* or *target rate*, provided they are accompanied by a fair description of the anticipated actual return, taking into account fees, default rates and taxation;
 - (c) the term;
 - (d) the risk categorisation; and
 - (e) a description of any security interest, insurance, guarantee or other risk mitigation measures adopted by the *firm*.

- (3) ■ COBS 4.12A.18R (First condition: cooling off period) does not apply where a *direct offer financial promotion* to a *retail client* relates only to a *unit* in a *long-term asset fund*.

4.12A.15 R

- (1) Unless permitted by ■ COBS 4.12A.17R and subject to (2), (3) and (4), a *firm* must not:
 - (a) communicate a *direct offer financial promotion* relating to a *restricted mass market investment* to a *retail client* unless the

- conditions in ■ COBS 4.12A.18R (cooling off period), ■ COBS 4.12A.20R (personalised risk warning), ■ COBS 4.12A.21R (categorisation) and ■ COBS 4.12A.28R (appropriateness) are satisfied; or
- (b) approve a *direct offer financial promotion* relating to a *restricted mass market investment* for communication to a *retail client* unless the *firm* is satisfied that the conditions in ■ COBS 4.12A.18R (cooling off period), ■ COBS 4.12A.20R (personalised risk warning), ■ COBS 4.12A.21R (categorisation) and ■ COBS 4.12A.28R (appropriateness) will be satisfied in relation to each communication of the *direct offer financial promotion*.
- (2) The conditions in ■ COBS 4.12A.18R (cooling off period) and ■ COBS 4.12A.20R (personalised risk warning) do not need to be satisfied if the *retail client* has previously received a *direct offer financial promotion* relating to a *restricted mass market investment* from the same *person* as would otherwise need to satisfy them.
- (3) The condition in ■ COBS 4.12A.28R (appropriateness) does not need to be satisfied if the specific type of *restricted mass market investment* to which the *direct offer financial promotion* relates has previously been assessed as appropriate for the *retail client* by the same *person* as would otherwise need to undertake the assessment.
- (4) Where the *direct offer financial promotion* relates only to a *unit* in a *long-term asset fund*:
- (a) the condition in ■ COBS 4.12A.18R (cooling off period) does not apply; and
- (b) the condition in ■ COBS 4.12A.20R (personalised risk warning) does not need to be satisfied if the *retail client* has previously received a *direct offer financial promotion* relating to a *unit* in a *long-term asset fund* from the same *person* that would otherwise need to satisfy the condition.

4.12A.16 [G] The effect of ■ COBS 4.12A.15R and related provisions in this section is that:

- (1) a personalised risk warning and cooling off period are only required on the first occasion that a *firm*, or other *person communicating an approved direct offer financial promotion*, communicates a *direct offer financial promotion* relating to a *restricted mass market investment* (other than a *unit* in a *long-term asset fund*) to a particular *retail client*;
- (1A) where a *direct offer financial promotion* relates only to a *unit* in a *long-term asset fund*:
- (a) a personalised risk warning is required only on the first occasion that a *firm*, or other *person communicating an approved direct offer financial promotion*, communicates a *direct offer financial promotion* to a particular *retail client*; and
- (b) a cooling off period is not required;
- (2) an appropriateness assessment is only required on the first occasion that a particular *retail client* responds to a *direct offer financial promotion* relating to a specific type of *restricted mass market investment* (although a *firm* should consider whether it would be in

the best interests of the *retail client* for a further assessment to be undertaken, for example due to lapse of time, even where this is not required); and

- (3) in any case, a *direct offer financial promotion* relating to a *restricted mass market investment* can only be communicated to a *retail client* who has a current statement (completed and signed within the period of 12 months ending with on the day on which the communication is to be made) of a type falling within ■ COBS 4.12A.22R and which applies to the type of *restricted mass market investment* to which the *direct offer financial promotion* relates.

4.12A.17 R

A *firm* may communicate or approve a *direct offer financial promotion* relating to a *restricted mass market investment* to, or for communication to, a *retail client* if:

- (1) the *firm* itself will comply with the suitability rules (■ COBS 9 and ■ 9A) in relation to the investment promoted; or
- (2) the *retail client* has confirmed before the promotion is made that they are a *retail client* of another *firm* that will comply with the suitability rules (■ COBS 9 and ■ 9A) in relation to the *investment* promoted; or
- (3) the *retail client* is a *corporate finance contact* or a *venture capital contact*.

First condition: cooling off period

4.12A.18 R

- (1) The first condition is that following the *retail client's* request to receive the *direct offer financial promotion*, the *firm*, or other person communicating the *direct offer financial promotion*:
 - (a) allows a period of at least 24 hours (the 'cooling off period') to elapse before communicating the *direct offer financial promotion*;
 - (b) following the lapse of time in (a), invites the *retail client* to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *direct offer financial promotion*; and
 - (c) the *retail client* specifies that they wish to continue to receive the *direct offer financial promotion*.
- (2) The options in (1)(b) must be presented with equal prominence.
- (3) This condition does not apply if the *direct offer financial promotion* relates only to *units* in a *long-term asset fund*.

4.12A.19 G

■ COBS 4.12A.18R does not prevent the person who is subject to it from engaging with the *retail client* during the cooling off period. This includes for the purposes of providing the *client* with the personalised risk warning required by ■ COBS 4.12A.20R and obtaining the information necessary to undertake the appropriateness assessment required by ■ COBS 4.12A.28R.

4.12A.20 R

Second condition: personalised risk warning

- (1) Subject to (1A) below, the second condition is that before communicating the *direct offer financial promotion*, the *firm*, or other person communicating the *direct offer financial promotion*:
- obtains the *retail client's* full name; and
 - having obtained the *retail client's* name, communicates to that *retail client* the following personalised risk warning:

[Client name], this is a high-risk investment. How would you feel if you lost the money you're about to invest? Take 2 mins to learn more.

- (1A) Where the *direct offer financial promotion* relates to a *unit* in a *long-term asset fund*, the second condition is that before communicating the *direct offer financial promotion*, the *firm*, or other person communicating the *direct offer financial promotion*:

- obtains the *retail client's* full name; and
- having obtained the *retail client's* name, communicates to that *retail client* the following personalised risk warning:

[Client name], this is a high-risk investment, and assets may take a long time to buy and sell. Only invest if you can wait (possibly several years) to get your money back. You do not have protection against poor performance. Take 2 mins to learn more.

[Editor's note: The last sentence in this text will be underlined in the final rules.]

- (2) If the *direct offer financial promotion* is, or is to be, communicated by means of a website, mobile application or other digital medium, the personalised risk warning in (1)(b) or (1A)(b) must:

- be clearly brought to the *retail client's* attention by means of a pop-up box (or equivalent);
- include a link which, when activated, delivers an appropriate risk summary in a further pop-up box (or equivalent):
 - relating to the type of *restricted mass market investment* that is the subject of the *direct offer financial promotion*; and
 - selected from ■ COBS 4 Annex 1R; and
- be accompanied by an invitation to the *retail client* to specify whether they wish to:
 - leave the investment journey; or
 - continue to receive the *direct offer financial promotion*.

- (3) If the *direct offer financial promotion* is, or is to be, communicated other than by means of a website, mobile application or other digital medium:

- the personalised risk warning in (1)(b) or (1A)(b) must be:
 - provided to the *retail client* omitting the words "Take 2 mins to learn more"; and
 - accompanied by an appropriate risk summary in a *durable medium* relating to the type of *restricted mass market*

- investment that is the subject of the *direct offer financial promotion* selected from ■ COBS 4 Annex 1R; and
- (b) the *retail client* must then be invited to specify whether they wish to:
- (i) leave the investment journey; or
 - (ii) continue to receive the *direct offer financial promotion*.
- (4) The options in (2)(c) and (3)(b) must be presented with equal prominence.
- (5) This condition:
- (a) is only satisfied if the *retail client* specifies that they wish to continue to receive the *direct offer financial promotion*; and
 - (b) must be satisfied before steps are taken to satisfy the conditions in ■ COBS 4.12A.21R (categorisation) and ■ COBS 4.12A.28R (appropriateness).
- (6) The personalised risk warning required by (1)(b) or (1A)(b) and the risk summary required by (2)(b) must comply with ■ COBS 4.12A.40R and ■ COBS 4.12A.42R.
- (7) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12A.36R and ■ COBS 4.12A.38R.
- (8) Where the *financial promotion* relates to a *unit* in a *long-term asset fund*, the appropriate risk summary required by (2)(b) or (3)(a)(ii) (see ■ COBS 4 Annex 1R(7) (Risk summary for units in a long-term asset fund)) must be adapted to reflect the characteristics of the relevant *LTAF*, particularly the *dealing* arrangements for the *LTAF* and the applicable *notice period*.

Third condition: categorisation

4.12A.21 R

The third condition is that before *communicating* the *direct offer financial promotion*, the *firm*, or other *person communicating* the *direct offer financial promotion*, takes reasonable steps to establish that the *retail client* is:

- (1) certified as:
 - (a) a 'high net worth investor';
 - (b) a 'sophisticated investor'; or
 - (c) a 'restricted investor', or
- (2) if the *direct offer financial promotion* relates to a *non-readily realisable security*, a *P2P agreement*, a *P2P portfolio* or a *unit* in a *long-term asset fund*, self-certified as a 'sophisticated investor',

in each case in accordance with ■ COBS 4.12A.22R.

4.12A.22 R

- (1) A certified high net worth investor, a certified sophisticated investor, a self-certified sophisticated investor or a restricted investor is an individual:
 - (a) who has completed and signed, within the period of 12 months ending on the day on which the *communication* is made, a

4.12A.23 **E** For the purposes of ■ COBS 4.12A.21R, a *firm* (or relevant other person) will have taken reasonable steps to establish the certification of a *retail client* where:

- (1) the *firm* (or other person) has obtained the relevant completed certificate from the *retail client*; and
- (2) the *retail client's* completion of the certificate evidences that the *retail client* meets the criteria to be certified as such.

4.12A.24 **G** Where the *direct offer financial promotion* will relate to more than one type of *restricted mass market investment*, the condition in ■ COBS 4.12A.21R may be satisfied by the *retail client* signing a combined statement that meets the requirements in ■ COBS 4 Annex 2R to ■ COBS 4 Annex 5R, as applicable, in respect of each type of *restricted mass market investment* to which the *direct offer financial promotion* will relate.

4.12A.25 **G**

- (1) Where the restricted investor statement (■ COBS 4 Annex 5R) refers to a restricted investor not investing more than 10% of their net assets, this refers to the *retail client's* aggregate investment across all types of *restricted mass market investment*.
- (2) However, a *retail client* may be informed that they need not include in the calculation referred to in (1) any investment in a *restricted mass market investment* made in response to a *direct offer financial promotion* for the purpose of which they were categorised as sophisticated (whether on a certified or self-certified basis).

4.12A.26 **R** A *firm* must not:

- (1) influence, or seek to influence, the information that a *retail client* provides when completing a certificate in ■ COBS 4.12A.22R; or

4.12A.27 G

- (2) encourage a *retail client* to complete a further certificate in the event that a *client's* signed certificate indicates that they do not meet the criteria to be categorised as a high net worth, sophisticated or restricted investor, as applicable.

Fourth condition: appropriateness

4.12A.28 R

- (1) The fourth condition is relevant if the recipient of the *direct offer financial promotion* makes an application or order for a *restricted mass market investment* in response to that *direct offer financial promotion*.
- (2) The fourth condition requires a *restricted mass market investment* to be assessed as appropriate for a *retail client* before an application or order is processed. The *rules and guidance* are not prescriptive as to how such an assessment is undertaken. The condition is designed to ensure that *retail clients* are only able to invest in *restricted mass market investments* which they have the knowledge and experience to understand, particularly in relation to the risks. Appropriateness processes should be designed to this end.

4.12A.29 G

- (1) The fourth condition applies where the *firm* itself or the *person* who will:
- (a) *arrange or deal* in relation to a *non-readily realisable security*;
 - (b) facilitate the *retail client* becoming a lender under a *P2P agreement* or a *P2P portfolio*; or
 - (c) *arrange or deal* in relation to a *unit* in a *long-term asset fund*, or issue such a *unit*; or
 - (d) transact in a *qualifying cryptoasset*,
- is aware, or ought reasonably to be aware, that an application or order is in response to the *direct offer financial promotion*.
- (2) The condition is that the *firm* or *person* in (1) will only process the application or order once it has assessed that the *restricted mass market investment* is appropriate for the *retail client* in compliance with the *rules* in ■ COBS 10 or ■ COBS 10A (as applicable) or equivalent requirements as modified and supplemented by ■ COBS 4.12A.30R to ■ COBS 4.12A.32R.

4.12A.30 R

- In the course of providing information regarding their knowledge and experience for the purpose of the appropriateness assessment required by ■ COBS 4.12A.28R, the *retail client* must not be provided with assistance, information, guidance or feedback which might affect the substance of the information that they provide.

4.12A.31 R

- (1) This rule applies if:
- a *restricted mass market investment* is assessed as not being appropriate for a particular *retail client*; and
 - the assessment of appropriateness is based on a series of questions which the *retail client* is required to answer.
- (2) The *retail client* must not be informed of the particular answers which led to the *restricted mass market investment* being assessed as not appropriate for them.
- (3) Any further assessment of the appropriateness of that *restricted mass market investment* for that *retail client* must not be based on the same questions as were used for the purpose of a previous assessment of the appropriateness of that *restricted mass market investment* for that *retail client*.

4.12A.32 R

- (1) This rule applies where a first and second assessment have both determined that a *restricted mass market investment* is not appropriate for a particular *retail client*.
- (2) Following the second, and each and every subsequent, determination that a *restricted mass market investment* is not appropriate for a *retail client*, any further assessment of the appropriateness of that *restricted mass market investment* for that *retail client* must not be undertaken for at least 24 hours.

4.12A.33 G

The effect of ■ COBS 4.12A.28R to ■ COBS 4.12A.32R is that:

- direct offer financial promotions* relating to *restricted mass market investments* may only be communicated, or approved for communication, to *retail clients* if any application or order received in response to that *direct offer financial promotion* will be fulfilled only where that *restricted mass market investment* has been assessed as being appropriate for that *retail client*;
- if the assessment of appropriateness results in the provision of a warning (a determination that the *restricted mass market investment* is not appropriate for the *retail client* (■ COBS 10.3 or ■ COBS 10A.3)), then an order or application received in response to a *direct offer financial promotion* may not be fulfilled; and
- the circumstances in which an assessment of appropriateness need not be undertaken (■ COBS 10.4 and ■ COBS 10A.4) are not relevant for the purpose of the fourth condition.

4.12A.34 G

When gathering information regarding a *retail client's* knowledge and experience for the purpose of assessing whether a *restricted mass market investment* is appropriate for that *retail client*, the *firm or person* undertaking the assessment should:

- avoid asking the *retail client* questions that invite binary (yes/no) answers;
- if asking multiple-choice questions, use questions which offer at least 3 plausible answers (excluding the option to answer 'do not know', or similar); and

4.12A.35 G

- (3) ensure that questions address matters that are relevant to the specific type of *investment* in which the *retail client* has expressed interest (see also ■ COBS 10.2.2R).
- (1) A *retail client* should only be informed of the outcome of an appropriateness assessment once they have provided all of the information required for the assessment to be undertaken.
- (2) ■ COBS 4.12A.31R(2) does not prevent a *retail client* from being informed of the broad reasons for which a *restricted mass market investment* was assessed not to be appropriate for them or of the nature of the deficiencies identified in their knowledge or experience. The rule is intended to prevent a *retail client* from being informed only of the questions within an assessment which led to a *restricted mass market investment* being assessed not to be appropriate such that the *client* is able simply to change their answer in any subsequent assessment without improving their own understanding.
- (3) For the purposes of ■ COBS 4.12A.31R(3), any questions used to undertake a further assessment of appropriateness should be sufficiently different such that the *retail client* could not simply infer the answers that would lead to an assessment of appropriateness from the outcome of their responses to a previous set of questions.
- (4) A *firm* should consider whether the particular features of a *restricted mass market investment* mean that an interval of greater than 24 hours should be applied following a second assessment (and any subsequent assessment) that that *investment* is not appropriate for a *retail client* (■ COBS 4.12A.32R(2)).
- (5) A *retail client* may be informed of the option to re-apply to *buy* a *restricted mass market investment* following a determination that the *restricted mass market investment* is not appropriate for them. However, the *retail client* should not be encouraged to do so.

Requirements of risk warnings and non-digital risk summaries

4.12A.36 R

- (1) The relevant risk warning in ■ COBS 4.12A.11R(1) or (2) and the relevant risk summaries in ■ COBS 4.12A.11R(4)(b) and ■ COBS 4.12A.20R(3)(a)(ii) must:
- (a) be prominent, taking into account the content, size and orientation of the *financial promotion* as a whole;
- (b) except where the risk warning cannot be provided in writing, be clearly legible, contained within its own border and with bold and underlined text as indicated in ■ COBS 4.12A.11R or ■ COBS 4 Annex 1R.
- (2) The relevant risk warning in ■ COBS 4.12A.11R(1) or (2) must, if the *financial promotion* is, or is to be, communicated by means of:
- (a) a website or mobile application:
- (i) be statically fixed and visible at the top of the screen, below anything else that also stays static, even when the *retail client* scrolls up or down the webpage; and
- (ii) be included as described in (i) on each linked webpage on the website or page on the application relating to the relevant *investment*;

4.12A.37 **G**

- (b) a television broadcast, be prominently fixed on the screen for the duration of the broadcast.
- (1) The FCA expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing digital financial promotions and, in particular, how the risk warning will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>
- (2) *Firms* should have regard to the intended or likely recipients of a *financial promotion*. Where a *firm* considers that such *persons* are unlikely to have a good understanding of the English language, a risk warning or risk summary required by the *rules* in this section should be provided in an appropriate language in addition to English.

4.12A.38 **R**

The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the risk warning or risk summary.

[Note: The FCA has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12A.39 **G**

For the purposes of ■ COBS 4.12A.38R, design features which might reduce the visibility or prominence of a risk warning or risk summary include, but are not limited to:

- (1) using a font size for the risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *client* to read the text;
- (3) fading the text of the risk warning or risk summary;
- (4) placing the risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional links to be clicked in order for the full text of the risk warning to be seen;
- (6) using a font or background in the risk warning or risk summary in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning or risk summary in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk warning or risk summary from other forms of information.

Requirements of digital personalised risk warnings and digital risk summaries

4.12A.40 **R**

The relevant personalised risk warning in ■ COBS 4.12A.20R(2) and the relevant risk summaries in ■ COBS 4.12A.11R(3)(a)(ii) and ■ COBS 4.12A.20R(2)(b) must be:

- (1) prominently brought to the *retail client's* attention, taking into account the content, size and orientation of the *financial promotion* as a whole;
- (2) clearly legible, contained within its own border and with bold and underlined text as indicated in ■ COBS 4.12A.20R(1)(b), ■ COBS 4.12A.20R(1A)(b) and ■ COBS 4 Annex 1R;
- (3) statically fixed and visible in the middle of the screen; and
- (4) the main focus of the screen.

4.12A.41 G

- (1) The FCA expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing digital financial promotions and, in particular, how the personalised risk warning or risk summary will be displayed: <https://www.w3.org/WAI/WCAG21/quickref>
- (2) *Firms* should have regard to the intended or likely recipients of a *financial promotion*. Where a *firm* considers that such *persons* are unlikely to have a good understanding of the English language, a risk warning or risk summary required by the *rules* in this section should be provided in an appropriate language in addition to English.

4.12A.42 R

The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the personalised risk warning or risk summary.
[Note: The FCA has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12A.43 G

- For the purposes of ■ COBS 4.12A.42R, design features which might reduce the visibility or prominence of a personalised risk warning or risk summary include, but are not limited to:
- (1) using a font size for the personalised risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
 - (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *retail client* to read the text;
 - (3) fading the text of the personalised risk warning or risk summary;
 - (4) placing the personalised risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
 - (5) requiring additional actions to be taken by the *retail client*, such as requiring additional links to be clicked in order for the full text of the personalised risk warning or risk summary to be seen;
 - (6) using a font or background in the risk warning in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
 - (7) using a font or background in the risk warning in the same colour as other forms of disclosure and standard information; the colour of the

font and background should distinguish the personalised risk warning or risk summary from other forms of information.

Risk summaries

4.12A.44 R Where a *rule* in this section requires a *firm* to communicate a risk summary selected from ■ COBS 4 Annex 1R, the *firm* must either:

- (1) (subject to ■ COBS 4.12A.46R) provide the risk summary as it appears in ■ COBS 4 Annex 1R; or
- (2) provide a version of the risk summary in ■ COBS 4 Annex 1R in appropriately amended form, provided that:
 - (a) the *firm* has a valid reason for each amendment;
 - (b) the *firm* makes a record of each amendment and the reason for it;
 - (c) any alternative or additional text is in plain English; and
 - (d) the amended risk summary does not take longer than around 2 minutes to read.

4.12A.45 G For the purposes of ■ COBS 4.12A.44R(2), the following reasons are considered to be valid:

- (1) the relevant part of the risk summary in ■ COBS 4 Annex 1R would be misleading in relation to the particular *investment*;
- (2) the relevant part of the risk summary in ■ COBS 4 Annex 1R would be irrelevant in relation to the particular *investment*;
- (3) the risk summary in ■ COBS 4 Annex 1R does not include a risk that is relevant to the particular *investment* and it is appropriate for that further risk to be included;
- (4) the sole purpose of the relevant statement in the risk summary is to include a hyperlink to a webpage and the medium of communication does not permit the incorporation of a link;
- (5) the *firm* is required to adapt the risk summary in accordance with ■ COBS 4.12A.11R(8) (Risk warning) or ■ COBS 4.12A.20R(8) (Second condition: personalised risk warning).

This list is not exhaustive.

4.12A.46 R ■ COBS 4.12A.44R(1) does not apply to a *firm* which communicates a risk summary relating to *units* in an *LTAF* (see ■ COBS 4.12A.11R(8) (Risk warning) and ■ COBS 4.12A.20R(8) (Second condition: personalised risk warning)).

4.12A.47 G A *firm* communicating a risk summary relating to *units* in an *LTAF* (see ■ COBS 4 Annex 1R(7) (Risk summaries)) is required to adapt the risk summary to reflect the characteristics of the relevant *LTAF*, particularly the *dealing arrangements* for the *LTAF* and the applicable *notice period* (see ■ COBS 4.12A.11R(8) (Risk warning) and ■ COBS 4.12A.20R(8) (Second condition: personalised risk warning)). Other amendments may also be appropriate.

When amending the risk summary, the *firm* will need to comply with
■ COBS 4.12A.44R(2).

4.12B **Promotion of non-mass market investments**

Application

4.12B.1 **R**

This section applies to:

- (1) *firms*;
- (2) *TP firms*, to the extent that this section does not already apply to those *TP firms* as a result of ■ GEN 2.2.26R; and
- (3) *Gibraltar-based firms*, to the extent that this section does not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R,

when *approving or communicating financial promotions* in relation to *non-mass market investments*.

4.12B.2 **G**

In addition to the *persons* listed in ■ COBS 4.12B.1R, *persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

- (1) Part 7 of the *EU Exit Passport Regulations*; or
- (2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361),

are required to comply with the *rules* in this section as a consequence of:

- (3) regulation 59 of the *EU Exit Passport Regulations*; or
- (4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

4.12B.3 **R**

Throughout this section, references to a *firm* include a *TP firm* and a *Gibraltar-based firm*.

4.12B.4 **R**

This section does not apply to:

- (1) *excluded communications*; or
- (2) *financial promotions* to the extent that they relate to *local authority securities*.

4.12B.5

G

Purpose and overview of the rules

- (1) The *rules* in this section are intended to ensure that *financial promotions* relating to *non-mass market investments* are not communicated to ordinary retail investors. They do not apply to *excluded communications*, to *financial promotions* to the extent that they relate to *local authority securities* or to *financial promotions* insofar as they are directed at *clients* other than *retail clients*.
- (2) The *rules* in this section reflect the often complex and high-risk nature of *non-mass market investments*.
- (3) The *rules* in this section therefore restrict *firms* from *approving* or *communicating financial promotions* in relation to *non-mass market investments* which are addressed to, or disseminated in such a way that they are likely to be received by, a *retail client*, subject to certain exemptions.
- (4) The exemptions referred to in (3) are set out in ■ COBS 4.12B.7R(5).
- (5) (a) *Firms* must also comply with ■ COBS 4.12B.7R(1)(b) and the *rules* in ■ COBS 4.12B.14R to ■ COBS 4.12B.30R (see (b) below) where:
 - (i) the *financial promotion* relates to a *non-mass market investment*; and
 - (ii) the *firm* wishes to rely on exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors).
 (b) ■ COBS 4.12B.7R(1)(b) and ■ COBS 4.12B.14R to ■ COBS 4.12B.31G cover:
 - (i) preliminary assessment of suitability (in relation to exemptions 9 and 11);
 - (ii) personalised risk warning, risk summary and cooling off period;
 - (iii) risk warnings; and
 - (iv) monetary and non-monetary incentives.
 (5A) ■ COBS 4.12B.17R requires that a *financial promotion* which relates to a *non-mass market investment* does not offer to any *retail client* any form of incentive. The purpose of this *rule* is to ensure that retail clients are not persuaded or incited to engage in investment activity relating to a *non-mass market investment* other than by reference to the features of the investment activity that is the subject of the *financial promotion*.
- (6) Where the *financial promotion* relates to a *speculative illiquid security*, *firms* must also comply with ■ COBS 4.12B.32R, ■ COBS 4.12B.33R and ■ COBS 4.12B.35R which relate to the disclosure of costs, charges and commission.
- (7) The table below explains how the *rules* apply and to which *non-mass market investments* the *rules* apply, after the provisions in ■ COBS 4.12B.4R have been applied.

Handbook provision	Description of the provision	Which investments does the provision apply to	When does the provision apply
COBS 4.12B.6R	<i>Firms</i> must not communicate or	All <i>non-mass market investments</i>	At all times.

Handbook provision	Description of the provision	Which investments does the provision apply to	When does the provision apply
	<i>approve financial promotions in relation to non-mass market investments to retail clients</i>	other than units in unregulated collective investment schemes	
COBS 4.12B.7R(1)(b)	<i>Firms must carry out a preliminary assessment of suitability</i>	All non-mass market investments	Before the financial promotion is communicated to a certified high net worth investor or self-certified sophisticated investor in reliance on the relevant exemption in COBS 4.12B.7R(5)
COBS 4.12B.14R and COBS 4.12B.15R	<i>Firms must ensure that a personalised risk warning and summary of the risks is made available to the client and a period of at least 24 hours (the 'cooling off period') is applied before the financial promotion is communicated</i>	All non-mass market investments except for securities in a closed-ended investment fund (i) applying for, or with, a listing in the closed-ended investment funds category and (ii) which complies with the requirements of UKLR 11	Before the financial promotion is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)
COBS 4.12B.17R	<i>Restrictions on monetary and non-monetary benefits being included within the financial promotions</i>	All non-mass market investments	At the time the financial promotion is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)
COBS 4.12B.20R, COBS 4.12B.21R, COBS 4.12B.24R, and COBS 4.12B.26R	<i>Firms must ensure that a risk warning is provided to the client</i>	All non-mass market investments except for securities in a closed-ended investment fund (i) applying for, or with, a listing in the closed-ended invest-	At the time the financial promotion is communicated to a certified high net worth investor, self-certified sophisticated investor or certi-

Handbook provision	Description of the provision	Which investments does the provision apply to	When does the provision apply
COBS 4.12B.32R, COBS 4.12B.33R, and COBS 4.12B.35R	<i>Firms must ensure that statements disclosing all costs, charges and commission are provided to the client</i>	<i>ment funds category; and (ii) which complies with the requirements of UKLR 11</i>	<i>fied sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)</i>

- (8) There is *guidance* in ■ COBS 4.12B.43G to ■ 4.12B.45G on the application of the exemptions set out in the table in ■ COBS 4.12B.7R(5).

Promotion of non-mass market investments

4.12B.6

R

- (1) A firm must not communicate or approve a *financial promotion* which relates to a *non-mass market investment* where that *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.
- (2) The restriction in (1) is subject to ■ COBS 4.12B.7R and does not apply to *units in unregulated collective investment schemes*, which are subject to a statutory restriction on promotion in section 238 of the Act.

Exemptions from the restrictions on the promotion of non-mass market investments

4.12B.7

R

- (1) The restriction in ■ COBS 4.12B.6R does not apply if the following conditions are met:
 - (a) the *financial promotion* falls within an applicable exemption in the first column in the table in (5) because either:
 - (i) it is made to, or directed at, only those recipients whom the *firm communicating the financial promotion* has taken reasonable steps to establish are *persons* in the second column of the table; or
 - (ii) the *firm approving the financial promotion* has taken reasonable steps to establish that the *financial promotion* will be made to, or directed at, only those recipients who are *persons* in the second column of the table;
 - (b) where the third column of the table refers to the need for a preliminary assessment of suitability, that assessment is undertaken before the *financial promotion* is made to or directed at the recipient;

- (c) the *firm* complies with the relevant *rules* in ■ COBS 4.12B.14R to ■ 4.12B.35R relating to the use of exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors), as provided by ■ COBS 4.12B.7R(5).
- (2) For the purposes of ■ COBS 4.12B.7R(1)(a), a *firm* will have taken reasonable steps to establish that the recipients of the *financial promotion* are *persons* in the second column of the table where the *firm* has:
- obtained the relevant completed certificate from the *retail client*; and
 - satisfied itself that the *retail client's* completion of the certificate evidences that the *retail client* meets the criteria to be certified as such.
- (3) Where a *firm approves or communicates a financial promotion* the preliminary assessment of suitability required by ■ COBS 4.12B.7R(1)(b) must be undertaken by that *firm*.
- (4) A *firm* may rely on more than one exemption in relation to the same *financial promotion*.
■ 5)

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
Exemptions applicable to promotions of non-mainstream pooled investments only:		
1. Replacement products and rights issues	A person who already participates in, owns, holds rights to or interests in, a <i>non-mainstream pooled investment</i> that is being liquidated or wound down or which is undergoing a rights issue. [See Note 1.]	<p>1. A <i>non-mainstream pooled investment</i> which is intended by the operator or manager to absorb or take over the assets of that <i>non-mainstream pooled investment</i>, or which is being offered by the operator or manager of that <i>non-mainstream pooled investment</i> as an alternative to cash on its liquidation;</p> <p>or</p> <p>2. <i>Securities</i> offered by the existing <i>non-mainstream pooled investment</i> as part of a rights issue.</p>
2. Enterprise and charitable funds	A person who is eligible to participate or invest in an arrangement constituted under: (1) the Church Funds Investment Measure 1958 (available at https://www.legislation.gov.uk/ukcm/Eliz2/6-7/1); (2) section 96 or 100 of the	Any <i>non-mainstream pooled investment</i> which is such an arrangement.

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
	<p>Charities Act 2011 https://www.legislation.gov.uk/pqa/2011/25);</p> <p>(3) section 25 of the Charities Act (Northern Ireland) 1964 (available at https://www.legislation.gov.uk/apni/1964/33/section/25);</p> <p>(4) the Regulation on European Venture Capital Funds ('EuVECAs') or the <i>RVECA Regulation</i> ('RVECAs'); or</p> <p>(5) the Regulation on European Social Entrepreneurship Funds ('EuSEFs') or the <i>SEF Regulation</i> ('SEFs').</p>	
3. Eligible employees	<p>An eligible employee, that is, a person who is:</p> <ul style="list-style-type: none"> (1) an officer; (2) an employee; (3) a former officer or employee; or (4) a member of the immediate family of any of (1) – (3), of an employer which is (or is in the 	<p>1. A <i>non-mainstream pooled investment</i>, the instrument constituting which:</p> <p>A. restricts the property of the <i>non-mainstream pooled investment</i>, apart from cash and near cash, to:</p> <ul style="list-style-type: none"> (1) (where the employer is a company) shares in and debentures of the company or any other connected company; [See Note 2.] (2) (in any case), any property, provided that the <i>non-mainstream pooled investment</i> takes the form of: (i) a limited partnership, under the terms of which the employer (or connected company) will be the unlimited partner and the eligible em-

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
	<p>same group as) the <i>firm</i>, or which has accepted responsibility for the activities of the <i>firm</i> in carrying out the <i>designated investment business</i> in question.</p>	<p>ployees will be some or all of the limited partners; or</p> <p>(ii) a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than charges) for <i>investment transactions</i> earlier entered into, which the eligible employee was not aware of at the time he entered into them; and</p> <p>B. (in a case falling within A(1) above) restricts participation in the <i>non-mainstream pooled investment</i> to eligible employees, the employer and any connected company.</p> <p>2. Any <i>non-mainstream pooled investment</i>, provided that the participation of eligible employees is to facilitate their co-investment:</p> <p>(i) with one or more <i>companies</i> in the same group as their employer (which may include the employer); or</p> <p>(ii) with one or more <i>clients</i> of such a company.</p>
4. Members of the Society of Lloyd's	A person admitted to membership of the Society of Lloyd's or any person by law entitled or bound to administer his affairs.	A scheme in the form of a limited partnership which is established for the sole purpose of underwriting <i>insurance business</i> at Lloyd's.
5. Exempt Persons	An exempt person (other than a person exempted only by section 39 of the Act (Exemption of appointed representatives) (available at https://www.legislation.gov.uk/ukpga/2000/8/section/39) if the financial promotion relates to a regulated activity in respect of	Any <i>non-mainstream pooled investment</i> .

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
	which the person is exempt from the general prohibition.	
6. Non-retail clients	An eligible counterparty or a professional client.	Any <i>non-mainstream pooled investment</i> in relation to which the <i>client</i> is categorised as a <i>professional client</i> or <i>eligible counterparty</i> . [See Note 4.]
7. Solicited advice	Any person.	Any <i>non-mainstream pooled investment</i> , provided the communication meets all of the following requirements: <ul style="list-style-type: none"> (a) the communication only amounts to a <i>financial promotion</i> because it is a <i>personal recommendation</i> on a <i>non-mainstream pooled investment</i>; (b) the <i>personal recommendation</i> is made following a specific request by that <i>client</i> for advice on the merits of investing in the <i>non-mainstream pooled investment</i>; and (c) the <i>client</i> has not previously received a <i>financial promotion</i> or any other communication from the <i>firm</i> (or from a <i>person connected to the firm</i>) which is intended to influence the <i>client</i> in relation to that <i>non-mainstream pooled investment</i> [See Note 3.]
8. US persons	A person who is classified as a United States person for tax purposes under United States legislation or who owns a US qualified retirement plan.	Any investment company registered and operated in the United States under the Investment Company Act 1940.
Exemptions applicable to promotions of all non-mass market investments:		
9. Certified high net worth investor	An individual who meets the requirements set out in COBS 4.12B.38R or a person (or persons) legally empowered to make investment decisions on behalf of the person.	Any <i>non-mass market investment</i> the <i>firm</i> considers is likely to be suitable for that individual, based on a preliminary assessment of the <i>client's profile</i> and objectives. [See COBS 4.12B.9G(2).]

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
10. Certified sophisticated investor	half of such an individual. An individual who meets the requirements set out in COBS 4.12B.39R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the <i>firm's client</i> .	Any <i>non-mass market investment</i> .
11. Self-certified sophisticated investor	An individual who meets the requirements set out in COBS 4.12B.40R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the <i>firm's client</i> .	Any <i>non-mass market investment</i> the <i>firm</i> considers is likely to be suitable for that individual, based on a preliminary assessment of the <i>client's profile</i> and objectives. [See COBS 4.12B.9G(2)].

The following Notes explain certain words and phrases used in the table above.

Note 1 Promotion of *non-mainstream pooled investments* to a category of person includes any nominee company acting for such a person.

Note 2 A *company* is 'connected' with another *company* if:
they are both in the same *group*; or
one *company* is entitled, either alone or with another *company* in the same *group*, to exercise or control the exercise of a majority of the voting rights attributable to the *share capital*, which are exercisable in all circumstances at any general meeting of the other *company* or of its *holding company*.

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
Note 3	A person is connected with a firm if it acts as an introducer or appointed representative for that firm or if it is any other person, regardless of authorisation status, who has a relevant business relationship with the firm.	
Note 4	In deciding whether a promotion is permitted under the rules of this section or under section 238 of the Act, firms may use the client categorisation regime that applies to business other than MiFID or equivalent third country business. (This is the case even if the firm will be carrying on a MiFID activity at the same time as or following the promotion.)	

- 4.12B.8** **R** A firm may communicate an invitation or inducement to participate in an unregulated collective investment scheme without breaching the restriction on promotion in section 238 of the Act if the promotion falls within an exemption in the table in ■ COBS 4.12B.7R(5) and is in accordance with ■ COBS 4.12B.7R(1).

Advice and preliminary assessment of suitability

- 4.12B.9** **G**
- (1) Where a firm communicates any promotion of a non-mass market investment in the context of advice, it should have regard to and comply with its obligations under ■ COBS 9 or ■ 9A (as applicable). Firms should also be mindful of the appropriateness requirements in ■ COBS 10 and ■ 10A which apply to a wide range of non-advised services.
 - (2)
 - (a) The effect of ■ COBS 4.12B.7R(1)(b) is that where a firm wishes to rely on exemptions 9 (certified high net worth investors) or 11 (self-certified sophisticated investors), as provided by ■ COBS 4.12B.7R(5), the preliminary assessment of suitability must be undertaken before promotion of the non-mass market investment is made to or directed at clients (in addition to other requirements). Where a firm approves or communicates a financial promotion the preliminary assessment of suitability must be undertaken by that firm as required by ■ COBS 4.12B.7R(3).
 - (b) There is no duty to communicate the preliminary assessment of suitability to the client. If the firm does so, it must not do so in a way that amounts to making a personal recommendation unless it complies with the rules in ■ COBS 9 or ■ 9A (as applicable) on suitability.
 - (c) The requirement for a preliminary assessment of suitability does not extend to a full suitability assessment, unless advice is being offered in relation to the non-mass market investment being promoted, in which case the requirements in ■ COBS 9 or ■ 9A apply (as applicable). However, it requires that the firm takes reasonable steps to acquaint itself with the client's profile and objectives in order to ascertain whether the non-mass market investment under contemplation is likely to be suitable for that client. The firm should not promote the non-mass market investment to the client if it does not consider it likely to be suitable for that client following such preliminary assessment.

4.12B.10 R

Promotions to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors

- (1) ■ COBS 4.12B.10R to ■ COBS 4.12B.31G apply to *financial promotions* which:
- relate to *non-mass market investments*; and
 - are *communicated*, or are to be *communicated*, to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors for the purposes of the exemptions in ■ COBS 4.12B.7R(5).
- (2) A *firm* may only rely on exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors) to:
- communicate a financial promotion* to which this *rule* applies if the *firm* has complied with the *rules* in ■ COBS 4.12B.14R to ■ COBS 4.12B.35R, as appropriate; or
 - approve for communication a financial promotion* to which this *rule* applies if the *firm* is satisfied that the *rules* in ■ COBS 4.12B.14R to ■ COBS 4.12B.35R, as appropriate, will be satisfied in relation to each *communication of the financial promotion*.
- (3) The conditions in ■ COBS 4.12B.14R (personalised risk warning) and ■ COBS 4.12B.15R (cooling off period) do not need to be satisfied if the *retail client* has previously received a *financial promotion* relating to a *non-mass market investment* from the same *person* as would otherwise need to satisfy them.

4.12B.11 G

Where a *firm* is relying on exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors), in accordance with ■ COBS 4.12B.7R(1)(a), it must first take reasonable steps to establish that the *retail client* falls into one of those categories and then the *firm* must undertake a preliminary assessment of suitability in accordance with ■ COBS 4.12B.7R(1)(b), where relevant. Once a *firm* has completed these steps, it must comply with the *rules* in ■ COBS 4.12B.14R to ■ COBS 4.12B.35R.

4.12B.12 G

The effect of ■ COBS 4.12B.10R(3) and related provisions in this section is that a personalised risk warning and cooling off period are only required on the first occasion that a *firm*, or other *person communicating a financial promotion, communicates a financial promotion* relating to a *non-mass market investment* to a particular *retail client*.

Risk summaries

4.12B.13 R

Where a *rule* in this section requires a *firm* to communicate a risk summary selected from ■ COBS 4 Annex 1R, the *firm* must either:

- provide the risk summary as it appears in ■ COBS 4 Annex 1R; or
- provide a version of the risk summary in ■ COBS 4 Annex 1R in appropriately amended form, provided that:
 - the *firm* has a valid reason for each amendment;

- (b) the *firm* makes a record of each amendment and the reason for it;
- (c) any alternative or additional text is in plain English; and
- (d) the amended risk summary does not take longer than around 2 minutes to read.

4.12B.13A G

For the purposes of ■ COBS 4.12B.13R(2), the following reasons are considered to be valid:

- (1) the relevant part of the risk summary in ■ COBS 4 Annex 1R would be misleading in relation to the particular *investment*;
- (2) the relevant part of the risk summary in ■ COBS 4 Annex 1R would be irrelevant in relation to the particular *investment*;
- (3) the risk summary in ■ COBS 4 Annex 1R does not include a risk that is relevant to the particular *investment*, and it is appropriate for that further risk to be included;
- (4) the sole purpose of the relevant statement in the risk summary is to include a hyperlink to a webpage and the medium of communication does not permit the incorporation of a link.

This list is not exhaustive.

Prior conditions for communication to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors

4.12B.14 R

- (1) The first condition is that before communicating the *financial promotion*, the *firm*, or other person communicating the *financial promotion*:
 - (a) obtains the *retail client's* full name; and
 - (b) having obtained the *retail client's* name, communicates to that *retail client* the following personalised risk warning:

[Client name], this is a high-risk investment. How would you feel if you lost the money you're about to invest? Take 2 mins to learn more.
- (2) If the *financial promotion* is, or is to be, communicated by means of a website, mobile application or other digital medium, the personalised risk warning in (1)(b) must:
 - (a) be clearly brought to the *retail client's* attention by means of a pop-up box (or equivalent);
 - (b) include a link which, when activated, delivers an appropriate risk summary in a further pop-up box (or equivalent):
 - (i) relating to the type of *non-mass market investment* that is the subject of the *financial promotion*; and
 - (ii) selected from ■ COBS 4 Annex 1R; and
 - (c) be accompanied by an invitation to the *retail client* to specify whether they wish to:
 - (i) leave the investment journey; or

- (ii) continue to receive the *financial promotion*.
- (3) If the *financial promotion* is, or is to be, communicated other than by means of a website, mobile application or other digital medium:
- (a) the personalised risk warning in (1)(b) must be:
- (i) provided to the *retail client* omitting the words "Take 2 mins to learn more"; and
- (ii) accompanied by an appropriate risk summary in a *durable medium* relating to the type of *non-mass market investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R; and
- (b) the *retail client* must then be invited to specify whether they wish to:
- (i) leave the investment journey; or
- (ii) continue to receive the *financial promotion*.
- (4) The options in 2(c) and (3)(b) must be presented with equal prominence.
- (5) The condition is only satisfied if the *retail client* specifies that they wish to continue to receive the *financial promotion*.
- (6) This rule does not apply to a *financial promotion* of a *closed-ended investment fund* applying for, or with, a *listing* in the *closed-ended investment funds* category and which complies with the requirements of ■ UKLR 11.
- (7) The personalised risk warning required by (2)(a) and the risk summary required by (2)(b) must comply with ■ COBS 4.12B.28R and ■ COBS 4.12B.30R.
- (8) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12B.24R and ■ COBS 4.12B.26R.

4.12B.15 R

- (1) The second condition applies if a *retail client* requests to view a *financial promotion* of a *non-mass market investment* (including of a *security* in a *closed-ended investment fund* applying for, or with, a *listing* in the *closed-ended investment funds* category and which complies with the requirements of ■ UKLR 11).
- (2) The second condition is that, before communicating the *financial promotion*, the *firm* or other person communicating the *financial promotion*:
- (a) allows a period of at least 24 hours (the 'cooling off period') to elapse;
- (b) following the lapse of time in (a), invites the *retail client* to specify whether they wish to:
- (i) leave the investment journey; or
- (ii) continue to receive the *financial promotion*; and
- (c) the *retail client* specifies that they wish to continue to receive the *financial promotion*.
- (3) The options in (2)(b) must be presented with equal prominence.

4.12B.16 G ■ COBS 4.12B.15R does not prevent the person who is subject to it from engaging with the *retail client* during the cooling off period. This includes for the purposes of providing the *client* with the personalised risk warning required by ■ COBS 4.12B.14R and obtaining the information necessary to undertake the preliminary assessment of suitability required by ■ COBS 4.12B.7R(1)(b).

Restrictions on monetary and non-monetary incentives.....

4.12B.17 R (1) A firm must not communicate or approve a *financial promotion* which relates to a *non-mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive.

(2) The rule in (1) does not apply to a product or service produced or provided by the *person*, or a member of the *group* of the *person*, who will benefit from the proceeds of the investment.

(3) The rule in (1) does not apply where the incentive is:

- (a) offered for the exclusive purpose of encouraging a *retail client* to transfer their existing holding of one or more *non-mass market investments* from an existing arrangement with one *person* to a different arrangement with another *person*; and
- (b) not structured in such a way as to encourage further investment in any *non-mass market investment*.

4.12B.18 G For the purposes of ■ COBS 4.12B.17R monetary and non-monetary incentives include, but are not limited to:

- (1) offering bonuses when investing in a *non-mass market investment*;
- (2) offering bonuses where the *client* refers another *person*;
- (3) offering cashback when investing in a *non-mass market investment*;
- (4) offering discounts or rebates on fees paid that are linked to volumes of trades made in *non-mass market investments*;
- (5) offering free gifts once an investment in a *non-mass market investment* has been made such as laptops or mobile telephones; or
- (6) offering any additional free *investments* or offering discounts on *investments*.

4.12B.19 G (1) Information and research tools do not constitute non-monetary incentives.

(2) Lower fees or charges not linked to volumes of trades, made available to all *retail clients*, do not constitute a monetary incentive.

(3) The effect of ■ COBS 4.12B.17R(3) is that a *financial promotion* may offer an incentive to transfer an existing holding of a *non-mass market investment* (for example, from one platform to another). However, the incentive must relate solely to the transfer and must not be used to encourage *retail clients* to otherwise engage in *investment activity* in relation to *non-mass market investments*.

4.12B.19A G

Subject to ■ COBS 4.12B.18G and ■ COBS 4.12B.19G, the following factors are relevant in determining whether a benefit is an incentive:

- (1) A benefit which is intrinsically connected with the *investment* or investment activity that is the subject of the *financial promotion* is unlikely to constitute an incentive – for example, voting rights which are carried by a share. However, a benefit which is entirely separable from the *investment* or investment activity that is the subject of the *financial promotion* is likely to be an incentive.
- (2) A benefit which is only available for a fixed period of time, or is contingent upon investing in a *non-mass market investment* in the future, is likely to constitute an incentive. This would not include, for example, a benefit which is offered in connection with a specified event such as the first close of an investment.
- (3) A benefit which is only available to *retail clients* who invest through a particular medium is likely to constitute an incentive – for example, a benefit which is only offered to *retail clients* who invest via a social media link.

4.12B.19B G

- (1) ■ COBS 4.12B.17R applies irrespective of the nature of the investment activity. This means that the *rule* applies not only in relation to incentives to *buy non-mass market investments* but also, for example, to incentives to enter into agreements for the purposes of transacting in *non-mass market investments*.
- (2) The rationale for offering the incentive is immaterial. This means that the *rule* applies to incentives which are intended, for example, to encourage *retail clients* to make investments ahead of the end of the tax year.

Risk warning to be included in the financial promotion

4.12B.20 R

A firm must not communicate or approve a *financial promotion* which relates to a *non-mass market investment* unless it contains a risk warning that complies with ■ COBS 4.12B.21R.

4.12B.21 R

- (1) For the purposes of ■ COBS 4.12B.20R the *financial promotion* must contain the following risk warning:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong.

- (2) Where the number of characters contained in the risk warning in (1) exceeds the number of characters permitted by a third-party marketing provider, the following risk warning must be used:

Don't invest unless you're prepared to lose all the money you invest.

- (3) Where the *financial promotion* is, or is to be, communicated by way of a website, mobile application or other digital medium:
 - (a) the risk warning in (1) or (2) must also include a link:
 - (i) in the form of the text: Take 2 mins to learn more; and

- (ii) which, when activated, delivers an appropriate risk summary in a pop-up box (or equivalent) relating to the type of *non-mass market investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R;
- (b) the link required by (3)(a) need not be:
 - (i) in the form required by 3(a)(i) if the inclusion of that additional text would exceed the number of characters permitted by a third-party marketing provider;
 - (ii) provided if the medium of communication does not allow the incorporation of a link.
- (4) Where the *financial promotion* is communicated other than by way of a website, mobile application or other digital medium (and including where the *financial promotion* is a *real time financial promotion*), the risk warning in (1) must be:
 - (a) provided:
 - (i) in a *durable medium*; or
 - (ii) if the medium of communication means that the risk warning cannot be provided in a *durable medium*, in a manner appropriate to the medium of communication; and
 - (b) however the *financial promotion* is communicated, accompanied by an appropriate risk summary in a *durable medium* relating to the type of *non-mass market investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R.
- (5) (a) A *firm* must omit the words "and you are unlikely to be protected if something goes wrong" from the risk warning required by (1) if the conditions in (b) apply.
 - (b) The conditions are that:
 - (i) the *financial promotion* relates to an *investment*:
 - (A) that is issued by; or
 - (B) the provision of which involves a, *participant firm* or an *appointed representative* of a *participant firm*; and
 - (ii) the activity of the person in (i) is of a type that could give rise to a *protected claim*.
 - (c) A *firm* that omits the words in (a) must make a record of the basis on which the conditions in (b) are met.
- (6) This *rule* does not apply to a *financial promotion* of a *closed-ended investment fund* applying for, or with, a *listing* in the *closed-ended investment funds* category and which complies with the requirements of ■ UKLR 11.
- (7) The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with ■ COBS 4.12B.24R and ■ COBS 4.12B.26R.
- (8) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12B.28R and ■ COBS 4.12B.30R.

- 4.12B.22 G**
- (1) Reference in ■ COBS 4.12B.21R(5)(b)(i)(B) to the 'provision' of an *investment* is to a *person* developing, managing or packaging an *investment* such as an *operator*. It does not refer to *persons* involved in distributing, or intermediating the sale of, an *investment* such as a *financial adviser* or a *person arranging investments*.
- (2) A *firm* relying on ■ COBS 4.12B.21R(5) should consider obtaining external legal advice (from legal advisers with relevant expertise and experience) on the appropriateness of omitting the words in that *rule* from a risk warning. Any such advice should be recorded as part of the *firm's* compliance with ■ COBS 4.12B.21R(5)(c).
- 4.12B.23 G**
- Even where it is not possible to provide a risk warning in a *durable medium* (for example, because the *financial promotion* is a *real time financial promotion*), the recipient of the *financial promotion* must still be provided with an appropriate risk summary in a *durable medium* at or around the time that the *financial promotion* is communicated (■ COBS 4.12B.21R(4)).
- Requirements of risk warnings and non-digital risk summaries**
- 4.12B.24 R**
- (1) The relevant risk warning in ■ COBS 4.12B.21R(1) or ■ (2) and the relevant risk summaries in ■ COBS 4.12B.14R(3)(a)(ii) and ■ COBS 4.12B.21R(4)(b) must:
- (a) be prominent, taking into account the content, size and orientation of the *financial promotion* as a whole;
- (b) except where the risk warning cannot be provided in writing, be clearly legible, contained within its own border and with bold and underlined text as indicated in ■ COBS 4.12B.21R or ■ COBS 4 Annex 1R.
- (2) The relevant risk warning in ■ COBS 4.12B.21R(1) or ■ (2) must, if the *financial promotion* is, or is to be, *communicated* by means of a website or mobile application:
- (a) be statically fixed and visible at the top of the screen, below anything else that also stays static, even when the *retail client* scrolls up or down the webpage; and
- (b) be included as described in (a) on each linked webpage on the website or page on the application relating to the *non-mass market investment*.
- 4.12B.25 G**
- The FCA expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing how the risk warning will be displayed: <https://www.w3.org/WAI/WCAG21/quickref>
- 4.12B.26 R**
- The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the risk warning or risk summary.
- [Note: The FCA has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fq-fin-proms-prominence.pdf>]

- 4.12B.27 G** For the purposes of ■ COBS 4.12B.26R, design features which might reduce the visibility or prominence of a risk warning or risk summary include, but are not limited to:
- (1) using a font size for the risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
 - (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *client* to read the text;
 - (3) fading the text of the risk warning or risk summary;
 - (4) placing the risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
 - (5) requiring additional links to be clicked in order for the full text of the risk warning to be seen;
 - (6) using a font or background in the risk warning or risk summary in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
 - (7) using a font or background in the risk warning or risk summary in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk warning or risk summary from other forms of information.

Requirements of digital personalised risk warnings and digital risk summaries

- 4.12B.28 R** The relevant personalised risk warning in ■ COBS 4.12B.14R(2) and the relevant risk summaries in ■ COBS 4.12B.14R(2)(b) and ■ COBS 4.12B.21R(3)(a)(ii) must be:
- (1) prominently brought to the *retail client's* attention, taking into account the content, size and orientation of the *financial promotion* as a whole;
 - (2) clearly legible, contained within its own border and with bold and underlined text as indicated in ■ COBS 4.12B.14R(1)(b) and ■ COBS 4 Annex 1R;
 - (3) statically fixed and visible in the middle of the screen; and
 - (4) the main focus of the screen.

- 4.12B.29 G** The FCA expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing how the personalised risk warning or risk summary will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>

- 4.12B.30 R** The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the personalised risk warning or risk summary.
[Note: The FCA has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fq-fin-proms-prominence.pdf>]

4.12B.31 G For the purposes of ■ COBS 4.12B.30R, design features which might reduce the visibility or prominence of a personalised risk warning or risk summary include, but are not limited to:

- (1) using a font size for the personalised risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *retail client* to read the text;
- (3) fading the text of the personalised risk warning or risk summary;
- (4) placing the personalised risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional actions to be taken by the *retail client*, such as requiring additional links to be clicked in order for the full text of the personalised risk warning or risk summary to be seen;
- (6) using a font or background in the risk warning in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the personalised risk warning or risk summary from other forms of information.

Further requirement to include a statement of costs, charges and commission where the financial promotion relates to speculative illiquid securities

4.12B.32 R A *firm* must not communicate or approve a *financial promotion* which relates to a *speculative illiquid security* to, or for communication to, a *retail client* unless it contains statements that comply with ■ COBS 4.12B.33R.

4.12B.33 R For the purposes of ■ COBS 4.12B.33R, the *financial promotion* must contain:

- (1) a statement which expresses as a percentage the total amount of the capital raised by the issue of the *speculative illiquid security* which will be paid out in costs, fees, charges and commissions and other expenses to any third party;
- (2) a statement which expresses as a cash sum the percentage referred to in (1) above; and
- (3) in addition to the statements in (1) and (2) above, a statement which provides a breakdown of the actual or potential expenditure to be paid out of an investor's capital and details of the third party (or parties) who will receive it.

4.12B.34 G (1) There is an illustration of how a *firm* should comply with ■ COBS 4.12B.33R(2) in (2) below.

- (2) Where a *firm* pays 30% of the total amount of capital raised by the issue of *speculative illiquid securities* towards costs, fees, charges and

4.12B.35 R

commissions and other expenses to any third party, the statement should say: “**For every £100 you invest, £30 will be paid to third parties to meet costs, fees, charges and commissions.**”

The statements providing the percentage figure in ■ COBS 4.12B.33R(1) and the cash sum in ■ COBS 4.12B.33R(2) must:

- (1) be prominent;
- (2) be contained together within their own border and with bold text;
- (3) immediately follow the most prominent reference to the expected return on the *speculative illiquid security*; and
- (4) be published so that they are clearly legible against a neutral background.

4.12B.36 G

The statement providing the breakdown of expenditure in ■ COBS 4.12B.33R(3) should be included in the *financial promotion* in a clear and prominent way.

4.12B.37 G

The purpose of the statements required by ■ COBS 4.12B.33R is to enable an investor to consider the proportion of capital raised by an issue of a *speculative illiquid security* that will not be invested. This information should help the investor to assess the risk that the *issuer* will be unable to pay any advertised interest payments, other income or otherwise to repay the investor's capital at maturity.

Definition of sophisticated and high net worth investors

4.12B.38 R

A certified high net worth investor is an individual who has completed and signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the terms set out in ■ COBS 4 Annex 2R, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

4.12B.39 R

A certified sophisticated investor is an individual:

- (1) who has a written certificate signed within the last 36 *months* by a *firm* confirming they have been assessed by that *firm* as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in *non-mass market investments*; and
- (2) who has completed and signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the terms set out in ■ COBS 4 Annex 3R, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

4.12B.40 R

A self-certified sophisticated investor is an individual who has completed and signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the terms set out in ■ COBS 4 Annex 4R, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

4.12B.41 **G** Where the *financial promotion* will relate to more than one type of *non-mass market investment*, the *retail client* may sign a combined statement that meets the requirements in ■ COBS 4 Annex 2R to ■ COBS 4 Annex 4R, as applicable, in respect of each type of *non-mass market investment* to which the *financial promotion* will relate.

4.12B.42 **R** A *firm* must not:

- (1) influence, or seek to influence, the information that a *retail client* provides when completing a certificate for the purposes of ■ COBS 4.12B.38R to ■ COBS 4.12B.40R; or
- (2) encourage a *retail client* to complete a further certificate in the event that a *client's* signed certificate indicates that they do not meet the criteria to be categorised as a certified high net worth investor, certified sophisticated investor or self-certified sophisticated investor, as applicable.

Sophisticated and high net worth investors: guidance on certification by authorised person and reliance on self-certification

4.12B.43 **G**

- (1) A *firm* which wishes to rely on any of the *certified high net worth investor* exemptions (see Part I of the Schedule to the *Promotion of Collective Investment Schemes Order*, Part I of Schedule 5 to the *Financial Promotion Order* and ■ COBS 4.12B.38R) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should take reasonable steps to ascertain that the *retail client* does, in fact, meet the income and net assets criteria set out in the relevant statement for *certified high net worth investors*.
- (2) In addition, the *firm* should consider whether the promotion of the *non-mass market investment* is in the interests of the *retail client* and whether it is fair to make the promotion to that *client* on the basis that the *client* is a *certified high net worth investor*, having regard to the generally complex nature of *non-mass market investments*. A *retail client* who meets the criteria for a *certified high net worth investor* but not for a *certified sophisticated investor* may be unable to properly understand and evaluate the risks of the *non-mass market investment* in question.

4.12B.44 **G**

- (1) A *firm* which is asked to or proposes to assess and certify a *retail client* as a *certified sophisticated investor* (see article 23 of the *Promotion of Collective Investment Schemes Order*, article 50 of the *Financial Promotion Order* and ■ COBS 4.12B.39R) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should carry out that assessment with due skill, care and diligence, having regard to the generally complex nature of *non-mass market investments* and the level of experience, knowledge and expertise that the *retail client* being assessed must possess in order to be fairly and reasonably assessed and certified as a sophisticated investor.
- (2) (a) For example, a *retail client* whose *investment* experience is limited to mainstream *investments* such as regularly traded *securities* issued by *listed companies*, *life policies* or *units* in

regulated collective investment schemes (other than *qualified investor schemes*) is generally unlikely to possess the requisite knowledge to adequately understand the risks associated with investing in *non-mass market investments*.

- (b) In exceptional circumstances, however, the *retail client* may have acquired the requisite knowledge through means other than their own investment experience, for example, if the *retail client* is a professional of several years' experience with the design, operation or marketing of complex investments such as *options*, *futures*, *contracts for differences* or *non-mass market investments*.

4.12B.45 G

- (1) A *firm* which wishes to rely on any of the *self-certified sophisticated investor* exemptions (see Part II of the Schedule to the *Promotion of Collective Investment Schemes Order*, Part II of Schedule 5 to the *Financial Promotion Order* and ■ COBS 4.12B.40R) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should consider whether the promotion of the *non-mass market investment* is in the interests of the *client* and whether it is fair to make the promotion to that *client* on the basis of self-certification.
- (2) For example, it is unlikely to be appropriate for a *firm* to make a promotion under any of the *self-certified sophisticated investor* exemptions without first taking reasonable steps to satisfy itself that the investor does in fact have the requisite experience, knowledge or expertise to understand the risks of the *non-mass market investment* in question. A *retail client* who meets the criteria for a *self-certified sophisticated investor* but not for a *certified sophisticated investor* may be unable to properly understand and evaluate the risks of a *non-mass market investment*.

One-off promotions

4.12B.46 G

- (1) A *firm* which wishes to rely on one of the *one-off promotion* exemptions provided by the *Promotion of Collective Investment Schemes Order* or the *Financial Promotion Order* to promote a *non-mass market investment* to a *retail client* should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should consider whether the *financial promotion* of the *non-mass market investment* is in the interests of the *client* and whether it is fair to make the *financial promotion* to that *client* on the basis of a *one-off promotion* exemption.
- (2) The *one-off promotion* exemptions permit the promotion of investments to *clients* under certain conditions (see ■ PERG 8.14.3G to ■ PERG 8.14.13G for guidance on the scope of the one-off exemptions in the *Financial Promotion Order*). *Firms* should note that, in the FCA's view, promotion of a *non-mass market investment* to a *retail client* who is not a *certified high net worth investor*, a *certified sophisticated investor* or a *self-certified sophisticated investor* is unlikely to be appropriate or in that *client's best interests*.

Qualified investor schemes

4.12B.47 G

- (1) A *firm* which wishes to promote *units* in a *qualified investor scheme* to a *retail client* in circumstances where the *firm* considers the

financial promotion to be an excluded communication (see ■ COBS 4.12B.4R(1)) should have regard to its duties under the Principles and the client's best interests rule.

- (2) As explained in ■ COLL 8.1, qualified investor schemes are intended only for professional clients and retail clients who are sophisticated investors. Firms should note that, in the FCA's view, promotion of units in a qualified investor scheme to a retail client who is not a certified sophisticated investor or a self-certified sophisticated investor is unlikely to be appropriate or in that client's best interests.

4.12B.48 G [deleted.]

Electronic documents

4.12B.49 G In this section:

- (1) any requirement that a document is signed may be satisfied by an electronic signature or electronic evidence of assent; and
- (2) any references to writing should be construed in accordance with ■ GEN 2.2.14R and its related guidance provisions.

Definition of speculative illiquid security

4.12B.50 R Subject to ■ COBS 4.12B.52R to ■ COBS 4.12B.54R, a *speculative illiquid security* is a debenture or preference share which:

- (1) has a denomination or minimum investment of less than £100,000 (or an equivalent amount as defined in ■ COBS 4.12B.51R); and
- (2) has been issued, or is to be issued, in circumstances where the issuer or a member of the issuer's group uses, will use or purports to use some or all of the proceeds of the issue directly or indirectly for one or more of the following:
 - (a) the provision of loans or finance to any person other than a member of the issuer's group;
 - (b) buying or acquiring specified investments (whether they are to be held directly or indirectly);
 - (c) buying or acquiring investments other than specified investments (whether they are to be held directly or indirectly);
 - (d) buying real property or an interest in real property (whether it is to be held directly or indirectly);
 - (e) paying for or funding the construction of real property.

4.12B.51 R For the purposes of ■ COBS 4.12B.50R(1):

- (1) an equivalent amount in relation to an amount denominated in any currency other than sterling is an amount of equal value denominated wholly or partly in another currency; and
- (2) the equivalent amount is to be calculated at the latest practicable date before (but in any event not more than three business days before) the date of the issue of debentures or preference shares.

- 4.12B.52 R** A *debenture or preference share* that does not otherwise fall within ■ COBS 4.12B.50R is not a *speculative illiquid security* by virtue only of the fact that the proceeds of the issue are used to *buy or acquire specified investments* as part of the ordinary cash management activities or treasury functions of an *issuer* (or its *group*) carrying on a general commercial or industrial purpose as defined in ■ COBS 4.12B.54R(1).
- 4.12B.53 R** For the purposes of ■ COBS 4.12B.50R, and notwithstanding the exemption for *readily realisable securities* in ■ COBS 4.12B.54R(3)(d), a *debenture* is also a *speculative illiquid security* if:
- (1) it meets the conditions set out in ■ COBS 4.12B.50R; and
 - (2) it:
 - (a) is admitted to official listing on an exchange in the *United Kingdom* or an *EEA State*; and
 - (b) is not regularly traded on or under the rules of such an exchange; or
 - (3) it:
 - (a) is a newly issued *debenture* which can be reasonably expected to be admitted to official listing on an exchange in the *United Kingdom* or an *EEA State*; and
 - (b) cannot reasonably be expected to be regularly traded on or under the rules of such an exchange when it begins to be traded.
- 4.12B.54 R** A *debenture or preference share* is not a *speculative illiquid security* where one or more of the exemptions in (1), (3) or (4) below applies.
- (1) This exemption applies where:
 - (a) the *issuer* or a member of the *issuer's group* uses the proceeds of the issue for the purpose of the activities in ■ COBS 4.12B.50R(2)(c) (*buying or acquiring investments other than specified investments*), (d) (*buying real property or an interest in real property*) or (e) (*paying for or funding the construction of real property*); and
 - (b) the relevant property or *investment* is or will be used by the *issuer* or a member of the *issuer's group* for a general commercial or industrial purpose which it carries on.
 - (2) The exemption in (1) will not apply in respect of a *debenture or preference share* within ■ COBS 4.12B.50R(2)(d) or ■ (e) if the ability of the *issuer* to pay in relation to the *debenture or preference share*:
 - (a) any *coupon* or other income; and/or
 - (b) capital at maturity,is wholly or predominantly linked to, contingent on, highly sensitive to, or dependent, on a return generated as a result of the matters referred to in ■ COBS 4.12B.50R(2)(d) or ■ (e).
 - (3) This exemption applies where the *debenture or preference share* is:
 - (a) issued, or to be issued, by a *credit institution*;
 - (b) issued, or to be issued, by an *investment trust*;

- (c) a *non-mainstream pooled investment*;
 - (d) a *readily realisable security* except for a *debenture* within ■ COBS 4.12B.53R; or
 - (e) a *P2P agreement*.
- (4) This exemption applies where:
- (a) the *issuer* is:
 - (i) a *property holding vehicle*; or
 - (ii) a *single-company holding vehicle*;
 - (b) any *financial promotions* made relating to the investment comply with ■ COBS 4.12A as appropriate; and
 - (c) any *financial promotion* made relating to a *single-company holding vehicle* clearly and prominently states which *single company* the investment relates to.

4.12B.55 R

- (1) For the purposes of ■ COBS 4.12B.54R(1)(b), a general commercial or industrial purpose includes the following:
 - (a) a commercial activity, involving the purchase, sale and/or exchange of goods or commodities and/or the supply of services; or
 - (b) an industrial activity involving the production of goods; or
 - (c) a combination of (a) and (b).
- (2) For the purposes of ■ COBS 4.12B.54R(1)(b), a general commercial or industrial purpose does not include:
 - (a) investment to generate a pooled return;
 - (b) property development or construction services; and
 - (c) hiring, leasing or rental services.

Guidance on general commercial or industrial purpose

4.12B.56 G

- (1) ■ COBS 4.12B.50R provides that a *debenture* or *preference share* will fall within the definition of a *speculative illiquid security* where the proceeds of the issue are to be used by the *issuer* or a member of the *issuer's group* to fund various activities including *buying* or *acquiring investments* (other than *specified investments*) or the *buying* or construction of real property.
- (2) However, ■ COBS 4.12B.54R(1) provides an exemption in cases where the *investments* (other than *specified investments*) that are bought or acquired, or the property which is bought or constructed are or will be used by the *issuer* or a member of the *issuer's group* for a general commercial or industrial purpose which it carries on.
- (3) General commercial or industrial purpose is defined in ■ COBS 4.12B.55R.
- (4) The effect of the exemption in ■ COBS 4.12B.54R(1) is that a *debenture* or *preference share* will not be a *speculative illiquid security* where the proceeds of the issue are used by the *issuer* or a member of the *issuer's group* to buy or acquire *investments* (other than *specified*

investments), or to buy or construct real property, and the relevant investments or property are or will be used by the issuer or group member for the purposes of its own commercial or industrial activities. This is illustrated in the examples in (5) and (6) below.

- (5) In relation to ■ COBS 4.12B.50R(2)(c) (*buying or acquiring investments other than specified investments*):
- (a) where a *company* issues a *debenture* or *preference share* and uses the proceeds to purchase IT equipment for use in its business, to the extent that the IT equipment might be considered an *investment*, the *debenture* or *preference share* will benefit from the exemption because the IT equipment is used by the *company* for its own commercial activities (in this case, for use by its staff to provide services to customers);
 - (b) where a supermarket chain issues a *debenture* or *preference share* and uses the proceeds to purchase stock (for example wine) for sale as part of its retail business, to the extent that the wine might be considered an *investment*, the *debenture* or *preference share* will benefit from the exemption because the wine is used by the supermarket for its own commercial activities (in this case, to sell it on to its retail customers for a profit);
 - (c) where a *company* issues a *debenture* or *preference share* and uses the proceeds to buy or acquire art or fine wine as an investment, it will not benefit from the exemption because the art or fine wine will not be used by the *company* itself for its own commercial activities; if the art or fine wine is used to generate a pooled return, then the exemption would also not apply as a result of ■ COBS 4.12B.55R(2)(a); and
 - (d) where a *company* issues a *debenture* or *preference share* and uses the proceeds to purchase IT equipment for the purpose of hiring or leasing those out to another *company*, it will not benefit from the exemption because it is not using the IT equipment for its own commercial activities and hiring and leasing services are excluded from the definition of general commercial or industrial purpose as a result of ■ COBS 4.12B.55R(2)(c).
- (6) In relation to ■ COBS 4.12B.50R(2)(d) or ■ (e) (*buying or constructing real property*):
- (a) where a retailer issues a *debenture* or *preference share* and uses the proceeds to build a shop, the *debenture* or *preference share* will benefit from the exemption because the property is used by the retailer for its own commercial activities (in this case, the sale of goods);
 - (b) where a property developer issues a *debenture* or *preference share* and uses the proceeds to fund the costs of a property development or construction of property, which is intended to be sold or rented out for commercial purposes or as residential dwellings, it will not benefit from the exemption because the development will not be used by the developer itself, and property development and construction services are excluded from the definition of general commercial or industrial purpose (see ■ COBS 4.12B.55R(2)(b));
 - (c) where a *company* issues a *debenture* or *preference share* to fund the costs of constructing a power station which the *company*

intends to operate itself with a view to selling the electricity it produces, the *debenture* or *preference share* will benefit from the exemption (unless ■ COBS 4.12B.54R(2) applies). That is because it will use the property for its own commercial or industrial activities (generating electricity). However, *firms* should also consider ■ COBS 4.12B.54R(2) and the *guidance* in (7) below.

- (7) ■ COBS 4.12B.54R(2) provides that the general commercial or industrial purposes exemption does not apply where the ability of the issuer to pay the *coupon* or other income or to repay capital on maturity in relation to the *debenture* or *preference share* is wholly or predominantly linked to, contingent on, highly sensitive to, or dependent on, a return generated as a result of the matters referred to in ■ COBS 4.12B.50R(2)(d) or ■ (e) (buying or construction of real property).
- (8) The effect of the above is that where a *company* issues a *debenture* or *preference share* for the purpose of buying real property, an interest in real property or funding the construction of a particular project and the *company's* ability to pay interest on the *debenture* or *preference share* or repay capital depends on the success of that purchase or project, the exemption in ■ COBS 4.12B.54R(1) will not apply. In those circumstances, the *debenture* or *preference share* will be a *speculative illiquid security* unless one of the other exemptions in ■ COBS 4.12B.54R applies.

4.13 UCITS

4.13.1

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- (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 a *UCITS scheme*.

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

Marketing communications relating to UCITS schemes

4.13.2

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- (1) A *firm* must ensure that a marketing communication that comprises an invitation to purchase *units* in a *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* for the scheme;
 - (b) indicates that a *prospectus* exists for the *scheme* and that the *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* 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 states, local authorities 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* invests principally in *units* in *collective investment schemes*, *deposits* or *derivatives*, or replicates a stock or debt securities index in accordance with ■ **COLL 5.2.31 R** (Schemes replicating an index), 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 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*]

4.13.3

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Marketing communications relating to a feeder UCITS

A *firm* must ensure that a marketing communication (other than a *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*]

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4.14 [deleted]

[deleted]

4.15 Promotion of OFR recognised schemes

- 4.15.1 R** **Application**
- (1) Subject to (2), this section applies to a *firm* in relation to the *communication or approval* of a *financial promotion* relating to an *OFR recognised scheme*.
- (2) This section does not apply to the extent that the *financial promotion* is an *excluded communication*.
- 4.15.2 R** **Financial promotions of OFR recognised schemes**
- A *firm* must not *communicate or approve* a *financial promotion* relating to an *OFR recognised scheme* unless the *financial promotion* clearly states that:
- (1) the *scheme* is authorised *overseas*, but not in the *United Kingdom*;
- (2) (subject to ■ COBS 4.15.3R) the *Financial Ombudsman Service* is unlikely to be able to consider *complaints* related to the *scheme*, its *operator* or its *depositary*;
- (3) any claims for losses relating to the *operator* and the *depositary* of the *scheme* are unlikely to be covered under the *compensation scheme*; and
- (4) a prospective investor should consider getting financial advice before deciding to invest and should see the *prospectus* of the *scheme* for more information.
- 4.15.3 R** To the extent that the *Financial Ombudsman Service* is likely to be able to consider a *complaint* relating to the *operator* or the *depositary* of a particular *recognised scheme*, the *financial promotion* must contain a clear statement to that effect, and to that extent only ■ COBS 4.15.2R(2) does not apply.
- 4.15.4 G** In relation to ■ COBS 4.15.3R, and by way of example, the *operator* of a *recognised scheme* may be a *VJ participant*, and so it may be possible for a *complaint* against the *operator* to be dealt with under the *Voluntary Jurisdiction*.

Risk summaries

This Annex belongs to ■ COBS 4.12A.11R, ■ COBS 4.12A.20R, ■ COBS 4.12B.14R and ■ COBS 4.12B.21R.

Where a risk summary in this Annex includes two or three alternative formulations of text in square brackets, the first should be used where the *person offering the investment* is not an *authorised person* (including a *registered person*) and the second where the *person offering the investment* is an *authorised person*. The third alternative formulation should be used instead of the first or second formulations where the *investment* is a *unit* in an *unregulated collective investment scheme*. A *firm* should select the correct statement in the relevant section and omit the statement(s) in that section that are not appropriate. *Firms* should omit square brackets.

Where a risk summary in this Annex includes only one available statement in relation to *unregulated collective investment schemes*, *firms* should use this where the *investment* is a *unit* in an *unregulated collective investment scheme*. This text should not be used when the *investment* is not a *unit* in an *unregulated collective investment scheme*. *Firms* should omit square brackets.

Where a risk summary in this Annex includes a web address in square brackets:

- where the risk summary is provided through a digital medium, this web address and square brackets should be omitted, and the preceding underlined text should link to the web address specified in the square brackets;
- where the risk summary is provided through a non-digital medium, this web address and square brackets should be omitted and *firms* should amend the text to make it appropriate for the non-digital setting, pointing the reader to the relevant web address.

The risk summary in (1) is expected ordinarily to be used where a *financial promotion* will be communicated by a *firm* intermediating investment in *non-readily realisable securities* by way of an online platform. The risk summaries in (3) and (4) are expected ordinarily to be used where a *financial promotion* will be communicated by an *issuer of non-readily realisable securities* or a *firm* intermediating investment in *non-readily realisable securities* other than by way of an online platform.

1 Risk summary for investments in *non-readily realisable securities* which are arranged by a *firm* by way of an online platform

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1. You could lose all the money you invest

- Most investments are shares in start-up businesses or bonds issued by them. Investors in these shares or bonds often lose 100% of the money they invested, as most start-up businesses fail.
- Certain of these investments can be held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all your money. It only means that any potential returns will be tax free.
- Checks on the businesses you are investing in, such as how well they are expected to perform, may not have been carried out by the platform you are investing through. You should do your own research before investing.

2. You won't get your money back quickly

- Even if the business you invest in is successful, it will likely take several years to get your money back.

- The most likely way to get your money back is if the business is bought by another business or lists its shares on an exchange such as the London Stock Exchange. These events are not common.
- Start-up businesses very rarely pay you back through dividends. You should not expect to get your money back this way.
- Some platforms may give you the opportunity to sell your investment early through a 'secondary market' or 'bulletin board', but there is no guarantee you will find a buyer at the price you are willing to sell.

3.Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well. A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

4.The value of your investment can be reduced

- If your investment is shares, the percentage of the business that you own will decrease if the business issues more shares. This could mean that the value of your investment reduces, depending on how much the business grows. Most start-up businesses issue multiple rounds of shares.
- These new shares could have additional rights that your shares don't have, such as the right to receive a fixed dividend, which could further reduce your chances of getting a return on your investment.

5.You are unlikely to be protected if something goes wrong

- Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try the FSCS investment protection checker here. [<https://www.fscs.org.uk/check/investment-protection-checker>]
- Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated platform, FOS may be able to consider it. Learn more about FOS protection here. [<https://www.financial-ombudsman.org.uk/consumers>].

If you are interested in learning more about how to protect yourself, visit the FCA's website here. [<https://www.fca.org.uk/investsmart>] For further information about investment-based crowdfunding, visit the FCA's website here. [<https://www.fca.org.uk/consumers/crowdfunding>]

Risk summary for P2P agreements or P2P portfolios

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1.You could lose the money you invest

- Many peer-to-peer (P2P) loans are made to borrowers who can't borrow money from traditional lenders such as banks. These borrowers have a higher risk of not paying you back.
- Advertised rates of return aren't guaranteed. If a borrower doesn't pay you back as agreed, you could earn less money than expected. A higher advertised rate of return means a higher risk of losing your money.
- These investments can be held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all

your money. It only means that any potential gains from your investment will be tax free.

2. You are unlikely to get your money back quickly

- Some P2P loans last for several years. You should be prepared to wait for your money to be returned even if the borrower repays on time.
- Some platforms may give you the opportunity to sell your investment early through a 'secondary market', but there is no guarantee you will be able to find someone willing to buy.
- Even if your agreement is advertised as affording early access to your money, you will only get your money early if someone else wants to buy your loan(s). If no one wants to buy, it could take longer to get your money back.

3. Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

4. The P2P platform could fail

- If the platform fails, it may be impossible for you to collect money on your loan. It could take years to get your money back, or you may not get it back at all. Even if the platform has plans in place to prevent this, they may not work in a disorderly failure.

5. You are unlikely to be protected if something goes wrong

- The Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover investments in P2P loans. You may be able to claim if you received regulated advice to invest in P2P, and the adviser has since failed. Try the FSCS investment protection checker [here](https://www.fscs.org.uk/check/investment-protection-checker/). [<https://www.fscs.org.uk/check/investment-protection-checker/>]
- Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated platform, FOS may be able to consider it. Learn more about FOS protection [here](https://www.financial-ombudsman.org.uk/consumers). [<https://www.financial-ombudsman.org.uk/consumers>]

If you are interested in learning more about how to protect yourself, visit the FCA's website [here](https://www.fca.org.uk/investsmart). [<https://www.fca.org.uk/investsmart>]

For further information about peer-to-peer lending (loan-based crowdfunding), visit the FCA's website [here](https://www.fca.org.uk/consumers/crowdfunding). [<https://www.fca.org.uk/consumers/crowdfunding>]

3 Risk summary for non-readily realisable securities which are shares

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1. You could lose all the money you invest

- If the business you invest in fails, you are likely to lose 100% of the money you invested. Most start-up businesses fail.

2. You are unlikely to be protected if something goes wrong

- [The business offering this investment is not regulated by the FCA. Protection from the Financial Services Compensation Scheme (FSCS) only considers claims against failed regulated firms. Learn more about FSCS protection [here](https://www.fscs.org.uk/what-we-cover/investments/). [<https://www.fscs.org.uk/what-we-cover/investments/>] or

[Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try

the FSCS investment protection checker [here](https://www.fscs.org.uk/check/investment-protection-checker). [<https://www.fscs.org.uk/check/investment-protection-checker>])]

- [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection [here](https://www.financial-ombudsman.org.uk/consumers). [<https://www.financial-ombudsman.org.uk/consumers>])]

3. You won't get your money back quickly

- Even if the business you invest in is successful, it may take several years to get your money back. You are unlikely to be able to sell your investment early.
- The most likely way to get your money back is if the business is bought by another business or lists its shares on an exchange such as the London Stock Exchange. These events are not common.
- If you are investing in a start-up business, you should not expect to get your money back through dividends. Start-up businesses rarely pay these.

4. Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>])]

5. The value of your investment can be reduced

- The percentage of the business that you own will decrease if the business issues more shares. This could mean that the value of your investment reduces, depending on how much the business grows. Most start-up businesses issue multiple rounds of shares.
- These new shares could have additional rights that your shares don't have, such as the right to receive a fixed dividend, which could further reduce your chances of getting a return on your investment.

If you are interested in learning more about how to protect yourself, visit the FCA's website [here](https://www.fca.org.uk/investsmart). [<https://www.fca.org.uk/investsmart>])]

4

Risk summary for *non-readily realisable securities* which are *debentures*

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1. You could lose all the money you invest

- If the business you are investing in fails, there is a high risk that you will lose your money. Most start-up and early-stage businesses fail.
- Advertised rates of return aren't guaranteed. This is not a savings account. If the borrower doesn't pay you back as agreed, you could earn less money than expected. A higher advertised rate of return means a higher risk of losing your money. If it looks too good to be true, it probably is.
- These investments are sometimes held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all your money. It only means that any potential gains from your investment will be tax free.

2. You are unlikely to be protected if something goes wrong

- [The business offering this investment is not regulated by the FCA. Protection from the Financial Services Compensation Scheme (FSCS) only considers claims against failed regulated firms. Learn more about FSCS protection [here](https://www.fscs.org.uk/what-we-cover/investments/)] or

[Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try the FSCS investment protection checker here. [<https://www.fscs.org.uk/check/investment-protection-checker>]]

- [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection here. [<https://www.financial-ombudsman.org.uk/consumers>]

3. You are unlikely to get your money back quickly

- Many bonds last for several years, so you should be prepared to wait for your money to be returned even if the business you're investing in repays on time.
- You are unlikely to be able to cash in your investment early by selling your bond. You are usually locked in until the business has paid you back over the period agreed.

4. Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

If you are interested in learning more about how to protect yourself, visit the FCA's website here. [<https://www.fca.org.uk/investsmart>]

5

Risk summary for *speculative illiquid securities*

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be very complex and high risk.

What are the key risks?

1. You could lose all the money you invest

- If the business offering this investment fails, there is a high risk that you will lose all your money. Businesses like this often fail as they usually use risky investment strategies.
- Advertised rates of return aren't guaranteed. This is not a savings account. If the issuer doesn't pay you back as agreed, you could earn less money than expected or nothing at all. A higher advertised rate of return means a higher risk of losing your money. If it looks too good to be true, it probably is.
- These investments are sometimes held in an Innovative Finance ISA (IFISA). While any potential gains from your investment will be tax free, you can still lose all your money. An IFISA does not reduce the risk of the investment or protect you from losses.

2. You are unlikely to be protected if something goes wrong

[The business offering this investment is not regulated by the FCA. Protection from the Financial Services Compensation Scheme (FSCS) only considers claims against failed regulated firms. Learn more about FSCS protection here. [<https://www.fscs.org.uk/what-we-cover/investments>]] or

[Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try the FSCS investment protection checker here. [<https://www.fscs.org.uk/check/investment-protection-checker>]]

- [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it]. Learn more about FOS protection here. [<https://www.financial-ombudsman.org.uk/consumers>]

3. You are unlikely to get your money back quickly

- This type of business could face cash-flow problems that delay interest payments. It could also fail altogether and be unable to repay investors their money.
- You are unlikely to be able to cash in your investment early by selling it. You are usually locked in until the business has paid you back over the period agreed. In the rare circumstances where it is possible to sell your investment in a 'secondary market', you may not find a buyer at the price you are willing to sell.

4. This is a complex investment

- This investment has a complex structure based on other risky investments. A business that raises money like this lends it to, or invests it in, other businesses or property. This makes it difficult for the investor to know where their money is going.
- This makes it difficult to predict how risky the investment is, but it will most likely be high.
- You may wish to get financial advice before deciding to invest.

5. Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

If you are interested in learning more about how to protect yourself, visit the FCA's website here. [<https://www.fca.org.uk/investsmart>]

For further information about minibonds, visit the FCA's website here. [<https://www.fca.org.uk/consumers/mini-bonds>]

6

Risk summary for non-mainstream pooled investments

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be very complex and high risk.

What are the key risks?

1. You could lose all the money you invest

- If the business offering this investment fails, there is a high risk that you will lose all your money. Businesses like this often fail as they usually use risky investment strategies.
- Advertised rates of return aren't guaranteed. This is not a savings account. If the issuer doesn't pay you back as agreed, you could earn less money than expected or nothing at all. A higher advertised rate of return means a higher risk of losing your money. If it looks too good to be true, it probably is.
- These investments are very occasionally held in an Innovative Finance ISA (IFISA). While any potential gains from your investment will be tax free, you can still lose all your money. An IFISA does not reduce the risk of the investment or protect you from losses.

2. You are unlikely to be protected if something goes wrong

- [The business offering this investment is not regulated by the FCA. Protection from the Financial Services Compensation Scheme (FSCS) only considers claims against failed regulated firms. Learn more about FSCS protection here. [<https://www.fscs.org.uk/what-we-cover/investments/>]] or

[Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try the FSCS investment protection checker here. [<https://www.fscs.org.uk/check/investment-protection-checker/>]] or

[The Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover investments in unregulated collective investment schemes. You may be able to claim if you received regulated advice to invest in one, and the adviser has since failed. Try the FSCS investment protection checker [here](https://www.fscs.org.uk/check/investment-protection-checker). [<https://www.fscs.org.uk/check/investment-protection-checker>]]

•[The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection [here](https://www.financial-ombudsman.org.uk/consumers). [<https://www.financial-ombudsman.org.uk/consumers>]

3. You are unlikely to get your money back quickly

- This type of business could face cash-flow problems that delay payments to investors. It could also fail altogether and be unable to repay any of the money owed to you.
- You are unlikely to be able to cash in your investment early by selling your investment. In the rare circumstances where it is possible to sell your investment in a 'secondary market', you may not find a buyer at the price you are willing to sell.
- You may have to pay exit fees or additional charges to take any money out of your investment early.

4. This is a complex investment

- This kind of investment has a complex structure based on other risky investments, which makes it difficult for the investor to know where their money is going.
- This makes it difficult to predict how risky the investment is, but it will most likely be high.
- You may wish to get financial advice before deciding to invest.

5. Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

If you are interested in learning more about how to protect yourself, visit the FCA's website [here](https://www.fca.org.uk/investsmart). [<https://www.fca.org.uk/investsmart>]

[For further information about unregulated collective investment schemes (UCIS), visit the FCA's website [here](https://www.fca.org.uk/consumers/unregulated-collective-investment-schemes). [<https://www.fca.org.uk/consumers/unregulated-collective-investment-schemes>]]

7

Risk summary for units in a long-term asset fund

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1. You should be ready to invest for the long term and, during this time, the value of your investment may go up or down. You may lose money on your investment.
 - Assets in this fund may take a long time to buy and sell.
 - Long-Term Asset Funds (LTAFs) can invest into fixed assets, infrastructure, or complex financial products, all of which are relatively hard to sell. Investors who do not remain invested for the long-term may not get back all of their money. It may take many years to make a profit on the investment.
 - You should carry out your own research, so that you understand what you are investing in.

2. If you decide to exit early, you won't get your money back quickly

- This LTAF accepts requests to sell units only once a month and there is also a 90-day waiting period before the value of your units is determined and you receive your money. This means that:

If you choose to sell your units on 2 January, and the trading day is the 15th of the month, you won't get any money back until approximately 20 April, assuming a few extra days for the trade to close and funds to transfer.

The value of the units you sell will be at the price set on 15 April if it is a business day, or else the next business day after it.

- Once your redemption request has been approved, you cannot cancel your request.

3. It will take a long time to make profits

- If the assets the LTAF invests in are successful, it may still take a long time to get your money back and make a profit.
- You should not expect to get your money back as payments of income (unless the LTAF includes payments of income as an investment objective).

4. Don't put all your eggs in one basket

- Putting all your money into a single investment or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments.

5. You are unlikely to be protected if something goes wrong

- Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Learn more about FSCS protection here [<https://www.fscs.org.uk/check/investment-protection-checker>].
- Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated platform, FOS may be able to consider it. Learn more about FOS protection here [<https://www.financial-ombudsman.org.uk/consumers>].

8

Risk summary for *qualifying cryptoassets*

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1. You could lose all the money you invest

- The performance of most cryptoassets can be highly volatile, with their value dropping as quickly as it can rise. You should be prepared to lose all the money you invest in cryptoassets.
- The cryptoasset market is largely unregulated. There is a risk of losing money or any cryptoassets you purchase due to risks such as cyber-attacks, financial crime and firm failure.

2. You should not expect to be protected if something goes wrong

- The Financial Services Compensation Scheme (FSCS) doesn't protect this type of investment because it's not a 'specified investment' under the UK regulatory regime – in other words, this type of investment isn't recognised as the sort of investment that the FSCS can protect. Learn more by using the FSCS investment protection checker here [<https://www.fscs.org.uk/check/investment-protection-checker>].
 - [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated

firm, FOS may be able to consider it.] Learn more about FOS protection here. [<https://www.financial-ombudsman.org.uk/consumers>]

3. You may not be able to sell your investment when you want to

- There is no guarantee that investments in cryptoassets can be easily sold at any given time. The ability to sell a cryptoasset depends on various factors, including the supply and demand in the market at that time.
- Operational failings such as technology outages, cyber-attacks and comingling of funds could cause unwanted delay and you may be unable to sell your cryptoassets at the time you want.

4. Cryptoasset investments can be complex

- Investments in cryptoassets can be complex, making it difficult to understand the risks associated with the investment.
- You should do your own research before investing. If something sounds too good to be true, it probably is.

5. Don't put all your eggs in one basket

- Putting all your money into a single type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

If you are interested in learning more about how to protect yourself, visit the FCA's website here. [<https://www.fca.org.uk/investsmart>]

For further information about cryptoassets, visit the FCA's website here. [<https://www.fca.org.uk/investsmart/crypto-basics>]

Certified high net worth investor statement

This Annex belongs to ■ COBS 4.12A.22R and ■ COBS 4.12B.38R.

HIGH-NET-WORTH INVESTOR STATEMENT	
Please confirm whether you qualify as a high-net-worth investor on the basis that A or B apply to you.	
In the last financial year did you have:	
A) an annual income of £100,000 or more? Income does NOT include any one-off pension withdrawals.	
<input type="checkbox"/> No	
<input type="checkbox"/> Yes	
If yes, please specify your income (as defined above) to the nearest £10,000 in the last financial year _____	
B) net assets of £250,000 or more? Net assets do NOT include: your home (primary residence), your pension (or any pension withdrawals) or any rights under qualifying contracts of insurance.	
<input type="checkbox"/> No	
<input type="checkbox"/> Yes	
If yes, please specify your net assets (as defined above) to the nearest £100,000 in the last financial year _____	
OR	
C) None of these apply to me.	
<input type="checkbox"/> Yes	
I accept that being a high-net-worth investor will expose me to promotions for investment where there is a significant risk of losing all the money I invest. I am aware that it is open to me to seek professional advice before making any investment in a high-risk investment.	
Signature: _____	
Date: _____	

Certified sophisticated investor statement

This Annex belongs to ■ COBS 4.12A.22R and ■ COBS 4.12B.39R.

Firms must omit the notes and square brackets which appear in the following form of certificate.

SOPHISTICATED INVESTOR STATEMENT	
Please confirm whether you qualify as a sophisticated investor on the basis that in the last three years you have received a certificate from an authorised firm confirming you understand the risks involved with [type of investment] [Note 1] .	
<input type="checkbox"/> No	
<input type="checkbox"/> Yes	
If yes, what is the name of the authorised firm? _____	
OR	
This does not apply to me.	
<input type="checkbox"/> Yes	
I accept that being a sophisticated investor will expose me to promotions for investment where there is a significant risk of losing all the money I invest. I am aware that it is open to me to seek professional advice before making any investment in a high-risk investment.	
Signature:	
Date:	

Note 1: The *firm* must insert the type of *investment* in relation to which the *client* wishes to be categorised for the purpose of receiving *financial promotions*.

Self-certified sophisticated investor statement

This Annex belongs to ■ COBS 4.12A.22R and ■ COBS 4.12B.40R.

Firms must omit the notes and square brackets which appear in the following form of certificate.

SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT	
Please confirm whether you qualify as a self-certified sophisticated investor on the basis that A, B, C or D apply to you.	
In the last two years have you:	
A) worked in private equity or in the provision of finance for small and medium enterprises ?	
<input type="checkbox"/> No	
<input type="checkbox"/> Yes	
If yes, what is/was the name of the business or organisation? _____	
B) been the director of a company with an annual turnover of at least £1 million?	
<input type="checkbox"/> No	
<input type="checkbox"/> Yes	
If yes, what is/was the name of the company? _____	
C) made two or more investments in an unlisted company ?	
<input type="checkbox"/> No	
<input type="checkbox"/> Yes	
If yes, how many investments in unlisted companies have you made in the last two years? _____	
D) been a member of a network or syndicate of business angels for more than six months ?	
<input type="checkbox"/> No	
<input type="checkbox"/> Yes	
If yes, what is the name of the network or syndicate? _____	
OR	
E) None of these apply to me.	
<input type="checkbox"/> Yes	
I accept that being a self-certified sophisticated investor will expose me to promotions for investments where there is a significant risk of losing all the money I invest. I am aware that it is open to me seek advice from someone who specialises in advising on [type of investment] [Note 1].	
Signature: _____	
Date: _____	

Note 1: The firm must insert the type of *investment* in relation to which the *client* wishes to be categorised for the purpose of receiving *financial promotions*.

Restricted investor statement

This Annex belongs to ■ COBS 4.12A.22R.

RESTRICTED INVESTOR STATEMENT	
<p>Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.</p> <p>You should not invest more than 10% of your net assets in high-risk investments. Doing so could expose you to significant losses.</p> <p>For the purposes of this statement, net assets do NOT include: your home (primary residence), your pension (or any pension withdrawals) or any rights under qualifying contracts of insurance.</p> <p>For the purposes of this statement high-risk investments are: peer-to-peer (P2P) loans; investment based crowdfunding; units in a long-term asset fund; cryptoassets (such as bitcoin); and unlisted debt and equity (such as in companies not listed on an exchange like the London Stock Exchange).</p>	
<p>Please confirm whether you qualify as a restricted investor on the basis that A and B apply to you.</p> <p>A) In the past twelve months have you invested less than 10% of your net assets in high-risk investments (as defined above)?</p> <p><input type="checkbox"/> Yes (I have invested less than 10% of my net assets) <input type="checkbox"/> No (I have invested more than 10% of my net assets)</p> <p>If yes, over the last twelve months roughly what percentage of your net assets have you invested in high-risk investments (as defined above)?</p> <hr/> <p>and</p> <p>B) In the next twelve months do you intend to limit your investment in high-risk investments (as defined above) to less than 10% of your net assets?</p> <p><input type="checkbox"/> Yes (I intend to invest less than 10% of my net assets) <input type="checkbox"/> No (I intend to invest more than 10% of my net assets)</p> <p>If yes, in the next twelve months roughly what percentage of your net assets do you intend to invest in high-risk investments (as defined above)?</p> <hr/>	
<p>I accept that being a restricted investor will expose me to promotions for investment where there is a risk of losing all the money I invest. I am aware that it is open to me seek professional advice before making any investment in a high-risk investment.</p> <p>Signature: Date:</p>	

Chapter 5

Distance communications

5.1 The distance marketing disclosure rules

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*.
- (2) If a *firm* is an intermediary rather than the supplier under the *distance contract*, references to '*firm*' in ■ COBS 5 Annex 1 R and ■ COBS 5 Annex 2 R are to be interpreted as referring to the supplier except for references to '*firm*' in ■ COBS 5 Annex 1 R (2), (4) and (18).

The distance marketing disclosure rules

5.1.1

R

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

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

5.1.2

R

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

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

5.1.3

R

When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

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

Exception: contracts for payment services

5.1.4

R

A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[**Note:** article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form		
5.1.5	R	A firm must communicate to the consumer all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (■ COBS 5.1.1 R to ■ COBS 5.1.4 R) on a durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer. [Note: article 5(1) of the <i>Distance Marketing Directive</i>]
5.1.6	G	A firm will provide information, or communicate contractual terms and conditions, to a consumer if another person provides the information, or communicates the terms and conditions, to the consumer on its behalf.
Exception: distance contract as a stage in the provision of another service		
5.1.7	R	This section does not apply to a distance contract to deal as agent, advise or arrange, if the distance contract is concluded merely as a stage in the provision of another service by the firm or another person. [Note: recital 19 to the <i>Distance Marketing Directive</i>]
Exception: successive operations		
5.1.8	R	In the case of a distance contract comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the rules in this section only apply to the initial agreement. [Note: article 1(2) of the <i>Distance Marketing Directive</i>]
5.1.9	R	If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure rules (■ COBS 5.1.1 R to ■ COBS 5.1.4 R) will only apply: <ol style="list-style-type: none">(1) when the first operation is performed; and(2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations). [Note: recital 16 and article 1(2) of the <i>Distance Marketing Directive</i>]
5.1.10	G	In this section: <ol style="list-style-type: none">(1) 'initial service agreement' includes the opening of a bank account and the concluding of a portfolio management contract;(2) 'operations' includes transactions made within the framework of a portfolio management contract; and(3) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with one's existing bank account, does not constitute an 'operation' but an additional contract to which the rules in this section apply. The

5.1.11**G**

In the FCA's view, other examples of:

- (1) 'initial service agreement' include:
 - (a) subscribing to an *investment trust savings scheme*; or
 - (b) concluding a *life policy, personal pension scheme or stakeholder pension scheme* that includes a pre-selected option providing for future increases or decreases in regular *premiums* or payments; and
- (2) 'operations' include:
 - (a) successive purchases or sales of *shares* under an *investment trust savings scheme*; and
 - (b) subsequent index-linked changes to premiums or increases or decreases to pension contributions following fluctuations in salary.

Exception: voice telephony communications**5.1.12****R**

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

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

- Exception: means of distance communication not enabling disclosure**
- 5.1.13 R** A firm may provide the distance marketing information (■ COBS 5 Annex 1R) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a consumer's request using a means of distance communication that does not enable the provision of that information in that form in good time before the consumer is bound by any *distance contract* or offer.
- [Note: article 5(2) of the *Distance Marketing Directive*]
- Exception: contracts for payment services**
- 5.1.13A R** Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a firm is required to provide to the consumer only the information specified in rows 7 to 12, 15, 16 and 20 of ■ COBS 5 Annex 1 R.
- [Note: article 4(5) of the *Distance Marketing Directive*]
- 5.1.13B G** Where a *distance contract* covers both *payment services* and *non-payment services*, this exception applies only to the *payment services* aspects of the contract. A firm taking advantage of this exception will need to comply with the information requirements in Part 6 of the *Payment Services Regulations*.
- Distance marketing: other provisions**
- 5.1.14 R** If, at any time during the contractual relationship, a consumer that is a party to a *distance contract* asks a firm:
- (1) for a paper copy of the terms and conditions of that contract; or
 - (2) to change the means of distance communication used;
- the firm must provide that paper copy or change the means of distance communication used, unless (in the latter case) that would be incompatible with the contract or the nature of the service provided.
- [Note: article 5(3) of the *Distance Marketing Directive*]
- Unsolicited services**
- 5.1.15 R**
- (1) A firm must not enforce, or seek to enforce, any obligations under a *distance contract* against a consumer, in the event of an unsolicited supply of services, the absence of reply not constituting consent.
 - (2) This rule does not apply to the tacit renewal of a *distance contract*.
- [Note: article 9 of the *Distance Marketing Directive*]
- Mandatory nature of consumer's rights**
- 5.1.16 R** If a consumer purports to waive any of the consumer's rights created or implied by the rules in this section, a firm must not accept that waiver, nor seek to rely on or enforce it against the consumer.
- [Note: article 12 of the *Distance Marketing Directive*]

5.1.17

R

If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *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 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*.

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:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R or ■ GEN 4 Annex 1A R as appropriate), together with a statement which explains that it is on the *Financial Services Register* and includes its Firm Reference Number;
- (5) if it is a *professional firm*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title;
 - (c) a reference to the applicable professional rules and the means to access them; and
- (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

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

5.2.3

R

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

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

5.2.4**R**

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

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

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

5.2.5**R**

An unsolicited commercial communication sent by e-mail by a *firm* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

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

Requirements relating to the placing and receipt of orders

5.2.6**R**

A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
- (4) make available to an *ECA recipient*, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

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

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

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

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

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

Exception: contract concluded by e-mail

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

[Note: article 10(4) and 11(3) of the *E-Commerce Directive*]

Distance marketing information

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

Information about the firm

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *United Kingdom*; , the name of that representative and the geographical address relevant for the *consumer's* relations with that representative.
- (3) Where the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant to the *consumer's* relations with that professional.
- (4) An appropriate statutory status disclosure statement (**GEN 4**), a statement that the *firm* is on the *Financial Services Register* and its *FCA* registration number.

Information about the financial service

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related fees, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the *firm's* control and that past performance is no indicator of future performance.
- (8) Notice of the possibility that other taxes or costs may exist that are not paid via the *firm* or imposed by it.
- (9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a *firm's* offer applies as it stands.
- (10) The arrangements for payment and performance.

(11)	Details of any specific additional cost to the <i>consumer</i> for using a means of distance communication.
Information about the contract	
(12)	The existence or absence of a right to cancel or withdraw under the cancellation rules (COBS 15) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) in accordance with those <i>rules</i> , as well as the consequences of not exercising the right to cancel or withdraw.
(13)	The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
(14)	Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
(15)	Practical instructions for exercising any right to cancel or withdraw, including the address to which any cancellation or withdrawal notice should be sent.
(16)	[deleted]
(17)	Any contractual clause on the law applicable to the contract or on the competent court, or both.
(18)	In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.
Information about redress	
(19)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.
(20)	Whether compensation may be available from the <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its liabilities.

[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]

Abbreviated distance marketing disclosure

This Annex belongs to ■ COBS 5.1.12 R

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

Chapter 6

Information about the firm, its services and remuneration

		<h2>6.1 Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)</h2>
6.1.1	R	<p>Application</p> <p>(1) This section applies to a <i>firm</i> that carries on <i>designated investment business</i>, other than <i>MiFID</i>, <i>equivalent third country or optional exemption business</i> or <i>insurance distribution activities</i>, for a <i>retail client</i>.</p> <p>(2) [deleted]</p>
6.1.2	R	If a <i>firm</i> provides <i>basic advice on stakeholder products</i> in accordance with the <i>basic advice rules</i> , this section does not apply to that service.
6.1.3	G	This section imposes requirements relating to disclosure of information to <i>clients</i> that are additional to the general requirement in ■ COBS 2.2.
6.1.4	R	<p>Information about a firm and its services</p> <p>A <i>firm</i> must provide a <i>client</i> with the following general information, if relevant:</p> <p>(1) the name and address of the <i>firm</i>, and the contact details necessary to enable a <i>client</i> to communicate effectively with the <i>firm</i>;</p> <p>(2) [deleted]</p> <p>(3) the methods of communication to be used between the <i>firm</i> and the <i>client</i> including, where relevant, those for the sending and reception of orders;</p> <p>(4) a statement of the fact that the <i>firm</i> is authorised by the <i>FCA</i> or the <i>PRA</i>, as applicable;</p> <p>(5) [deleted]</p> <p>(6) if the <i>firm</i> is acting through an <i>appointed representative</i>, a statement of this fact</p> <p>(7) the nature, frequency and timing of the reports on the performance of the service to be provided by the <i>firm</i> to the <i>client</i> in accordance with the <i>rules on reporting to clients on the provision of services</i> (■ COBS 16);</p> <p>(8) (a) in the case of a <i>common platform firm</i>, a description, which may be provided in summary form, of the <i>conflicts of interest policy</i>;</p>

- (b) other than in the case of a *common platform firm*, when a *material interest* or conflict of interest may or does arise, the manner in which the *firm* will ensure fair treatment of the *client*;
- (9) in the case of a *common platform firm*, at any time that the *client* requests it, further details of the *conflicts of interest policy*.

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

6.1.6 **R**

(1) A *firm* that *manages investments* for a *client* must establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the *client* and the types of *designated investments* included in the *client* portfolio, so as to enable the *client* to assess the *firm's* performance.

(2) If a *firm* proposes to *manage investments* for a *client*, the *firm* must provide the *client* with such of the following information as is applicable:

- (a) information on the method and frequency of valuation of the *designated investments* in the *client* portfolio;
- (b) details of any delegation of the discretionary management of all or part of the *designated investments* or funds in the *client* portfolio;
- (c) a specification of any benchmark against which the performance of the *client* portfolio will be compared;
- (d) the types of *designated investments* that may be included in the *client* portfolio and types of transaction that may be carried out in those *designated investments*, including any limits; and
- (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

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:

- (a) if applicable,
 - (i) that the *designated investments* or *client money* of that *client* may be held by a third party on behalf of the *firm*;
 - (ii) the responsibility of the *firm* under the applicable national law for any acts or omissions of the third party; and
 - (iii) the consequences for the *client* of the insolvency of the third party;
- (b) if applicable, that the *designated investments* belonging to the *client* may be held in an omnibus account by a third party and a prominent warning of the resulting risks;
- (c) if it is not possible under national law for *designated investments* belonging to a *client* held with a third party to be separately

identifiable from the proprietary *designated investments* of that third party or of the *firm*, that fact and a prominent warning of the resulting risks;

- (d) if applicable, that accounts that contain *designated investments* or *client money* belonging to that *client* are or will be subject to the law of a jurisdiction other than that of 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 the *United Kingdom*.
- (2) A *firm* that holds *designated investments* or *client money* for a *client* must inform the *client*:
- (a) if applicable, about the existence and the terms of any security interest or lien which the *firm* has or may have over the *client's designated investments* or *client money*, or any right of set-off it holds in relation to the *client's designated investments* or *client money*; and
 - (b) if applicable, that a depositary may have a security interest or lien over, or right of set-off in relation to those instruments or money.
- (3) A *firm* within (1) must also, before entering into *securities financing transactions* in relation to *designated investments* held by it on behalf of a *client*, or before otherwise using such *designated investments* for its own account or the account of another *client*, in good time before the use of those *designated investments* provide the *client*, in a *durable medium*, with clear, full and accurate information on the obligations and responsibilities of the *firm* with respect to the use of those *designated investments*, including the terms for their restitution, and on the risks involved.

		(4) [deleted]
6.1.7A	G	<p>Firms subject to either or both the <i>custody rules</i> and the <i>client money rules</i> are reminded of the information requirements concerning <i>custody assets</i> and <i>client money</i> in ■ CASS 9.3 (Prime brokerage agreement disclosure annex) and ■ CASS 9.4 (Information to clients concerning custody assets and client money).</p>
6.1.8	G	[deleted]
		Information about costs and associated charges
6.1.9	R	<p>A firm must provide a client with information on costs and associated charges including, if applicable:</p> <ol style="list-style-type: none">(1) the total price to be paid by the client in connection with the <i>designated investment</i> or the <i>designated investment business</i>, including all related fees, commissions, charges and expenses, and all taxes payable via the firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it. The commissions charged by the firm must be itemised separately in every case;(2) if any part of the total price referred to (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;(3) notice of the possibility that other costs, including taxes, related to transactions in connection with the <i>designated investment</i> or the <i>designated investment business</i> may arise for the client that are not paid via the firm or imposed by it; and(4) the arrangements for payment or other performance.
6.1.10	G	<p>The rules on inducements in ■ COBS 2.3 may also require a firm to disclose information to a client in relation to benefits provided to the firm.</p>
		Timing of disclosure
6.1.11	R	<ol style="list-style-type: none">(1) A firm must provide a client with the information required by this section in good time before the provision of <i>designated investment business</i> unless otherwise provided by this rule.(2) A firm may instead provide that information immediately after starting to provide <i>designated investment business</i> if:<ol style="list-style-type: none">(a) the firm was unable to comply with (1) because, at the request of the client, the agreement was concluded using a means of distance communication which prevented the firm from doing so; and(b) in any case where the rule on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the firm complies with that rule in relation to the client, as if that client were a consumer.

6	<p>6.1.12 G A <i>firm</i> should take into account ■ COBS 8.1.3 R (1), which requires earlier disclosure of some items of information covered in this section.</p> <p>Medium of disclosure</p> <p>6.1.13 R Except where expressly provided, a <i>firm</i> must provide the information required by this section in a <i>durable medium</i> or via a website (where it does not constitute a <i>durable medium</i>) where the <i>website conditions</i> are satisfied.</p> <p>Keeping the client up to date</p> <p>6.1.14 R</p> <ul style="list-style-type: none">(1) A <i>firm</i> must notify a <i>client</i> in good time about any material change to the information provided under this section which is relevant to a service that the <i>firm</i> is providing to that <i>client</i>.(2) A <i>firm</i> must provide this notification in a <i>durable medium</i> if the information to which it relates was given in a <i>durable medium</i>. <p>Existing clients</p> <p>6.1.15 G</p> <ul style="list-style-type: none">(1) A <i>firm</i> need not treat each of several transactions in respect of the same type of <i>financial instrument</i> as a new or different service and so does not need to comply with the disclosure <i>rules</i> in this chapter in relation to each transaction.(2) But a <i>firm</i> should ensure that the <i>client</i> has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction. <p>Compensation information</p> <p>6.1.16 R</p> <ul style="list-style-type: none">(1) A <i>firm</i> must make available to a <i>client</i>, who has used or intends to use the <i>firm's services</i>, information necessary for the identification of the <i>compensation scheme</i> if the <i>firm</i> is a <i>participant firm</i>.
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- (2) The information under (1) must include the amount and scope of the cover offered by the *compensation scheme*.
- (3) A *firm* must provide, on the *client's* request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.
- (4) The information provided for in this *rule* must be made available in a *durable medium* or via a website if the *website conditions* are satisfied in the official language or languages of the *United Kingdom*.

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

Record keeping: information about the firm and compensation information

6.1.17

G

Firms are reminded of the general record-keeping requirements in ■ SYSC 3.2 and ■ SYSC 9.

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

Application.....

6.1ZA.1 R

- (1) Subject to (2) and (3), this section applies to a *firm*:
 - (a) in relation to its *MiFID, equivalent third country or optional exemption business*; and
 - (b) carrying on *insurance distribution activities*.
- (2) ■ COBS 6.1ZA.16R does not apply to a *firm* in respect of its *MiFID optional exemption business*.
- (3) Where a *firm* is carrying on *insurance distribution activities* for a *professional client* only those *rules* which implemented the requirements of the *IDD* apply.

6.1ZA.1A G

For the purposes of ■ COBS 6.1ZA.1R(3) if a *rule* implemented a requirement of the *IDD*, a note ("Note:") follows the *rule* indicating which provision was being implemented.

6.1ZA.2 G

This section imposes requirements relating to disclosure of information to *clients* that are additional to the general requirements in ■ COBS 2.2A.

Effect of provisions marked "UK" for third country investment firms and MiFID optional exemption firms.....

6.1ZA.3 R

Provisions in this section (and in ■ COBS 6 Annex 7UK to which this section refers) marked "UK" apply in relation to *MiFID optional exemption business* as if they were *rules* (see ■ COBS 1.2.2G).

6.1ZA.4 G

The effect of ■ GEN 2.2.22AR is that provisions in this section marked "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).]

6.1ZA.5 UK

Information about a firm and its services: MiFID business.....

47(1) Investment firms shall provide clients or potential clients with the following general information, where relevant:

- (a) the name and address of the investment firm, and the contact details necessary to enable clients to communicate effectively with the firm;
- (b) the languages in which the client may communicate with the investment firm, and receive documents and other information from the firm;
- (c) the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;
- (d) a statement of the fact that the investment firm is authorised and the name and contact address of the competent authority that has authorised it;
- (e) where the investment firm is acting through a tied agent, a statement of this fact;
- (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 [■ 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 the *United Kingdom*;
- (h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm in accordance with Article 34;
- (i) at the request of the client, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions set out Article 3(2) are satisfied.

The information listed in points (a) to (i) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.

[Note: article 47(1) of the *MiFID Org Regulation*]

6.1ZA.6 G

[deleted]

6.1ZA.7 G

A firm disclosing details of its authorisation should refer to the appropriate form of words set out in ■ GEN 4 Annex 1R or ■ GEN 4 Annex 1AR as appropriate.

6.1ZA.7A R

Information about a firm and its services: insurance distribution

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

- (1) the name and address of the *firm*, and the contact details necessary to enable a *client* to communicate effectively with the *firm*;
- (2) the methods of communication to be used between the *firm* and the *client* including, where relevant, those for the sending and reception of orders;
- (3) a statement of the fact that the *firm* is authorised and the name of the *competent authority* that has authorised it;
- (4) if the *firm* is acting through an *appointed representative* a statement of this fact;
- (5) the nature, frequency and timing of the reports on the performance of the service to be provided by the *firm* to the *client* in accordance with the *rules on reporting to clients* on the provision of services (■ COBS 16 or ■ COBS 16A in relation to an *insurance-based investment product*);
- (6) (a) a description, which may be provided in summary form, of (as applicable) the *conflicts of interest policy*, or the policy required ■ SYSC 3.3.10R (for *insurers*) or ■ SYSC 10.1A.3R (for *insurance intermediaries* in relation to *insurance-based investment products*); and
(b) if not included in the information provided under (a), when a *material interest* or conflict of interest may or does arise, the manner in which the *firm* will ensure fair treatment of the *client*;
- (7) at any time that the *client* requests it, further details of the *conflicts of interest policy*.

The timing of these disclosures is governed by ■ COBS 6.1ZA.19AR.

Status disclosure general information: insurance distribution

6.1ZA.7B R

In good time before the conclusion of a *life policy* and, if necessary, on its amendment:

- (1) a *firm* must provide the *client* with at least the following information:
 - (a) its identity, address and whether it is an *insurance intermediary* or an *insurance undertaking*;
 - (b) whether it provides a *personal recommendation* about the insurance products offered;
 - (c) the procedures allowing *clients* and other interested parties to register *complaints* about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *clients*; and
- (2) an *insurance intermediary* must also provide the *client* with the following information:

- (a) the fact that it is included in the *Financial Services Register* (or if it is not on the *Financial Services Register*, the register in which it has been included) and the means for verifying this;
- (b) whether it has a direct or indirect holding representing 10% or more of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);
- (c) whether a given *insurance undertaking* (that is not a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*; and
- (d) whether it is representing the *client* or is acting for and on behalf of the *insurer*.

[Note: articles 18 and 19(1)(a) and (b) of the *IDD*]

6.1ZA.7C R

Where an *insurance intermediary* proposes or advises on a *life policy*, in good time before the conclusion of a *life policy* and, if necessary, on its amendment, an *insurance intermediary* must provide the *client* with at least information on whether the *firm*:

- (1) gives a *personal recommendation* on the basis of a fair and personal analysis; or
- (2) is under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings*, in which case it must provide the names of those *insurance undertakings*; or
- (3) is not under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings*; and

does not give a *personal recommendation* on the basis of a fair and personal analysis,

in which case it must provide its *client* with the name of those *insurance undertakings* with which the *insurance intermediary* may and does conduct business.

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

6.1ZA.7D R

If an *insurance intermediary* informs a *client* that it gives a *personal recommendation* on the basis of a fair and personal analysis, it must give that *personal recommendation* on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a *personal recommendation* in accordance with professional criteria, regarding which *life policy* would be adequate to meet the *client's* needs.

[Note: article 20(3) of the *IDD*]

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

6.1ZA.8 UK

47(2) When providing the service of portfolio management, investment firms shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm's performance.

- 47(3) Where investment firms propose to provide portfolio management services to a client or potential client, they shall provide the client, in addition to the information required under paragraph 1, with such of the following information as is applicable:
- (a) information on the method and frequency of valuation of the financial instruments in the client portfolio;
 - (b) details of any delegation of the discretionary management of all or part of the financial instruments or funds in the client portfolio;
 - (c) a specification of any benchmark against which the performance of the client portfolio will be compared;
 - (d) the types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits;
 - (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

The information listed in points (a) to (e) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.

[**Note:** articles 47(2) and (3) of the *MiFID Org Regulation*]

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

6.1ZA.9 **UK**

- 49(1) Investment firms holding financial instruments or funds belonging to clients shall provide those clients or potential clients with the information specified in paragraphs 2 to 7 where relevant.
- 49(2) The investment firm shall inform the client or potential client where the financial instruments or funds of that client may be held by a third party on behalf of the investment firm and of the responsibility of the investment firm under the applicable national law for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.
- 49(3) Where financial instruments of the client or potential client may, if permitted by national law, be held in an omnibus account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks.
- 49(4) The investment firm shall inform the client or potential client where it is not possible under national law for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the investment firm and shall provide a prominent warning of the resulting risks.
- 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 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.
- 49(6) An investment firm shall inform the client about the existence and the terms of any security interest or lien which the firm has or may have over the

client's financial instruments or funds, or any right of set-off it holds in relation to those instruments or funds. Where applicable, it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or funds.

49(7) An investment firm, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a client, or before otherwise using such financial instruments for its own account or the account of another client shall in good time before the use of those instruments provide the client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

[Note: article 49 of the *MiFID Org Regulation*]

6.1ZA.10 G

Firms subject to either or both the *custody rules* and the *client money rules* are reminded of the information requirements concerning *custody assets* and *client money* in ■ CASS 9.3 (Prime brokerage agreement disclosure annex) and ■ CASS 9.4 (Information to clients concerning custody assets and client money).

6

Information concerning safeguarding of client money: insurance distribution

6.1ZA.10A 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:
 - (a) ■ COBS 6.1.7R; or
 - (b) (if it is a *firm* doing *MiFID, equivalent third country or optional exemption business*) ■ COBS 6.1ZA.9UK and ■ COBS 6.1.7R(1)(e);in relation to that *client money*.
- (2) For the purposes of ■ COBS 6.1ZA.10AR(1)(b), ■ COBS 1.2.3R applies except 'funds' should be read as meaning *client money* that a *firm* receives or holds for, or on behalf of, a *client* in the course of, or in connection with, its *insurance distribution activities*.
- (3) The timing of this disclosure is governed by ■ COBS 6.1ZA.19AR.

Information about costs and associated charges: MiFID and insurance distribution

6.1ZA.11 R

A *firm* must provide a *client* with at least the following information about all costs and related charges (see also ■ COBS 2.2A.2R):

- (1) (as applicable) information relating to:
 - (a) both *investment services* and *ancillary services*; and
 - (b) the distribution of an *insurance-based investment product*;
- (2) where relevant, the cost of any *investment advice*;
- (3) the cost of the *financial instrument* or *insurance-based investment product* recommended or marketed to the *client*;

6.1ZA.12 R

- (4) information on how the *client* may pay; and
- (5) details of any third party payments.

[Note: article 24(4)(c) of *MiFID*, article 29(1)(c) of the *IDD*]

- (1) A *firm* must aggregate the information about costs and charges required by ■ COBS 2.2A.2R and ■ COBS 6.1ZA.11R, where those costs and charges are not caused by the occurrence of underlying market risk. This is to allow the *client* to understand the overall cost, and the cumulative effect on the return, of the investment.
- (2) A *firm* must provide the *client* with an itemised breakdown of the costs and charges information required by (1) and ■ COBS 6.1ZA.11R when requested by the *client*.
- (3) The information must, where applicable, be provided to the *client* on a regular basis, and at least annually, during the life of the investment.

[Note: article 24(4) of *MiFID*, second paragraph of article 29(1) of the *IDD*]

6.1ZA.13 R

- (1) A *firm* must provide the information required by ■ COBS 6.1ZA.11R and ■ COBS 6.1ZA.12R in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* or *insurance-based investment product* that is being offered and, consequently, to take investment decisions on an informed basis.
- (2) That information may be provided in a standardised format.

[Note: article 24(5) of *MiFID*, third paragraph of article 29(1) of the *IDD*]

Costs and associated charges disclosure: MiFID

6.1ZA.14 UK

50(1) 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.

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.

50(2) For ex-ante and ex-post disclosure of information on costs and charges to clients, investment firms shall aggregate the following:

(a) all costs and associated charges charged by the investment firm or other parties where the client has been directed to such other

parties, for the investment services(s) and/or ancillary services provided to the client; and

(b) all costs and associated charges associated with the manufacturing and managing of the financial instruments.

Costs referred to in points (a) and (b) are listed in Annex II to this Regulation. For the purposes of point (a), third party payments received by investment firms in connection with the investment service provided to a client shall be itemised separately and the aggregated costs and charges shall be totalled and expressed both as a cash amount and as a percentage.

50(3) Where any part of the total costs and charges is to be paid in or represents an amount of foreign currency, investment firms shall provide an indication of the currency involved and the applicable currency conversion rates and costs. Investments firms shall also inform about the arrangements for payment or other performance.

50(4) In relation to the disclosure of product costs and charges that are not included in the UCITS KIID, the investment firms shall calculate and disclose these costs, for example, by liaising with UCITS management companies to obtain the relevant information.

50(5)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:

(a) where the investment firm recommends or markets financial instruments to clients; or

(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.

50(6)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 shall inform their clients about all costs and charges relating to the investment and/or ancillary service provided.

50(7) Where more than one investment firm provides investment or ancillary services to the client, each investment firm shall provide information about the costs of the investment or ancillary services it provides. An investment firm that recommends or markets to its clients the services provided by another firm, shall aggregate the cost and charges of its services together with the cost and charges of the services provided by the other firm. An investment firm shall take into account the costs and charges associated to the provision of other investment or ancillary services by other firms where it has directed the client to these other firms.

50(8) Where calculating costs and charges on an ex-ante basis, investment firms shall use actually incurred costs as a proxy for the expected costs and charges. Where actual costs are not available, the investment firm shall make reasonable estimations of these costs. Investment firms shall review ex-ante assumptions based on the ex-post experience and shall make adjustment to these assumptions, where necessary.

50(9) Investment firms shall provide annual ex-post information about all costs and charges related to both the financial instrument(s) and investment and ancillary service(s) where they have recommended or marketed the financial instrument(s) or where they have provided the client with the KID/ KIID in relation to the financial instrument(s) and they have or have had an

ongoing relationship with the client during the year. Such information shall be based on costs incurred and shall be provided on a personalised basis.

Investment firms may choose to provide such aggregated information on costs and charges of the investment services and the financial instruments together with any existing periodic reporting to clients.

50(10) Investment firms shall provide their clients with an illustration showing the cumulative effect of costs on return when providing investment services. Such an illustration shall be provided both on an ex-ante and ex-post basis. Investment firms shall ensure that the illustration meets the following requirements:

- (a) the illustration shows the effect of the overall costs and charges on the return of the investment;
- (b) the illustration shows any anticipated spikes or fluctuations in the costs; and
- (c) the illustration is accompanied by a description of the illustration.

[**Note:** article 50 of the *MiFID Org Regulation*]

6.1ZA.14A G

Annex II of the *MiFID Org Regulation* is reproduced in ■ COBS 6 Annex 7UK.

6.1ZA.15 G

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

Costs and associated charges disclosure: insurance distribution

6.1ZA.15A R

In addition to the information specified by ■ COBS 2.2A.2R and ■ COBS 6.1ZA.11R, a *firm* carrying on *insurance distribution activities* must provide a *retail client* with the following information on costs and associated charges, if applicable:

- (1) the total price to be paid by the *client* in connection with the *life policy* or the *insurance distribution activity*, including all related fees, commissions, charges and expenses, and all taxes payable via the *firm* or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the *client* can verify it. The commissions charged by the *firm* must be itemised separately in every case;
- (2) if any part of the total price referred to in (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;
- (3) notice of the possibility that other costs, including taxes, related to transactions in connection with the *life policy* or the *insurance distribution activity* may arise for the *client* that are not paid via the *firm* or imposed by it; and
- (4) the arrangements for payment or other performance.

The timing of this disclosure is governed by ■ COBS 6.1ZA.19AR.

Remuneration received by firm disclosure: insurance intermediaries

6.1ZA.15B R

In good time before the conclusion of the *life policy* and, if necessary, on its amendment, an *insurance intermediary* must provide the *client* with information:

- (1) on the nature of the *remuneration* received in relation to the *life policy*;
- (2) about whether in relation to the *life policy* it works on the basis of:
 - (a) a *fee*, that is *remuneration* paid directly by the *client*; or
 - (b) a *commission* of any kind, that is the *remuneration* included in the *premium*; or
 - (c) any other type of *remuneration*, including an economic benefit of any kind offered or given in connection with the contract; or
 - (d) on the basis of a combination of any type of *remuneration* set out above in (a), (b) and (c).

[Note: article 19(1)(d) and (e) of the *IDD*]

Remuneration of employees disclosure: insurers

6.1ZA.15C R

In good time before the conclusion of a *life policy* an *insurance undertaking* must provide its *client* with information on the nature of the *remuneration* received by its *employees* in relation to the *life policy*.

[Note: article 19(4) of the *IDD*]

General remuneration disclosure: insurance distributors

6.1ZA.15D R

The *remuneration* referred to in this section includes *remuneration* that is not guaranteed or which is contingent on meeting certain targets.

6.1ZA.15E G

The information required to be disclosed by ■ COBS 6.1ZA.15BR and ■ COBS 6.1ZA.15CR includes the type of the *remuneration* and, taking into account the clear, fair and not misleading rule (■ COBS 4.2.1R), should also include the source of the *remuneration*.

6.1ZA.15F G

When considering what information to provide about the *remuneration*, a *firm* should include all *remuneration* which the *insurance intermediary* or the *employee* of an *insurance undertaking*, receives or may receive in relation to the distribution of the *life policy*. This includes *remuneration*:

- (1) provided indirectly by the *insurer* or another *firm* within the distribution chain; or
- (2) provided by way of a bonus (whether financial or non-financial) paid to the *firm* by the *insurer* or another *firm*, or provided by the *firm* to its *employees*, where this bonus is contingent on the achievement of a target to which the distribution of the particular *life policy* could contribute. For example, this can include cash bonuses paid for achieving a sales target and additional annual leave for achieving a high customer service score on sales calls, profit share arrangements, overriders or other enhanced commissions.

6.1ZA.15G R If any payments, other than ongoing *premiums* and scheduled payments, are made by the *client* under the *life policy* after its conclusion, a *firm* must make the disclosures required by ■ COBS 6.1ZA.15BR or ■ COBS 6.1ZA.15CR, for each such payment.

[Note: articles 19(3) and (5) of the *IDD*]

6.1ZA.15H G Examples of the type of payments made are those for mid-term adjustments, administration fees and cancellation fees.

Insurance distributors fee disclosure: additional requirements

- 6.1ZA.15I R**
- (1) Where a *fee* is payable in relation to a *life policy*, the *firm* must inform its *client* of the amount of the *fee*.
 - (2) The information in (1) must be given before the *client* incurs liability to pay the *fee*, or before conclusion of the *life policy*, whichever is earlier.
 - (3) To the extent that it is not possible for an amount to be given, a *firm* must give the basis for its calculation.

[Note: articles 19(2) and (5) of the *IDD*]

6.1ZA.15J R The *fee disclosure requirement* extends to all such *fees* that may be charged during the life of a *policy*.

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

Information about costs and charges of different services or products: MiFID business

- 6.1ZA.16 R**
- (1) This *rule* applies to a *firm* that offers an *investment service* with another service or product or as part of a package or as a condition of the same agreement or package.
 - (2) The *firm* must inform the *client* whether it is possible to buy the different components separately and must provide information on the costs and charges of each component.
 - (3) If the agreement or package is offered to a *retail client*, the *firm* must:
 - (a) inform that *retail client* if the risks resulting from the agreement or package are likely to be different from the risks associated with the components when taken separately; and
 - (b) provide that *retail client* with an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.

[Note: article 24(11) of *MiFID*]

Cross selling requirements where insurance is the primary product

6.1ZA.16A R When offering a non-insurance ancillary product or service as part of a package or the same agreement with a *life policy*, a *firm* must:

- (1) inform the *client* whether it is possible to buy the different components separately and, if so, must provide the *client* with an adequate description of:
 - (ba) the different components;
 - (b) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with the components taken separately; and
- (2) provide the *client* with separate evidence of the costs and charges of each component.

[Note: article 24(1) and (2) of the *IDD*]

Cross selling requirements where insurance is the ancillary product

6.1ZA.16B R

When offering a *life policy* ancillary to and as part of a package or in the same agreement with a non-insurance product or service, a *firm* must offer the *client* the option of buying the non-insurance goods or services separately.

6.1ZA.16C R

■ COBS 6.1ZA.16BR does not apply where the non-insurance product or service is any of the following:

- (1) *investment services or activities*; or
- (2) a credit agreement as defined in point 3 of article 4 of the *MCD* which is:
 - an *MCD credit agreement*; or
 - an *exempt MCD credit agreement*; or
 - a *CBTL credit agreement*; or
 - a credit agreement referred to in [articles 72G\(3B\)](#) and (4) of the *Regulated Activities Order*; or
- (3) a payment account as defined in regulation 2(1) of the *Payment Accounts Regulations*.

[Note: article 24(3) of the *IDD*]

6.1ZA.16D R

■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16CR do not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

[Note: article 24(5) of the *IDD*]

6.1ZA.16E G

In addition to the rules in ■ COBS 6.1ZA.16AR and ■ 6.1ZA.16BR firms should still comply with the other *rules* in COBS relating to the offer and sale of insurance products that form part of the package or agreement, such as ■ COBS 2.5 (Optional additional products).

[Note: article 24(6) of the *IDD*]

6.1ZA.17 **UK**

Timing of disclosure: MiFID business

46(2) 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*]

6.1ZA.18 **G**

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

Medium of disclosure: MiFID business

6.1ZA.19 **UK**

46(3) The information referred to in paragraphs 1 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*]

Timing of disclosure: specified rules for insurance distribution

6.1ZA.19A **R**

- (1) A firm must provide a client with the information required by ■ COBS 6.1ZA.7AR, ■ COBS 6.1ZA.10AR and ■ COBS 6.1ZA.15AR in good time before the provision of the *insurance distribution activity* concerned unless otherwise provided by this rule.
- (2) A firm may instead provide that information immediately after starting to provide the *insurance distribution activity* concerned if:
 - (a) the firm was unable to comply with (1) because, at the request of the client, the agreement was concluded using a means of

distance communication which prevented the *firm* from doing so; and

- (b) in any case where the *rule* on voice telephony communications (■ COBS 5.1.12R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if that *client* were a *consumer*.

Medium of disclosure: insurance distribution

6.1ZA.19B R

Where this section requires an *insurance distributor* to provide information to *clients* in relation to a *life policy* it must do so in accordance with ■ COBS 7.4 (Means of communication to clients), unless COBS 6.1ZA.18AR(2) applies.

[Note: article 23 of the *IDD*]

6

Keeping the client up to date: MiFID business

6.1ZA.20 UK

46(4) Investment firms shall notify a client in good time about any material change to the information provided under Articles 47 to 50 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

[Note: article 46(4) of the *MiFID Org Regulation*]

Keeping the client up to date: insurance distribution

6.1ZA.20A R

- (1) A *firm* carrying on *insurance distribution activities* must notify a *client* in good time about any material change to the information provided in relation to an *insurance distribution activity* under this section which is relevant to a service that the *firm* is providing to that *client*.
- (2) A *firm* must provide this notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

Existing clients: MiFID business

6.1ZA.21 G

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

[Note: recital 69 to the *MiFID Org Regulation*]

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

Compensation information: MiFID business

6.1ZA.22 R

- (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* if the *firm* is a *participant firm*.
- (2) The information under (1) must include the amount and scope of the cover offered by the *compensation scheme*.

- (3) A *firm* must provide, on the *client's* request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.
- (4) The information provided for in this *rule* must be made available in a *durable medium* or via a website if the *website conditions* are satisfied in the official language or languages of the *United Kingdom*.

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

Record keeping: information about the firm and compensation information for MiFID business and insurance distribution

6.1ZA.23 G

Firms are reminded of the general record-keeping requirements ■ SYSC 3.2 (for *insurers* and *managing agents*) and ■ SYSC 9 (for other *firms*).

6.1A.1

R

- (1) This section applies to a *firm* which makes *personal recommendations* to *retail clients* in relation to *retail investment products, pension transfers, pension conversions, pension opt-outs or P2P agreements*.
- (2) This section does not apply to a *firm* giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

6.1A.1A

G

■ PERG 8.30B (Personal recommendations) describes what is meant by a *personal recommendation* in the context of the definition of the *regulated activity of advising on investments* (except *P2P agreements*). That guidance is also relevant to the meaning of *personal recommendation* in this section in relation to a *retail investment product*. The guidance in ■ PERG 8.24 to ■ PERG 8.30B does not apply to the *regulated activity of advising on P2P agreements*.

6.1A.1B

G

In this section, ■ COBS 6.1A.4AR, ■ COBS 6.1A.4ABR and ■ COBS 6.1A.4BR are not relevant to a *firm* making *personal recommendations* in relation to *P2P agreements*.

6.1A.2

R

This section does not apply to a *firm* when it gives *basic advice* in accordance with the *basic advice rules*.

6.1A.2A

R

This section does not apply to a *firm* when it makes a *personal recommendation* to a *retail client* in relation to a *Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.

Application - Where?

6.1A.3

R

This section does not apply if the *retail client* is outside the *United Kingdom* except to the extent that the service provided is *advising on conversion or transfer of pension benefits*.

Requirement to be paid through adviser charges

6.1A.4

R

Except as specified in this section, a *firm* must:

- (1) only be remunerated for the *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*; and

- (2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in connection with the *firm's business of advising* or any other related services, regardless of whether it intends to refund the payments or pass the benefits on to the *retail client*; and
- (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *adviser charges* in relation to the *retail client's retail investment product* or *P2P agreement* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *adviser charges* are recovered from the *retail client*.

Exception: Events before December 2012

6

6.1A.4A R

A *firm* and its *associates* may:

- (1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1A.4 R if:
 - (a) the *personal recommendation* was made on or before 30 December 2012;
 - (b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012;
 - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
 - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
 - (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to that *firm* or its *associate*.

6.1A.4AA G

- (1) A *firm* may continue to accept a commission, remuneration or benefit of any kind after 30 December 2012 if there is a clear link between the payment and an investment in a *retail investment product* which was made by the *retail client* following a *personal recommendation* made, or a transaction executed, on or before 30 December 2012. This is the case even if the *firm* makes a *personal recommendation* to the same *retail client* after 30 December 2012 to the extent that the continued payment can properly be regarded as linked to the pre 31 December 2012 *personal recommendation* or transaction, rather than the new *personal recommendation*. Of course this is dependent upon the terms of the contract contemplating the continued receipt of such payments.
- (2) Examples of circumstances where a commission, remuneration or benefit is clearly linked to the retention of an investment in a *retail investment product* and can therefore continue to be accepted include (in each case where the terms of the contract contemplate a continued payment of the kind referred to in (1)):

- (a) no change is made to the *retail client's* investment in the relevant *retail investment product*;
- (b) the *retail client's* investment in, or regular contribution to, the relevant *retail investment product* is reduced; the *firm* may continue to accept the payment associated with the reduced investment amount;
- (c) the *retail client's* investment in the relevant *retail investment product* is transferred from accumulation *units* to income *units* or vice versa;
- (d) the *retail client* transfers all or part of his investment between funds within a *life policy*.
- (3) If a *firm* makes a *personal recommendation* to a *retail client* and wishes to:
- (a) receive remuneration for that *personal recommendation* in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by (1); or
- (b) be paid additional amounts for any actions which are linked to a new amount invested by the *retail client* in the relevant *retail investment product*;
- it should only be paid those additional amounts for that *personal recommendation* or for those actions by *adviser charges*.
- (4) A *firm* may offset against any *adviser charges* which are payable by the *retail client* any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in (1).

6.1A.4AB R

A *firm* and its *associates* may solicit and accept a commission, remuneration or benefit of any kind from a *discretionary investment manager* in the circumstances in ■ COBS 6.1A.4 R if:

- (1) the *firm* or its *associates* recommended the *discretionary investment manager* to a *retail client* on or before 30 December 2012;
- (2) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012;
- (3) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
- (4) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
- (5) the *retail client* agreed an investment mandate with the *discretionary investment manager* within a reasonable time of the recommendation to use the *discretionary investment manager* being made.

6.1A.4AC G

- (1) If a *firm* makes a recommendation of a *discretionary investment manager* to a *retail client* and wishes to:
- (a) receive remuneration for that recommendation in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by ■ COBS 6.1A.4AB R; or

- (b) be paid additional amounts for any actions linked to a new amount invested by the retail client through the same *discretionary investment manager*;
- it should only be paid those additional amounts for that recommendation or for those actions by *adviser charges*.
- (2) A *firm* may offset against any *adviser charges* which are payable by the *retail client* any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in ■ COBS 6.1A.4AB R.

Re-registration of commission when a retail client moves to a new adviser

6.1A.4B

R

If a *retail client* chooses to become a *client* of a *firm* and that *firm* or its associate enters into an arrangement in ■ COBS 6.1A.4AR (2), the *firm* must:

- (1) before the arrangement is entered into, disclose to the *retail client* that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its associate;
- (2) throughout the period during which the *firm* or its associate receives the commission, remuneration or benefit of any kind, provide the *retail client* with an ongoing service; and
- (3) as soon as reasonably practicable after it makes the disclosure in (1):
 - (a) disclose to the *retail client*, as a cash amount or percentage of funds under management, the amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and
 - (b) provide the *retail client* with a description of the ongoing service it will provide to the *retail client* in accordance with (2).

Exception: Employer or trustee funded pension advice charge

6.1A.4C

R

A *firm* may receive an *employer or trustee funded pension advice charge*.

Exception: receipt and refund of adviser charges

6.1A.5

G

A *firm* may receive an *adviser charge* that is no longer payable (for example, after the service it is received in payment for has been amended or terminated) provided the *firm* refunds any such payment to the *retail client*.

Acceptable minor non-monetary benefits

6.1A.5A

R

- (1) For the purposes of ■ COBS 6.1A.4R(2), a *firm* or its associate may solicit or accept minor non-monetary benefits which meet the requirements of:
 - (a) ■ COBS 2.3A.15R, in relation to the provision of *investment services*; or
 - (b) paragraph (2), in relation to other business.
- (2) An acceptable minor non-monetary benefit is one which:
 - (a) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way;

- (b) is capable of enhancing the quality of service provided to the *client*;
- (c) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;
- (d) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and
- (e) consists of:
 - (i) information or documentation relating to a specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*, that is generic in nature or personalised to reflect the circumstances of an individual *client*;
 - (ii) written material from a third party that is commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company, or where the third party *firm* is contractually engaged and paid by the *issuer* to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any *firms* wishing to receive it, or to the general public;
 - (iii) participation in conferences, seminars and other training events on the benefits and features of a specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*; and
 - (iv) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under (iii).
 - (v) research relating to an issue of *shares, debentures, warrants or certificates representing certain securities* by an *issuer*, which is:
 - (A) produced:
 - (1)prior to the issue being completed; and
 - (2)by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and
 - (B) made available to prospective investors in the issue; or
 - (vi) research that is received so that the *firm* may evaluate the research provider's research service, provided that:
 - (A) it is received during a trial period that lasts no longer than three *months*;
 - (B) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;
 - (C) the trial period is not commenced with the research provider within 12 *months* from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and
 - (D) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record

6.1A.5B

G

of how the conditions in (A) to (C) were satisfied for each such trial period.

6.1A.6

R

'Related service(s)' for the purposes of ■ COBS 6.1A includes:

- (1) arranging or executing a transaction which has been recommended to a *retail client* by the *firm*, an associate or another *firm* in the same group or conducting administrative tasks associated with that transaction; or
- (2) managing a relationship between a *retail client* (to whom the *firm* provides personal recommendations on *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs* or *P2P agreements*) and a *discretionary investment manager* or providing a service to such a client in relation to the investments managed by such a manager; or
- (3) recommending a *discretionary investment manager* to a *retail client* (to whom the *firm* provides personal recommendations or other services in relation to *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs* or *P2P agreements*).

6.1A.6A

G

'Other services' in ■ COBS 6.1A.6R (3) includes:

- (1) providing information relating to *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs*, *P2P agreements* or *operators of electronic systems in relation to lending to the retail client*, for example, general market research; or
- (2) passing on information from the *discretionary investment manager* to the *retail client*.

Guidance on the requirement to be paid through adviser charges

6.1A.7

G

The requirement to be paid through *adviser charges* does not prevent a *firm* from making use of any facility for the payment of *adviser charges* on behalf of the *retail client* offered by another *firm* or other third parties provided that the facility complies with the requirements of ■ COBS 6.1B.9R.

- 6.1A.8** **G** Examples of payments and benefits that should not be accepted under the requirement to be paid through *adviser charges* include:
- (1) a share of the *retail investment product* charges or *platform service provider's* charges, or *retail investment product provider's* or *platform service provider's* revenues or profits;
 - (2) a commission set and payable by a *retail investment product provider* or an *operator of an electronic system in relation to lending* in any jurisdiction; and
 - (3) a share of the *operator of the electronic system in relation to lending's* charges, revenues or profits.
- Requirements on a firm making a personal recommendation in respect of its own retail investment products or P2P agreements**
- 6.1A.9** **R** If the *firm* or its *associate* is the *retail investment product provider*, *platform service provider* or *operator of an electronic system in relation to lending*, the *firm* must ensure that the level of its *adviser charges* is at least reasonably representative of the cost of the services associated with making the *personal recommendation* (and related services).
- 6.1A.10** **G** An *adviser charge* is likely to be reasonably representative of the cost of the services associated with making the *personal recommendation* if:
- (1) the total expected costs associated with making a *personal recommendation* and distributing the *retail investment product* will:
 - (a) be recovered through *adviser charges*; and
 - (b) not be recovered by charges for, or profits from, other services (such as manufacturing and administering the *retail investment product*);
 - (2) the *adviser charges* are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the *firm's* established payback period; and
 - (3) were the *personal recommendation* and any related services to be provided by an unconnected *firm*, the level of *adviser charges* would be appropriate in the context of the service being provided by the *firm*.
- 6.1A.10A** **G**
- (1) In ■ COBS 6.1A.10G(1), the total costs associated with making a *personal recommendation* and distributing the *retail investment product* include attributable indirect costs from the *firm's* (or *group's*) wider business such as *firm* or *group* overheads.
 - (2) In ■ COBS 6.1A.10G(2), the *firm's* established payback period is the period of time in which the cash outflows associated with an investment made by the *firm* (or *group*) are expected to be recovered from the cash inflows generated by the *adviser charges*.

Requirement to use a charging structure	
6.1A.11	R A firm must determine and use an appropriate charging structure for calculating its <i>adviser charge</i> for each <i>retail client</i> .
6.1A.12	G A firm can use a standard charging structure.
6.1A.13	G In determining its charging structure and <i>adviser charges</i> a firm should have regard to its duties under the <i>client's best interests rule</i> . Practices which may indicate that a firm is not in compliance with this duty include: <ol style="list-style-type: none">(1) varying its <i>adviser charges</i> inappropriately according to provider or, for substitutable and competing <i>retail investment products</i>, the type of <i>retail investment product</i>; or(2) allowing the availability or limitations of services offered by third parties to facilitate the payment of <i>adviser charges</i> to influence inappropriately its charging structure or <i>adviser charges</i>; or(3) varying its <i>adviser charges</i> inappropriately according to <i>operator of an electronic system in relation to lending</i>.
6.1A.14	R A firm must not use a charging structure which conceals the amount or purpose of any of its <i>adviser charges</i> from a <i>retail client</i> .
6.1A.14A	R A firm must not make a <i>personal recommendation</i> to a <i>retail client</i> in relation to a <i>retail investment product</i> or <i>P2P agreement</i> if it knows, or ought to know, that: <ol style="list-style-type: none">(1) the product's charges, the <i>platform service provider's charges</i> or the <i>operator of the electronic system in relation to lending's charges</i> are presented in a way that offsets or may appear to offset any <i>adviser charges</i> or <i>platform charges</i> that are payable by that <i>retail client</i>; or(2) the product's charges or other payments are maintained by the <i>retail investment product provider</i> or <i>operator of the electronic system in relation to lending</i> at a level such that a cash rebate, other than a cash rebate permitted by ■ COBS 6.1B.7A R or ■ COBS 6.1E.10R (2), is payable to the <i>retail client</i>.
6.1A.15	G A firm is likely to be viewed as operating a charging structure that conceals the amount or purpose of its <i>adviser charges</i> if, for example: <ol style="list-style-type: none">(1) it makes arrangements for amounts in excess of its <i>adviser charges</i> to be deducted from a <i>retail client's investments</i> from the outset, in order to be able to provide a cash refund to the <i>retail client</i> later; or(2) it provides other services to a <i>retail client</i> (for example, <i>advising on a home finance transaction</i> or <i>advising on an equity release transaction</i>), and its <i>adviser charges</i> do not represent a reasonable proportion of the costs associated with the <i>personal recommendation</i> for the <i>retail investment product</i> or <i>P2P agreement</i> and its related services.

6.1A.16

G

Calculation of the cost of adviser services to a client

- To meet its responsibilities under the *client's best interests rule* and *Principle 6 (Customers' interests)*:
- (1) a *firm* should consider whether the *personal recommendation* or any other related service is likely to be of value to the *retail client* when the total charges the *retail client* is likely to be required to pay are taken into account;
 - (2) a *firm* that *advises on conversion or transfers of pension benefits* should consider whether it would be more appropriate to give a *retail client abridged advice* (under ■■ COBS 19.1A) rather than a *full pension transfer or conversion advice* (under ■ COBS 19.1) taking into account the total charges the *retail client* is likely to pay.

6.1A.17

R

Initial information for clients on the cost of adviser services

6.1A.18

G

- A *firm* must disclose its charging structure to a *retail client* in writing, in good time before making the *personal recommendation* (or providing related services) or commencement of the *abridged advice process*.

6.1A.18A

R

- (1) Where the services to be provided in ■ COBS 6.1A.17R include *full pension transfer or conversion advice* (other than where the only *safeguarded benefit* involved is a *guaranteed annuity rate*), the disclosure required under ■ COBS 6.1A.17R must include a personalised charges communication.
- (2) The personalised charges communication in (1) must include the following:
 - (a) the expected amounts payable (in *cash terms*) for the *full pension transfer or conversion advice*, and, where applicable, any *advice on investments* (whether by the *firm* or any other *firm*) in connection with the *retail client's pension transfer or pension conversion*;
 - (b) where the *firm* is subject to the ban on contingent charging rules (see ■ COBS 19.1B) (Ban on contingent charging)) because the *client* does not fall within one of the exceptions in ■ COBS 19.1B.9R, a statement that the amount of charges payable in relation to *full pension transfer or conversion advice* is the same whether or not the advice is to transfer or convert or to remain in their *ceding arrangement*;
 - (c) the estimated amount of the monthly charge (in *cash terms*) for ongoing advice and/or services (whether provided by the *firm* or any other *firm*) in the first year following the transfer or conversion, assuming that funds remain invested with no growth but taking into account the cost of initial advice;
 - (d) whether and the extent to which the charges in the first year are lower than the charges anticipated in subsequent years;
 - (e) if the charges are significantly lower in the first year compared to subsequent years, the *firm* must indicate the amount of the

monthly charge (in *cash terms*) in subsequent years until the point at which the charges are no longer expected to vary significantly from year to year; and

- (f) where relevant, a statement that the expected amounts payable in (a) do not include any amounts that may be payable by the *client* for any related advice or services they may receive that fall outside the *UK* regulatory regime.

- (3) Where the *firm* (or any other *firm*) offers different types of ongoing advice and/or services with different charging structures, the *firm* must include in the personalised charges communication, the charges for each type of ongoing advice and/or service it offers.
- (4) Where a *firm* has reasonable grounds to believe that it is not subject to the ban on contingent charging *rules* (see ■ COBS 19.1B) because the *client* falls within one of the exceptions in ■ COBS 19.1B.9R:

- (a) the reasons why the *firm* considers that the *client* falls within one of the exceptions, and including a description of the evidence relied on by the *firm* in support;
- (b) the amounts payable (in *cash terms*) if the *firm's* recommendation is for the *client* not to transfer or not to convert their pension, and the amounts payable (including any amounts recoverable by the *firm* (or any other *firm*) as part of ongoing charges) if the advice is to transfer or to convert; and
- (c) a statement that:
- (i) the reasons set out in (4a) may change after further analysis of the *client's* circumstances; and
- (ii) if after further analysis of the *client's* circumstances, the *firm* determines that it is subject to the ban on contingent charging *rules* because the *client* does not fall within one of the exceptions in ■ COBS 19.1B.9R, then the amount of charges payable in relation to *full pension transfer or conversion advice* is the same whether or not the advice is to transfer or convert or to remain in their *ceding arrangement*.

6.1A.18B R

Where the services to be provided in ■ COBS 6.1A.17R include *abridged advice*, the *firm* must disclose to the *client* in writing the amounts payable (in *cash terms*) in each of the following situations:

- (1) the *firm* gives *abridged advice* and a *personal recommendation* not to transfer or convert their pension;
- (2) the *firm* starts the *abridged advice* process but is unable to take a view on whether it is in the *client's* best interests to transfer or convert without undertaking *full pension transfer or conversion advice*; and
- (3) the *firm* gives *abridged advice* followed by *full pension transfer or conversion advice*.

6.1A.19 G

In order to meet the requirement in the *rule* on information disclosure before providing services (■ COBS 2.2.1 R), a *firm* should ensure that the disclosure of its charging structure is in clear and plain language and, as far as practicable, uses *cash terms*. If a *firm's* charging structure is in non-cash

terms, examples in *cash terms* should be used to illustrate how the charging structure will be applied in practice.

- 6.1A.20** G A *firm* is unlikely to meet its obligations under the *fair, clear and not misleading rule* and the *client's best interests rule* unless it ensures that:
- (1) the charging structure it discloses reflects, as closely as is practicable, the total *adviser charge* to be paid; for example, the *firm* should avoid using a wide range; and
 - (2) if using hourly rates in its charging structure, it states whether the rates are indicative or actual hourly rates, provides the basis (if any) upon which the rates may vary and provides an approximate indication of the number of hours that the provision of each service is likely to require.
- 6.1A.21** G [deleted]
- 6.1A.22** R A *firm* must not use an *adviser charge* which is structured to be payable by the *retail client* over a period of time unless (1) or (2) applies:
- (1) the *adviser charge* is in respect of an ongoing service for the provision of *personal recommendations* or related services and:
 - (a) the *firm* has disclosed that service along with the *adviser charge*; and
 - (b) the *retail client* is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the *retail client* to give any reason; or
 - (2) the *adviser charge* relates to a *retail investment product* or a *pension transfer*, *pension conversion* or *pension opt-out* or arrangement with an *operator of an electronic system in relation to lending* for which an instruction from the *retail client* for regular payments is in place and the *firm* has disclosed that no ongoing *personal recommendations* or service will be provided.
- 6.1A.22A** G To comply with the *rule* on providing a *retail client* with the right to cancel an ongoing service for the provision of *personal recommendations* or related services without penalty (■ COBS 6.1A.22R (1)(b)) a *firm* should:
- (1) ensure that any notice period of the *retail client's* right of cancellation is reasonable;
 - (2) not make any charge in respect of cancellation of the ongoing service except for an amount which is in proportion to the extent of the service already provided by the *firm* up to the date of cancellation of the ongoing service; and
 - (3) not make cancellation conditional on, for example, requiring the *retail client* to sell any *retail investment products* or to assign any *P2P agreements* to which the ongoing service relates.

- 6.1A.22B** **R** If a *retail client* exercises his right to cancel an ongoing service, the *firm* must clearly disclose to the *retail client* whether charges for other services provided by the *firm*, such as *custody* services, will continue to be payable by the *retail client*.
- 6.1A.23** **R** If **COBS 6.1A.22R(1)** or **(2)** do not apply, a *firm* may not offer *credit* to a *retail client* for the purpose of paying *adviser charges* unless this would be in the best interests of the *retail client*.
- 6.1A.24** **R**
- Disclosure of total adviser charges payable**
- (1) A *firm* must agree with and disclose to a *retail client* the total *adviser charge* payable to it or any of its associates by a *retail client*.
 - (2) A disclosure under (1) must:
 - (a) be in *cash terms* (or convert non-cash terms into illustrative cash equivalents);
 - (b) be as early as practicable;
 - (c) be in a *durable medium* or through a website (if it does not constitute a *durable medium*) if the *website conditions* are satisfied; and
 - (d) if there are payments over a period of time, include the amount and frequency of each payment due, the period over which the *adviser charge* is payable and the implications for the *retail client* if the *retail investment product* or arrangement with the *operator of an electronic system in relation to lending* is cancelled before the *adviser charge* is paid and, if there is no ongoing service, the sum total of all payments.
- 6.1A.24A** **G** If the price of the *retail investment product* may vary as a result of fluctuations in the financial markets and the *adviser charge* is expressed as a percentage of that price, a *firm* need not disclose to the *retail client* the total *adviser charge* payable to the *firm* or any of its associates by the *retail client* until after execution of the transaction, provided it then does so promptly.
- 6.1A.25** **G** A *firm* may include the information required by the *rule* on disclosure of total *adviser charges* (**COBS 6.1A.24 R**) in a *suitability report*.
- 6.1A.26** **G** To comply with the *rule* on disclosure of total *adviser charges* (**COBS 6.1A.24 R**) and the *fair, clear and not misleading rule*, a *firm's* disclosure of the total *adviser charge* should:
- (1) provide information to the *retail client* as to which particular service an *adviser charge* applied to;
 - (2) include information as to when payment of the *adviser charge* is due;
 - (3) inform the *retail client* if the total *adviser charge* varies materially from the charge indicated for that service in the *firm's* charging structure;
 - (4) if an ongoing *adviser charge* is expressed as a percentage of funds under management, clearly reflect in the disclosure that the *adviser charge* may increase as the fund grows; and

- (5) if an ongoing *adviser charge* applies for an ongoing service, clearly confirm the details of the ongoing service, its associated charges, and how the *retail client* can cancel this service and cease payment of the associated charges.

Record keeping

6.1A.27

R

A firm must keep a record of:

- (1) its charging structure;
- (2) the total *adviser charge* payable by each *retail client*; and
- (3) if the total *adviser charge* paid by a *retail client* has varied materially from the charge indicated for that service in the *firm's* charging structure, the reasons for that difference.

6.1B Retail investment product provider, operator of an electronic system in relation to lending, and platform service provider requirements relating to adviser charging and remuneration

Application - Who? What?

6.1B.1

R

- (1) This section applies to:
 - (a) a *firm* which is a *retail investment product provider*;
 - (b) in relation to ■ COBS 6.1B.9 R, ■ COBS 6.1B.10 G and ■ COBS 6.1B.11 G, a *platform service provider*; and
 - (c) a *firm* which is an *operator of an electronic system in relation to lending*;
in circumstances where a *retail client* receives a *personal recommendation* in relation to a *retail investment product* or *P2P agreement* and also where a *retail investment product* transaction is executed by a *platform service provider* and no *personal recommendation* has been made.
- (2) This section does not apply to a *retail investment product provider* in circumstances where a *firm* gives advice or provides services to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

6.1B.1A

G

■ PERG 8.30B (Personal recommendations) describes what is meant by a *personal recommendation* in the context of the definition of the *regulated activity of advising on investments* (except *P2P agreements*). That guidance is also relevant to the meaning of *personal recommendation* in this section in relation to a *retail investment product*. The guidance in ■ PERG 8.24 to ■ PERG 8.30B does not apply to the *regulated activity of advising on P2P agreements*.

6.1B.1B

G

In this section, ■ COBS 6.1B.5AR and ■ COBS 6.1B.7AR are not relevant in circumstances where a *retail client* receives a *personal recommendation* in relation to a *P2P agreement*.

6.1B.2

R

This section does not apply to a *firm* when a *retail client* receives *basic advice* in accordance with the *basic advice rules*.

- 6.1B.2A** **R** This section does not apply to a *firm* in circumstances where a *retail client* receives a *personal recommendation* in relation to one of the *firm's Holloway sickness policies*, provided that the *Holloway policy special application conditions* are met.
- 6.1B.3** **G** This section applies to a *firm* when it makes a *personal recommendation* on a *retail investment product* or *P2P agreement* and where a *retail investment product* for which it is the *retail investment product provider* or *P2P agreement* which it facilitates as the *operator of an electronic system in relation to lending* is the subject of a *personal recommendation* made by another *firm*.
- Application - Where?**
- 6.1B.4** **R** This section does not apply if the *retail client* is outside the *United Kingdom*.
- Requirement not to offer commissions**
- 6.1B.5** **R**
- (1) Except as specified in ■ COBS 6.1B.5AR, a *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, or to any other third party for the benefit of that *firm*, in connection with that *firm's business of advising* (or any related services), except those that facilitate the payment of *adviser charges* from a *retail client's* investments in accordance with this section.
 - (2) Paragraph (1) does not apply to minor non-monetary benefits which meet the requirements of:
 - (a) ■ COBS 2.3A.19R, in connection with the provision of *investment services*; or
 - (b) ■ COBS 6.1A.5AR(2), in connection with other business.
- 6.1B.5-A** **G** The *guidance* in ■ COBS 6.1A.5BG is also relevant for the purposes of ■ COBS 6.1B.5R(2).
- 6.1B.5A** **R** A *firm* and its *associates* may:
- (1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1B.5 R if:
 - (a) the *personal recommendation* was made on or before 30 December 2012;
 - (b) the offer and payment was permitted by the *rules* in force on 30 December 2012;
 - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
 - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
 - (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and

		<p>(2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another <i>firm</i> or its associate.</p>
6	6.1B.5B	<p>G A <i>firm</i> may continue paying commission, remuneration or benefits of any kind to another <i>firm</i> in relation to a <i>personal recommendation</i> made by that other <i>firm</i> in circumstances where that other <i>firm</i> may accept that commission, remuneration or benefit of any kind (see ■ COBS 6.1A.4A R and ■ COBS 6.1A.4AA G).</p>
	6.1B.6	<p>G [deleted]</p>
		<p>Distinguishing product and P2P platform charges from adviser charges</p>
	6.1B.7	<p>R A <i>firm</i> must:</p> <p class="list-item-l1">(1) take reasonable steps to ensure that its <i>retail investment product</i> charges or its charges as an <i>operator of an electronic system in relation to lending</i> are not structured so that they could mislead or conceal from a <i>retail client</i> the distinction between those charges and any <i>adviser charges</i> payable in respect of its <i>retail investment products</i> or investments in <i>P2P agreements</i> made through the system of which it is the <i>operator of an electronic system in relation to lending</i>;</p> <p class="list-item-l1">(2) not include in any marketing materials in respect of its <i>retail investment products</i>, the service it offers as an <i>operator of an electronic system in relation to lending</i> or facilities for collecting <i>adviser charges</i> any statements about the appropriateness of levels of <i>adviser charges</i> that a <i>firm</i> could charge in making <i>personal recommendations</i> or providing related services in relation to its <i>retail investment products</i> or investments through the system in relation to which it is the <i>operator of an electronic system in relation to lending</i>; and</p> <p class="list-item-l1">(3) not defer, discount or rebate <i>retail investment product</i> charges or its charges as an <i>operator of an electronic system in relation to lending</i> in a way that offsets or may appear to offset any <i>adviser charges</i> or <i>platform charges</i> that are payable, including by maintaining <i>retail investment product</i> charges or its charges as an <i>operator of an electronic system in relation to lending</i> at a level such that a cash rebate, other than a cash rebate permitted by ■ COBS 6.1B.7A R or ■ COBS 6.1E.10R (2), is payable to the <i>retail client</i>.</p>
	6.1B.7A	<p>R A <i>retail investment product</i> provider may maintain <i>retail investment product</i> charges at a level such that a cash rebate is payable to the <i>retail client</i> if:</p> <p class="list-item-l1">(1) the <i>retail investment product</i> transaction was agreed on or before 5 April 2014 and executed within a reasonable time of that agreement; and</p> <p class="list-item-l1">(2) the <i>retail client's</i> right to receive the cash rebate arose on or before 5 April 2014; and</p> <p class="list-item-l1">(3) on or after 6 April 2014 no change is made to that product, or, where there is such a change on or after 6 April 2014, only in relation to the unchanged part of that product.</p>

- 6.1B.7B** **G** In the FCA's view, if the *platform service provider* retained any part of a rebate on or before 5 April 2014, the *retail client* is unlikely to have had a right to receive that part of the rebate.
- 6.1B.7C** **G** The following examples do not entail changes to the *retail investment product*:
- (1) no change is made to the *retail client's* investment in the relevant product or to the level of the *retail client's* regular contributions into that product;
 - (2) the *retail client's* investment in, or regular contribution to, the relevant product is reduced: the *retail investment product provider* may continue to pay the cash rebate associated with the reduced investment amount;
 - (3) the *retail client's* investment in the relevant product is transferred from accumulation *units* to income *units* or vice versa;
 - (4) part of the *retail client's* investment is switched between funds within a *retail investment product*, such as a *SIPP*, or a *retail investment product* wrapper, such as an *ISA*: the *retail investment product provider* may continue to pay the cash rebate associated with the part of the *retail client's* investment which has not been switched into another fund;
 - (5) the level of cash rebate payable to the *retail client* is reduced;
 - (6) the product is converted to a share class which does not pay a commission, remuneration or benefit of any kind to a *firm* and is otherwise unchanged.
- 6.1B.8** **G** COBS 6.1B.7 R does not prevent a *firm* from offering a promotional discount to a *retail client* in the form of extra *units* or additional investment, but a *firm* should not offer to invest more than 100% of the *retail client's* investment.
- Requirements on firms facilitating the payment of adviser charges**
- 6.1B.9** **R** COBS 6.1B.7 R does not prevent a *firm* from offering a promotional discount to a *retail client* in the form of extra *units* or additional investment, but a *firm* that offers to facilitate, directly or through a third party, the payment of *adviser charges*, including by means of a *platform service* must:
- (1) obtain and validate instructions from a *retail client* in relation to an *adviser charge*;
 - (2) offer sufficient flexibility in terms of the *adviser charges* it facilitates; and
 - (3) not pay out or advance *adviser charges* to the *firm* to which the *adviser charge* is owed over a materially different time period, or on a materially different basis to that in which it recovers the *adviser charge* from the *retail client* (including paying any *adviser charges* to the *firm* that it cannot recover from the *retail client*).

COBS 6 : Information about the firm, its services and remuneration

Section 6.1B : Retail investment product provider, operator of an electronic system in relation to lending, and platform service...

- 6.1B.9A** **G** A *firm* facilitates the payment of *adviser charges* for the purposes of
■ COBS 6.1B.9 R if the *adviser charge* is not paid directly by the *retail client*, but is instead paid on behalf of the *retail client* via the *firm*.
- 6.1B.9B** **G** A *firm* may facilitate the payment of *adviser charges* for the purposes of
■ COBS 6.1B.9 R by:
- (1) selling all or part of the *retail client's retail investment product* to pay the *adviser charge*; or
 - (2) disposing of or reducing all or part of the *retail client's rights under the retail investment product* (for example, by way of a part disposal which creates benefits under a *life policy*) to pay the *adviser charge*; or
 - (3) separating out an amount or amounts for the payment of the *adviser charge* from the amount received from the *retail client* to be invested or from the *premium* in the case of a *life policy*; or
 - (4) paying the *adviser charge* from the *retail client's cash account*.
- 6.1B.10** **G** A *firm* should consider whether the flexibility in levels of *adviser charges* it offers to facilitate is sufficient so as not to unduly influence or restrict the charging structure and *adviser charges* that the *firm* providing the *personal recommendation* or related services can use.
- 6.1B.11** **G** ■ COBS 6.1B.9R(3) does not prevent a *firm*, if this is in the *retail client's best interests*, from entering into an agreement with another *firm* which is providing a *personal recommendation* to a *retail client*, or with a *retail client* of such a *firm*, to provide it with *credit* separately in accordance with the *rules and guidance* on providing credit and other benefits to *firms* that provide *personal recommendations* on *retail investment products* or *P2P agreements* (see ■ COBS 2.3.12 E, ■ COBS 2.3.12A G), ■ COBS 2.3A.27E and ■ COBS 2.3A.28G).

6.1C Consultancy charging and remuneration

- 6.1C.1** **R** **Application - Who? What?**
- (1) This section applies to a *firm* that gives advice, or provides services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.
- (2) Without prejudice to (1), this section does not apply to a *firm* that makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*.
- 6.1C.2** **R** **Application - Where?**
- This section does not apply if the employer is outside the *United Kingdom*.
- 6.1C.3** **R** **Interpretation**
- In this section 'giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*' includes:
- (1) giving advice or assistance to an employer on the operation of such a scheme;
- (2) taking, or helping the employer to take, the steps that must be taken to enable an employee of the employer to become a member of such a *scheme*; and
- (3) giving advice to an employee, pursuant to an agreement between the employer and the adviser, about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of such a *scheme*.
- 6.1C.4** **G** **Requirement to be paid through consultancy charges**
- COBS 6.1C.1 (Application - Who? What?) and ■ COBS 6.1C.3 (Interpretation) mean (for example) that the cost of any advice given to an employee pursuant to an agreement between the employer and the adviser about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of a *group personal pension scheme* or *group stakeholder pension scheme* are subject to the *rules* in this section, not the *rules on adviser charging* (■ COBS 6.1A).

6	<p>6.1C.5 R Except as specified in ■ COBS 6.1C.5A R, ■ COBS 6.1C.5B R and ■ COBS 6.1C.5C R, a <i>firm</i> must:</p> <ul style="list-style-type: none">(1) only be remunerated for giving advice, or providing services, to an employer in connection with a <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> by <i>consultancy charges</i> or by a fee payable by the employer;(2) not solicit or accept (and ensure that none of its <i>associates</i> solicits or accepts) any other commissions, remuneration or benefit of any kind in relation to that advice, or those services, regardless of whether it intends to refund the payments or pass the benefits on to the <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i>; and(3) not solicit or accept (and ensure that none of its <i>associates</i> solicits or accepts) <i>consultancy charges</i> which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the <i>consultancy charges</i> are recovered from the relevant <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i>. <p>6.1C.5A R A <i>firm</i> and its <i>associates</i> may, except in relation to a <i>qualifying scheme</i>:</p> <ul style="list-style-type: none">(1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1C.5 R if:<ul style="list-style-type: none">(a) the employer's part of the relevant scheme was established on or before 30 December 2012; and(b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the <i>rules</i> in force on 30 December 2012; and(2) enter into an arrangement under which the right to receive the commission, remuneration or benefit in (1) is transferred to that <i>firm</i> or its <i>associate</i>. <p>Re-registration of commission when an employer moves to a new adviser</p> <p>6.1C.5B R If an employer chooses to appoint a <i>firm</i> to provide advice or services in connection with a <i>group personal pension scheme</i> or a <i>group stakeholder pension scheme</i> and that <i>firm</i> or its <i>associate</i> enters into an arrangement in ■ COBS 6.1C.5AR (2), the <i>firm</i> must:</p> <ul style="list-style-type: none">(1) before the arrangement is entered into, disclose to the employer that the transfer of the commission, remuneration or benefit of any kind will be requested by the <i>firm</i> or its <i>associate</i>;(2) throughout the period during which the <i>firm</i> or its <i>associate</i> receives the commission, remuneration or benefit of any kind, provide the employer with an ongoing service; and(3) as soon as reasonably practicable after it makes the disclosure in (1):<ul style="list-style-type: none">(a) disclose to the employer the basis and amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and(b) provide the employer with a description of the ongoing service it will provide to the employer in accordance with (2).
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- 6.1C.5C** **R** In connection with a *qualifying scheme*, a *firm* may only solicit or accept *consultancy charges* from an operator of a *qualifying scheme* if the *operator* has confirmed that express agreement has been given by members of that scheme under ■ COBS 19.6.4 R.
- 6.1C.6** **G** A *firm* may receive a *consultancy charge* that is no longer payable (for example, after the service it is received in payment for has been amended or terminated) provided the *firm* passes any such payments to the relevant *group personal pension scheme* or *group stakeholder pension scheme*.
- 6.1C.7** **G** The requirement to be paid through *consultancy charges* does not prevent a *firm* from making use of any facility for the payment of *consultancy charges* provided by another *firm* or other third parties provided that the facility complies with the requirements of ■ COBS 6.1D.9 R.
- 6.1C.8** **G** Examples of payments and benefits that should not be accepted under the requirement only to be paid through *consultancy charges* include:
- (1) a share of the charges applied to a *group personal pension scheme*, *group stakeholder pension scheme* or the scheme provider's revenues or profits (except if the *firm* providing the advice to an employer in relation to such a scheme is the scheme provider);
 - (2) a commission set and payable by a *retail investment product* provider in any jurisdiction.
- Requirements on a product provider giving advice to an employer in respect of the product provider's own group personal pension scheme or group stakeholder pension scheme products.
- 6.1C.9** **R** If the *firm* or its *associate* is the *group personal pension scheme* or *group stakeholder pension scheme* provider, the *firm* must ensure that the level of its *consultancy charges* is at least reasonably representative of the cost associated with giving the advice to the employer in relation to the relevant scheme.
- 6.1C.10** **G** A *consultancy charge* is likely to be reasonably representative of the cost of the services associated with giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* if:
- (1) the total expected costs associated with advising the employer in relation to the *group personal pension scheme* or *group stakeholder pension scheme* will:
 - (a) be recovered through *consultancy charges*; and
 - (b) not be recovered by charges for, or profits from, other services (such as those associated with establishing and operating that scheme);
 - (2) *consultancy charges* are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the *firm*'s established payback period; and

		<p>(3) (were the services to be provided by an unconnected <i>firm</i>), the level of <i>consultancy charges</i> would be appropriate in the context of the service being provided by the <i>firm</i>.</p>
6	6.1C.10A	<p>G</p> <p>(1) In ■ COBS 6.1C.10G(1), the total costs associated with advising the employer in relation to the <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> include attributable indirect costs of the <i>firm's</i> (or <i>group's</i>) wider business such as <i>firm</i> or <i>group</i> overheads.</p> <p>(2) In ■ COBS 6.1C.10G(2), the <i>firm's</i> established payback period is the period of time in which the cash outflows associated with an investment made by the <i>firm</i> (or <i>group</i>) are expected to be recovered from the cash inflows generated by the <i>adviser charges</i>.</p>
		<p>Requirement to use a charging structure</p>
	6.1C.11	<p>R</p> <p>A <i>firm</i> must determine and use an appropriate charging structure for calculating its <i>consultancy charge</i> for each employer.</p>
	6.1C.12	<p>G</p> <p>A <i>firm</i> can use a standard charging structure.</p>
	6.1C.13	<p>G</p> <p>(1) In determining its charging structure and <i>consultancy charges</i> a <i>firm</i> should have regard to the best interests of the employer and the employer's employees.</p> <p>(2) A <i>firm</i> may not be acting in the best interests of the employer and the employer's employees if it:</p> <p>(a) varies its <i>consultancy charges</i> inappropriately according to product provider; or</p> <p>(b) allows the availability or limitation of services offered by third parties to facilitate the payment of <i>consultancy charges</i> to influence inappropriately its charging structure or <i>consultancy charges</i>.</p> <p>(3) <i>Firms</i> are reminded that the <i>client's best interests rule</i> may also apply.</p>
	6.1C.14	<p>R</p> <p>A <i>firm</i> must not use a charging structure which conceals the amount or purpose of any of its <i>consultancy charges</i> from an employer or an employee.</p>
	6.1C.15	<p>G</p> <p>A <i>firm</i> is likely to be viewed as operating a charging structure that conceals the amount or purpose of its <i>consultancy charges</i> if, for example, it makes arrangements for amounts in excess of its <i>consultancy charges</i> to be deducted from an employee's investments from the outset, in order to be able to provide a cash payment to the employer or employee later.</p>
		<p>Initial information for clients on the cost of consultancy services</p>
	6.1C.16	<p>R</p> <p>A <i>firm</i> must disclose its charging structure to an employer in writing, in good time before giving advice, or providing services, to the employer in connection with a <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i>.</p>

- 6.1C.17** G A firm should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses *cash terms*. If a firm's charging structure is in non-cash terms, examples in *cash terms* should be used to illustrate how the charging structure will be applied in practice.

Disclosure of total consultancy charges payable

- 6.1C.18** R
- (1) A firm must agree with and disclose to an employer the total consultancy charge payable to it or any of its associates.
 - (2) A disclosure under (1) must:
 - (a) be in *cash terms* (or convert non-cash terms into illustrative cash equivalents);
 - (b) be made as early as practicable and, in any event, before the employer:
 - (i) selects a particular group personal pension scheme or group stakeholder pension scheme for the benefit of its employees; or
 - (ii) if applicable, reviews its group personal pension scheme or group stakeholder pension scheme arrangements;
 - (c) be in a *durable medium* or through a website (if it does not constitute a *durable medium*) if the *website conditions* are satisfied;
 - (d) if there are payments over a period of time, include:
 - (i) the amount and frequency of each payment due; and
 - (ii) the period over which the consultancy charge is payable;
 - (iii) an explanation of the implications for the employer and its employees if an employee leaves the employer's service; and
 - (iv) an explanation of the implications for the employer and its employees if contributions to the group personal pension scheme or group stakeholder pension scheme are cancelled before the consultancy charge is fully paid.

6

- 6.1C.19** G To comply with the rule on disclosure of total consultancy charges payable (COBS 6.1C.18R) and the fair, clear and not misleading rule, a firm's disclosure of the total consultancy charge should:

- (1) provide information to the employer as to which particular service a consultancy charge applies;
- (2) include information as to when payment of the consultancy charge is due;
- (3) if an ongoing consultancy charge is expressed as a percentage of funds under management, clearly reflect in the disclosure how that consultancy charge may increase as the fund grows.

Requirement not to make a consultancy charge in certain circumstances

- 6.1C.20** R When an employer asks a firm to provide advice to the employer's employees, the firm:

- (1) may make a *consultancy charge* for the cost of preparing and giving advice to each employee who chooses to accept his employer's offer of advice;
- (2) must not make a *consultancy charge* for the cost of preparing or giving advice to an employee who chooses not to accept the offer of advice;
- (3) (if the *firm* prepares generic advice to be given to more than one employee) must not make more than one *consultancy charge* for preparing that advice.

Disclosure to employees

6.1C.20A R

A *firm* must take reasonable steps to ensure that its *representatives*, when making contact with an employee with a view to giving a *personal recommendation* on his or her employer's *group personal pension scheme* and/or *group stakeholder pension scheme*, inform the employee:

- (1) that the *firm* will be providing a *personal recommendation* on a *group personal pension scheme* and/or *group stakeholder pension scheme* provided by the employer;
- (2) whether the employee will be provided with a *personal recommendation* that is restricted to the *group personal pension scheme* or *group stakeholder pension scheme* provided by the employer or the recommendation will also cover other products; and
- (3) that the employee will have to pay an *adviser charge* (if applicable) unless the *representative* is making contact pursuant to an agreement made between the *firm* and the employer under which the *firm* is remunerated by *consultancy charging* or a fee payable by the employer.

Record-keeping

6.1C.21 R

A *firm* must keep a record of:

- (1) its charging structure;
- (2) the *consultancy charges* payable by each employer and each of the employer's employees; and
- (3) if the *consultancy charge* for a particular service has varied materially from that indicated in the *firm's* charging structure, the reasons for that difference.

6.1D Product provider requirements relating to consultancy charging and remuneration

- 6.1D.1 R** This section applies to a *firm* that is a *group personal pension scheme* or *group stakeholder pension scheme* provider, but only if the *firm* providing the relevant scheme (or another *firm*) gives advice, or provides services, to an employer in connection with that scheme.
- 6.1D.2 R** This section does not apply if the employer is outside the *United Kingdom*.
- 6.1D.3 R** In this section 'giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*' includes:
- (1) giving advice or assistance to an employer on the operation of such a scheme;
 - (2) taking, or helping the employer to take, the steps that must be taken to enable an employee of the employer to become a member of such a *scheme*; and
 - (3) giving advice to an employee, pursuant to an agreement between the employer and the advisor, about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of such a scheme.
- 6.1D.4 R** Requirement not to offer commission, provide factoring or offer credit to a third party
- (1) Except as specified in ■ COBS 6.1D.6A R, a *firm* must not offer or pay (and must ensure that none of its associates offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, an *employee benefit consultant* or to any other third party for the benefit of that *firm*, *employee benefit consultant* or third party in relation to the sale or purchase of:
 - (a) a *group personal pension scheme* or *group stakeholder pension scheme*, whether or not that sale or purchase is accompanied or facilitated by advice given to the purchasing employer or the employer's employees; or

(b) an *investment*, if that sale or purchase is, or was, for the benefit of an *occupational pension scheme* established as an alternative to a *group personal pension scheme* or *group stakeholder pension scheme*.

(2) Except in connection with a *qualifying scheme*, paragraph (1)(a) does not prevent a *firm* from making a payment to a third party that has facilitated the payment of a *consultancy charge* from a *group personal pension scheme* or *group stakeholder pension scheme*, provided that that payment is only in respect of that facilitation.

(3) For the purposes of (1)(b) only, an *occupational pension scheme* will be established as an alternative to a *group personal pension scheme* or *group stakeholder pension scheme* if, in order to meet the most material of its objectives, an employer could reasonably have chosen to establish an *occupational pension scheme* on the one hand, or a *group personal pension scheme* or *group stakeholder pension scheme* on the other, and it chose to establish an *occupational pension scheme*.

6.1D.5 **G** The requirement not to offer or pay commission does not prevent a *firm* from making a payment to a third party in respect of administration or other charges incurred, for example a payment to a fund supermarket or a third party administrator.

6.1D.6 **R** A *firm* that produces a *group personal pension scheme* or *group stakeholder pension scheme* must not offer or make any credit available out of its own funds, and to or for the benefit of another *firm*, an *employee benefit consultant* or another third party.

6.1D.6A **R** A *firm* and its associates may, except in connection with a *qualifying scheme*:

- (1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in **COBS 6.1D.4 R** if:
 - (a) the employer's part of the relevant scheme was established on or before 30 December 2012; and
 - (b) the offer or payment was permitted by the *rules* in force on 30 December 2012; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its associate.

Distinguishing product charges from consultancy charges

6.1D.7 **R** A *firm* must:

- (1) take reasonable steps to ensure that its *group personal pension scheme* and *group stakeholder pension scheme* charges are not structured so that they could mislead or conceal from an employer the distinction between those charges and any *consultancy charges* payable in respect of the scheme; and
- (2) not include in any marketing materials in respect of its *group personal pension schemes* or *group stakeholder pension schemes* any

		statements about the appropriateness of levels of <i>consultancy charges</i> that a <i>firm</i> could charge in giving advice to an employer in relation to a such a scheme.
6.1D.8	<input type="checkbox"/> G	A <i>firm</i> should not offer to invest more than 100% of the <i>retail client's</i> contribution to a <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> .
6.1D.9	<input type="checkbox"/> R	Requirements on firms facilitating the payment of consultancy charges A <i>firm</i> that offers to facilitate, directly or through a third party, the payment of <i>consultancy charges</i> must: <ol style="list-style-type: none">(1) obtain and validate instructions from the relevant employer in relation to the <i>consultancy charge</i>;(2) offer sufficient flexibility in terms of the <i>consultancy charges</i> it facilitates;(3) not pay out or advance <i>consultancy charges</i> to the <i>firm</i> to which the <i>consultancy charge</i> is owed over a materially different time period, or on a materially different basis to that in which it recovers the <i>consultancy charges</i> from the employee (including paying any <i>consultancy charges</i> to the <i>firm</i> that it cannot recover from the employee); and(4) ensure that the <i>consultancy charges</i> levied do not exceed those agreed between the employee's employer and the relevant adviser (unless the prior written consent of the employee is obtained).
6.1D.9A	<input type="checkbox"/> G	A <i>firm</i> facilitates the payment of <i>consultancy charges</i> for the purposes of COBS 6.1D.9 R if the <i>consultancy charge</i> is not paid directly by the employee, but is instead paid on behalf of the employee via the <i>firm</i> .
6.1D.9B	<input type="checkbox"/> G	A <i>firm</i> facilitates the payment of <i>consultancy charges</i> for the purposes of COBS 6.1D.9 R by: <ol style="list-style-type: none">(1) selling all or part of, or rights under, the employee's investment in a <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> to pay the <i>consultancy charge</i>; or(2) disposing of or reducing all or part of the employee's rights under the <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> (for example, by way of a part disposal which creates benefits under a <i>life policy</i>) to pay the <i>consultancy charge</i>; or(3) separating out an amount or amounts for the payment of the <i>consultancy charge</i> from the amount received from the employer on behalf of the employee or from the premium in the case of a <i>life policy</i>.
6.1D.10	<input type="checkbox"/> G	A <i>firm</i> should consider whether the flexibility in levels of <i>consultancy charges</i> it offers to facilitate is sufficient so as not to unduly influence or restrict the

charging structure and *consultancy charges* that the *firm* providing advice to an employer in relation to a *group personal pension scheme* or *group stakeholder pension scheme* can use.

Disclosure of total consultancy charges payable

- 6.1D.11** **R** A *firm* must, in good time, provide an employee with sufficient information on the total *consultancy charge* payable by the employee.
- 6.1D.12** **G** To comply with **COBS 6.1D.11R**, a *firm's* disclosure should be in *cash terms* (or convert non-cash terms into illustrative cash equivalents) and should:
- (1) include information as to the period over which the *consultancy charge* is payable;
 - (2) provide information on the implications for the employee if the employee leaves the employer's service or their contributions to the *group personal pension scheme* or *group stakeholder pension scheme* are cancelled before the *consultancy charge* is fully paid.
- 6.1D.13** **G** A *firm* may provide the disclosure in **COBS 6.1D.11R** at the same time as it provides a *key features document*.

6.1E Platform services: platform charges and using a platform service for advising

Platform service providers: platform charges

6.1E.-1 **R** This section does not apply if the *retail client* is outside the *United Kingdom*.

- 6.1E.1** **R**
- (1) A *platform service provider* must clearly disclose the total *platform charge* to the *retail client* in a *durable medium* in good time before the provision of *designated investment business*.
 - (2) In the event that it is not possible to make the disclosure in (1) in good time before the provision of *designated investment business*, the disclosure must be made as soon as practicable thereafter.

6.1E.2 **G** A *platform service provider* should pay due regard to its obligations under *Principle 6 (Customers' interests)*, *Principle 7 (Communications with clients)* and the *client's best interests rule*, and ensure that it presents *retail investment products* without bias.

6.1E.3 **G** A *platform service provider* should pay due regard to its obligations under *Principle 6 (Customers' interests)* and the *client's best interests rule* and not vary its *platform charges* inappropriately according to provider or, for substitutable and competing *retail investment products*, the type of *retail investment product*.

Requirement to be paid through platform charges

6.1E.4 **R** Except as specified in ■ COBS 6.1E.6 R and ■ COBS 6.1E.7 R, a *platform service provider* must:

- (1) only be remunerated for its *platform service* (and any other related services it provides), by *platform charges*; and
- (2) ensure that none of its *associates* accepts any remuneration in respect of those services.

6.1E.5 **G** Examples of remuneration that should not be accepted by a *platform service provider* or its *associates* include (but are not limited to):

- (1) a share of an annual management charge; and
- (2) any payment (other than a product charge or a *platform charge*) made to a *platform service provider* in its capacity as a *retail*

investment product provider where the relevant retail investment product is distributed to retail clients by its platform service.

Exceptions.....

6.1E.6

R

A platform service provider or its associates may solicit and accept payments from:

- (1) a firm, other than a retail investment product provider, which is in the business of making personal recommendations to retail clients in relation to retail investment products; and/or
- (2) a firm, other than a retail investment product provider, which is in the business of arranging or dealing retail investment products for retail clients.

6.1E.7

R

Other than in ■ COBS 6.1E.6 R, a platform service provider or its associates may solicit and accept payments from any firm, including a retail investment product provider, which are only for:

- (1) pricing error corrections;
- (2) administering corporate actions;
- (3) research carried out by the platform service provider and management information; and
- (4) advertising;

provided that:

- (5) the services are available to firms at a price which does not vary inappropriately according to firm;
- (6) the payments are reasonable and proportionate for the service; and
- (7) the payments or service could not reasonably be expected to result in a channelling of business to the firm other than through the normal effect of general advertising.

Distinguishing platform charges from product charges and adviser charges.....

6.1E.8

R

A platform service provider must not arrange for a retail client to buy a retail investment product if:

- (1) the product's charges are presented in a way that offsets or may appear to offset any adviser charges or platform charges that are payable by that retail client; or
- (2) the platform service provider's charges are presented in a way that offsets or may appear to offset any product charges or adviser charges that are payable by the retail client; or
- (3) the product's charges or other payments are maintained by the retail investment product provider at a level such that a cash rebate, other than a cash rebate permitted by ■ COBS 6.1E.10R (2), is payable to the retail client.

- Using a platform service when advising**
- 6.1E.9 R** A firm must not use a *platform service* as part of a *personal recommendation* to a *retail client* in relation to a *retail investment product* unless it has satisfied itself that the *platform service provider*, and its *associates*, only receive remuneration for business carried on in the *UK* which is permitted by the *rules* in this section.
- Providing additional units or payment in cash to a retail client**
- 6.1E.10 R** COBS 6.1E.4 R does not prevent a *platform service provider* receiving a share of an annual management charge from an *authorised fund manager* if the *platform service provider* passes that share on to the *retail client* in the form of:
- (1) additional *units*; or
 - (2) cash, provided that it does not offset or appear to offset any *adviser charges* or *platform charges*.
- 6.1E.11 G** Examples of a cash share of an annual management charge that would not offset or appear to offset any *adviser charges* or *platform charges* are:
- (1) where the *retail client* has redeemed his *retail investment product*; or
 - (2) where the value of the payment made to the *retail client* in each month does not exceed £1 for each fund.
- 6.1E.12 G** If a *platform service provider* passes a share of an annual management charge on to a *retail client* by way of additional *units* or cash, it should pay due regard to its obligations under *Principle 7* (Communications with clients).

6

6.1F Using a platform service for arranging and advising

Client's best interests rule and using a platform service

6.1F.-1 **R** This section does not apply if the *retail client* is outside the *United Kingdom*.

6.1F.1 **R** A *firm* which:

- (1) arranges for *retail clients* to buy *retail investment products* or makes personal recommendations to *retail clients* in relation to *retail investment products*; and
- (2) uses a *platform service* for that purpose;

must take reasonable steps to ensure that it uses a *platform service* which presents its *retail investment products* without bias.

6.1F.2 **G** When selecting and using a *platform service* for the purpose described in

■ COBS 6.1F.1 R, a *firm* should be mindful of its duty to comply with the *client's best interests rule* and the *rules on inducements* (■ COBS 2.3.1 R, ■ COBS 2.3A.5R and ■ COBS 2.3A.15R).

6.1G Re-registration of title to retail investment products

- 6.1G.1** **R** If a *client* requests a *firm* (F) to transfer the title to a *retail investment product* which is held by F directly, or indirectly through a third party, on that *client's* behalf to another *person* (P), and F may lawfully transfer the title to that *retail investment product* to P, F must execute the *client's* request within a reasonable time and in an efficient manner.
- 6.1G.2** **R** A *firm* acting as a *registrar* should carry out a request by F for the re-registration of ownership of a *retail investment product* to P within a reasonable time.

6.1H Platform switching

Application.....

- 6.1H.1** **R** This section applies to a *platform service provider* in relation to the transfer, or potential transfer, of a *retail client's units*.

Definitions.....

- 6.1H.2** **R** In this section:
- (1) “transfer” means the process of transferring a *client's investment* from existing arrangements with a *platform service provider* (“ceding platform”) to separate arrangements with another *platform service provider* (“receiving platform”), irrespective of whether the assets, rights or interests comprising the *investment* are themselves transferred, or whether any of them are converted, exchanged, sold and replaced by equivalent assets, rights or interests, or realised as part of the process;
 - (2) “available scheme” is a *fund* in which *units* are available for investment by the *client* via both the ceding and the receiving platforms;
 - (3) “discounted unit class” is a *unit* class of an available scheme in respect of which the *fund manager* is remunerated by a lower level of charges than would otherwise apply to the *client's investment* in the available scheme;
 - (4) “in-specie transfer” refers to a transfer of the *client's units* which is given effect via re-registration of the ownership of the *units*, whether or not the transfer also involves a *unit* class conversion but in any event without the *fund manager* redeeming the existing *units*;
 - (5) “*fund manager*” is the *operator*, or, to the extent not covered by that term, the *AIFM* of the available scheme; and
 - (6) “*unit*” includes any right to or interest in a *unit*.

In-specie transfers and unit class conversions.....

- 6.1H.3** **R** Where a *client* contacts a *platform service provider* in connection with a potential transfer of their *investment* which is, or includes, *units*, the *platform service provider* must provide the *client* with:
the option of an in-specie transfer of *units* in an available scheme, provided there are no circumstances outside the control of either the ceding or the receiving platform which would prevent such transfer;

6.1H.4

R

If the *client* instructs the *platform service provider* to proceed with a transfer of *units*, then:

the ceding and receiving platforms must take all reasonable steps to give effect to the *client's* transfer instructions efficiently and within a reasonable time, including cooperating with and promptly providing each other with information as necessary;

if the *client* has chosen an in-specie transfer in accordance with ■ COBS 6.1H.3R(1) and a *unit* class conversion is required to enable or facilitate such transfer, the ceding platform must request the *fund manager* to carry out the relevant *unit* class conversion, and take any other reasonable steps to bring it about; and

if the *client* has chosen a discounted *unit* class in accordance with ■ COBS 6.1H.3R(2), the receiving platform must request the *fund manager* to carry out, and take any other reasonable steps to bring about, the conversion of the units into the appropriate discounted *unit* class.

6.1H.5

R

The obligation to request a *unit* class conversion in ■ COBS 6.1H.4R(2) and (3) only applies to the extent the *platform service provider* is entitled to request it.

6.1H.6

R

If a *platform service provider* is unable to give effect to all or part of a *client's* transfer instructions, it must contact the *client* at the earliest opportunity to request further instructions.

6.2B Describing advice services

Application

- 6.2B.1** **R** (1) This section applies to a *firm* that provides:
- (a) *investment advice in the course of MiFID, equivalent third country or optional exemption business to clients in relation to financial instruments or structured deposits; or*
 - (b) *investment advice to retail clients in the United Kingdom in relation to financial instruments, structured deposits or other retail investment products; or*
 - (c) *basic advice to retail clients in the United Kingdom.*
- 6.2B.2** **R** (1) This section does not apply to a *firm* when it makes a *personal recommendation* or provides *basic advice* to an employee, if that recommendation or advice is provided under the terms of an agreement between the *firm* and that employee's employer which is subject to the rules on *consultancy charges* (**COBS 6.1C**).
- (2) This section does not apply to a *firm* when it makes a *personal recommendation* to a *retail client* in relation to a *Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.
- 6.2B.3** **G** P2P agreements are neither *financial instruments* nor *retail investment products*. This section does not apply to a *firm* when it is *advising on P2P agreements*.
- 6.2B.4** **G** (1) This section applies in accordance with the territorial scope of the general application of this sourcebook as modified in **COBS 1 Annex 1**.
- (2) But the effect of **COBS 6.2B.1R(1)** and **COBS 6.2B.6R** to **COBS 6.2B.9R** includes that:
- (a) this section does not apply to a *firm* that provides *investment advice* to a *retail client* in relation to a *retail investment product* that is not a *financial instrument* if the *retail client* is outside the *United Kingdom*; and
 - (b) a *firm* that carries on *MiFID or equivalent third country business* with a *retail client* outside the *United Kingdom* need only have regard to *financial instruments* and *structured deposits* (and not other *retail investment products*) in conducting its assessment for the purposes of **COBS 6.2B.11R**.

6.2B.5

G

This section 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 *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*.

6.2B.6

R

Interpretation of rules and guidance: relevant products

In this section a “relevant product” is:

- (1) where the *client* is a *retail client* in the *United Kingdom*, a *financial instrument*, *structured deposit* or other *retail investment product*; or
- (2) otherwise, a *financial instrument* or *structured deposit*.

[Note: article 1(4) of *MiFID*]

6

Interpretation of 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 “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 “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 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 “UK” as if they were *rules* but:

- (1) reading references to *financial instruments* as including *structured deposits* and (if the *client* is a *retail client* in the *United Kingdom*) other *retail investment products*;
- (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.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.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.29UK) that a *firm* does not allow a

natural person to provide both *independent advice* and *restricted advice*.

Interpretation: non-independent advice and restricted advice

- 6.2B.10** G This section refers to both “restricted advice” and “non-independent advice”. These terms have the same meaning.

Firms holding themselves out as independent

- 6.2B.11** R If a *firm* informs a *client* that it provides *independent advice*, that *firm* must assess a sufficient range of relevant products available on the market which must:

- (1) be sufficiently diverse with regard to their:
 - (a) type; and
 - (b) issuers or product providers,to ensure that the *client's* investment objectives can be suitably met; and
- (2) not be limited to relevant products issued or provided by:
 - (a) the *firm* itself or by entities having close links with the *firm*; or
 - (b) other entities with which the *firm* has such close legal or economic relationships, including contractual relationships, as to present a risk of impairing the independent basis of the advice provided.

[**Note:** article 24(7)(a) of *MiFID*]

- 6.2B.12** R ■ COBS 6.2B.11R does not apply to *group personal pension schemes* if a *firm* discloses information to a *client* in accordance with the rule on *group personal pension schemes* (■ COBS 6.1C.20AR).

- 6.2B.13** G The combined effect of ■ COBS 6.2B.6R and ■ COBS 6.2B.11R is that the assessment undertaken by a *firm* for the purpose of ■ COBS 6.2B.11R must:
- (1) where the *client* is a *retail client* in the *United Kingdom*, include a sufficient range of *financial instruments*, *structured deposits* and other *retail investment products*; or otherwise
 - (2) include a sufficient range of *financial instruments* and *structured deposits*,

which in each case must meet the requirements as to diversity and scope in ■ COBS 6.2B.11R(1) and ■ (2) respectively.

Requirements for firms providing focused independent advice

- 6.2B.14** G A *firm* that holds itself out as providing *independent advice* may provide broad and general advice or specialist and specific advice.

[**Note:** recital 71 to the *MiFID Org Regulation*]

6.2B.15 UK

53(2) An investment firm that provides investment advice on an independent basis and that focuses on certain categories or a specified range of financial instruments shall comply with the following requirements:

- (a) the firm shall market itself in a way that is intended only to attract clients with a preference for those categories or range of financial instruments;
- (b) the firm shall require clients to indicate that they are only interested in investing in the specified category or range of financial instruments; and
- (c) prior to the provision of the service, the firm shall ensure that its service is appropriate for each new client on the basis that its business model matches the client's needs and objectives, and the range of financial instruments that are suitable for the client. Where this is not the case the firm shall not provide such a service to the client.

[Note: article 53(2) of the *MiFID Org Regulation*]

6.2B.16 G

- (1) ■ COBS 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.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.
- (2) A *firm* that provides *independent advice* in respect of a relatively narrow market should not hold itself out as acting independently in a broader sense. A *firm* which specialises in providing advice in respect of a particular market might include reference to the provision of independent investment advice in its name. However, it would need to be clear in any marketing materials, and when describing its service, that it only provides *independent advice* in respect of that particular product market.

Sufficient range

6.2B.17 G

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.15UK;
- (2) the investment objectives of the *client* (■ COBS 6.2B.11R(1)); and
- (3) the *firm's* close links and relationships with product providers and issuers (■ COBS 6.2B.11R(2)).

6.2B.18 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 [■ COBS 6.2B.11R]. The selection process shall include the following elements:

- (a) the number and variety of financial instruments considered is proportionate to the scope of investment advice services offered by the independent investment adviser;
- (b) the number and variety of financial instruments considered is adequately representative of financial instruments available on the market;
- (c) the quantity of financial instruments issued by the investment firm itself or by entities closely linked to the investment firm itself is proportionate to the total amount of financial instruments considered; and
- (d) the criteria for selecting the various financial instruments shall include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients, and shall ensure that the selection of the instruments that may be recommended is not biased.

Where such a comparison is not possible due to the business model or the specific scope of the service provided, the investment firm providing investment advice shall not present itself as independent.

[**Note:** article 53(1) of the MiFID Org Regulation]

6.2B.19 G

- (1) ■ COBS 6.2B.11R does not require a *firm* providing *independent advice* to assess every relevant product available on the market before making a *personal recommendation*.

[**Note:** recital 73 to *MiFID*]

- (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.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*.
- (3) For example, a *firm* providing *independent advice* on *personal pension schemes* should be in a position to consider all *personal pension schemes*. What will constitute a sufficient range of *personal pension schemes* to be considered before providing a *client* with a *personal recommendation* will, however, depend upon the investment objectives of that *client*.
- (4) A *firm* not specialising in a particular market would generally be expected to be in a position to consider all relevant product types which would be capable of meeting the investment objectives of its *clients*.
- (5) If a *firm* that provides focused *independent advice* is not able to recommend a *financial instrument* that would meet the investment

objectives of a *client*, the *firm* should not provide that *client* with a *personal recommendation*. For example, if a *firm* providing *independent advice* on *shares* considered that a *client's* investment objectives would be better met by way of investment in an accumulation product, it should not provide that *client* with a *personal recommendation*.

Guidance on the independence standard

6.2B.20 G A *personal recommendation* on a relevant product that invests in a number of underlying relevant products would not of itself enable the *firm* providing the *personal recommendation* to satisfy the requirement to have considered a sufficient range of relevant products which are sufficiently diverse (■ COBS 6.2B.11R), even if the relevant product invests in a wide range of underlying *investments*.

6.2B.21 G The effect of ■ COBS 6.2B.11R(2) is that a *firm* which is subject to any form of agreement with an issuer or provider of relevant products that confines that *firm* to providing advice on relevant products issued or provided by that other person only will not be in a position to provide *independent advice*.

6.2B.22 G 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:

- (1) not limited to relevant products issued or provided by that related issuer or provider (■ COBS 6.2B.11R(2));
- (2) proportionate; and
- (3) not biased (■ COBS 6.2B.18UK).

6.2B.23 G In providing *independent advice* to a *retail client* in the *United Kingdom* a *firm* should consider financial products other than relevant products which are capable of meeting the investment needs and objectives of that *retail client*, examples of which could include national savings and investments (ns&i) products and cash deposit ISAs.

Use of platforms

6.2B.24 R A *firm* which:

- (1) holds itself out to a *retail client* in the *United Kingdom* as acting independently; and
- (2) relies upon a single *platform service* to facilitate the majority of its *personal recommendations*,

must ensure that, as appropriate, the selection of relevant products made available by the *platform service provider* is such as to enable the *firm* to satisfy the requirements of ■ COBS 6.2B.11R.

- 6.2B.25** **G** When a *firm* considers whether a *platform service provider's* selection of relevant products enables it to satisfy the requirements of **[COBS 6.2B.11R]**, a *firm* should take into account any fees, commission or non-monetary benefits the *platform service provider* receives in relation to those relevant products.
- Use of panels**
- 6.2B.26** **G** A *firm* providing *independent advice* may satisfy the requirement to assess a sufficient range of relevant products which are sufficiently diverse (**[COBS 6.2B.11R]**) by using 'panels'. Such a *firm* would need to ensure that any panel is sufficiently broad in its composition to enable the *firm* to make *personal recommendations* based on an assessment of a sufficient range of relevant products available on the market which are sufficiently diverse. The *firm* would need to review the panel regularly and ensure that the *client's* investment objectives can be suitably met.
- 6.2B.27** **G** When using a panel a *firm* may exclude a certain type or class of relevant product from the panel if, after review, there is a valid reason, consistent with this section and the *client's best interests rule*, for doing so.
- 6.2B.28** **G** If a *firm* providing *independent advice* chooses to engage a third party to conduct an assessment of the relevant products available on the market, the *firm* remains responsible for complying with the requirements of **[COBS 6.2B.11R]** to ensure that its advice is based on an assessment of a sufficient range of relevant products which are sufficiently diverse as to ensure that the *client's* investment objectives can be suitably met.
- Requirements for firms providing both independent and restricted advice**
- 6.2B.29** **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 **[COBS 6.2B.33R]** and the relevant implementing measures;
 - (b) the investment firm has presented itself as independent for the services for which it provides investment advice on an independent basis; and
 - (c) the investment firm has adequate organisational requirements and controls in place to ensure that both types of advice services and advisers are clearly separated from each other and that clients are not likely to be confused about the type of advice that they are receiving and are given the type of advice that is appropriate for them. The investment firm shall not allow a natural person to provide both independent and non-independent advice.
- [Note:** article 53(3) of the *MiFID Org Regulation*]
- 6.2B.30** **G** A *firm* that offers an unlimited range of *regulated mortgage contracts*, or gives advice in relation to *contracts of insurance* on the basis of a fair

6.2B.31

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analysis, but offers *restricted advice* on relevant products should not hold itself out as acting independently for its business as a whole, for example by holding itself out as an independent financial adviser. However, it may disclose that it offers an unlimited range of *regulated mortgage contracts* or gives advice in relation to *contracts of insurance* on the basis of a fair analysis provided it makes clear in accordance with the *fair, clear and not misleading rule* (■ COBS 4.2.1R) that it provides *restricted advice* on relevant products.

6.2B.32

UK

52(1) Where advice is offered or provided to the same client on both an independent and non-independent basis, investment firms shall explain the scope of both services to allow investors to understand the differences between them and not present itself as an independent investment adviser for the overall activity. Firms shall not give undue prominence to their independent investment advice services over non-independent investment services in their communications with clients.

[Note: article 52(1) of the *MiFID Org Regulation*]

6.2B.33

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- (1) A firm must disclose to a *client*, in good time before the provision of *investment advice* or *basic advice*:
 - (a) whether its advice will be:
 - (i) *independent advice*; or
 - (ii) *restricted advice*;
 - (b) whether the advice will be based on a broad or more restricted analysis of different types of relevant products; and
 - (c) where the advice will be *restricted advice*, whether the range will be limited to relevant products issued or provided by entities having close links with the *firm* or any other legal or economic relationships, such as contractual relationships, so as to present a risk of impairing the independent basis of the advice provided.

[Note: article 24(4)(a)(i) and (ii) of *MiFID*]

- (2) A firm must include the term “*independent advice*” or “*restricted advice*” or both, as relevant, in the disclosure.

6.2B.34

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- (1) A firm must provide the information required by ■ COBS 6.2B.33R in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* that is being offered and, consequently, to take investment decisions on an informed basis.
- (2) That information may be provided in a standardised format.

[Note: article 24(5) of *MiFID*]

6	<p>6.2B.35 UK</p> <p>52(1) Investment firms shall explain in a clear and concise way whether and why investment advice qualifies as independent or non-independent and the type and nature of the restrictions that apply, including, when providing investment advice on an independent basis, the prohibition to receive and retain inducements.</p> <p>[Note: article 52(1) of the <i>MiFID Org Regulation</i>]</p>
	<p>6.2B.36 UK</p> <p>52(2) Investment firms providing investment advice, on an independent or non-independent basis, shall explain to the client the range of financial instruments that may be recommended, including the firm's relationship with the issuers or providers of the instruments.</p> <p>52(3) Investment firms shall provide a description of the types of financial instruments considered, the range of financial instruments and providers analysed per each type of instrument according to the scope of the service, and, when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis and the factors taken into consideration in the selection process used by the investment firm to recommend financial instruments, such as risks, costs and complexity of the financial instruments.</p> <p>52(4) When the range of financial instruments assessed by the investment firm providing investment advice on an independent basis includes the investment firm's own financial instruments or those issued or provided by entities having close links or any other close legal or economic relationship with the investment firm as well as other issuers or providers which are not linked or related, the investment firm shall distinguish, for each type of financial instrument, the range of the financial instruments issued or provided by entities not having any links with the investment firm.</p> <p>[Note: article 52(2), (3) and (4) of the <i>MiFID Org Regulation</i>]</p>
	<p>Medium of disclosure</p>
	<p>6.2B.37 G</p> <p>A firm should provide the disclosure information required by the rule on describing the breadth of a firm's advice service (■ COBS 6.2B.33R) in a durable medium or through a website (if it does not constitute a durable medium) provided the website conditions are satisfied.</p>
	<p>Additional oral disclosure for firms providing restricted advice</p>
	<p>6.2B.38 R</p> <p>If a firm provides restricted advice and engages in spoken interaction with the retail client, in addition to the disclosure required by ■ COBS 6.2B.33R, a firm must disclose orally in good time before the provision of its investment advice that it provides restricted advice and the nature of that restriction.</p>
	<p>6.2B.39 G</p> <p>Examples of statements which would comply with ■ COBS 6.2B.38R include:</p> <ol style="list-style-type: none">(1) "I am a [Firm X] adviser offering restricted advice, which means that my advice is restricted to advice on [Firm X] [products/stakeholder products] only"; or(2) "I am a [Firm X] adviser offering restricted advice, which means that my advice is restricted to advice on [products/stakeholder products] from a limited number of companies that [Firm X] has selected".

6.2B.40

Record keeping.....

G Firms are reminded of the general record keeping requirements in ■ SYSC 3.2 and ■ SYSC 9. A *firm* should keep appropriate records of the disclosures required by this section.

6.2B.41

Systems and controls.....

- G**
- (1) Firms are reminded of the systems and controls requirements in SYSC.
 - (2) A *firm* providing *restricted advice* should take reasonable care to establish and maintain appropriate systems and controls to ensure that if there is no relevant product in the *firm's* range of products which meets the investment needs and objectives of the *client*, no *personal recommendation* should be made.
 - (3) A *firm* specialising in a particular market should take reasonable care to establish and maintain appropriate systems and controls to ensure that it does not make a *personal recommendation* if there is a relevant product outside the market on which it provides *investment advice* which would meet the investment needs and objectives of the *client*.

6.4 Disclosure of charges, remuneration and commission

Application.....

6.4.1 **R** This section applies to a *firm* when it sells or *arranges* the sale of a *packaged product* to a *retail client* and the *firm's* services to sell or *arrange* are not in connection with the provision of a *personal recommendation*.

6.4.2 **G** [deleted]

Disclosure of commission (or equivalent) for packaged products.....

6.4.3 **R**

- (1) If a *firm* sells or *arranges* the sale of a *packaged product* to a *retail client*, and subsequently if the *retail client* requests it, the *firm* must disclose to the *client* in *cash terms*.
 - (a) any *commission* receivable by it or any of its *associates* in connection with the transaction;
 - (b) if the *firm* is also the *product provider*, any *commission* or *commission equivalent* payable in connection with the transaction; and
 - (c) if the *firm* or any of its *associates* is in the same *immediate group* as the *product provider*, any *commission equivalent* in connection with the transaction.
- (2) Disclosure "in cash terms" in relation to *commission* does not include the value of any indirect benefits listed in the table at ■ COBS 2.3.15 G.
- (3) In determining the amount to be disclosed as *commission equivalent*, a *firm* must put a proper value on the cash payments, benefits and services provided to its *representatives* in connection with the transaction.
- (4) This *rule* does not apply if:
 - (a) the *firm* is acting as an *investment manager*; or
 - (b) the *retail client* is not present in the *United Kingdom* at the time of the transaction; or
 - (c) the *firm* provides the *client* with a *key features document*, a *key investor information document*, an *EEA key investor information document* or a *NURS-KII document*, in accordance with ■ COBS 14, provided that the *firm* discloses to the *client* the actual amount or value of *commission* or *equivalent* within five *business days* of effecting the transaction.

- (5) If the terms of a *packaged product* are varied in a way that results in a material increase in *commission* or *commission equivalent*, a *firm* must disclose to a *retail client* in writing any consequent increase in *commission* or *equivalent receivable* by it in relation to that transaction.
- 6.4.4** **G** Where a *firm* is required to disclose the value of *commission equivalent*, the value will be at least as high as the amount of any *commission*.
- 6.4.4A** **R** If the *firm* or its associate is the *pure protection contract insurer*, it may comply with ■ COBS 6.4.3R (1)(b) and ■ (c) by disclosing to the *consumer* an *indicative adviser charge* as an alternative to a *commission equivalent*.
- 6.4.4B** **R** The *indicative adviser charge* must be at least reasonably representative of the cost of the services associated with making the *personal recommendation* in relation to the *pure protection contract*.
- 6.4.4C** **G** An *indicative adviser charge* is likely to be reasonably representative of the cost of the services associated with making the *personal recommendation* if:
- (1) the total expected costs associated with making a *personal recommendation* and distributing the *pure protection contract* will:
 - (a) be recovered through *indicative adviser charges*; and
 - (b) not be recovered by charges for, or profits from, other services (such as manufacturing and administering the *pure protection contract*);
 - (2) *indicative adviser charges* are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the *firm's* established payback period; and
 - (3) the *personal recommendation* and any related services were to be provided by an unconnected *firm*, the level of the *indicative adviser charge* would be appropriate in the context of the service being provided by an unconnected *firm*.
- 6.4.4D** **G**
- (1) In ■ COBS 6.4.4CG(1), the total costs associated with making a *personal recommendation* and distributing the *pure protection contract* include attributable indirect costs of the *firm's* (or *group's*) wider business such as *firm* or *group* overheads.
 - (2) In ■ COBS 6.4.4CG(2), the *firm's* established payback period is the period of time in which the cash outflows associated with an investment made by the *firm* (or *group*) are expected to be recovered from the cash inflows generated by the *adviser charges*.
- 6.4.5** **R**
- (1) A *firm* must make the disclosure required by the *rule* on disclosure of *commission* or *equivalent* (■ COBS 6.4.3 R) as close as practicable to the time that it sells or *arranges* the sale of a *packaged product*.
 - (2) The *firm* must make the disclosure:

6.4.6

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- (a) in a *durable medium*; or
- (b) when a *retail client* does not make a written application to enter into a transaction, orally. In these circumstances, the *firm* must give written confirmation as soon as possible after the date of the transaction, and in any event within five *business days*.

6.4.7

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Guidance on disclosure requirements for packaged products

A *firm* must not enter into an arrangement to pay *commission* other than to the *firm* responsible for a sale, unless:

- (1) the *firm* responsible for the sale has passed on its right to receive the *commission* to the recipient; or
- (2) [deleted]
- (3) the *commission* is paid following the sale of a *packaged product* by the *firm* in response to a *financial promotion* communicated by that *firm* to a *client* of the recipient *firm*; or
- (4) the arrangement is with a *firm* in the same *immediate group*.

6.4.8

G

A disclosure made under this section should indicate the timing of any payment. For example, if a *firm* exchanges its right to future *commission* payments for a lump sum, whether by way of a loan or other commercial arrangement, it should disclose the amount of *commission* receivable by it that has been exchanged for the lump sum.

6.4.9

G

The *rules* in this section build on the disclosure of fees, commission and non-monetary benefits made under the rules on inducements (**■ COBS 2.3.1 R**, **■ COBS 2.3A.5R**, **■ COBS 2.3A.6R**, **■ COBS 2.3A.15R** and **■ COBS 2.3A.16R**).

6.4.10

G

If the precise rate or value of *commission* or *equivalent* is not known in advance, the *firm* should estimate the rate likely to apply to the *representative* in respect of the transaction.

6.4.11

G

Commission or equivalent disclosure statements: content and wording

A *firm* should consider including the following in its written statement of *commission*:

- (1) Amounts or values of *commission* rounded as appropriate to help the *client* understand the document (for example, large amounts might be rounded to three significant figures).

Commission or equivalent disclosure statements: content and wording	
(2)	The names of the <i>firms</i> involved in paying and receiving <i>commission or commission equivalent</i> .
(3)	A plain language description of whether remuneration takes the form of <i>commission or commission equivalent</i> . <i>Commission equivalent</i> could, for example, be described as "remuneration and services received from XYZ Ltd".
(4)	The timing of payments and period over which they are paid.
(5)	For payments relating to the <i>client's fund</i> , examples of how much money might be taken, such as: (a) where the <i>commission or equivalent</i> is on an increasing basis, the amount to be taken in the first and tenth year in which it is paid; or (b) where the <i>commission or equivalent</i> is a percentage of the fund, the amount that would be taken if the fund was worth a certain value and the amount that would be taken if the fund was worth twice that value.

**Services and costs disclosure document described in COBS 6.3.7G(1)
[deleted]**

**Combined initial disclosure document described in COBS 6.3, ICOBS
4.5 and MCOB 4.4A.20G [deleted]**

[deleted]

[deleted]

[deleted]

Calculating commission equivalent

This table forms part of ■ COBS 6.4.6 E.

Calculating commission equivalent

This table sets out the basis on which the *firm* should determine the value of cash payments, benefits and services to be disclosed as *commission equivalent*. Benefits and services, as set out in parts B and C below, need be included only if their value is such that they could not be provided to a *firm* as a non-monetary benefit listed in the table in COBS 2.3.15 G. The result of the calculation should be that the amounts disclosed as *commission equivalent* are, as far as possible, the same as the amounts and value of *commission* which would be paid in a corresponding sale.

Part A: Cash payments

1. These cover all payments by a *firm* to a *representative*, *appointed representative* or, where applicable, a *tied agent*, or a *firm* in the same *immediate group* in relation to a transaction in a *packaged product*. This includes bonus payments, manager's overrides, extra earnings from other transactions and other payments conditional on amounts of new business.
2. In determining the amounts to be included in the calculation, a *firm* should have regard to the following:
 - (a) when the precise rate of *commission equivalent* is not known in advance (for example, if retrospective volume overrides apply), the *firm* should estimate the rate likely to apply to the *representative* in question. When an identical *commission equivalent* scale applies to all *representatives* (although they might earn differing percentages of it), the same average amount of *commission equivalent* (and the value of other benefits and services) in respect of identical transactions may be disclosed, regardless of the percentage of the scale paid to each individual *representative*. Averaging should not be used for *appointed representatives*, or, where applicable, *tied agents*.
 - (b) all credits to an account from which periodic withdrawals may be made should be included.
 - (c) when a payment is made before the *firm* receives the *premium* or the investment monies to which it relates (for example, indemnity *commission equivalent*), it should be included as being received at the time of payment. *Firms* that wish to explain this arrangement to the *clients* are free to do so, provided this does not detract from the required disclosure.
 - (d) when the *firm* arranges for a third party to make a payment to a *representative* in exchange for the income stream to which the *representative* is entitled, or to make a loan to the *representative* on the security or expectation of future payments from the *firm*, this should be treated as if it were a payment from the *firm* at the time of the transaction.
 - (e) when a *firm* provides, or arranges for a third party to provide, a loan to a *representative*, on the security of, or in the expectation of, future payments from the *firm*, the amounts to be included are the payments to the *representative* on which the provision of the loan is based, as if they were received at the time the transaction was effected, irrespective of their actual timing.
 - (f) when an agent is employed and remunerated by the *firm's appointed representative*, or, where applicable, *tied agent*, the payments to be included should be those made by the *firm* to the *appointed representative*.

Calculating commission equivalent

ive or tied agent, not those made by the appointed representative or tied agent to its own agent.

Part B: Benefits

3. Benefits include the cost to the *firm* of all non-monetary benefits provided by it to a *representative*. A benefit should be included whether or not the *representative* is liable to income tax on it and whether it is chargeable to tax. Examples of benefits include the use of a car, attendance at conferences, subsidised loans, contributions to *pension schemes*, national insurance contributions, and the value of *share option* (taking into account any discount on issue and assuming that the *shares* in question grow at a reasonable rate in line with other *investments*).

Part C: Services

4. Services include benefits which are not indirect benefits within the table in COBS 2.3.15 G.
5. The following services should be included:
- (a) office accommodation and equipment, including telephone, photocopying and fax;
 - (b) loans where a commercial rate of interest is not charged, including *commission equivalent* advances overdue for repayment;
 - (c) general stationery and mailing or distribution costs;
 - (d) computer hardware and software (except software which specifically relates to the *firm's packaged product*, such as software used for producing illustrations, *projection* and product information);
 - (e) clerical and administrative support;
 - (f) business insurance cover, including professional indemnity and fidelity guarantee;
 - (g) recruitment;
 - (h) compliance monitoring;
 - (i) *client services*;
 - (j) business planning services;
 - (k) line management.
6. To put a value on these services, the following costs should be included:
- (a) all overheads attributable to a particular cost item (for example, the cost of a compliance official);
 - (b) salary costs pro rata if individuals are only engaged part-time on relevant business;
 - (c) rent and associated premises costs at an appropriately reduced rate if the premises are also used for other business activities;
 - (d) only that proportion of the cost of lead generation promotions attributable to the generation of relevant business (but including the placing of any *financial promotion*, and its mailing or provision of access to third party *clients*);
 - (e) only the marginal additional compliance costs of ensuring that *representatives* and their support and training material comply with relevant *rules*;
 - (f) the commercial value of a service which is the use of an asset owned by the *firm* (for example in the case of a property, its full market rent);
 - (g) in respect of *appointed representative*, or, where applicable *tied agent*, the costs of any promotion in a newspaper or elsewhere and the provision of *representative-specific* literature in connection with a *financial promotion*;

Calculating commission equivalent

- (h) in respect of a *firm* in the same *immediate group* and connected *appointed representatives* or, where applicable, *tied agents*, where the name of the company is included in the *financial promotion*, the costs of any promotion in a newspaper or elsewhere and the provision of literature specific to the *representative* in connection with a *financial promotion*.
7. The following costs should be excluded:
- (a) the cost of corporate awareness advertising;
 - (b) training costs;
 - (c) costs of developing and maintaining computer systems for the provision of *projections* of benefits, *client-specific key features documents* or other product information; or other product information;
 - (d) costs of compensating *clients*;
 - (e) the costs of head office and branch level management and support, other than payments to *managers* falling under Part 1, for *representatives*, if these services could also be provided to a *firm* not in the same *immediate group*, for example, broker consultants and 'inspectors'.
- Part D: Calculation methodology
8. Estimating commission equivalent
- The cost of benefits and services should normally be based on the most recent relevant experience of the *firm*, except if the *firm* has grounds to believe that the *commission equivalent* for the period concerned will be higher or lower than that implied by the experience or no such experience is available. In such a case, the estimate should be based on and evidenced by business plans which the *firm* is satisfied are achievable.
9. *Firms* that receive or expect to receive:
- (a) *commission* in respect of *packaged products* which are not its own products or the products of a *product provider* who is in the same *immediate group*; and
 - (b) *commission equivalent* in respect of its own products;
- must ensure that the costs and benefits attributed to these products do not exceed the amounts that can be financed from that *commission*.
- Construction of commission equivalent scales
10. The total costs of cash payments, benefits and services should be assessed and the normal approach is to split them into new business costs and after sale servicing costs. The costs of each of these functions should be assessed directly in relation to the work carried out by the *representatives*.
- 11.
- (a) The total *commission equivalent* costs identified in 10 should be spread across the business using a new business *commission equivalent* scale and a servicing *commission equivalent* scale respectively.
 - (b) The *commission equivalent* scales should distinguish between products for which the *commission equivalent* of *representatives* is likely to be different.
12. If the *representative's commission equivalent* includes a cash payment related to volume and/or value of the transactions sold (which payment must be in accordance with the *client's best interest rule*), the following method would be appropriate:
- (a) The payment scales should be grossed up by new business uplift factors or servicing uplift factors as appropriate to reflect the cost of benefits and services. The grossed up scales represent the new business and servicing *commission equivalent* scales, and are applied to each contract to derive the *commission equivalent* to be disclosed.

Calculating commission equivalent

13. (b) If servicing costs are expected to be incurred in any year in which no servicing payments are to be made on a contract, disclosure should still be made, for example by using a technique similar to that described in 14.
13. (a) When a *representative* receives a salary, or other payment unrelated to volume or sales:
- (i) this should be amalgamated with the cost of benefits and services; and
 - (ii) the total costs should be apportioned over individual transactions in a way that reflects the value of a contract to a *firm* or the *firm's immediate group*.
13. (b) If a *firm* is a distributor for a *product provider* within the same *immediate group*, the *firm* must apportion total costs over individual transactions in a way that reflects the value of the contract to the *firm's immediate group*.
14. If a *representative* agrees to forgo part of his or her normal payment to improve the terms of the contract, the disclosure may be reduced in such a way that fairly reflects the overall effect of the amount foregone.
15. The *firm* should review the *commission equivalent* scales if at any time it becomes aware that the *commission equivalent* figures have become misleading. A review should take place at least annually.
16. Payments to associates
- If a *firm* pays *commission equivalent* to another *firm* in the same *immediate group*, or an *appointed representative* or, where applicable *tied agent*, which is an *associate* of the *firm*, it should ensure that the calculation of the sum to be disclosed is the higher of:
- (a) all payments, benefits and services provided to the *firm* or *appointed representative* or *tied agent*, from whatever source, plus an additional allowance for profit of 15% - unless the *firm* can demonstrate that another figure (higher or lower) is more appropriate; and
 - (b) the cash payments actually paid by the *firm*, plus the value of services provided.

Identified costs that should form part of the costs to be disclosed to clients

This Annex belongs to ■ COBS 6.1ZA.14UK.¹

Table 1 – All costs and associated charges charged for the investment service(s) and/or ancillary services provided to the client that should form part of the amount to be disclosed.

Cost items to be disclosed	Examples
One-off charges related to the provision of an investment service	All costs and charges paid to the investment firm at the beginning or at the end of the provided investment service(s). Deposit fees, termination fees and switching costs ² .
Ongoing charges related to the provision of an investment service	All ongoing costs and charges paid to investment firms for their services provided to the client. Management fees, advisory fees, custodian fees.
All costs related to transactions initiated in the course of the provision of an investment service	All costs and charges that are related to transactions performed by the investment firm or other parties. Broker commissions ³ , entry- and exit-charges paid to the fund manager, platform fees, mark ups (embedded in the transaction price), stamp duty, transactions tax and foreign exchange costs.
Any charges that are related to ancillary services	Any costs and charges that are related to ancillary services that are not included in the costs mentioned above. Research costs. Custody costs.
Incidental costs	Performance fees.

Table 2 – All costs and associated charges related to the financial instrument that should form part of the amount to be disclosed.

Cost items to be disclosed	Examples
One-off charges	All costs and charges (included in the price or in addition to the price of the financial instrument) paid to product suppliers at the beginning or at the end of the investment in the financial instrument. Front-loaded management fee, structuring fee ⁴ , distribution fee.
Ongoing charges	All ongoing costs and charges related to the management of the financial product that are deducted from the value of the financial instrument during the investment in the financial instrument. Management fees, service costs, swap fees, securities lending costs and taxes, financing costs.
All costs related to the transactions	All costs and charges that incurred as a result of the acquisition and disposal of investments. Broker commissions, entry- and exit-charges paid by the fund, mark ups embedded in the transaction price, stamp duty, transactions tax and foreign exchange costs.
Incidental costs	Performance fees.

¹ It should be noted that certain cost items appear in both tables but are not duplicative since they respectively refer to costs of the product and costs of the service. Examples are the management fees (in Table 1, this refers to management fees charged by an investment firm providing the service of portfolio management to its clients, while in Table 2 this refers to management fees charged by an investment fund manager to its investor) and broker commissions (in Table 1, this refers to commissions incurred by the investment firm when trading on behalf of its clients, while in Table 2 this refers to commissions paid by investment funds when trading on behalf of the fund).

² Switching costs should be understood as costs (if any) that are incurred by investors by switching from one investment firm to another investment firm.

³ Broker commissions should be understood as costs that are charged by investment firms for the execution of orders.

⁴ Structuring fees should be understood as fees charged by manufacturers of structured investment products for structuring the products. They may cover a broader range of services provided by the manufacturer.

[Note: Annex II of the *MiFID Org Regulation*]

Chapter 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 the *United Kingdom*.

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

7.3 Additional insurance distribution obligations

Demands and needs

7.3.1

R

- (1) Prior to the conclusion of a *life policy*, a *firm* must specify, on the basis of the information obtained from the *client*, the demands and needs of that *client*.
- (2) The details must be modulated according to the complexity of the *life policy* proposed and the type of *client*.
- (3) A statement of the demands and needs must be communicated to the *client* prior to the conclusion of a *life policy*.
- (4) This *rule* and ■ COBS 7.3.4R do not apply when a *firm* makes a *personal recommendation* in relation to a *life policy*.

[Note: first paragraph of article 20(1) and article 20(2) of the *IDD*]

7.3.2

G

Firms are reminded that they are obliged to take reasonable steps to ensure that a *personal recommendation* is suitable for, and consistent with the insurance demands and needs of, the *client* and that, whenever a *personal recommendation* relates to a *life policy*, a *suitability report* is required (see ■ COBS 9 or ■ 9A).

7.3.3

G

A *firm* may obtain information from the *client* in a number of ways including, for example, by asking the *client* questions in person or by way of a questionnaire prior to any *life policy* being proposed.

7.3.4

R

When proposing a *life policy* a *firm* must ensure it is consistent with the *client's* insurance demands and needs.

[Note: recital 44 to, and second paragraph of article 20(1) of, the *IDD*]

7.3.5

R

The sale of a *life policy* must always be accompanied by a demands and needs test on the basis of information obtained from the *client*.

[Note: recital 44 to, and article 20(1) of, the *IDD*]

Distribution of connected contracts through exempt persons

7.3.6

R

- (1) Where an *insurance distributor* is distributing through a *person* relying on the connected contracts exemption in article 72B of the *Regulated Activities Order*, the *insurance distributor* must ensure that the requirements in (2) are met.

- (2) The requirements referred to in (1) are:
- (a) ■ SYSC 19F.2 (Remuneration and insurance incentives)
 - (b) ■ COBS 4 (Communicating with clients, including fair financial promotions);
 - (c) ■ COBS 2.1.1R (client's best interests);
 - (d) ■ COBS 6.1ZA.7AR(1)(a) and (c) (Status disclosure general information: insurance distribution);
 - (e) ■ COBS 7.3.1R to ■ COBS 7.3.5R (Additional insurance distribution obligations: demands and needs); and
 - (f) ■ COBS 6.1ZA.16AR to ■ 6.1ZA.16DR (cross-selling).

[Note: article 1(4) of the *IDD*]

7.3.7

G

To comply with the relevant chapter of SYSC or *Principle 3*, an *insurance distributor* will need to have appropriate arrangements in place to ensure compliance with ■ COBS 7.3.6R.

7.4 Insurance distribution: Means of communication to clients

7.4.1 **R** This section applies to all information required to be provided to a *client* in ■ COBS 7.3 and where it is stated to apply in other sections or chapters.

- 7.4.2** **R**
- Means of communication to customers: Non-telephone sales**
- (1) A *firm* must communicate information to a *client* using any of the following:
- paper; or
 - a *durable medium* other than paper; or
 - a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.
- (2) The *firm* must communicate the information in (1):
- in a clear and accurate manner, comprehensible to the *client*;
 - in an official language of the *State of the commitment* or in any other language agreed by the parties; and
 - free of charge.
- [Note: article 23(1), (2), (4) and (5) of the *IDD*]

7.4.3 **R** Where the information is communicated using a *durable medium* other than paper or by means of a website, the *firm* must, upon request and free of charge, also send the *customer* a paper copy.

[Note: article 23(3) of the *IDD*]

- 7.4.4** **R**
- Means of communications to clients: Telephone sales**
- In the case of telephone selling:

- the information must be given in accordance with the distance marketing disclosure *rules* (see ■ COBS 5); and
- if prior to the conclusion of the contract the information is provided:
 - orally; or
 - on a *durable medium* other than paper,the *firm* must also provide the information to the *client* in accordance with ■ COBS 7.4.2R and ■ COBS 7.4.3R immediately after the conclusion of the *life policy*.

[**Note:** article 23(7) of the *IDD*]

Chapter 8

Client agreements (non-MiFID provisions)

8.1 Client agreements: non-MiFID designated investment business

8.1.1

R

- (1) This chapter applies to a *firm* in relation to *designated investment business* carried on for a *retail client*.
- (2) [deleted]
- (3) But this chapter does not apply to:
- (a) a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*; or
 - (b) subject to (3A), a *firm* to the extent that it is *effecting contracts of insurance* in relation to a *life policy* issued or to be issued by the *firm* as principal.
- (3A) ■ COBS 8.1.4R and ■ COBS 8.1.5R apply to a *firm* carrying on *insurance distribution* in relation to *insurance-based investment products* for any *client*.

Providing a client agreement

8.1.2

R

- If a *firm* carries on *designated investment business*, other than *advising on investments or advising on conversion or transfer of pension benefits*, with or for a new *retail client*, the *firm* must enter into a written basic agreement, on paper or other *durable medium*, with the *client* setting out the essential rights and obligations of the *firm* and the *client*.

8.1.3

R

- (1) A *firm* must, in good time before a *client* is bound by any agreement relating to *designated investment business* or before the provision of those services, whichever is the earlier, provide that *client* with:
- (a) the terms of any such agreement; and
 - (b) the information about the *firm* and its services relating to that agreement or to those services required by ■ COBS 6.1.4 R, including information on communications, conflicts of interest and authorised status.
- (2) A *firm* must provide the agreement and information in a *durable medium* or, where the *website conditions* are satisfied, otherwise via a website.
- (3) A *firm* may provide the agreement and the information immediately after the *client* is bound by any such agreement if:

8.1.4**R**

- (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from doing so; and
- (b) if the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if he were a *consumer*.
- (4) (a) A *firm* must notify a *client* in good time about any material change to the information provided under this *rule* which is relevant to a service that the *firm* is providing to that *client*.
- (b) A *firm* must provide the notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

Record keeping: client agreements**8.1.5****R**

- (1) A *firm* must establish a record that includes the document or documents agreed between it and a *client* which set out the rights and obligations of the parties, and the other terms on which it will provide services to the *client*.
- (2) The record must be maintained for:
- (a) [deleted]
- (b) unless (c) applies, at least the duration of the relationship with the *client*; or
- (c) in the case of a record relating to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely.

[Note: article 30(4) of the *IDD*]

8.1.6**G**

- For the purposes of this chapter, a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.
- [Note: article 30(4) of the *IDD*]
- When considering its approach to client agreements, a *firm* should be aware of other obligations in the *Handbook* which may be relevant. These include the *fair, clear and not misleading rule*, the *rules* on disclosure of information to a *client* before providing services, the *rules* on distance communications (principally in ■ COBS 2.2, ■ 5, ■ 6 and ■ 13) and the provisions on record keeping (principally in ■ SYSC 3, for *insurers* and *managing agents*, and ■ SYSC 9, for other *firms*).

Chapter 8A

Client agreements (MiFID provisions)

8A
8A.1.1**R**

This chapter applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

8A.1.2**R**

Provisions in this chapter marked "UK" apply to *MiFID optional exemption firms* as if they were *rules*.

8A.1.3**G**

In order to provide legal certainty and enable clients to better understand the nature of the services provided, investment firms that provide investment or ancillary services to clients should enter into a written basic agreement with the client, setting out the essential rights and obligations of the firm and the client.

[**Note:** recital 90 to the *MiFID Org Regulation*]

8A.1.4**UK**

Investment firms providing any investment service or the ancillary service referred to in 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 only where a periodic assessment of the suitability of the financial instruments or services recommended is performed.

(a) a description of the services, and where relevant the nature and extent of the investment advice, to be provided;

(b) in case of portfolio management services, the types of financial instruments that may be purchased and sold and the types of transactions that may be undertaken on behalf of the client, as well as any instruments or transactions prohibited; and

(c) a description of the main features of any services referred to in 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*]

8A.1.5**UK****General requirement for information to clients**

46(1) Investment firms shall, in good time before a client or potential client is bound by any agreement for the provision of investment services or ancillary services or before the provision of those services, whichever is the earlier to provide that client or potential client with the following information:

- (a) the terms of any such agreement;
- (b) the information required by Article 47 relating to that agreement or to those investment or ancillary services.

[Note: article 46(1) of the *MiFID Org Regulation*]

8A.1.6**UK**

46(2) 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 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*]

Avoiding duplicate information**8A.1.8****G**

- (1) Articles 47 to 50 of the *MiFID Org Regulation* require a *firm* to provide a *client* with information about:

- (a) the *firm* and its services for *clients* and potential *clients* (including information on communications, conflicts of interest and authorised status);
- (b) *financial instruments*;
- (c) safeguarding of *client financial instruments* or *client funds*; and
- (d) costs and associated charges.
- (2) Provided the information referred to in (1) is communicated to a *client* in good time before the provision of the service, a *firm* does not need to provide it either separately or by incorporating it in a *client agreement*.
- (3) The requirements for *firms* to provide *clients* with the information referred to in (1) are set out at ■ COBS 6.1ZA.

[Note: recital 84 to *MiFID*]

Record keeping: client agreements

8A

- 8A.1.9** **R** A *firm* must establish a record that includes the document or documents agreed between it and a *client* which set out the rights and obligations of the parties, and the other terms on which it will provide services to the client.
- [Note: article 25(5) of *MiFID*]
- 8A.1.10** **UK** 73 Records which set out the respective rights and obligations of the investment firm and the client under an agreement to provide services, or the terms on which the firm provides services to the client, shall be retained for at least the duration of the relationship with the client.
- [Note: article 73 of the *MiFID Org Regulation*]
- 8A.1.11** **R** For the purposes of this chapter, a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.
- [Note: article 25(5) of *MiFID*]
- 8A.1.12** **G** When considering its approach to *client agreements*, a *firm* should be aware of other obligations in the *Handbook* which may be relevant. These include the *fair, clear and not misleading rule*, the rules on disclosure of information to a *client* before providing services (principally in ■ COBS 2.2A, ■ 6.1ZA and ■ 13) and the provisions on record keeping (principally in ■ SYSC 9).

Chapter 9

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

9.1 Application and purpose provisions

Application

9.1.1

R

This chapter applies to a *firm* which:

- (a) makes a *personal recommendation* to a *retail client* in relation to a *designated investment*;
- (b) *manages investments* of a *retail client* of the *firm*;
- (c) manages the assets of an *occupational pension scheme, stakeholder pension scheme or personal pension scheme*, other than in relation to its *MiFID, equivalent third country or optional exemption business* or to an *insurance-based investment product*.

9.1.1A

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■ COBS 9A contains suitability requirements which apply in respect of *insurance-based investment products*, or in respect of a *firm's MiFID, equivalent third country or optional exemption business* involving the provision of *investment advice* or *portfolio management*.

Providing basic advice on a stakeholder product

9.1.2

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If a *firm* to which this chapter applies makes a *personal recommendation* in relation to a *stakeholder product* it may choose to give *basic advice* under the *rules* in section 9.6 of this chapter instead of the *rules* in the remainder of this chapter.

P2P agreements

9.1.3

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[deleted]

9.1.3A

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This chapter does not apply to a *firm* which *manages investments* when that *firm* takes a decision to trade for a *client* and that decision relates to a *P2P agreement*. This is because the *regulated activity* of *managing investments* does not extend to the management of assets where those assets are *P2P agreements*.

9.1.4

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[deleted]

Life policies for professional clients	
9.1.5	R If the <i>firm</i> makes a <i>personal recommendation</i> to a <i>professional client</i> to take out a <i>life policy</i> which is not an <i>insurance-based investment product</i> , this chapter applies, but only those <i>rules</i> which implemented the requirements of the <i>IDD</i> .
9.1.6	G If a <i>rule</i> implemented a requirement of the <i>IDD</i> , a Note ("Note:") follows the <i>rule</i> indicating which provision 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) contains contain further <i>rules</i> which implemented the <i>IDD</i>
9.1.7	G [deleted]
Related rules	
9.1.8	G For a <i>firm</i> making <i>personal recommendations</i> in relation to pensions: <ol style="list-style-type: none">(1) ■ COBS 19.1 contains additional provisions relevant to assessing suitability and the contents of suitability reports for <i>full pension transfer or conversion advice</i>; and(2) ■ COBS 19.1A contains additional provisions relevant to assessing suitability and the contents of <i>suitability reports</i> for <i>abridged advice</i>.
9.1.9	G ■ COBS 6.1ZA (Insurance mediation) contains requirements relating to the basis on which certain recommendations may be made, including requirements relating to fair analysis and range and scope.

9.2 Assessing suitability

[**Note:** The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fq21-3.pdf>]

Assessing suitability: the obligations

9.2.1

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- (1) A *firm* must:
- (a) take reasonable steps to ensure that a *personal recommendation*, or a decision to trade, is suitable for its *client*; and
 - (a) ensure that any *life policy* proposed is consistent with the *client's* insurance demands and needs.
- (2) When making the *personal recommendation* or managing his *investments*, the *firm* must obtain the necessary information regarding the *client's*:
- (a) knowledge and experience in the investment field relevant to the specific type of *designated investment* or service;
 - (b) financial situation; and
 - (c) investment objectives;
- so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for the *client* and for a *life policy*, to propose a contract that is consistent with the *client's* insurance demands and needs.

[**Note:** recital 44 to, and second paragraph of article 20(1), of the *IDD*]

9.2.1A

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A *client's* insurance demands and needs are those which would need to be obtained under ■ COBS 7.3 where a contract is sold without the provision of a *personal recommendation*.

9.2.2

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- (1) A *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:
- (a) meets his investment objectives;
 - (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
 - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a *client* must include, where relevant, information on the length of time for which

		<p>he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.</p> <p>(3) The information regarding the financial situation of a <i>client</i> must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.</p>
9.2.3	R	<p>The information regarding a <i>client's</i> knowledge and experience in the investment field includes, to the extent appropriate to the nature of the <i>client</i>, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:</p> <p>(1) the types of service, transaction and <i>designated investment</i> with which the <i>client</i> is familiar;</p> <p>(2) the nature, volume, frequency of the <i>client's</i> transactions in <i>designated investments</i> and the period over which they have been carried out;</p> <p>(3) the level of education, profession or relevant former profession of the <i>client</i>.</p>
9.2.4	R	<p>A <i>firm</i> must not encourage a <i>client</i> not to provide information for the purposes of its assessment of suitability.</p>
9.2.5	R	<p>Reliance on information</p> <p>A <i>firm</i> is entitled to rely on the information provided by its <i>clients</i> unless it is aware that the information is manifestly out of date, inaccurate or incomplete.</p>
9.2.6	R	<p>Insufficient information</p> <p>If a <i>firm</i> does not obtain the necessary information to assess suitability, it must not make a <i>personal recommendation</i> to the <i>client</i> or take a decision to trade for him.</p>
9.2.7	G	<p>Although a <i>firm</i> may not be permitted to make a <i>personal recommendation</i> or take a decision to trade because it does not have the necessary information, its <i>client</i> may still ask the <i>firm</i> to provide another service such as, for example, to arrange a deal or to deal as agent for the <i>client</i>. If this happens, the <i>firm</i> should ensure that it receives written confirmation of the instructions. The <i>firm</i> should also bear in mind the <i>client's best interests rule</i> and any obligation it may have under the <i>rules</i> relating to appropriateness when providing the different service (see ■ COBS 10, Appropriateness (for non-advised services)) and ■ COBS 10A, Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)).</p>
9.2.8	R	[deleted]

9.2.9

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Friendly society life policies

- (1) When recommending a small *friendly society life policy*, a *firm*, for the purpose of assessing suitability, need only obtain details of the net income and expenditure of the *client* and his dependants.
- (2) A *friendly society life policy* is small if the *premium*:
 - (a) does not exceed £50 a year; or
 - (b) if payable weekly, £1 a week.
- (3) The *firm* must keep for five years a record of the reasons why the recommendation is considered suitable.

9.3 Guidance on assessing suitability

9.3.1

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- (1) A transaction may be unsuitable for a *client* because of the risks of the *designated investments* involved, the type of transaction, the characteristics of the order or the frequency of the trading.
- (2) In the case of *managing investments*, a transaction might also be unsuitable if it would result in an unsuitable portfolio.

[deleted]

Churning and switching

9.3.2

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- (1) A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.
- (2) A *firm* should have regard to the *client's* agreed investment strategy in determining the frequency of transactions. This would include, for example, the need to switch a *client* within or between *packaged products*.

[deleted]

Income withdrawals, short-term annuities and uncrystallised funds pension lump sum payments

9.3.3

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When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals, uncrystallised funds pension lump sum payments* or purchase of *short-term annuities*, it should consider all the relevant circumstances including:

- (1) the *client's investment* objectives, need for tax-free cash and state of health;
- (2) current and future income requirements, existing pension assets and the relative importance of the plan, given the *client's* financial circumstances;
- (3) the *client's* attitude to risk, ensuring that any discrepancy is clearly explained between his or her attitude to an *income withdrawal, uncrystallised funds pension lump sum payment* or purchase of a *short-term annuity* and other *investments*.

9.3.3A	G	<p>(1) When a <i>firm</i> is making a <i>personal recommendation</i> to a <i>retail client</i> about the investment of funds in the client's <i>capped drawdown pension fund</i> or <i>flexi-access drawdown pension fund</i> its suitability assessment under ■ COBS 9.2.1R(1)(a) should include consideration of <i>pathway investments</i>.</p> <p>(2) <i>Pathway investments</i> do not need to be considered where the <i>personal recommendation</i> is to purchase a fixed-term product that:</p> <ul style="list-style-type: none">(a) provides a guaranteed income, a guaranteed capital return or both; and(b) does not expose the client to investment risk, if the client remains in the product for the fixed term.
9.3.4	G	<p>Loans and mortgages</p> <p>When considering the suitability of a particular <i>investment</i> product which is linked directly or indirectly to any form of loan, mortgage or <i>home reversion plan</i>, a <i>firm</i> should take account of the suitability of the overall transaction. The <i>firm</i> should also have regard to any applicable suitability <i>rules</i> in MCOB.</p>
9.3.5	G	<p>Investments subject to restrictions on retail distribution</p> <p>(1) <i>Firms</i> should note that restrictions and specific requirements apply to the retail distribution of certain <i>investments</i>:</p> <ul style="list-style-type: none">(a) <i>non-mass market investments</i> are subject to a restriction on financial promotions (see section 238 of the Act and ■ COBS 4.12B);(b) <i>restricted mass market investments</i> are subject to a restriction on direct offer financial promotions (see ■ COBS 4.12A);(c) <i>contingent convertible instruments</i> and <i>CoCo funds</i> are subject to a restriction on sales and on promotions (see ■ COBS 22.3);(d) <i>mutual society shares</i> are subject to specific requirements in relation to <i>dealing</i> and <i>arranging</i> activities (see ■ COBS 22.3);(e) deferred shares issued by a <i>credit union</i> are subject to specific requirements in relation to <i>dealing</i> and <i>arranging</i> activities (see ■ CREDS 3A.5);(f) <i>credit union subordinated debt</i> is subject to a restriction on direct offer financial promotions (see ■ CREDS 3A.5).(g) [deleted] <p>(2) A <i>firm</i> should be satisfied that an exemption is available before recommending an <i>investment</i> subject to a restriction on distribution to a <i>retail client</i>, noting in particular that a <i>personal recommendation</i> to invest will generally incorporate a <i>financial promotion</i>.</p> <p>(3) (a) In addition to assessing whether the promotion is permitted, a <i>firm</i> giving advice on a <i>designated investment</i> subject to a restriction on distribution should comply with their obligations in ■ COBS 9 and ensure any <i>personal recommendation</i> is suitable for its client.</p> <p>(b) (i) In considering its obligations under ■ COBS 9, a <i>firm</i> purchasing a <i>designated investment</i> subject to a restriction</p>

9.3.6

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on distribution on behalf of a *retail client* as part of a discretionary management agreement should exercise particular care to ensure the transaction is suitable and in that *client's* best interests, having regard to the FCA's view that such *designated investments* pose particular risks of inappropriate distribution.

- (ii) A restriction on promotion does not affect a transaction where there has been no prior communication with the *client* in connection with the investment by the *firm* or a person connected to the *firm*. Nonetheless, if promotion of a *designated investment* to a *retail client* would not have been permitted, then the discretionary manager's decision to purchase it on behalf of the *retail client* should be supported by detailed and robust justification of his assessment of suitability.

Pension transfers, conversions and opt-outs

Guidance on assessing suitability when a *firm* is making a *personal recommendation* for a *retail client* who is, or is eligible to be, a member of a *pension scheme* with *safeguarded benefits* and who is considering whether to transfer, convert or opt-out is contained in ■ COBS 19.1.6G (in respect of *full pension transfer or conversion advice* or advice on a *pension opt-out*) and ■ COBS 19.1A.11G (in respect of *abridged advice*).

9.4 Suitability reports

9.4.1

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Providing a suitability report

A firm must provide a *suitability report* to a *retail client* if the firm makes a *personal recommendation* to the *client* and the *client*:

- (1) acquires a holding in, or *sells* all or part of a holding in:
 - (a) a *regulated collective investment scheme*;
 - (b) an *investment trust* where the relevant *shares* have been or are to be acquired through an *investment trust savings scheme*;
 - (c) an *investment trust* where the relevant *shares* are to be held within an *ISA* which has been promoted as the means for investing in one or more specific *investment trusts*; or
- (2) *buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme*; or
- (3) elects to make *income withdrawals*, an *uncrystallised funds pension lump sum* payment or purchase a *short-term annuity*; or
- (4) enters into a *pension opt-out*.

9.4.2

R

If a firm makes a *personal recommendation* in relation to a *life policy*, it must provide the *client* with a *suitability report*.

[**Note:** first and third paragraphs of article 20(1) of the *IDD*]

9.4.2A

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If a firm makes a *personal recommendation* in relation to a *pension transfer* or *pension conversion*, it must provide:

the *client* with a *suitability report*; and

(except where the only *safeguarded benefit* involved is a *guaranteed annuity rate*) a one page summary at the front of the *suitability report*.

9.4.3

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

- (1) if the firm, acting as an *investment manager* for a *retail client*, makes a *personal recommendation* relating to a *regulated collective investment scheme*;
- (2) if the *client* is habitually resident outside the *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;
- (3) [deleted]
- (4) if the *personal recommendation* is to increase a regular *premium* to an existing contract;
- (5) if the *personal recommendation* is to invest additional single *premiums* or single contributions to an existing *packaged product* to which a single *premium* or single contribution has previously been paid.

Timing.....

9.4.4**R**

A firm must provide the *suitability report* to the *client*:

- (1) in the case of a *life policy*, before the contract is concluded;
- (2) in the case of a *personal pension scheme* or *stakeholder pension scheme* that is not a *life policy*, where the *rules* on cancellation (■ COBS 15) require notification of the right to cancel, no later than the fourteenth day after the contract is concluded;
- (2A) in the case of a *pension transfer* or *pension conversion*, in good time before the transaction is effected; or
- (3) in any other case, when or as soon as possible after the transaction is effected or executed.

[Note: first and third paragraphs of article 20(1) of the *IDD*]

9.4.5**R**

[deleted]

9.4.6**R**

In the case of telephone selling of a *life policy*, when the only contact between a *firm* and its *client* before conclusion of a contract is by telephone, the *suitability report* must be given in accordance with ■ COBS 7.4.

[Note: article 23(7) of the *IDD*]

Contents.....

9.4.7**R**

The *suitability report* must, at least:

- (1) specify, on the basis of the information obtained from the *client*, the *client's demands and needs*;
- (2) explain why the *firm* has concluded that the recommended transaction is suitable for the *client* having regard to the information provided by the *client*;
- (3) explain any possible disadvantages of the transaction for the *client*; and
- (4) in the case of a *life policy*, include a personalised recommendation explaining why a particular *life policy* would best meet the *client's demands and needs*.

[Note: first and third paragraphs of article 20(1) of the *IDD*]

9.4.8	R A firm must ensure the details are modulated according to the complexity of the transaction or the proposed <i>contract of insurance</i> and the type of <i>client</i> . [Note: article 20(2) of the <i>IDD</i>]
9.4.8A	R Where a <i>friendly society</i> has given a <i>personal recommendation</i> on a small <i>life policy</i> in ■ COBS 9.2.9R(2), the <i>suitability report</i> must include, at least, the information required by ■ COBS 9.4.7R(1) and (4). [Note: first and third paragraphs of article 20(1) of the <i>IDD</i>]
9.4.9	R Means of communication (life policies) If a firm is providing a <i>suitability report</i> in the course of <i>insurance distribution activity</i> , the information must be in accordance with ■ COBS 7.4. [Note: article 23 of the <i>IDD</i>]
9.4.10	G Additional content for income withdrawals When a firm is making a <i>personal recommendation</i> to a <i>retail client</i> about <i>income withdrawals</i> or purchase of <i>short-term annuities</i> or making <i>uncrystallised funds pension lump sum payments</i> , explanation of possible disadvantages in the <i>suitability report</i> should include the risk factors involved in entering into an <i>income withdrawal</i> , purchase of a <i>short-term annuity</i> or making <i>uncrystallised funds pension lump sum payments</i> . These may include: <ol style="list-style-type: none">(1) the capital value of the fund may be eroded;(2) the <i>investment returns</i> may be less than those shown in the illustrations;(3) annuity or <i>scheme pension rates</i> may be at a worse level in the future;(4) the levels of income provided may not be sustainable; and(5) there may be tax implications.
9.4.11	R Additional content for pension transfers and conversions (1) A firm must include a one page summary at the front of the <i>suitability report</i> when making a <i>personal recommendation</i> in relation to a <i>pension transfer</i> or a <i>pension conversion</i> , except where the only <i>safeguarded benefit</i> involved is a <i>guaranteed annuity rate</i> . (2) The one page summary must include the following: <ol style="list-style-type: none">(a) a summary of the <i>personal recommendation</i>;(b) a statement as to whether the recommendation is in relation to <i>abridged advice</i> or <i>full pension transfer or conversion advice</i>;(c) information about the ongoing advice and/or services (if any) the <i>firm</i>, or any other <i>person</i>, proposes to provide to the <i>client</i> after the execution of the <i>pension transfer</i> or <i>pension conversion</i>;(d) the risks associated with <i>pension transfers</i> or <i>pension conversions</i> as set out in ■ COBS 19.1.6G(4)(b), and an invitation to the <i>client</i> to consider whether they fully understand those risks and, if so, sign the one page summary to confirm that;

- (e) all of the ongoing advice charges, all other ongoing charges and any additional charges expected to be incurred by the *client* if they proceed with the *pension transfer or pension conversion*, together with a comparison to the charges and revalued monthly income in the *ceding arrangement* and to the charges in any *default arrangement* in any available *qualifying scheme*; and
- (f) information about the amounts payable (in *cash terms*) in relation to the initial advice on the *pension transfer or pension conversion*, and the number of months (rounded up to the nearest whole month) it would take to pay that amount out of the revalued monthly income the *client* would receive from the *ceding arrangement*.
- (3) Where the *firm* only gave *abridged advice*:
- the information in (2)(c), (d) and (e) is not required;
 - the information in (2)(f) must clearly state that this is only relevant if the *client* wishes to obtain *full pension transfer or conversion advice*; and
 - the one page summary must also set out:
 - that the *firm* has not given *full pension transfer or conversion advice*, and provide a summary of the difference between it and *abridged advice*; and
 - that where the *full pension transfer or conversion advice* is within the scope of the requirement in **section 48** of the Pension Schemes Act 2015, no *firm* can arrange a *pension transfer* or a *pension conversion* unless the *client* receives *full pension transfer or conversion advice*.
- (4) The summary in (2)(a) must:
- set out whether the recommendation is to effect a *pension transfer* or *pension conversion* or to remain in the *client's current scheme or arrangement*;
 - set out where in the *suitability report* the *client* can obtain a more detailed explanation of the recommendation;
 - invite the *client* to consider whether they accept or do not accept the recommendation and, if so, sign the one page summary to confirm that; and
 - where the *firm* provides *full pension transfer or conversion advice* and any *advice on investments* (whether by the *firm* or any other *person*) in connection with the *pension transfer or pension conversion*, set out the summary of the advice given by the *firm* and/or any other *person* for both services.
- (5) The information in (2)(c) must:
- set out that the *client* is not required to accept ongoing advice and/or services proposed (if any);
 - explain that the *client* can opt out of receiving ongoing advice and/or services at any time;
 - set out, in *cash terms*, the monthly and annual charges associated with receiving ongoing advice and/or services whether by the *firm* or any other *person*;
 - where the *firm* proposes that it or another *firm* offers ongoing advice and/or services to the *client*, invite the *client* to consider

- whether they wish to receive this ongoing advice and/or services proposition, and whether they agree to the associated charges, and if so, sign the one page summary to consent to receiving the ongoing advice and/or services, and agree to the associated charges; and
- (e) where the *client* declines to sign the one page summary for any of the proposals in (d), set out that the *client* is not required to accept ongoing advice and/or services, and explain that additional charges and/or other amounts may be payable by the *client* if they wish to receive ongoing advice and/or services from another person.
- (6) The summary of the anticipated charges associated with the *pension transfer* or *pension conversion* in (2)(e) must include the anticipated first-year charges after the *pension transfer* or *pension conversion* and be set out:
- (a) in *cash terms*;
 - (b) alongside any charges associated with the *client's ceding arrangement* (and presented as nil if there are no charges); and
 - (c) alongside any charges associated with any *default arrangement* in any *qualifying scheme* available to the *client*, if the *client* chose to transfer to that scheme.
- (7) The revalued monthly income in the *ceding arrangement* referred to in (2)(e) must:
- (a) (where the *client* has not passed the normal retirement age) be calculated by:
 - (i) revaluing the *future income benefits* to the date the *client* would normally be paid in accordance with ■ COBS 19 Annex 4B 1R(1)(1); and
 - (ii) discounting the value of the *future income benefits* to the calculation date in accordance with the assumption in ■ COBS 19 Annex 4C 1R(4)(d);
 - (b) (where the *client* has passed the normal retirement age) be calculated in line with the current income in the *ceding arrangement*.

9.4.12

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- (1) If the *personal recommendation* to the *client* is to remain in the *ceding arrangement*, and the *client* declines to sign the one page summary to confirm that they intend to accept the *personal recommendation* in accordance with ■ COBS 9.4.11R(4)(c), the *firm* should follow the insistent *client* guidance in ■ COBS 9.5A (Additional guidance for firms with insistent clients).
- (2) If the *client* declines to sign the one page summary of the advice to confirm their understanding of the risks in ■ COBS 9.4.11R(2)(d), the *firm* should take further steps to establish whether the *client* has fully understood the risks, and if not, consider changing its *personal recommendation*.
- (3) The other ongoing charges in ■ COBS 9.4.11R(2)(e) include (but are not limited to):
- (a) ongoing product charges, including those in relation to *investments* within the product;

- (b) discretionary fund management charges; and/or
 - (c) platform charges.
- (4) The additional charges in ■ COBS 9.4.11R(2)(e) include initial product charges, charges associated with accessing existing funds or moving funds to a different scheme.

9.5 Record keeping and retention periods for suitability records

9.5.1

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

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9.5.2

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A *firm* must retain its records relating to suitability for a minimum of the following periods:

- (1) if relating to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely;
- (2) if relating to a *life policy*, *personal pension scheme*, *stakeholder pension scheme* or benefits in a *defined contribution occupational pension scheme* (unless otherwise falling in (1) above), five years; and
- (3) [deleted]
- (4) in any other case, three years.

9.5.3

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A *firm* need not retain its records relating to suitability if the *client* does not proceed with the recommendation

9.5A Additional guidance for firms with insistent clients

Purpose

9.5A.1

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

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

9

Who is an insistent client?

9.5A.2

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In this section, a *client* should be considered an *insistent client* where:

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

Information to be communicated to an insistent client

9.5A.3

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- (1) Where a *firm* proceeds to execute a transaction for an *insistent client* which is not in accordance with the *personal recommendation* given by the *firm*, the *firm* should communicate to the *insistent client*, in a way which is clear, fair and not misleading, and having regard to the information needs of the *insistent client* so that the *client* is able to understand, the information set out in (2).
- (2) The information which the *firm* should communicate to the *insistent client* is:
 - (a) that the *firm* has not recommended the transaction and that it will not be in accordance with the *firm's personal recommendation*;

9.5A.4

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

Acknowledgement from the insistent client

9.5A.5

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

Record keeping

9.5A.6

G

- (1) A *firm* dealing with an insistent *client* should retain a record of:
 - (a) the advice and transaction process followed, including the communications with the *client*; and
 - (b) the acknowledgment from the *client* referred to in ■ COBS 9.5A.4G.

9.5A.7

G

A *firm* dealing with an insistent *client* should also refer to the record keeping requirements in ■ COBS 9.5 (Record keeping and retention periods for suitability records) and ■ SYSC 9.1 (General rules on record-keeping).

9.6 Special rules for giving basic advice on a stakeholder product

9.6.1 **G** This section applies to a *firm* giving *basic advice*, which has chosen to comply with the *rules* in this section instead of the other *rules* in this chapter (see ■ COBS 9.1.2 R).

Range

9.6.2 **R** A *firm* is permitted to maintain more than one *range of stakeholder products*.

9.6.3 **R** A *range of stakeholder products*:

- (1) may include more than one *deposit-based stakeholder product*;
- (2) may include the *stakeholder products* of more than one *stakeholder product provider*;
- (3) must not include any more than one:
 - (a) *CIS stakeholder product* or *linked life stakeholder product*; or
 - (b) *stakeholder CTF*; or
 - (c) *stakeholder pension scheme*.

9.6.4 **R** When a *firm* provides *basic advice* it must:

- (1) explain why it chose the *stakeholder products* and *stakeholder product providers* that appear in the relevant *range*; and
- (2) give the *client* a list of the *stakeholder products* and *stakeholder product providers* that appear in that *range*;

if the *client* asks it do so.

Requirements on first contact

9.6.5 **R** When a *firm* first has contact with a retail client with a view to giving *basic advice* on a *stakeholder product*, it must give the *retail client*:

- (1) the *basic advice initial disclosure information* (■ COBS 9 Annex 1), in a *durable medium*, together with an explanation of that information, unless:
 - (a) it has already done so and the *basic advice initial disclosure information* is likely still to be accurate and appropriate; or

		<ul style="list-style-type: none"> (b) the contact is not face to face and is using a means of communication which makes it not practicable to provide the <i>basic advice</i> initial disclosure information in a <i>durable medium</i>; and (2) an explanation of how the advice will be paid for and the fact that any commission will be disclosed.
9.6.6	G	[deleted]
9.6.6A	G	A <i>firm</i> will meet the requirements in respect of its obligation to provide written disclosure in the <i>rules</i> on describing the breadth of advice (■ COBS 6.2B.33R) by providing its <i>basic advice</i> initial disclosure information (in ■ COBS 9 Annex 1 R).
9.6.7	R	[deleted]
9.6.8	R	<p>If a <i>firm's</i> first contact with a <i>retail client</i> is not face to face, it must:</p> <ul style="list-style-type: none"> (1) inform the <i>client</i> at the outset: <ul style="list-style-type: none"> (a) (if the communication is initiated by or on behalf of a <i>firm</i>), of the name of the <i>firm</i> and the commercial purpose of the communication; (b) [deleted] (c) that the <i>firm</i> will provide the <i>retail client</i> with <i>basic advice</i> without carrying out a full assessment of the <i>retail client's</i> needs and circumstances; and (d) that such information will be confirmed in writing; and (2) (if not provided at first contact) send the <i>client</i> the <i>basic advice</i> initial disclosure information (■ COBS 9 Annex 1) in a <i>durable medium</i> as soon as reasonably practicable following the conclusion of the first contact; (3) (unless the relevant product is a <i>deposit-based stakeholder product</i>) if the contact is by spoken interaction, provide the <i>client</i> with the disclosure required by the <i>rules</i> on additional oral disclosure for firms providing restricted advice (■ COBS 6.2B.38R).
		Sales process
9.6.9	R	<p>When a <i>firm</i> gives <i>basic advice</i>, it must do so using:</p> <ul style="list-style-type: none"> (1) a single range of <i>stakeholder products</i>; and (2) a sales process that includes putting pre-scripted questions to the <i>client</i>.
9.6.10	R	<p>When a <i>firm</i> gives <i>basic advice</i> it must not:</p> <ul style="list-style-type: none"> (1) describe or recommend a <i>stakeholder product</i> outside the <i>firm's</i> range; or

- (2) describe or recommend a *smoothed linked long term stakeholder product*; or
- (3) describe fund choice, or recommend a particular fund, if a *stakeholder product* offers a choice of funds; or
- (4) recommend the level of contributions required to be made to a *stakeholder pension scheme* to achieve a specific income in retirement; or
- (5) recommend or agree that a *client* makes a contribution to an *ISA* which exceeds the HM Revenue & Customs *ISA* limits.
- 9.6.11 R**
- (1) If a *firm* starts the sales process for a *stakeholder product* that is not a *deposit-based stakeholder product*, it must not depart from that process unless it has advised the *retail client* that it will not provide *basic advice* on *stakeholder products* during the period of departure. A *firm* that does that must not provide *basic advice* during the departure period.
- (2) Before a *firm* returns to the sales process for *stakeholder products*, it must tell the *retail client* that that process is about to recommence.
- Suitability of recommendations**
- 9.6.12 R**
- A *firm* must only recommend a *stakeholder product* to a *retail client* if:
- (1) it has taken reasonable steps to assess the client's answers to the scripted questions and any other facts, circumstances or information disclosed by the *client* during the sales process;
- (2) (unless the relevant product is a *deposit-based stakeholder product*) having done so, it has reasonable grounds for believing that the *stakeholder product* is suitable for the *client*; and
- (3) the *firm* reasonably believes that the client understands the *firm's* advice and the basis on which it was provided.
- 9.6.13 G**
- COBS 9 Annex 2 gives guidance on the steps a *firm* could take to help it meet these suitability obligations.
- 9.6.14 R**
- If a *firm* giving *basic advice* recommends to a *retail client* to acquire a *stakeholder product*, it must ensure that, before the conclusion of the contract, its *representative*:
- (1) (unless the relevant product is a *deposit-based stakeholder product*) explains to the *client*, if necessary in summary form, but always in a way that will allow the client to make an informed decision about the *firm's* recommendation:
- (a) the nature of the *stakeholder product*; and
- (b) the "aims", "commitment" and "risks" sections of the appropriate *key features document*;
- (2) provides the *client* with a summary sheet, which is in a *durable medium* and sets out, for each product it recommends:

9.6.15

R

- (a) the specific amount the *client* wishes to pay into the product; and
(b) the reasons for the recommendation, including the *client's* attitude to risk and any information provided by the *client* on which the recommendation is based; and
(3) informs the *client* that in determining any subsequent complaint, the *Ombudsman* may take into account the limited information on which the recommendation was based and the fact that it was not tailored to take account of those aspects of the *client's* financial needs and circumstances not covered by the *firm's* sales process.

Notwithstanding ■ COBS 9.6.14R (2) a *firm* may provide the summary sheet (■ COBS 9.6.14R (2)) as soon as reasonably practicable after the conclusion of the contract if the *client* asks it to do so, or the contract will be concluded using a means of distance communication that does not enable the provision of the summary sheet in a *durable medium* before the conclusion of the contract, but only if the *firm*:

- (1) reads the summary sheet to the *client* before it concludes the contract; and
- (2) sends the summary sheet to the *client* as soon as practicable after the conclusion of the contract.

Concluding the contract

9.6.16

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

Basic advice on stakeholder products: other issues

9.6.17

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- (1) [deleted]
- (2) When a *firm* provides *basic advice* on a *stakeholder product*, it may use the facilities and stationery it uses for other business in respect of which it does hold itself out as acting or advising independently.

9.6.18

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A *firm* must ensure that none of its *representatives*:

- (1) is likely to be influenced by the structure of his or her *remuneration* to give unsuitable *basic advice* on *stakeholder products* to a *retail client*; or
- (2) refers a *retail client* to another *firm* in circumstances which would amount to the provision of any fee, commission or non-monetary benefit.

9.6.18A

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- (1) A *firm* providing *basic advice* on a *stakeholder product* that is a *life policy* must, in addition to providing the statement of demands and needs required under ■ COBS 7.3.1R, provide the *client* with a personalised explanation of why a particular *life policy* would best meet the *client's* demands and needs.
- (2) The details must be modulated according to the complexity of the *life policy* proposed and the type of *client*.

- (3) The information in (1) must be provided in accordance with
■ COBS 7.4.

[Note: third paragraph of article 20(1) and 20(2) of the *IDD*]

Records

9.6.19

R

A firm must record that it has chosen to give *basic advice* to a *retail client* and make a record of the *range* used and the summary sheet (■ COBS 9.6.14R (2)) prepared for each *retail client*. That record must be retained for at least five years from the date of the relevant *basic advice*.

9.6.20

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- (1) A firm must make an up-to-date record of:
- its *scope of basic advice*, and the *scope of basic advice* used by its *appointed representatives* (if any); and
 - its *range* (or *ranges*) of *stakeholder products*, and the *range* (or *ranges*) used by its *appointed representatives* (if any).
- (2) Those records must be retained for five years from the date on which they are replaced by a more up-to-date record.

Basic advice initial disclosure information

This Annex belongs to ■ COBS 9.6.5R (1)

Information that comprises the following:

1. the name and address (head office or principal place of business if more appropriate) of the *firm*;
2. [deleted]
3. a statement that the service being offered is *basic advice* on a limited range of *stakeholder products* by asking questions about income, savings and other circumstances but without carrying out a full assessment of the *retail client's* needs and without offering advice on whether a non-stakeholder product may be more suitable;
4. a statement, in accordance with [GEN 4](#) that the *firm* is regulated by the *FCA* (or if an *appointed representative*, a statement of whom it is an *appointed representative* and that that *firm* is regulated by the *FCA*) to give *basic advice*, together with the registration number of the *firm* and the fact that the *firm's status can be checked with the FCA on 0800 111 6768 or on the FCA website at <http://www.fca.org.uk>*;
5. a statement disclosing any product provider loans (where such credit exceeds 10% of share and loan capital) and direct or indirect ownership (where that ownership exceeds 10% of share capital or voting power) either by, or of, a single *product provider* or *operator*; (See also notes 32-35 in [COBS 6 Annex 1](#) and notes 45-50 of [COBS 6 Annex 2](#))
6. a description of the arrangements concerning complaints and the circumstances in which the *retail client* can refer the matter to the *Financial Ombudsman Service*; (See also notes 36-37 in [COBS 6 Annex 1](#) and notes 51-54 of [COBS 6 Annex 2](#))
7. a description of the circumstances and the extent to which the *firm* is covered by the *compensation scheme* and the *retail client* will be entitled to compensation from the *compensation scheme*; (See also notes 38-39 of [COBS 6 Annex 1](#) and notes 55-58 of [COBS 6 Annex 2](#))
8. any relevant disclosure required by the *rules* on describing the breadth of advice ([COBS 6.2B.33R](#)).

[Note: in respect of 7, article 10 of the *Investors compensation directive*]

Sales processes for stakeholder products

This Annex gives *guidance* on the standards and requirements to which a *firm* may have regard in designing a sales process for *stakeholder products* and assumes that *firms* will provide *basic advice* to *retail clients* who have no practical knowledge of investing in *stakeholder products* or *investments*.

General Standards – all sales

1. A sales process for *stakeholder products* may allow the *representative* administering it to depart from scripted questions where this is desirable to enable the *retail client* to better understand the points that need to be made provided this is compatible with the *representative's* competence and the degree of support offered by the *firm's* software and other systems. A software-based system is more likely to provide an adaptable means of providing prompts and support for *representatives* which may accordingly support a more flexible sales process.
2. Questions, statements and warnings provided should be short, simple and in plain language. Questions should address one issue at a time.
3. The sales process should enable the *retail client* to exit freely and without pressure at any stage. It should also allow the *representative* to terminate the process at any stage if it appears unlikely (for affordability, mis-match, risk or other reasons) that there is a suitable product for the *retail client*.
4. Where necessary the sales process should incorporate procedures to allow uncertainties in the *retail client's* answers to be addressed before proceeding and should generally reflect caution about proceeding if clarification or further information cannot be obtained during the process (for example if a *retail client* cannot confirm whether he or she is eligible for membership of an *occupational pension scheme*).

Preliminary - all sales

5. The *retail client* should be given the following preliminary information:
 - (a) the *retail client* will only be given *basic advice* about *stakeholder products*;
 - (b) *stakeholder products* are intended to provide a relatively simple and low-cost way of investing and saving;
 - (c) the *range of stakeholder products* on which the *representative* will give advice to that *retail client*;
 - (d) the *retail client* will be asked a series of questions about his or her needs and circumstances and, at the end of the procedure, he or she may be recom-

		mended to acquire a <i>stakeholder product</i> ;
	(e)	the assessment of whether a <i>stakeholder product</i> is suitable will be made without a detailed assessment of the <i>retail client's</i> needs but will be based only on the information disclosed during the questioning process; and
	(f)	the <i>retail client's</i> answers will be noted and, at the end of the process, if a recommendation to acquire a <i>stakeholder product</i> is made, the <i>retail client</i> will be provided with a copy of the completed questionnaire.
6.		Following 5, the <i>retail client</i> should be asked if he or she wishes to proceed and, if not, the sales process should cease.
Affordability - all sales		
7.		If it appears that the <i>retail client</i> is unlikely to be able to afford a <i>stakeholder product</i> , the sale should be terminated and the <i>retail client</i> given an explanation together with a copy of the questions and answers completed to that point.
Financial Priorities and Debt - all sales		
8.		A <i>retail client</i> should be assessed to ascertain other possible financial priorities -for example, does the <i>retail client</i> need (a) insurance protection; (b) access to liquid cash to meet an emergency; or (c) to reduce existing debts? If appropriate, the <i>retail client</i> should be given an unambiguous warning about the desirability of meeting those priorities before acquiring a <i>stakeholder product</i> .
9.		A stronger warning about the desirability of addressing debt as a priority should be given if it appears that the <i>retail client</i> is significantly indebted, especially if there is a strong indication that the debt commitments may render any new commitment unaffordable in the short-term. For this purpose a <i>firm</i> should consider using a threshold or indicator to decide whether a <i>retail client</i> should be excluded on the basis of affordability. Examples may include where the <i>retail client</i> has (a) annual unsecured debt repayments in excess of 20% of gross annual income or (b) four or more active forms of unsecured debt or (c) has consistently reached his over-draft limit. A <i>firm</i> should review its chosen indicator or threshold regularly to ensure that it reflects prevailing economic conditions and takes account of industry best practice.
10.		A <i>firm</i> should clearly explain what it needs to know about a <i>retail client's</i> debt and consider using a range of alternative words (eg 'loans', 'student loans', 'borrowing' and 'other forms of credit') to ensure all relevant information is obtained. A <i>firm</i> may use a simple reckoner to assess <i>retail client</i> debt, but should be conscious of the nature of, and not give the impression that it is providing more than, <i>basic advice</i> .
11.		If a <i>firm</i> gives a warning about the desirability of meeting other priorities before acquiring a <i>stakeholder product</i> , or about affordability, it should also invite the <i>retail client</i> to consider terminating the sales process.
Saving and investment objectives - all sales (except establishing a stakeholder CTF)		

12. A *retail client's* savings and investment objectives, including the period over which the *retail client* wishes to save or invest, should be ascertained including whether the *retail client*:
- (a) may need early access to some or all of the amount saved or invested; or
 - (b) wishes to save or invest for retirement; or
 - (c) wants to accumulate a specific sum by a specific date.
13. If that information indicates that the *retail client's* objective is:
- (a) to accumulate a specific sum by a specific date; or
 - (b) to save or invest only for the short term; or
 - (c) early access may be required to the whole of the sum saved or invested;
- the *firm* should not normally recommend a *CIS stakeholder product*, a *linked life stakeholder product*, a *stakeholder pension scheme* or topping up of a *stakeholder CTF*.
- Tolerance of risk - all sales
14. If a *retail client* is not willing to accept any risk of the capital value of an investment being reduced then *CIS stakeholder products*, *linked life stakeholder products* and *stakeholder CTFs* should not usually be recommended. However, a *firm* may, if appropriate, explain the effect of inflation on long-term savings especially in relation to pensions and invite the *retail client* to consider his attitude to risk in the light of that explanation.
15. If a *retail client* is willing to accept the risk of capital reduction in some circumstances but not others then, before any recommendation to acquire a *CIS stakeholder product* or *linked life stakeholder product* is made, the *retail client* should be reminded of the other circumstances in which he or she is unwilling to accept risk to capital.
- Stakeholder pensions
16. A *stakeholder pension scheme* should not be recommended, and the *retail client* should be advised to seek alternative or further advice, if it appears that the *retail client*:
- (a) has or will have access to an *occupational pension scheme*; or
 - (b) is likely to view income in retirement from state benefits as sufficient; or
 - (c) already has a pension to which he or she could make further contributions; or
 - (d) wishes to retire within five years.
17. It may also be appropriate to advise the *retail client* that other courses of action may be more beneficial than buying a *stakeholder pension scheme* (for example joining an *occupational pension scheme*).

18. A firm designing a sales process for use in the workplace may take account of the benefits offered by the employer. If a firm recommends a *stakeholder pension scheme* on the basis of benefits provided by an employer, then it should explain the basis of the recommendation to the *retail client* and suggest that the *retail client* seek advice if he or she has any concerns.
19. A firm should design its processes with a view to addressing the risk that *retail clients* will fail to appreciate the significance of questions about their pension provision and should accordingly incorporate a range of questions and information designed to foster the *retail client's* understanding of the issues and to elicit appropriate information.
20. *Retail client* should be told that a *stakeholder pension scheme* is life-styled and what this means.
21. A firm may provide a copy of the table setting out initial monthly pension amounts, found within the "Stakeholder pension decision tree" factsheet, available on <https://www.moneyhelper.org.uk> in accordance with COBS 13 Annex 2 1.8R, but in doing so should also provide and explain the caveats and assumptions behind the table. A firm should make it clear that the decision on how much to invest is the *retail client's* responsibility and that they should get further advice if they have any concerns.
- ISAs
22. A firm should ascertain whether the *retail client* has already opened a mini or maxi ISA and, if so, whether it would be appropriate for the *retail client* to open a non-ISA version of the same product.

Chapter 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).

Application

9A.1.1

R

This chapter applies to a *firm* which provides:

investment advice or portfolio management in the course of MiFID, equivalent third country or optional exemption business; or

investment advice in relation to an insurance-based investment product.

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

9A.1.2

R

Provisions in this chapter marked “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 “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

9A.1.4

R

[deleted]

9A.2 Assessing suitability: the obligations

9A.2.1 R When providing *investment advice* or *portfolio management* a firm must:

- (1) obtain the necessary information regarding the *client's*:
 - (a) knowledge and experience in the investment field relevant to the specific type of *financial instrument*, *insurance-based investment product* or service;
 - (b) financial situation including his ability to bear losses; and
 - (c) investment objectives including his risk tolerance,
so as to comply with (2);
- (2) only recommend *investment services*, *financial instruments* and *insurance-based investment products*, as applicable, or take decisions to trade, which are suitable for the *client* and, in particular, in accordance with the *client's* risk tolerance and ability to bear losses.

[Note: first paragraph of article 25(2) of *MiFID*, first paragraph of article 30(1) of the *IDD*]

9A.2.2 G Firms should undertake a suitability assessment not only when making a *personal recommendation* to buy a *financial instrument* or an *insurance-based investment product* but for all decisions whether to trade, including making any *personal recommendations* about whether or not to buy, hold or sell an investment.

[Note: recital 87 to the *MiFID Org Regulation*]

9A.2.3 G Where a *firm* providing a *portfolio management* service makes a recommendation or request, or provides advice, to a *client* to the effect that the *client* should give or alter a mandate to the *firm* that defines the limits of the *firm's* discretion, that recommendation, request or advice should be considered a recommendation for the purposes of ■ COBS 9A.2.1R. A *firm* should therefore undertake a suitability assessment in relation to any such recommendation, request or advice.

[Note: recital 89 to the *MiFID Org Regulation*]

9A.2.3A R When proposing an *insurance-based investment product* a *firm* must ensure it is consistent with the *client's* insurance demands and needs.

[Note: recital 44 to, and second paragraph article 20(1) of, the *IDD*]

9A.2.4

UK

Assessing the extent of the information required: MiFID business

54(2) Investment firms shall determine the extent of the information to be collected from clients in light of all the features of the investment advice or portfolio management services to be provided to those clients. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:

- (a) it meets the investment objectives of the client in question, including client's risk tolerance;
- (b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;
- (c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

[Note: article 54(2) of the *MiFID Org Regulation*]

9A

9A.2.4A

R

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

For the purposes of providing a *personal recommendation* on an *insurance-based investment product* in accordance with

■ COBS 9A.2.1R and ■ COBS 9A.2.16R, a *firm* must determine the extent of the information to be collected from the *client* in light of all the features of the advice to be provided to the *client*.

Without prejudice to the fact that, in accordance with

■ COBS 9A.2.3AR, ■ COBS 9A.3.2R and ■ COBS 9A.3.2AR, any *insurance-based investment product* proposed must be consistent with the *client's* demands and needs, a *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about the *client* and to have a reasonable basis for determining that its *personal recommendation* to the *client* satisfies all of the following criteria:

- it meets the *client's* investment objectives, including that person's risk tolerance;
- it meets the *client's* financial situation, including that person's ability to bear losses;
- it is such that the *client* has the necessary knowledge and experience in the investment field relevant to the specific type of *insurance-based investment product* or service.

Where information required for the purposes of ■ COBS 9A.2.1R and ■ COBS 9A.2.16R has already been obtained pursuant to

■ COBS 9A.2.3AR, ■ COBS 9A.3.2R and ■ COBS 9A.3.2AR, a *firm* must not request information it already has anew from the *client*.

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

9A.2.5

UK

Professional clients: MiFID business

54(3) Where an investment firm provides an investment service to a professional client it shall be entitled to assume that in relation to the products, transactions and services for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of point (c) of paragraph 2.

Where that investment service consists in the provision of investment advice to a professional client covered by Part 2 of Schedule 1 to Regulation (EU) No 600/2014, 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*]

9A.2.6

UK

Obtaining information about knowledge and experience: MiFID business

55(1) Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

- (a) the types of service, transaction and financial instrument with which the client is familiar;
- (b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;
- (c) the level of education, and profession or relevant former profession of the client or potential client.

[Note: article 55(1) of the *MiFID Org Regulation*]

9A.2.6A

R

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

For the purposes of ■ COBS 9A.2.1R and ■ COBS 9A.2.16R in relation to an *insurance-based investment product*, the necessary information to be obtained by a *firm* with regard to the *client's* knowledge and experience in the relevant investment field must include, where relevant, the following, to the extent appropriate to the nature of the *client*, and the nature and type of *insurance-based investment product* or service offered or demanded, including their complexity and the risks involved:

- the types of service, transaction, *insurance-based investment product* or *financial instrument* with which the *client* is familiar;
- the nature, number, value and frequency of the *client's* transactions in *insurance-based investment products* or *financial instruments* and the period over which they have been carried out;
- the level of education, and profession or relevant former profession of the *client*.

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

9A

9A.2.7

UK

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

54(4) The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

[**Note:** article 54(4) of the *MiFID Org Regulation*]

9A.2.7A

R

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

(1) In relation to an *insurance-based investment product*, the information regarding the *client's* financial situation, including that person's ability to bear losses, must include, where relevant, information on the source and extent of the *client's* regular income, assets, including liquid assets, investments and real property and the regular financial commitments.

(2) The level of information gathered must be appropriate to the specific type of *insurance-based investment product* or service being considered.

[**Note:** article 9(3) of the *IDD Regulation*]

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

9A.2.8

UK

54(5) The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

[**Note:** article 54(5) of the *MiFID Org Regulation*]

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

9A.2.8A

R

(1) In relation to an *insurance-based investment product*, the information regarding the *client's* investment objectives, including that person's risk tolerance, must include, where relevant, information on the length of time for which the *client* wishes to hold the investment, that person's preferences regarding risk taking, the risk profile, and the purposes of the investment.

(2) The level of information gathered must be appropriate to the specific type of *insurance-based investment product* or service being considered.

[**Note:** article 9(4) of the *IDD Regulation*]

Reliability of information: MiFID business

9A.2.9

UK

54(7) Investment firms shall take reasonable steps to ensure that the information collected about their clients or potential clients is reliable. This shall include, but shall not be limited to, the following:

(a) ensuring clients are aware of the importance of providing accurate and up-to-date information;

- (b) ensuring all tools, such as risk assessment profiling tools or tools to assess a client's knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their clients, with any limitations identified and actively mitigated through the suitability assessment process;
- (c) ensuring questions used in the process are likely to be understood by clients, capture an accurate reflection of the client's objectives and needs, and the information necessary to undertake the suitability assessment; and
- (d) taking steps, as appropriate, to ensure the consistency of client information, such as by considering whether there are obvious inaccuracies in the information provided by clients.

[Note: article 54(7) of the *MiFID Org Regulation*]

Reliability of information: insurance-based investment products

9A.2.9A

R

- (1) In relation to an *insurance-based investment product*, a *firm* must take reasonable steps to ensure that the information collected about the *client* for the purposes of the assessment of suitability is reliable.
- (2) The steps in (1) must include, but not be limited to, the following:
 - (a) ensuring that the *client* is aware of the importance of providing accurate and up-to-date information;
 - (b) ensuring that all tools, such as risk assessment profiling tools or tools to assess a *client's* knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with its *clients*, with any limitations identified and actively mitigated through the suitability assessment process;
 - (c) ensuring that questions used in the process are likely to be understood by the *client* and to capture an accurate reflection of the *client's* objectives and needs and the information necessary to undertake the suitability assessment;
 - (d) taking steps, as appropriate, to ensure the consistency of *client* information, such as considering whether there are obvious inaccuracies in the information provided by the *client*.

9A

[Note: article 10 of the *IDD Regulation*]

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

9A.2.10

UK

54(7) Investment firms having an on-going relationship with the client, such as by providing an on-going advice or portfolio management service, shall have, and be able to demonstrate, appropriate policies and procedures to maintain adequate and up-to-date information about clients to the extent necessary to fulfil the requirements under paragraph 2.

[Note: article 54(7) of the *MiFID Org Regulation*]

9A.2.11 UK

Discouraging the provision of information: MiFID business

55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of [■ COBS 9A.2.1R and ■ COBS 10A.2.1R].

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

9A.2.11A R

Discouraging the provision of information: insurance-based investment products

In relation to *insurance-based investment products*, a *firm* must not discourage a *client* from providing information required for the purposes of ■ COBS 9A.2.1R and ■ COBS 9A.2.16R.

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

9A.2.12 UK

Reliance on information: MiFID business

55(3) An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[**Note:** article 55(3) of the *MiFID Org Regulation*]

9A.2.12A R

Reliance on information: insurance-based investment products

For the purposes of assessing suitability in relation to an *insurance-based investment product*, a *firm* may rely on the information provided by its *clients* unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[**Note:** article 17(4) of the *IDD Regulation*]

9A.2.13 UK

Insufficient information: MiFID business

54(8) Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under [■ 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*]

9A.2.13A R

Insufficient information: insurance-based investment products

Where a *firm* does not obtain the information required under ■ COBS 9A.2.1R and ■ COBS 9A.2.16R, the *firm* must not provide a *personal recommendation* on *insurance-based investment products* to the *client*.

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

9A.2.14 G

Insufficient information: MiFID business and insurance-based investment products

Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this

happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *client's best interests rule* and any obligation it may have under the *rules* relating to appropriateness when providing the different service (see ■ COBS 10A (Appropriateness (for non-advised services in relation to MiFID and insurance-based investment products provisions))).

Identifying the subject of a suitability assessment: MiFID business

9A.2.15 [UK]

54(6) Where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person, the investment firm shall establish and implement policy as to who should be subject to the suitability assessment and how this assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives should be collected. The investment firm shall record this policy.

Where a natural person is represented by another natural person or where a legal person having requested treatment as professional client in accordance with 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*]

9A

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

9A.2.15A [R]

- (1) With regard to group insurance a *firm* must establish and implement a policy as to who will be subject to the suitability assessment where an *insurance-based investment product* is concluded on behalf of a group of members and each individual member cannot take an individual decision to join.
- (2) The policy established under (1) must also contain rules on how that assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives will be collected.
- (3) A *firm* must record the policy established under (1).

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

Bundled packages: MiFID business and insurance-based investment products

9A.2.16 [R]

Where a *firm* provides *investment advice* recommending a package of services or products bundled pursuant to ■ COBS 6.1ZA.16R (for MiFID business) or ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16ER (for *insurance-based investment products*), the *firm* must ensure that the overall bundled package is suitable for the *client*.

[Note: second paragraph of article 25(2) of *MiFID* and second paragraph of article 30(1) of the *IDD*]

9A.2.17 G When considering the suitability of a particular *financial instrument* or *insurance-based investment product* which is linked directly or indirectly to any form of loan, mortgage or *home reversion plan*, a firm should take account of the suitability of the overall transaction. The firm should have regard to any applicable suitability rules in MCOB.

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(11) of the *MiFID Org Regulation*]

Switching: insurance-based investment products

9A.2.18A R When providing a *personal recommendation* in relation to an *insurance-based investment product* that involves switching between underlying investment assets a firm must also collect the necessary information on the client's existing underlying investment assets and the recommended new investment assets and must undertake an analysis of the expected costs and benefits of the switch, such that it is reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs.

[Note: article 9(7) of the *IDD Regulation*]

Adequate policies and procedures: MiFID business

9A.2.19 UK 54(9) Investment firms shall have, and be able to demonstrate, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of investment services and financial instruments selected for their clients and that they assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile.

[Note: article 54(9) of the *MiFID Org Regulation*]

Unsuitability: MiFID business

9A.2.20 UK 54(10) When providing the investment service of investment advice or portfolio management, an investment firm shall not recommend or decide to trade where none of the services or instruments are suitable for the client.

[Note: article 54(10) of the *MiFID Org Regulation*]

Unsuitability: insurance-based investment products

9A.2.20A R When providing a *personal recommendation* on an *insurance-based investment product* in accordance with □ COBS 9A.2.1R and □ COBS 9A.2.16R, a firm must not make a recommendation where none of the *insurance-based investment products* are suitable for the client.

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

9A.2.21

G

Guidance on assessing suitability: MiFID business and insurance-based investment products

- (1) A transaction may be unsuitable for a *client* due to the risks of the associated *financial instruments*, the type of transaction, the characteristics of the order or the frequency of the trading.
- (1A) An *insurance-based investment product* may be unsuitable for a *client* due to the risks of the underlying investment assets, the type or characteristics of the product or the frequency of switching of underlying investment assets.
- (2) A series of transactions, each of which are suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.
- (3) In the case of *portfolio management*, a transaction might be unsuitable if it would result in an unsuitable portfolio.

[Note: recital 88 to the *MiFID Org Regulation*, recital 9 to the *IDD Regulation*]

9A.2.22

G

Investments subject to restrictions on retail distribution: MiFID business and insurance-based investment products

9A

- (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:
 - (a) *non-mass market investments* are subject to a restriction on *financial promotions* (see ~~section 238~~ of the Act and ■ COBS 4.12B);
 - (b) *restricted mass market investments* are subject to a restriction on *direct offer financial promotions* (see ■ COBS 4.12A);
 - (c) *mutual society shares* are subject to specific requirements in relation to *dealing* and *arranging activities* (see ■ COBS 22.2);
 - (d) *contingent convertible instruments* and *CoCo funds* are subject to a restriction on sales and on promotions (see ■ COBS 22.3).
 - (e) [deleted]
- (2) A *firm* should be satisfied that an exemption is available before recommending an *investment* subject to a restriction on distribution to a *retail client*, noting in particular that a *personal recommendation* to invest will generally incorporate a *financial promotion*.
- (3) In addition to assessing whether the promotion is permitted, a *firm* giving advice on an *investment* subject to a restriction on distribution should comply with their obligations in ■ COBS 9A and ensure any *personal recommendation* is suitable for its *client*.
- (4) In considering its obligations under ■ COBS 9A, a *firm* purchasing an *investment* subject to a restriction on distribution on behalf of a *retail client* as part of a discretionary management agreement should exercise particular care to ensure the transaction is suitable and in the *client's* best interests, having regard to the FCA's view that such *investments* pose particular risks of inappropriate distribution.
- (5) A restriction on promotion does not affect a transaction where there has been no prior communication with the *client* in connection with

9A.2.23 UK

the investment by the *firm* or a person connected to the *firm*. Nonetheless, if promotion of an *investment* to a *retail client* would not have been permitted, then the discretionary manager's decision to purchase it on behalf of the *retail client* should be supported by detailed and robust justification of his assessment of suitability.

Automated or semi-automated systems: MiFID business

54(1) Where investment advice or portfolio management services are provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the investment firm providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation or decision to trade.

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

9A.2.24

G

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

For the avoidance of doubt, a *firm's* responsibility to perform the suitability assessment in accordance with ■ COBS 9A.2.1R and ■ COBS 9A.2.16R is not reduced where a *personal recommendation* on *insurance-based investment products* is provided in whole or in part through an automated or semi-automated system.

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

9A

9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability: MiFID business

9A.3.1 UK

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 [■ COBS 9A.2.1R]. 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.

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

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

9A.3.1A R

- (1) A *firm* must not create any ambiguity or confusion about its responsibilities in the process of assessing the suitability of *insurance-based investment products* in accordance with ■ COBS 9A.2.1R and ■ COBS 9A.2.16R.
- (2) A *firm* must inform the *client*, clearly and simply, that the reason for assessing suitability is to enable it to act in the *client's* best interest.

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

Suitability reports: MiFID business and insurance-based investment products

9A.3.2 R

- (1) [deleted]
- (2) When providing *investment advice* to a *retail client*, a *firm* must, before the transaction is concluded, provide the *client* with a *suitability report* in a *durable medium*:
 - (a) specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the *client*;
 - (b) (for an *insurance-based investment product*):
 - (i) specifying, on the basis of the information obtained from the *client*, the *client's* demands and needs; and
 - (ii) including a personalised recommendation explaining why a particular *insurance-based investment product* would best meet the *client's* demands and needs.

The details in (i) and (ii) must be modulated according to the complexity of the *contract of insurance* proposed and the type of *client*.

- (3) Where the transaction is concluded using a means of distance communication which prevents the prior delivery of the *suitability report*, the *firm* may provide the *suitability report* in a *durable medium* immediately after the *client* is bound by the transaction , provided both the following conditions are met:
- the *client* has consented to receiving the *suitability report* without undue delay after the conclusion of the transaction; and
 - the *firm* has given the *client* the option of delaying the transaction in order to receive the *suitability report* in advance.
- (4) Where a *firm* provides a *portfolio management* service or has informed the *client* that it will carry out periodic assessment of suitability, the periodic report, provided under ■ COBS 16A.2.1R, must contain an updated statement of how the *client's* investments meet the preferences, objectives and other characteristics of the *client*.

[**Note:** second, third and fourth paragraphs of article 25(6) of, and recital 82 to, *MiFID*; article 20(1), article 20(2), second paragraph of article 22(1) and second, third and fourth paragraphs of article 30(5) of the *IDD*]

9A.3.2A

R

Where a *firm* makes a *personal recommendation* to a *professional client* on an *insurance-based investment product* it must, prior to the conclusion of the contract, provide to the client the information in ■ COBS 9A.3.2R(2)(b) in accordance with ■ COBS 7.4.

[**Note:** article 20(1) and 20(2) of the *IDD*]

Providing a suitability report: MiFID business

9A.3.3

UK

54(12) When providing investment advice, investment firms shall provide a report to the retail client that includes an outline of the advice given and how the recommendation provided is suitable for the retail client, including how it meets the client's objectives and personal circumstances with reference to the investment term required, client's knowledge and experience and client's attitude to risk and capacity for loss.

Investment firms shall draw clients' attention to and shall include in the suitability report information on whether the recommended services or instruments are likely to require the retail client to seek a periodic review of their arrangements.

Where an investment firm provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established may only cover changes in the services or instruments involved and/or the circumstances of the client and may not need to repeat all the details of the first report.

[**Note:** article 54(12) of the *MiFID Org Regulation*]

Providing a suitability report: insurance-based investment products

9A.3.3A

R

- When providing a *personal recommendation* on the suitability of an *insurance-based investment product* in accordance with ■ COBS 9A.2.1R and ■ COBS 9A.2.16R, a *firm* must provide a statement to the *client* (suitability statement) that includes the following:
 - an outline of the *personal recommendation* given;

- (b) information on how the recommendation provided is suitable for the *client*, in particular how it meets:
- (i) the *client's* investment objectives, including that person's risk tolerance;
 - (ii) the *client's* financial situation, including that person's ability to bear losses;
 - (iii) the *client's* knowledge and experience.
- (2) A *firm* must draw the *client's* attention to, and must include in the suitability statement, information on whether any recommended *insurance-based investment product* is likely to require the *client* to seek a periodic review of their arrangements.
- (3) Where a *firm* has informed the *client* that it will carry out a periodic assessment of suitability, the subsequent statements after the initial service is established may be limited to changes in the services or underlying investment assets, and/or the circumstances of the *client* without repeating all the details contained in the first statement.

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

9A.3.4 **G** When providing a *suitability report*, a *firm* should consider the requirements in ■ COBS 4.2.1R to ensure that the contents of the suitability report are fair, clear and not misleading.

9A.3.5 **G** Situations that are likely to require a *retail client* to seek a periodic review of their arrangements include where a *client* is likely to need to seek advice to bring a portfolio of investments back in line with the original recommended allocation where there is a probability that the portfolio could deviate from the target asset allocation.

[Note: recital 85 to the *MiFID Org Regulation*]

Periodic assessments: MiFID business and insurance-based investment products

9A.3.6 **R** A *firm* must:

- (1) in relation to an *insurance-based investment product*, at least in good time prior to the conclusion of the contract;
- (2) otherwise, in good time before it provides its *investment advice*;

inform the *client* whether it will provide the *client* with a periodic assessment of the suitability of the financial instruments or the *insurance-based investment products* recommended to the *client*.

[Note: article 24(4)(a)(iii) of *MiFID*, article 29(1)(a) of the *IDD*]

9A.3.7 **G** ■ COBS 9A.3.6R supplements ■ COBS 2.2A.2R (information disclosure before providing services (MiFID provisions and insurance distribution)).

9A.3.8

UK

Periodic assessments: MiFID business

52(5) Investments firms providing a periodic assessment of the suitability of the recommendations provided pursuant to Article 54(12) shall disclose all of the following:

- (a) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;
- (b) the extent to which the information previously collected will be subject to reassessment; and
- (c) the way in which an updated recommendation will be communicated to the client.

[**Note:** article 52(5) of the *MiFID Org Regulation*]

9A.3.9

UK

54(13) Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended.

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

Periodic assessments: insurance-based investment products

9A.3.10

R

- (1) A *firm* providing a periodic assessment of suitability must review, in accordance with the best interests of its *client*, the suitability of the recommended *insurance-based investment products* at least annually
- (2) The frequency of a periodic assessment must be increased depending on the characteristics of the *client*, such as the risk tolerance, and the nature of the recommended *insurance-based investment product*.

[**Note:** article 14(4) of the *IDD Regulation*]

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

Record keeping: MiFID business and insurance-based investment products

9A.4.1 **G** A firm to which ■ SYSC 9 applies is required to keep orderly records of its business and internal organisation (see ■ SYSC 9 (General rules on record-keeping)). The records may be expected to reflect the different effect of the requirements in this chapter depending on whether the *client* is a *retail client* or a *professional client*; for example, in respect of information about the *client* which the *firm* must obtain and whether the *firm* is required to provide a *suitability report*.

9A.4.2 **G** A firm should refer to ■ SYSC 3.2 and ■ SYSC 3.3 (for insurers and managing agents) and ■ SYSC 9 (for other firms) for its obligations in relation to record keeping.

[Note: article 16(7) of *MiFID*]

9A

Retention of records: insurance-based investment products

- 9A.4.3** **R**
- (1) Without prejudice to the application of the *General data protection regulation*, a *firm* must maintain records of the assessment of suitability in relation to *insurance-based investment products* undertaken in accordance with ■ COBS 9A.2.1R and ■ COBS 9A.2.16R.
 - (2) The records maintained under (1) must include the information obtained from the *client* and any documents agreed with the *client*, including documents that set out the rights of the parties and the other terms on which the *firm* will provide services to the *client*.
 - (3) The records must be retained for at least the duration of the relationship between the *firm* and the *client*.

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

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

- 9A.4.4** **R** In the case of an assessment of suitability undertaken in accordance with ■ COBS 9A.2.1R and ■ COBS 9A.2.16R in relation to *insurance-based investment products*, the record maintained under ■ COBS 9A.4.3R must include the following:
- (1) the result of the suitability assessment;
 - (2) the recommendation made to the *client* and the statement provided in accordance with ■ COBS 9A.3.3AR;

- (3) any changes made by the *firm* with regard to the suitability assessment, in particular any change to the *client's* risk tolerance;
- (4) any changes to the underlying investment assets.

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

Chapter 10

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

10.1 Application

- 10.1.1 R** [deleted]
- 10.1.2 R**
- (1) This chapter applies to a firm which:
- (a) arranges or deals in relation to a:
- (i) *non-readily realisable security*;
- (ii) *speculative illiquid security*;
- (iii) *derivative*;
- (iv) *warrant*; or
- (v) *unit in a long-term asset fund*,
with or for a *retail client*, other than in the course of *MiFID or equivalent third country business*;
- (b) facilitates a *retail client* becoming a lender under a *P2P agreement*;
- (c) *issues a unit in a long-term asset fund to a retail client*; or
- (d) transacts in a *qualifying cryptoasset* with or for a *retail client*,
and the *firm* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*.
- (2) The *rules* in this chapter also apply to:
- a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of ■ GEN 2.2.26R); and
- a *Gibraltar-based firm* to the extent that the *rule* does not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R).
- (3) (a) This chapter also applies to a *registered person* which transacts in *qualifying cryptoassets* with or for a *retail client* where the *registered person* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*, as it applies to an *authorised person*.
- (b) For the purpose of (3)(a), in this chapter, relevant references to a *firm* include reference to a *registered person*.
- 10.1.3 R** [deleted]

10.1.4

G

Related rules.....

A firm that is carrying on a *regulated activity* on a non-advised basis, whether or not the *rules* in this chapter apply to its activities, should also consider whether other *rules* in COBS apply.

		 10.2 Assessing appropriateness: the obligations
10.2.1	R	<p>(1) When providing a service to which this chapter applies, a <i>firm</i> must ask the <i>client</i> to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the <i>firm</i> to assess whether the service or product envisaged is appropriate for the <i>client</i>.</p> <p>(2) When assessing appropriateness, a <i>firm</i> must determine whether the <i>client</i> has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded.</p>
10.2.2	R	<p>The information regarding a <i>client's</i> knowledge and experience in the investment field includes, to the extent appropriate to the nature of the <i>client</i>, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:</p> <p>(1) the types of service, transaction and <i>designated investment</i> with which the <i>client</i> is familiar;</p> <p>(2) the nature, volume, frequency of the <i>client's</i> transactions in <i>designated investments</i> and the period over which they have been carried out;</p> <p>(3) the level of education, profession or relevant former profession of the <i>client</i>.</p>
10.2.3	R	<p>A <i>firm</i> must not encourage a <i>client</i> not to provide information required for the purposes of its assessment of appropriateness.</p>
10.2.4	R	<p>Reliance on information</p> <p>A <i>firm</i> is entitled to rely on the information provided by a <i>client</i> unless it is aware that the information is manifestly out of date, inaccurate or incomplete.</p>
10.2.5	G	<p>Use of existing information</p> <p>When assessing appropriateness, a <i>firm</i> may use information it already has in its possession.</p>

- 10.2.6** **G** **Knowledge and experience**
Depending on the circumstances, a *firm* may be satisfied that the *client's* knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a *firm* may infer knowledge from experience.
- 10.2.7** **G** **Increasing the client's understanding**
If, before assessing appropriateness, a *firm* seeks to increase the *client's* level of understanding of a service or product by providing information to him, relevant considerations are likely to include the nature and complexity of the information and the *client's* existing level of understanding.
- 10.2.8** **G** **No duty to communicate firm's assessment of knowledge and experience**
If a *firm* is satisfied that the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in ■ COBS 9 (Suitability (including basic advice) (non-MiFID provisions)).
- 10.2.9** **G** **Restricted mass market investments**
(1) When determining whether a *client* has the necessary knowledge to understand the risks involved in relation to a *restricted mass market investment*, a *firm* should consider asking the *client* questions that cover, at least, the matters in:
(a) ■ COBS 10 Annex 1G in relation to *non-readily realisable securities*;
(b) ■ COBS 10 Annex 2G in relation to *P2P agreements or P2P portfolios*;
(c) [deleted]
(d) [deleted]
(e) [deleted]
(f) [deleted]
(g) [deleted]
(h) [deleted]
(i) [deleted]
(j) [deleted]
(k) [deleted]
(l) [deleted]
(m) ■ COBS 10 Annex 3G in relation to *units in a long-term asset fund*; or
(n) ■ COBS 10 Annex 4G in relation to *qualifying cryptoassets*.

10.3 Warning the client

- 10.3.1 R**
- (1) If a *firm* considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the *client*, the *firm* must warn the *client*.
 - (2) This warning may be provided in a standardised format.
- 10.3.2 R**
- (1) If the *client* elects not to provide the information to enable the *firm* to assess appropriateness, or if he provides insufficient information regarding his knowledge and experience, the *firm* must warn the *client* that such a decision will not allow the *firm* to determine whether the service or product envisaged is appropriate for him.
 - (2) This warning may be provided in a standardised format.
- 10.3.3 G**
- If a *client* asks a *firm* to go ahead with a transaction, despite being given a warning by the *firm*, it is for the *firm* to consider whether to do so having regard to the circumstances.

10.4 Assessing appropriateness: when it need not be done

10.4.1

R

- (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if:
 - (a) the service only consists of execution and/or the reception and transmission of *client* orders, with or without *ancillary services*, it relates to particular *financial instruments* and is provided at the initiative of the *client*;
 - (b) the *client* has been clearly informed (whether the warning is given in a standardised format or not) that in the provision of this service the *firm* is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the protection of the *rules* on assessing suitability; and
 - (c) the *firm* complies with its obligations in relation to conflicts of interest.
- (2) The *financial instruments* referred to in (1)(a) are:
 - (a) [deleted]
 - (b) money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a *derivative*); or
 - (c) [deleted]
 - (d) other non-complex *financial instruments*.
- (3) A *financial instrument* is non-complex if it satisfies the following criteria:
 - (a) it is not a *derivative* or other security giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
 - (b) there are frequent opportunities to dispose of, redeem, or otherwise realise the instrument at prices that are publicly available to the market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;
 - (c) it does not involve any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument; and
 - (d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average *retail client* to make an informed judgment as to whether to enter into a transaction in that instrument.

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|--------|--|
| 10.4.2 | R If a <i>client</i> engages in a course of dealings involving a specific type of product or service through the services of a <i>firm</i> , the <i>firm</i> is not required to make a new assessment on the occasion of each separate transaction. A <i>firm</i> complies with the <i>rules</i> in this chapter provided that it makes the necessary appropriateness assessment before beginning that service. |
| 10.4.3 | G As explained in ■ COBS 4.12A.33G, ■ COBS 10.4 is not relevant for the purpose of complying with the <i>rules</i> requiring an appropriateness assessment under ■ COBS 4.12A in relation to <i>restricted mass market investments</i> . |
| 10.4.3 | R [deleted] |

10.5 Assessing appropriateness: guidance

The initiative of the client

10.5.1

G

A service should be considered to be provided at the initiative of a *client* (see ■ COBS 10.4.1 R (1)(a)) unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that particular *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument* or specific transaction.

10.5.2

G

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

10.5.3

G

- (1) Communications to the world at large, such as those in newspapers or on billboards, are likely to be by their very nature general and therefore not personalised communications.
- (2) Communications addressed to a *client* (such as, for example, an email, telephone call or letter), may or may not be personalised depending on the content.
- (3) A communication is not personalised solely because it contains the name and address of the *client* or because a mailing list has been filtered.
- (4) If a *firm* is satisfied that a communication does not contain any personalised content, it may wish to make clear that it does not intend the communication to be personalised and that the personal circumstances of the recipient have not been taken into account.

10.5.4

G

[deleted]

Independent valuation systems

10.5.5

G

The circumstances in which valuation systems will be independent of the issuer (see ■ COBS 10.4.1 R (3)(b)) include where they are overseen by a depositary that is regulated as a provider of depositary services in the *United Kingdom*.

10.6 When a firm need not assess appropriateness

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

10.6.2 **G** [deleted]

10.7 Record keeping and retention periods for appropriateness records

10.7.1

G

A *firm* is required to keep orderly records of its business and internal organisation, including all services and transactions undertaken by it. The records may be expected to include the *client* information a *firm* obtains to assess appropriateness and should be adequate to indicate what the assessment was.

10.7.2

R

The *firm* must retain its records relating to appropriateness for a minimum of five years.

Assessing appropriateness: non-readily realisable securities

This Annex belongs to ■ COBS 10.2.9G(1)(a) and ■ COBS 10A.2.11G.

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *non-readily realisable security*, a *firm* should consider asking the *client* questions that cover, at least, the following matters:

- (1) the nature of the *client's* contractual relationship with the *issuer* and any underlying beneficiaries of the investment;
- (2) the possibility that the *client* could lose all the money they invest;
- (3) the risk of failure of the *issuer* and the associated risk of losing all of the money invested;
- (4) the regulated status of the investment activity, including that the issuance of *securities* does not ordinarily involve *regulated activity* and the implications in relation to *FCA regulation*;
- (5) the extent to which the protection of the *Financial Ombudsman Service* or *FSCS* apply to the investment activity (including the fact that these services do not protect investors against poor investment performance and that the *Financial Ombudsman Service* cannot ordinarily consider complaints in relation to *unauthorised persons*);
- (6) the potential illiquidity of *non-readily realisable securities* (including the unlikelihood or impossibility that the *client* will be able to sell the *security* and the nature of the mechanisms through which the *client* could be paid their money back);
- (7) the risk to any management and administration of the *client's* investment in the event of the *issuer* becoming insolvent or otherwise failing;
- (8) the role of the *issuer* (including its role in assessing and making underlying investments);
- (9) that where a *security* is held in an *innovative finance ISA* (IFISA), this does not reduce the risk of the *security* or otherwise protect the *client* from the risk of losing their money;
- (10) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*;
- (11) where the *security* is a *share*:
 - (a) the likelihood of dividend payments;
 - (b) the risk of dilution from further issues of *shares* and the implications for the value of the *security*; and
 - (c) the risk of any further issues of *shares* granting preferential rights that negatively impact existing investors and the implications for the value of the *security*;
- (12) where the *security* is a *debenture*:
 - (a) the *client's* exposure to the credit risk of the *issuer*;
 - (b) that investing in a *debenture* is not comparable to depositing money in a savings account; and
 - (c) that returns may vary over time; and

- (13) where an investment in a *non-readily realisable security* is, or is to be, *arranged by a firm*:
- (a) the nature of the *client's* contractual relationships with the *firm*;
 - (b) the role of the *firm* and the scope of the service it provides to *clients* (including the extent of the due diligence that the *firm* undertakes in relation to the *securities* that it distributes); and
 - (c) the risk to any management and administration of the *client's* investment in the event of the *firm* becoming insolvent or otherwise failing.

Assessing appropriateness: P2P agreements and P2P portfolios

This Annex belongs to ■ COBS 10.2.9G(1)(b).

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *P2P agreement* or a *P2P portfolio*, a *firm* should consider asking the *client* questions that cover, at least, the following matters:

- (1) the nature of the *client's* contractual relationships with the borrower and the *firm*;
- (2) the *client's* exposure to the credit risk of the borrower;
- (3) that the *client* can lose all of the money that they invest in a *P2P agreement* or *P2P portfolio*;
- (4) that *P2P agreements* or *P2P portfolios* are not covered by *FSCS* and that the *Financial Ombudsman Service* does not protect investors against poor performance of *P2P agreements* or *P2P portfolios*;
- (5) that returns may vary over time;
- (6) that entering into a *P2P agreement* or investing in a *P2P portfolio* is not comparable to depositing money in a savings account;
- (7) the characteristics of any:
 - (a) security interest, insurance or guarantee taken in relation to the *P2P agreements* or *P2P portfolio*; or
 - (b) risk diversification facilitated by the *firm*; or
 - (c) *contingency fund* offered by the *firm*; or
 - (d) any other risk mitigation measure adopted by the *firm*;
- (8) that any of the measures in (7) adopted by the *firm* cannot guarantee that the *client* will not suffer a loss in relation to the money invested;
- (9) that where a *firm* has not adopted any risk mitigation measures (such as those in (7)), the extent of any loss of money invested is likely to be greater than if risk mitigation measures were adopted by the *firm*;
- (10) illiquidity in the context of a *P2P agreement* or *P2P portfolio*, including the risk that the lender may be unable to exit a *P2P agreement* before maturity even where the *firm* operates a secondary market (including the fact that any advertised access to money invested is not guaranteed);
- (11) the role of the *firm* and the scope of its services, including what the *firm* does and does not do on behalf of *clients*;
- (12) the risks to the management and administration of a *P2P agreement* or *P2P portfolio* in the event of the *firm's* becoming insolvent or otherwise failing;
- (13) that where a *P2P agreement* or *P2P portfolio* is held in an *innovative finance ISA* (IFISA), this does not reduce the risk of the *P2P agreement* or *P2P portfolio* or otherwise protect the *client* from the risk of losing their money; and

-
- (14) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*.

Assessing appropriateness: units in a long-term asset fund

This Annex belongs to ■ COBS 10.2.9G(1)(m).

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *long-term asset fund*, a *firm* should consider asking the *client* questions that cover, at least, the following matters:

- (1) the possibility that the *client* could see the value of the amount they invest go down;
- (2) the potential illiquidity of *LTAFs* and their underlying assets;
- (3) the possibility that it could take the *client* many years to make a profit on the *money* they invest, and (where relevant) that payments of income may be limited or non-existent;
- (4) that due to the *dealing frequency* and *notice period* after a *redemption* request has been accepted (see ■ COLL 15.8.12R (Dealing: redemption of units)):
 - (a) the *client* will not know the value of the proceeds of *redemption* until the end of the *notice period*; and
 - (b) it will take at least [period of time] for the *client* to receive the proceeds of *redemption*;
- (5) the risk of the *LTAF's investments* failing and the associated risk of the *client* losing all of the *money* invested;
- (6) the extent to which the protection of the *Financial Ombudsman Service* or *FSCS* apply to the investment activity (including the fact that these services do not protect investors against poor investment performance);
- (7) the nature of the *client's* contractual relationships with the *authorised fund manager* (including its role in assessing and making underlying *investments*);
- (8) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*;
- (9) where the *units* in the *LTAF* are, or are to be, *dealt* or *arranged* by another *firm* (AF):
 - (a) the nature of the *client's* contractual relationships with (AF);
 - (b) the role of AF and the scope of the service it provides to *clients* (including the extent of the due diligence that AF undertakes in relation to *units* in *LTAFs* that it *deals* in or *arranges*); and
 - (c) the risk to any management and administration of the *client's* investment in the event of AF becoming insolvent or otherwise failing.

Assessing appropriateness: qualifying cryptoassets

This Annex belongs to ■ COBS 10.2.9G(1)(n).

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *qualifying cryptoasset*, a *firm* should consider asking the *client* questions that cover, at least, the matters in (1) to (12).

Firms may need to ask additional or alternative questions to ensure that the *retail client* has the necessary knowledge to understand the risks involved in relation to the specific type of *qualifying cryptoasset* offered.

The matters are:

- (1) the role of the business offering or marketing the *qualifying cryptoasset* (the business) and the scope of its services, including what the business does and does not do on behalf of *clients*, such as what due diligence is and is not undertaken by the business on any underlying investments;
- (2) the nature of the *client's* rights and obligations with the business, in particular the nature of the legal and beneficial ownership of the *qualifying cryptoasset* and the risks associated with those rights;
- (3) that the *client* can lose all of the money that they invest in a *qualifying cryptoasset*;
- (4) the potential complexity of investments in *qualifying cryptoassets* and the associated difficulty of understanding the risks of the investment;
- (5) that the performance of many *qualifying cryptoassets* can be highly volatile and that the value of an investment in a *qualifying cryptoasset* can fall as quickly as it can rise;
- (6) the risk of losing money or any *qualifying cryptoassets* purchased as a result of operational risks (such as through cyber-attacks, loss of private keys, comingling of funds) or financial crime;
- (7) the risk to any management and administration of the *client's* investment in the event of the business becoming insolvent or otherwise failing;
- (8) that the *client* may not be able to readily sell their *qualifying cryptoasset* investment, including as a result of market illiquidity or operational outages;
- (9) the regulated status of the business offering or marketing the *qualifying cryptoasset* and the investment activity and the implications of this in relation to FCA regulation;
- (10) the extent to which the protection of the *Financial Ombudsman Service* or *FSCS* apply to the investment activity (including the fact that these services do not protect investors against poor investment performance and that the *Financial Ombudsman Service* cannot ordinarily consider complaints in relation to *unauthorised persons*);
- (11) that investing in, and holding, *qualifying cryptoassets* is not comparable to investing in mainstream *investments* such as listed or exchange-traded securities; and
- (12) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*.

Chapter 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).]

Application

- 10A.1.1** **R** This chapter applies to a *firm* which:
- (1) provides *investment services* in the course of *MiFID or equivalent third country business*; or
 - (2) carries on *insurance distribution* in relation to *insurance-based investment product*,
- other than when the *firm* makes a *personal recommendation* or carries out *portfolio management*.
- 10A.1.2** **R** This chapter applies to a *firm* which assesses appropriateness on behalf of a *MiFID investment firm* so that the other *firm* may rely on the assessment under **■ COBS 2.4.4R** (Reliance on other investment firms: *MiFID and equivalent business*).
- 10A.1.3** **R** The effect of **■ GEN 2.2.22AR** is that provisions in this chapter marked "UK" and including a Note ('**Note:**') referring to the *MiFID Org Regulation* also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.
- 10A.1.4** **R** [deleted]

10A.2 Assessing appropriateness: the obligations

- 10A.2.1 R** A firm must ask the *client* to provide information regarding that *client's* knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the *firm* to assess whether the service or product envisaged is appropriate for the *client*.
[Note: article 25(3) of *MiFID*, first paragraph of article 30(2) of the *IDD*]
- 10A.2.1A G** A firm carrying on *insurance distribution* is also required to comply with the requirements in ■ COBS 7.3 (additional insurance distribution obligations: demands and needs).
[Note: first paragraph of article 30(2) of the *IDD*]
- Bundled packages: MiFID business and insurance-based investment products** 10A
- 10A.2.2 R** Where a bundle of services or products is envisaged pursuant to ■ COBS 6.1ZA.16R (for MiFID business) or ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16E (for *insurance-based investment products*), the assessment made pursuant to ■ COBS 10A.2.1R must consider whether the overall bundled package is appropriate.
[Note: article 25(3) of *MiFID*, first paragraph of article 30(2) of the *IDD*]
- Assessing a client's knowledge and experience: MiFID business**
- 10A.2.3 UK** 56(1) Investment firms, shall determine whether that client 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 [■ COBS 10A.1.1R] is appropriate for a client.
An investment firm shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.
[Note: article 56(1) of the *MiFID Org Regulation*]
- Assessing a client's knowledge and experience: insurance-based investment product**
- 10A.2.3A R** Without prejudice to the fact that, in accordance with ■ COBS 7.3.4R, any *insurance-based investment product* proposed must be consistent with the

client's demands and needs, a firm must determine whether the client has the necessary knowledge and experience in order to understand the risks involved in relation to the service or insurance-based investment product proposed or demanded when assessing whether an insurance service or insurance-based investment product distributed in accordance with ■ COBS 10A.2.1R and ■ COBS 10A.2.2R is appropriate for the client.

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

Information regarding a client's knowledge and experience: MiFID business

10A.2.4 **UK**

55(1) Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

- (a) the types of service, transaction and financial instrument with which the client is familiar;
- (b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;
- (c) the level of education, and profession or relevant former profession of the client or potential client.

[Note: article 55(1) of the *MiFID Org Regulation*]

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

10A.2.4A **R**

- (1) For the purposes of ■ COBS 10A.2.1R and ■ COBS 10A.2.2R in relation to insurance-based investment products, the necessary information to be obtained by a firm with regard to the client's knowledge and experience in the relevant investment field must include, where relevant, the following, to the extent appropriate to the nature of the client, and the nature and type of insurance-based investment product or service offered or demanded, including their complexity and the risks involved:
 - (a) the types of service, transaction, insurance-based investment product or financial instrument with which the client is familiar;
 - (b) the nature, number, value and frequency of the client's transactions in insurance-based investment products or financial instruments and the period over which they have been carried out;
 - (c) the level of education, and profession or relevant former profession of the client.
- (2) Where information required for the purposes of ■ COBS 10A.2.1R and ■ COBS 10A.2.2R has already been obtained for the purposes of ■ COBS 7.3.4R, a firm must not request information it already has anew from the client.

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

10A.2.5 UK

Discouraging the provision of information: MiFID business.....

55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of [■ COBS 9A.2.1R and ■ COBS 10A.2.1R].

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

10A.2.5A R

**Discouraging the provision of information: insurance-based
investment products.....**

In relation to an *insurance-based investment product*, a *firm* must not discourage a *client* from providing information required for the purposes of ■ COBS 10A.2.1R and ■ COBS 10A.2.2R.

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

10A.2.6 UK

Reliance on information: MiFID business.....

55(3) An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 55(3) of the *MiFID Org Regulation*]

10A.2.6A R

Reliance on information: insurance-based investment products.....

In relation to an *insurance-based investment product*, a *firm* may rely on the information provided by the *client* unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 17(4) of the *IDD Regulation*]

10A.2.7 G

Use of existing information: MiFID business and insurance-based investment products.....

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

10A.2.8 G

Knowledge and experience: MiFID business and insurance-based investment products.....

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

10A.2.9 G

Increasing the client's understanding: MiFID business and insurance-based investment products.....

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

10A

10A.2.10 **G**

No duty to communicate firm's assessment of knowledge and experience: MiFID business and insurance-based investment products

If a *firm* is satisfied that the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in ■ COBS 9A (MiFID and insurance-based investment products provisions).

10A.2.11 **G**

Restricted mass market investments

When determining whether a *client* has the necessary knowledge to understand the risks involved in relation to a *restricted mass market investment*, a *firm* should consider asking the *client* questions that cover, at least, the matters in ■ COBS 10 Annex 1G in relation to *non-readily realisable securities*.

10A.2.12 **G**

Assessing appropriateness: units in long-term asset funds

When determining whether a *client* has the necessary knowledge and experience to understand the risks involved in relation to a *unit* in a *long-term asset fund* (see ■ COBS 4.12A (Promotion of restricted mass market investments)), a *firm* should consider asking the *client* questions that cover, at least, the matters in ■ COBS 10 Annex 3G (Assessing appropriateness: units in a long-term asset fund).

10A.3 Warning the client

10A.3.1 R

- (1) If a *firm* considers, on the basis of information received to enable it to assess appropriateness, that the product or service is not appropriate for the *client*, the *firm* must warn the *client*.
- (2) This warning may be provided in a standardised format.

[Note: article 25(3) of *MiFID*, second paragraph of article 30(2) of the *IDD*]

10A.3.2 R

- (1) If the *client* does not provide the information to enable the *firm* to assess appropriateness, or if the *client* provides insufficient information regarding their knowledge and experience, the *firm* must warn the *client* that the *firm* is not in a position to determine whether the service or product envisaged is appropriate for the *client*.
- (2) This warning may be provided in a standardised format.

[Note: article 25(3) of *MiFID*, third paragraph of article 30(2) of the *IDD*]

10A.3.3 G

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

10A

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

10A.4.1 R

- (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if either (a) or (aa), and both (b) and (c), are met:
- (a) the service:
 - (i) only consists of execution or reception and transmission of *client orders*, with or without *ancillary services*, excluding *ancillary service* (2) in section B of Annex I to *MiFID* (granting of credits or loans), where the relevant credits or loans do not comprise existing credit limits of loans, current accounts and overdraft facilities of *clients*;
 - (ii) relates to particular *financial instruments* (see paragraph (2)); and
 - (iii) is provided at the initiative of the *client*; or
 - (aa) the *insurance distribution* activity:
 - (i) relates to particular types of *insurance-based investment products* (see (2A)); and
 - (ii) is carried out at the initiative of the *client*; and
- (b) the *client* has been clearly informed (whether in a standardised format or not) that, in the provision of the service or *insurance distribution* activity, the *firm* is not required to assess the appropriateness of the *financial instrument* or service or *insurance-based investment product* provided or offered and that therefore the *client* does not benefit from the protection of the rules on assessing appropriateness; and
- (c) the *firm* complies with its obligations in relation to conflicts of interest.
- (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
 - (ii) an equivalent third country market; or
 - (iii) an *MTF*,
- 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

- (ii) an equivalent third country market; or
- (iii) an *MTF*,
- except those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or
- (c) *money-market instruments*, excluding those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or
- (d) shares or *units* in a *UCITS*, excluding structured *UCITS* as referred to in the second subparagraph of article 36(1) of the *KII Regulation*; or
- (e) *structured deposits*, excluding those that incorporate a structure which makes it difficult for the *client* to understand the risk of return or the cost of exiting the product before term; or
- (f) other non-complex *financial instruments*.
- (2A) The *insurance-based investment products* referred to in (1)(aa) are:
- (a) *insurance-based investment products* which only provide investment exposure to *financial instruments* referred to in (2) and do not incorporate a structure which makes it difficult for the *client* to understand the risks involved; or
- (b) other non-complex *insurance-based investment products*.
- (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 Treasury has adopted an affirmative equivalence decision in accordance with the requirements and procedure in 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).]

[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).]

Other non-complex financial instruments

10A.4.2 [UK]

57 A financial instrument which is not explicitly specified in [■ COBS 10A.4.1R(2)] shall be considered as non-complex for the purposes of paragraph (2)(f) of that rule if it satisfies the following criteria:

- (a) 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;
- (b) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available

to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

(d) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment;

(e) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

(f) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

[Note: article 57 of the *MiFID Org Regulation*]

10A.4.2A G

As explained in ■ COBS 4.12A.33G, ■ COBS 10A.4 is not relevant for the purpose of complying with the *rules* requiring an appropriateness assessment under ■ COBS 4.12A in relation to *restricted mass market investments*.

Other non-complex insurance-based investment products

10A.4.3 R

An *insurance-based investment product* may be considered as non-complex for the purposes of ■ COBS 10A.4.1R where it satisfies all of the following criteria:

- (1) it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the *client* after deduction of legitimate costs;
- (2) it does not incorporate a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk, or pay-out profile of the *insurance-based investment product*;
- (3) it provides options to surrender or otherwise realise the *insurance-based investment product* at a value that is available to the *client*;
- (4) it does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender or otherwise realise *insurance-based investment product*, doing so may cause unreasonable detriment to the *client* because the charges are disproportionate to the cost to the insurance undertaking;
- (5) it does not in any other way incorporate a structure which makes it difficult for the *client* to understand the risks involved.

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

10A.5 Assessing appropriateness: guidance

The initiative of the client: MiFID business and insurance-based investment products

10A.5.1 **G** A service should be considered to be provided, or carried out, at the initiative of a *client* (see ■ COBS 10A.4.1R(1)(a)(iii) and (aa)(ii)), unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument financial instrument, insurance-based investment product* or specific transaction.

[Note: recital 85 to *MIFID*]

10A.5.2 **G** A service can be considered to be provided, or carried out, at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion for, or offer of, *financial instruments* or *insurance-based investment products* made by any means and that by its very nature is general and addressed to the public or a larger group or category of *clients*.

[Note: recital 85 to *MIFID*]

Personalised communications: MiFID business and insurance-based investment products

- 10A.5.3** **G**
- (1) Communications to the world at large, such as those in newspapers or in billboards, are likely to be by their very nature general and therefore not personalised communications.
 - (2) Communications addressed to a *client* (such as, for example, an email, telephone call or letter), may or may not be personalised depending on the content.
 - (3) A communication is not personalised solely because it contains the name and address of the *client* or because a mailing list has been filtered.
 - (4) If a *firm* is satisfied that a communication does not contain any personalised content, it may wish to make clear that it does not intend the communication to be personalised and that the personal circumstances of the recipient have not been taken into account.

**10A.6 Assessing appropriateness: when
a firm need not assess
appropriateness due to
suitability assessment**

- 10A.6.1** **G** A *firm* need not assess appropriateness if it is receiving or transmitting an order or carrying on *insurance distribution* in relation to an *insurance-based investment product*, for which it has assessed suitability under **COBS 9A** (Suitability (MiFID and insurance-based investment products provisions)).
- 10A.6.2** **G** A *firm* may not need to assess appropriateness if it is able to rely on a recommendation made by an *investment firm* (see **COBS 2.4.5G** (Reliance on other investment firms: MiFID and equivalent business)) or, in relation to an *insurance-based investment product*, made by an *insurance distributor* (see **COBS 2.4.5AR** (Reliance on other insurance distributors)).

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

10A.7.1

G

A *firm* is required to keep orderly records of its business and internal organisation, including all services and transactions undertaken by it. The records may be expected to include the *client* information a *firm* obtains to assess appropriateness and should be adequate to indicate what the assessment was.

10A.7.2

UK

Record keeping: MiFID business

56(2) Investment firms shall maintain records of the appropriateness assessments undertaken which shall include the following:

- (a) the result of the appropriateness assessment;
- (b) any warning given to the client where the investment service or product purchase was assessed as potentially inappropriate for the client, whether the client asked to proceed with the transaction despite the warning and, where applicable, whether the firm accepted the client's request to proceed with the transaction;
- (c) any warning given to the client where the client did not provide sufficient information to enable the firm to undertake an appropriateness assessment, whether the client asked to proceed with the transaction despite this warning and, where applicable, whether the firm accepted the client's request to proceed with the transaction.

[Note: article 56(2) of the *MiFID Org Regulation*]

10A.7.2A

R

Record keeping: insurance-based investment products

- (1) Without prejudice to the application the *General data protection regulation*, a *firm* must maintain records of the assessment of appropriateness undertaken in accordance with ■ COBS 10A.2.1R and ■ COBS 10A.2.2R in relation to an *insurance-based investment product*.
- (2) The records maintained under (1) must include the information obtained from the *client* and any documents agreed with the *client*, including documents that set out the rights of the parties and the other terms on which the *firm* will provide services to the *client*.
- (3) The records in (1) must be retained for at least the duration of the relationship between the *firm* and the *client*.

- (4) The record in (1) must also include the following:
- (a) the result of the appropriateness assessment;
 - (b) any warning given to the *client* where the *insurance-based investment product* was assessed as potentially inappropriate for the *client*, whether the *client* asked to proceed with concluding the *policy* despite the warning and, where applicable, whether the *firm* accepted the *client's* request to proceed with concluding the *policy*;
 - (c) any warning given to the *client* where the *client* did not provide sufficient information to enable the *firm* to assess the appropriateness of the *insurance-based investment product*, whether the *client* asked to proceed with concluding the *policy* despite the warning and, where applicable, whether the *firm* accepted the *client's* request to proceed with concluding the *policy*.

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

Record keeping: MiFID business and insurance-based investment products

10A.7.3

G

A *firm* should refer to ■ SYSC 3.3 (for *insurers* and *managing agents*) and ■ SYSC 9 (for other *firms*) for its obligations in relation to record keeping. These provisions require records kept for the purposes of this chapter to be retained for a period of at least five years.

Chapter 11

Dealing and managing

11

- 
- ## 11.1 Application
- ### General application
- 11.1.1** **R** This chapter applies to a firm.
- (1) [deleted]
- (2) [deleted]
- 11.1.2** **R** Save as may be provided in the relevant sections, in this chapter, provisions marked "UK" apply to a *firm* which is not a *MiFID investment firm* as if they were *rules*.
- 11.1.3** **R** [deleted]
- ### Application of section on personal account dealing
- 11.1.4** **R** The section on personal account dealing applies to the *designated investment business* of a *firm* in relation to activities carried on from an *establishment* in the *United Kingdom*.
- 11.1.5** **G** [deleted]
- ### Disapplication of best execution for non-financial spreads
- 11.1.6** **R** The section on best execution (■ COBS 11.2A) does not apply to a *firm* when:
- (1) executing orders; or
- (2) placing orders with other entities for execution; or
- (3) transmitting orders to other entities for execution;

in relation to a *spread-bet* which is not a *financial instrument*, where the firm has not made a *personal recommendation* in relation to that *spread-bet*.

Disapplication of best execution to CIS operators purchasing or selling own units

11.1.7

R

The section on best execution (■ COBS 11.2 or ■ COBS 11.2B, as applicable) does not apply to a *firm* when, acting in the capacity of *operator* of a *regulated collective investment scheme*, it purchases or sells *units* in that *scheme*.

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*, in accordance with **COBS 18.5A.3R**.
- 11.2.-6** **G** In accordance with **COBS 18.5.4R**, this section does not apply to a small authorised *UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* of a fund whose *fund documents* include a statement that best execution does not apply in relation to the *fund* and in which:
- (1) no investor is a *retail client*; or
 - (2) no current investor in the *fund* was a *retail client* when it invested in the *fund*.
- 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*:
- **COBS 11.2.5G**;
 - **COBS 11.2.17G**;
 - **COBS 11.2.23AR**;
 - **COBS 11.2.24R**;
 - **COBS 11.2.25R(1)** and **COBS 11.2.26R**, but only where an *AIF* itself has a governing body which can provide prior consent; and
 - **COBS 11.2.27R**, but only regarding the obligation on an *AIFM* to notify the *AIF* of any material changes to its order execution arrangements or execution policy.
- 11.2.-4** **G** A *firm* to which this section applies may comply with its obligations under this section by complying with the *rules* in **COBS 11.2B** (Best execution for UCITS management companies).

Modifications	
11.2.-3	[G] In accordance with ■ COBS 18.5.3R(1) and ■ COBS 18.5A.5R, references in this section to <i>customer</i> or <i>client</i> are to any <i>fund</i> for which the <i>firm</i> is acting or intends to act.
11.2.-2	[G] In accordance with ■ COBS 18.5.1AR and ■ COBS 18.5.3R(2), in the case of a small authorised <i>UK AIFM</i> of an unauthorised <i>AIF</i> which is a <i>collective investment scheme</i> , or a <i>residual CIS operator</i> , when a <i>firm</i> is required by the rules in this section to provide information to, or obtain consent from, a <i>fund</i> , the <i>firm</i> must ensure that the information is provided to, or consent obtained from, an investor or a potential investor in the <i>fund</i> as the case may be.
11.2.-1	[G] In accordance with ■ COBS 18.5.3R(3) and ■ COBS 18.5A.9R, references to the service of <i>portfolio management</i> in this section are to be read as references to the management by a <i>firm</i> of <i>financial instruments</i> held for or within the <i>fund</i> .
Obligation to execute orders on terms most favourable to the client	
11.2.1	[R] A <i>firm</i> must take all reasonable steps to obtain, when executing orders, the best possible result for its <i>clients</i> taking into account the <i>execution factors</i> .
<p>[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. See 'CESR Questions & Answers: Best Execution under MiFID', May 2007, Ref: CESR/07-320]</p>	
11.2.1A	[R] [deleted]
Application of best execution obligation	
11.2.2	[G] The obligation to take all reasonable steps to obtain the best possible result for its <i>clients</i> (see ■ COBS 11.2.1 R) should apply to a <i>firm</i> which owes contractual or agency obligations to the <i>client</i> .
11.2.3	[G] [deleted]
11.2.4	[G] If a <i>firm</i> provides a quote to a <i>client</i> and that quote would meet the <i>firm's</i> obligations to take all reasonable steps to obtain the best possible result for its <i>clients</i> if the <i>firm</i> executed that quote at the time the quote was provided, the <i>firm</i> will meet those same obligations if it executes its quote after the <i>client</i> accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

11.2.5	G	The obligation to deliver the best possible result when executing <i>client</i> orders applies in relation to all types of <i>financial instruments</i> . However, given the differences in market structures or the structure of <i>financial instruments</i> , it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of <i>financial instruments</i> . For example, transactions involving a customised OTC <i>financial instrument</i> that involve a unique contractual relationship tailored to the circumstances of the <i>client</i> and the <i>firm</i> may not be comparable for best execution purposes with transactions involving shares traded on centralised <i>execution venues</i> .
11.2.5A	G	Best execution criteria
11.2.6	R	When executing a <i>client</i> order, a <i>firm</i> must take into account the following criteria for determining the relative importance of the <i>execution factors</i> :
		<ol style="list-style-type: none">(1) the characteristics of the <i>client</i> including the categorisation of the <i>client</i> as retail or professional;(2) the characteristics of the <i>client</i> order;(3) the characteristics of <i>financial instruments</i> that are the subject of that order; and(4) the characteristics of the <i>execution venues</i> to which that order can be directed.(5) [deleted] <i>instrument constituting the fund</i>.
11.2.7	R	Role of price
		Where a <i>firm</i> executes an order on behalf of a <i>retail client</i> , the best possible result must be determined in terms of the total consideration, representing the price of the <i>financial instrument</i> and the costs related to execution, which must include all expenses incurred by the <i>client</i> which are directly related to the execution of the order, including <i>execution venue fees</i> , clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.
11.2.8	G	For the purposes of ensuring that a <i>firm</i> obtains the best possible result for the <i>client</i> when executing a <i>retail client</i> order in the absence of specific <i>client</i> instructions, the <i>firm</i> should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the <i>financial instrument</i> and the costs related to execution. Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the <i>retail client</i> .

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

Delivering best execution where there are competing execution venues

- 11.2.10 **R** For the purposes of delivering best execution for a *retail client* where there is more than one competing venue to execute an order for a *financial instrument*, in order to assess and compare the results for the *client* that would be achieved by executing the order on each of the *execution venues* listed in the *firm's* order execution policy that is capable of executing that order, the *firm's* own commissions and costs for executing the order on each of the eligible *execution venues* must be taken into account in that assessment.

- 11.2.11 **G** The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a *firm* to compare the differences in its own commissions which are attributable to differences in the nature of the services that the *firm* provides to *clients*.

- 11.2.12 **R** A *firm* must not structure or charge its commissions in such a way as to discriminate unfairly between *execution venues*.

- 11.2.13 **G** A *firm* would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charges a different commission or spread to *clients* for execution on different *execution venues* and that difference does not reflect actual differences in the cost to the *firm* of executing on those venues.

Requirement for order execution arrangements including an order execution policy

- 11.2.14 **R** A *firm* must establish and implement effective arrangements for complying with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, for its *client* orders, the best possible result in accordance with that obligation.

11.2.15	R	The order execution policy must include, in respect of each class of <i>financial instruments</i> , information on the different <i>execution venues</i> where the <i>firm</i> executes its <i>client</i> orders and the factors affecting the choice of <i>execution venue</i> . It must at least include those <i>execution venues</i> that enable the <i>firm</i> to obtain on a consistent basis the best possible result for the execution of <i>client</i> orders.
11.2.16	G	<ul style="list-style-type: none"> (1) When establishing its execution policy, a <i>firm</i> should determine the relative importance of the <i>execution factors</i>, or at least establish the process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its <i>clients</i>. (2) In order to give effect to that policy, a <i>firm</i> should select the <i>execution venues</i> that enable it to obtain on a consistent basis the best possible result for the execution of <i>client</i> orders. (3) A <i>firm</i> should apply its execution policy to each <i>client</i> order that it executes with a view to obtaining the best possible result for the <i>client</i> in accordance with that policy. (4) The obligation to take all reasonable steps to obtain the best possible result for the <i>client</i> should not be treated as requiring a <i>firm</i> to include in its execution policy all available <i>execution venues</i>.
11.2.17	G	The provisions of this section which provide that costs of execution include a <i>firm's</i> own commissions or fees charged to the <i>client</i> for the provision of an <i>investment service</i> should not apply for the purpose of determining what <i>execution venues</i> must be included in the <i>firm's</i> execution policy.
11.2.18	G	The provisions of this section as to execution policy are without prejudice to the general obligation of a <i>firm</i> to monitor the effectiveness of its order execution arrangements and policy and assess the <i>execution venues</i> in its execution policy on a regular basis.
Following specific instructions from a client		
11.2.19	R	<ul style="list-style-type: none"> (1) Whenever there is a specific instruction from the <i>client</i>, the <i>firm</i> must execute the order following the specific instruction. (2) A <i>firm</i> satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a <i>client</i> to the extent that it executes an order, or a specific aspect of an order, following specific instructions from the <i>client</i> relating to the order or the specific aspect of the order.
11.2.20	G	When a <i>firm</i> executes an order following specific instructions from the <i>client</i> , it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the <i>client</i> instructions relate. The fact that the <i>client</i> has given specific instructions which cover one part or aspect of the order should not be treated as releasing the <i>firm</i> from its best execution obligations in respect of any other parts or aspects of the <i>client</i> order that are not covered by such instructions.

- 11.2.21** **G** A firm should not induce a client to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the client, when the firm ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that client. However, this should not prevent a firm inviting a client to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the firm.
- Information about the order execution policy**
- 11.2.22** **R** A firm must provide appropriate information to its clients on its order execution policy.
- 11.2.23** **R**
 - (1) A firm must provide a retail client with the following details on its execution policy in good time prior to the provision of the service:
 - (a) an account of the relative importance the firm assigns, in accordance with the execution criteria, to the execution factors, or the process by which the firm determines the relative importance of those factors;
 - (b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders;
 - (c) a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.
 - (2) This information must be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the website conditions are satisfied.
- 11.2.23A** **R** A full-scope UK AIFM 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.
- 11.2.24** **R** Where the order execution policy provides for the possibility that client orders may be executed outside a regulated market or an MTF, the firm must, in particular, inform its clients about this possibility.
- Client consent to execution policy and execution of orders outside a regulated market or MTF**
- 11.2.25** **R**
 - (1) A firm must obtain the prior consent of its clients to the execution policy.
 - (2) [deleted]
 - (3) [deleted]

11.2.26	R	A <i>firm</i> must obtain the prior express consent of its <i>clients</i> before proceeding to execute their orders outside a <i>regulated market</i> or an <i>MTF</i> . The <i>firm</i> may obtain this consent either in the form of a general agreement or in respect of individual transactions.
		Monitoring the effectiveness of execution arrangements and policy
11.2.27	R	A <i>firm</i> must monitor the effectiveness of its order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it must assess, on a regular basis, whether the <i>execution venues</i> included in the order execution policy provide for the best possible result for the <i>client</i> or whether it needs to make changes to its execution arrangements. The <i>firm</i> must notify <i>clients</i> of any material changes to their order execution arrangements or execution policy.
		Review of the order execution policy
11.2.28	R	<ol style="list-style-type: none">(1) A <i>firm</i> must review annually its execution policy, as well as its order execution arrangements.(2) This review must also be carried out whenever a material change occurs that affects the <i>firm's</i> ability to continue to obtain the best possible result for the execution of its <i>client</i> orders on a consistent basis using the venues included in its execution policy.
		Demonstration of execution of orders in accordance with execution policy
11.2.29	R	<ol style="list-style-type: none">(1) A <i>firm</i> must be able to demonstrate to its <i>clients</i>, at their request, that it has executed their orders in accordance with its execution policy.

		(2) [deleted] and article 25(5) of the <i>UCITS implementing Directive</i>]
		Duty of portfolio managers, receivers and transmitters and management companies to act in clients' best interests
11.2.30	R	A firm must, when providing the service of <i>portfolio management</i> , comply with the obligation to act in accordance with the best interests of its <i>clients</i> when placing orders with other entities for execution that result from decisions by the <i>firm</i> to deal in <i>financial instruments</i> on behalf of its <i>client</i> .
11.2.31	R	A firm must, when providing the service of reception and transmission of orders, comply with the obligation to act in accordance with the best interests of its <i>clients</i> when transmitting <i>client</i> orders to other entities for execution.
11.2.32	R	In order to comply with the obligation to act in accordance with the best interests of its <i>clients</i> when it places an order with, or transmits an order to, another entity for execution, a firm must: <ol style="list-style-type: none">(1) take all reasonable steps to obtain the best possible result for its <i>clients</i> taking into account the <i>execution factors</i>. The relative importance of these factors must be determined by reference to the <i>execution criteria</i> and, for <i>retail clients</i>, to the requirement to determine the best possible result in terms of the total consideration (see ■ COBS 11.2.7 R).<p>A firm satisfies its obligation to act in accordance with the best interests of its <i>clients</i>, and is not required to take the steps mentioned above, to the extent that it follows specific instructions from its <i>client</i> when placing an order with, or transmitting an order to, another entity for execution;</p>(2) establish and implement a policy to enable it to comply with the obligation to take all reasonable steps to obtain the best possible result for its <i>clients</i>. The policy must identify, in respect of each class of instruments, the entities with which the orders are placed or to which the <i>firm</i> transmits orders for execution. The entities identified must have execution arrangements that enable the <i>firm</i> to comply with its obligations under this section when it places an order with, or transmits an order to, that entity for execution;(3) provide appropriate information to its <i>clients</i> on the policy established in accordance with paragraph (2);(4) monitor on a regular basis the effectiveness of the policy and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies; and(5) review the policy annually. This review must also be carried out whenever a material change occurs that affects the <i>firm's</i> ability to continue to obtain the best possible result for its <i>clients</i>.

11.2.32A	R	[deleted]
11.2.33	G	This section is not intended to require a duplication of effort as to best execution between a <i>firm</i> which provides the service of reception and transmission of orders or <i>portfolio management</i> and any <i>firm</i> to which that <i>firm</i> transmits its orders for execution.
11.2.34	R	The provisions applying to a <i>firm</i> which places orders with, or transmits orders to, other entities for execution (see ■ COBS 11.2.30 R to ■ COBS 11.2.33 G) will not apply when the <i>firm</i> which provides the service of <i>portfolio management</i> or <i>collective portfolio management</i> and/or service of reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its <i>client's</i> portfolio. In those cases the requirements of this section for <i>firms</i> who execute orders apply (see ■ COBS 11.2.1 R to ■ COBS 11.2.29 R).

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 "UK".
 - (b) [deleted]
 - (2) [deleted]
 - (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*.

Obligation to execute orders on terms most favourable to the client

- 11.2A.2 R**
- (1) A *firm* must take all sufficient steps to obtain, when executing orders, the best possible results for its *clients* taking into account the *execution factors*.
 - (2) The *execution factors* to be taken into account are price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order.

[Note: article 27(1) of *MiFID*]

11

Application of best execution obligation

- 11.2A.3 G**
- The obligation to take all sufficient steps to obtain the best possible result for its *clients* (see ■ COBS 11.2A.2) should apply where a *firm* owes contractual or agency obligations to the *client*.
- [Note: recital 91 to, and article 27(1) of, *MiFID*]

- 11.2A.4 G**
- Dealing on own account with *clients* by a *firm* should be considered as the execution of *client orders*, and therefore subject to the requirements under *MiFID*, in particular, those obligations in relation to best execution.
- [Note: first sentence, recital 103 to the *MiFID Org Regulation*]

11.2A.5 **G** Dealing on own account when executing *client* orders includes the execution by *firms* of orders from different *clients* on a matched principal basis (back-to-back trading). Such activities are regarded as acting as *principal* and are subject to the requirements of this chapter in relation to both execution of orders on behalf of *clients* and *dealing on own account*.

[**Note:** recital 24 to *MiFID*]

11.2A.6 **G** However if a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all sufficient steps to obtain the best possible result for its *clients* under **COBS 11.2A.2R** if the *firm* executed that quote at the time it was provided, then the *firm* will meet those same obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

[**Note:** second sentence, recital 103 to the *MiFID Org Regulation*]

11.2A.7 **G** The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures and the structure of financial instruments, it may be difficult to identify and apply a uniform standard of, and procedure for, best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied to take into account the different circumstances surrounding the execution of orders for particular types of *financial instruments*. For example, transactions involving a customised *OTC financial instrument* with a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving *shares* traded on centralised *execution venues*. As best execution obligations apply to all *financial instruments*, irrespective of whether they are traded on *trading venues* or *OTC*, firms should gather relevant market data in order to check whether the *OTC* price offered for a *client* is fair and delivers on the best execution obligation.

[**Note:** recital 104 to the *MiFID Org Regulation*]

Best execution criteria**11.2A.8** UK

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 [■ COBS 11.2A.2R]:

- (a)the characteristics of the client including the categorisation of the client as retail or professional;
- (b)the characteristics of the client order, including where the order involves a securities financing transaction (SFT);
- (c)the characteristics of financial instruments that are the subject of that order;
- (d)the characteristics of the execution venues to which that order can be directed.

For the purpose of this Article and Articles 65 and 66, 'execution venue' includes a regulated market, an MTF, an OTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the function performed by any of the foregoing.

(2) An investment firm satisfies its obligation under [■ 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.

(3) Investment firms shall not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

(4) When executing orders or taking decision to deal in OTC products including bespoke products, the investment firm shall check the fairness of the price proposed to the client, by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

Role of price**11.2A.9** R

Where a *firm* executes an order on behalf of a *retail client*, the best possible result must be determined in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution, which must include all expenses incurred by the *client* which are directly related to the execution of the order, including *execution venue fees*, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

[Note: article 27(1) of *MiFID*]

11.2A.10 G

When a *firm* executes a *retail client's* order in the absence of specific *client* instructions, for the purposes of ensuring that the *firm* obtains the best possible result for the *client*, the *firm* should take into consideration all factors that will enable it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution.

[Note: recital 101 to the *MiFID Org Regulation*]

- 11.2A.11 G** Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.
- [**Note:** recital 101 to the *MiFID Org Regulation*]
- 11.2A.12 R** **Following specific instructions from a client** Whenever there is a specific instruction from the client, a *firm* must execute the order following the specific instruction.
- [**Note:** article 27(1) of *MiFID*]
- 11.2A.13 G** When a *firm* executes an order following specific instructions from the *client*, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the *client* instructions relate. The fact that the client has given specific instructions which cover one part or aspect of the order should not be treated as releasing the *firm* from its best execution obligations in respect of any other parts or aspects of the *client* order that are not covered by such instructions.
- [**Note:** recital 102 to the *MiFID Org Regulation*]
- 11.2A.14 G** A *firm* should not induce a *client* to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the *client*, when the *firm* ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that *client*. However, this should not prevent a *firm* inviting a *client* to choose between two or more specified *trading venues*, provided that those venues are consistent with the execution policy of the *firm*.
- [**Note:** recital 102 to the *MiFID Org Regulation*]
- 11.2A.15 R** **Delivering best execution where there are competing execution venues** A *firm*'s own commissions and the costs for executing an order in each of the eligible *execution venues* must be taken into account when assessing and comparing the results that would be achieved for a *client* by executing the order on each of the *execution venues* listed in the *firm*'s execution policy that is capable of executing that order.
- [**Note:** article 27(1) of *MiFID*]
- 11.2A.16 G** The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a *firm* to compare the differences in its own commissions which are attributable to differences in the nature of the services that the *firm* provides to *clients*.
- [**Note:** recital 93 to *MiFID*]

11.2A.17 G A firm would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charged a different commission or spread to *clients* for execution on different execution venues and that difference did not reflect actual differences in the cost to the *firm* of executing on those venues.

[Note: recital 95 to *MiFID*]

11.2A.18 G The provisions of this section which provide that costs of execution include a firm's own commission or fees charged to the *client* for the provision of an investment service should not apply for the purpose of determining what *execution venues* must be included in the *firm's* execution policy in accordance with ■ COBS 11.2A.21R.

[Note: recital 94 to *MiFID*]

11.2A.19 R A firm must not receive any remuneration, discount or non-monetary benefit for routing *client* orders to a particular *trading venue* or *execution venue* which would infringe the requirements on conflicts of interests (as set out in ■ SYSC 10) or inducements as set out in ■ COBS 2.3 (for firms carrying on business other than *MiFID, equivalent third country or optional exemption business*) and in ■ COBS 2.3A, ■ COBS 2.3B and ■ COBS 2.3C (for firms carrying on *MiFID, equivalent third country or optional exemption business*).

[Note: article 27(2) of *MiFID*]

Requirement for order execution arrangements including an order execution policy

11.2A.20 R A firm must establish and implement effective arrangements for complying with the obligation to take all sufficient steps to obtain the best possible results for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, in accordance with ■ COBS 11.2A.2R, the best possible result for the execution of *client* orders.

[Note: article 27(4) of *MiFID*]

11.2A.21 R The order execution policy must include, in respect of each class of *financial instruments*, information on the different *execution venues* where the *firm* executes its *client* orders and the factors affecting the choice of *execution venue*. It must at least include those *execution venues* that enable the *firm* to obtain on a consistent basis the best possible result for the execution of *client* orders.

[Note: article 27(5) of *MiFID*]

- 11.2A.22 R**
- (1) A firm must provide appropriate information to its *clients* on its order execution policy.
 - (2) That information must explain clearly how orders will be executed by the *firm* for the *clients*.
 - (3) The information must include sufficient details and be provided in a way that can be easily understood by *clients*.

[Note: article 27(5) of *MiFID*]

- 11.2A.23 R**
- (1) A *firm* must obtain the prior consent of its *clients* to the execution policy.

[Note: article 27(5) of *MiFID*]

- 11.2A.24 R**
- (1) Where a *firm's* order execution policy provides for the possibility that *client* orders may be executed outside a *trading venue*, a *firm* must, in particular, inform its *clients* about that possibility.
 - (2) A *firm* must obtain the express prior consent of its *clients* before proceeding to execute their orders outside a *trading venue*.
 - (3) A *firm* may obtain such consent either in the form of a general agreement or in respect of individual transactions.

[Note: article 27(5) of *MiFID*]

Execution policies

- 11.2A.25 UK**
- 66 (1) Investment firms shall review, at least on an annual basis execution policy established pursuant to [■ COBS 11.2A.20R], as well as their order execution arrangements.

Such a review shall also be carried out whenever a material change as defined in Article 65(7) occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy. An investment firm shall assess whether a material change has occurred and shall consider making changes to the relative importance of the best execution factors in meeting the overarching best execution requirement.

- (2) The information on the execution policy shall be customised depending on the class of financial instrument and type of the service provided and shall include information set out in paragraphs 3 to 9.
- (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 [■ COBS 11.2A.2R], or the process by which the firm determines the relative importance of those factors.
- (b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders and specifying which execution venues are used for each class of financial instruments, for retail client orders, professional client orders and SFTs;
- (c) a list of factors used to select an execution venue, including qualitative factors such as clearing schemes, circuit breakers, scheduled actions, or any other relevant consideration, and the relative importance of each factor; The information about the factors used to select an execution venue for execution shall be consistent with the controls used by the firm to demonstrate to clients that best execution has been achieved in a consistent basis when reviewing the adequacy of its policy and arrangements;

- (d) how the execution factors of price costs, speed, likelihood of execution and any other relevant factors are considered as part of all sufficient steps to obtain the best possible result for the client;
- (e) where applicable, information that the firm executes orders outside a trading venue, the consequences, for example counterparty risk arising from execution outside a trading venue, and upon client request, additional information about the consequences of this means of execution;
- (f) a clear and prominent warning that any specific instruction from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;
- (g) a summary of the selection process for execution venues, execution strategies employed, the procedures and process used to analyse the quality of execution obtained and how the firms monitor and verify that the best possible results were obtained for clients.

That information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

(4) Where investment firms apply different fees depending on the execution venue, the firm shall explain these differences in sufficient detail in order to allow the client to understand the advantages and the disadvantages of the choice of a single execution venue.

(5) Where investment firms invite clients to choose an execution venue, fair, clear and not misleading information shall be provided to prevent the client from choosing one execution venue rather than another on the sole basis of the price policy applied by the firm.

(6) Investment firms shall only receive third-party payments that comply with [■ 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 [■ 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.

(8) Where a client makes reasonable and proportionate requests for information about its policies or arrangements and how they are reviewed to an investment firm, that investment firm shall answer clearly and within a reasonable time.

(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.

11.2A.26 G

- (1) When establishing its execution policy in accordance with ■ COBS 11.2A.20R a firm should determine the relative importance of the factors mentioned in ■ COBS 11.2A.2R(2), or at least establish the process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its clients.

- (2) Ordinarily, the *FCA* would expect that price will merit a high relative importance in obtaining the best possible result for *professional clients*. However, in some circumstances for some *clients*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible execution result.
- (3) In order to comply with the obligation of best execution, a *firm*, when applying the criteria for best execution for *professional clients*, will typically not use the same *execution venues* for *securities financing transactions* and other transactions. This is because the *securities financing transactions* are used as a source of funding subject to a commitment that the borrower will return equivalent securities on a future date and the terms of the *securities financing transactions* are typically defined bilaterally between the counterparties ahead of the execution. Therefore, the choice of *execution venues* for *securities financing transactions* is more limited than in the case of other transactions, given that it depends on the particular terms defined in advance between the *counterparties* and on whether there is a specific demand on those *execution venues* for the *financial instruments* involved. As a result, the order execution policy established by *firms* should take into account the particular characteristics of *securities financing transactions* and it should list separately *execution venues* used for *securities financing transactions*.

[**Note:** recital 99 to the *MiFID Org Regulation*]

11.2A.27 G

A *firm* should apply its execution policy to each *client* order that it executes with a view to obtaining the best possible result for the *client* in accordance with that policy.

[**Note:** recital 99 to the *MiFID Org Regulation*]

11.2A.28 G

The obligation to take all sufficient steps to obtain the best possible result for the *client* should not be treated as requiring a firm to include in its execution policy all available *execution venues*.

11.2A.29 G

An *investment firm* executing orders should be able to include a single *execution venue* in their policy only where they are able to show that this allows them to obtain best execution for their *clients* on a consistent basis. *Investment firms* should select a single *execution venue* only where they can reasonably expect that the selected *execution venue* will enable them to obtain results for *clients* that are at least as good as the results that they could reasonably expect from using alternative *execution venues*. This reasonable expectation must be supported by relevant data or by other internal analyses conducted by *investment firms*.

[deleted]

[Note: recital 108 to the *MiFID Org Regulation*]

11.2A.30 G

The provisions of this section as to execution policy are without prejudice to the general obligation of a *firm* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

[Note: recital 105 to the *MiFID Org Regulation*]

11.2A.31 R

- (1) A *firm* must monitor the effectiveness of its order execution arrangements and execution policy to identify and, where appropriate, correct any deficiencies. In particular it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements taking into account relevant data or other internal analyses conducted by *investment firms*.[deleted]
- (2) The *firm* must notify *clients* of any material changes to its order execution arrangements or execution policy.

[Note: article 27(7) of *MiFID*]

11.2A.32 R

- (1) A *firm* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.
- (2) A *firm* must be able to demonstrate to the *FCA*, at the request of that authority, its compliance with **COBS 11.2A.2R** and with the related provisions in this chapter which require *firms* to execute orders on terms most favourable to the *client*.

[Note: article 27(8) of *MiFID*]

11.2A.33 G

In order to obtain the best execution for a client, a *firm* should compare and analyse relevant data.

[Note: recital 107 to the *MiFID Org Regulation*]

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

11.2A.34 UK

65 (1) Investment firms, when providing portfolio management, shall comply with the obligation [**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 [**COBS 2.1.1R**] to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

(3) In order to comply with paragraphs 1 or 2, investment firms shall comply with paragraphs 4 to 7 of this Article and Article 64(4).

(4) Investment firms shall take all sufficient steps to obtain the best possible result for their clients taking into account the factors referred to in Article 27(1) of Directive 2014/65/EU. The relative importance of these factors shall be determined by reference to the criteria set out in Article 64(1) and, for retail clients, to the requirement under Article 27(1) of Directive 2014/65/EU.

An investment firm satisfies its obligations under paragraph 1 or 2, and is not required to take the steps mentioned in this paragraph, to the extent that it follows specific instructions from its client when placing an order with, or transmitting an order to, another entity for execution.

(5) Investment firms shall establish and implement a policy that enables them to comply with the obligation in paragraph 4. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the investment firm transmits orders for execution. The entities identified shall have execution arrangements that enable the investment firm to comply with its obligations under this Article when it places or transmits orders to that entity 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.

Upon reasonable request from a client, investment firms shall provide its clients or potential clients with information about entities where the orders are transmitted or placed for execution.

(7) Investment firms shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 5 and, in particular, shall monitor the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

Investment firms shall review the policy and arrangements at least annually. Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for their clients.

Investment firms shall assess whether a material change has occurred and shall consider making changes to the execution venues or entities on which they place significant reliance in meeting the overarching best execution requirement.

A material change shall be a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

(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, Articles 64 and 66 of this Regulation, and rules in [COBS] which were relied on immediately before exit to implement Article 27 of Directive 2014/65/EU shall apply.

11.2A.35 G

This section is not intended to require a duplication of effort as to best execution between a *firm* which provides the service of reception and transmission of orders or *portfolio management* and any *firm* to which that *firm* transmits its orders for execution.

[Note: recital 106 to the *MiFID Org Regulation*]

11.2A.36 G

A *firm* transmitting or placing orders with other entities for execution may select a single entity for execution only where the *firm* is able to show that this provides the best possible result for their *clients* on a consistent basis and where they can reasonably expect that the selected entity will enable them to obtain results for *clients* that are at least as good as the results that could reasonably be expected from using alternative entities for execution. This reasonable expectation should be supported by relevant data or by other internal analyses conducted by *investment firms*. [deleted]

[Note: recital 100 to the *MiFID Org Regulation*]

11

Providing information to clients on order execution**11.2A.37** R

Following the execution of a transaction on behalf of a *client* a *firm* must inform the *client* of where the order was executed.

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

11.2A.38 G

[deleted]

11.2A.39 R

[deleted]



11.2B Best execution for UCITS management companies

Application

11.2B.1 **G** This section applies to a *UCITS management company* when carrying on *scheme management activity*, in accordance with **COBS 18.5B.2R**.

11.2B.2 **G** A *firm* that is subject to **COBS 11.2** (Best execution for AIFMs and residual CIS providers) may comply with its obligations under **COBS 11.2** by complying with the *rules* in this chapter.

11.2B.3 **G** References in this chapter to a *scheme* are to a *UCITS scheme*.

Obligation to execute orders on terms most favourable to the scheme

11.2B.4 **R** A *management company* must act in the best interests of each *scheme* it manages when executing decisions to deal on behalf of the *scheme*.

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

11.2B.5 **R** A *management company* must take all sufficient steps to obtain, when executing decisions to deal, the best possible result for each *scheme* it manages, taking into account:

- (1) price;
- (2) costs;
- (3) speed;
- (4) likelihood of execution;
- (5) likelihood of settlement;
- (6) order size and nature; and
- (7) any other consideration relevant to the execution of the decision to deal,

(together the “*execution factors*”).

[**Note:** article 25(2) first sentence of the *UCITS implementing Directive*]

- 11.2B.6** G
- (1) The obligation to deliver the best possible result applies for all types of *financial instrument*. However, given the differences in market structures and the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of, and procedure for, best execution that would be valid and effective for all types of *financial instrument*.
 - (2) Best execution obligations should therefore be applied to take into account the different circumstances surrounding the execution of orders for particular types of *financial instrument*. For example, transactions involving a customised *OTC financial instrument* with a unique contractual relationship tailored to the circumstances of the *scheme* and the *management company* may not be comparable for best execution purposes with transactions involving *shares* traded on centralised *execution venues*.
 - (3) As best execution obligations apply to all *financial instruments*, irrespective of whether they are traded on *trading venues* or *OTC*, *management companies* should gather relevant market data to check whether the *OTC* price offered for a *scheme* is fair and delivers on the best execution obligation.
- 11.2B.7** R
- A *management company* must determine the relative importance of the *execution factors*, taking into account the following criteria:
- (1) the objectives, investment policy and risks specific to the *scheme*, as indicated in its *prospectus* or *instrument constituting the fund*;
 - (2) the characteristics of the order, including where the order involves a *securities financing transaction*;
 - (3) the characteristics of the *financial instruments* that are the subject of that order; and
 - (4) the characteristics of the *execution venues* to which that order can be directed.
- [Note: article 25(2) second sentence of the *UCITS implementing Directive*]
- 11.2B.8** R
- A *management company* must take into account its own commissions and costs for executing an order, when assessing and comparing the results that would be achieved for a *scheme* by executing the order on each of the *execution venues* listed in the *management company's* execution policy that is capable of executing that order.
- 11.2B.9** G
- The requirement in ■ COBS 11.2B.8R that costs of execution include a *management company's* own commission or fees charged to the *scheme* should not apply for the purpose of determining which *execution venues* are included in the firm's execution policy in accordance with ■ COBS 11.2B.18R.
- 11.2B.10** R
- A *management company* must not receive any remuneration, discount or non-monetary benefit for routing orders to a particular *trading venue* or *execution venue* which would infringe the requirements on conflicts of interest (in ■ SYSC 10) or inducements (in ■ COBS 2.3 and ■ COBS 18 Annex 1).

- 11.2B.11 R** A *management company* must not structure or charge its *commission* in a way that discriminates unfairly between *execution venues*.
- 11.2B.12 G** A *management company* would be considered to discriminate unfairly between *execution venues* if it charged a different commission or spread to *schemes* for execution on different *execution venues* and that difference did not reflect actual differences in the cost to the *management company* of executing on those venues.
- 11.2B.13 R** When executing orders or taking decisions to deal in *OTC* products including bespoke products, the *management company* must check the fairness of the price proposed to the *scheme*, by gathering market data used to estimate the price of such products and, where possible, by comparing with similar or comparable products.
- When executing orders or taking decisions to deal in OTC products including bespoke products, the management company must check the fairness of the price proposed to the scheme, by gathering market data used to estimate the price of such products and, where possible, by comparing with similar or comparable products.**
- 11.2B.14 R** A *management company* must act in the best interests of each *scheme* it manages when placing orders to deal on behalf of that *scheme* with other entities for execution.
- [**Note:** article 26(1) of the *UCITS implementing Directive*]
- 11.2B.15 R**
- (1) A *management company* must take all sufficient steps to obtain the best possible result for each *scheme* it manages when placing orders to deal on behalf of that *scheme* with other entities, taking into account the *execution factors*.
 - (2) A *management company* must determine the relative importance of the *execution factors* in accordance with ■ COBS 11.2B.7R.
- [**Note:** article 26(2) first and second sentences of the first paragraph of the *UCITS implementing Directive*]
- 11.2B.16 G** This section is not intended to require a duplication of effort as to best execution between a *management company* and any firm with which that *management company* places its orders for execution.
- 11.2B.17 R**
- (1) A *management company* must establish and implement effective arrangements for complying with the obligation to take all sufficient steps to obtain the best possible result for each *scheme* it manages.
 - (2) In particular, the *management company* must establish and implement an order execution policy to allow it to obtain the best possible result for each *scheme* it manages when:
 - (a) executing orders on behalf of the *scheme* (in accordance with ■ COBS 11.2B.5R); and
 - (b) placing orders with other entities for execution (in accordance with ■ COBS 11.2B.15R(1)).

[Note: articles 25(3) first paragraph and 26(2) third sentence of the first paragraph of the *UCITS implementing Directive*]

11.2B.18 **R**

- (1) The order execution policy must include, for each type of *financial instrument*, information on the different *execution venues* where the *management company* executes its *scheme* orders and the factors affecting the choice of *execution venue*.
- (2) It must at least include *execution venues* that enable the *management company* to obtain the best possible result for the execution of *scheme* orders on a consistent basis.

11.2B.19 **G**

The obligation in ■ COBS 11.2B.17R does not require a *management company* to include all available *execution venues* in its execution policy.

11.2B.20 **G**

- (1) When establishing its execution policy in accordance with ■ COBS 11.2B.17R(2), a *management company* should determine the relative importance of the *execution factors*, or at least establish the process by which it determines the relative importance of these factors.
- (2) Ordinarily, the FCA would expect that price will merit a high relative importance in obtaining the best possible result. However, in some circumstances for some *schemes*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible result.
- (3) A *management company*, when applying the criteria for best execution, will typically not use the same *execution venues* for *securities financing transactions* and other transactions. As a result, the order execution policy should take into account the particular characteristics of *securities financing transactions* and it should list separately *execution venues* used for *securities financing transactions*.

11.2B.21 **R**

- (1) The order execution policy must identify, for each type of *financial instrument*, the entities with which orders are placed or to which the *management company* transmits orders for execution.
- (2) The entities identified must have execution arrangements that enable the *management company* to comply with its obligations under this section when it places or transmits orders to that entity for execution.

[Note: article 26(2) fourth sentence of the first paragraph and first sentence of the second paragraph]

11.2B.22 **G**

- (1) A *management company* may specify a single *execution venue*, or a single entity with which it places orders for execution, in its execution policy where it:
 - (a) is able to show that this allows it to obtain best execution, or, when placing orders for execution, the best possible result, for the *schemes* it manages on a consistent basis; and
 - (b) can reasonably expect that the selected *execution venue* or entity will enable it to obtain results for each *scheme* that are at least

		as good as the results that it could reasonably expect from using alternative execution venues or entities.
		(2) The reasonable expectation in (1)(b) should be supported by relevant data or by other internal analyses conducted by the <i>management company</i> .
		[deleted]
11.2B.23	R	A <i>management company</i> must be able to demonstrate that it has executed or placed orders on behalf of each <i>scheme</i> it manages in accordance with its execution policy. [Note: articles 25(5) and 26(4) of the <i>UCITS implementing Directive</i>]
11.2B.24	G	A <i>management company</i> should apply its execution policy to each <i>scheme</i> order that it executes with a view to obtaining the best possible result for the <i>scheme</i> in accordance with that policy.
11.2B.25	G	The provisions of this section relating to execution policy are in addition to the general obligation of a <i>management company</i> to monitor the effectiveness of its order execution arrangements and policy and assess the execution venues in its execution policy on a regular basis.
11.2B.26	R	(1) A <i>management company</i> of an <i>ICVC</i> that is a <i>UCITS scheme</i> that is structured as an investment company, must obtain the prior consent of the <i>ICVC</i> or investment company to the execution policy. (2) In the case of a <i>management company</i> that is the <i>ACD</i> of an <i>ICVC</i> that is a <i>UCITS scheme</i> , (1) does not apply where the <i>ACD</i> is the sole director of the <i>ICVC</i> . [Note: article 25(3) first sentence of the second paragraph of the <i>UCITS implementing Directive</i>]
		Monitoring and review of the order execution arrangements including the order execution policy
11.2B.27	R	(1) A <i>management company</i> must monitor the effectiveness of its order execution arrangements and policy on a regular basis to identify and, where appropriate, correct any deficiencies. (2) A <i>management company</i> that places orders with other entities for execution must in particular monitor the execution quality of those entities on a regular basis to identify and, where appropriate, correct any deficiencies. (3) A <i>management company</i> must assess, on a regular basis: (a) whether the execution venues included in the order execution policy provide for the best possible result for the <i>schemes</i> it manages; and (b) whether it needs to make changes to its execution arrangements taking into account relevant data or other internal analyses conducted by the <i>management company</i> .

[Note: article 25(4) first sentence, and article 26(3) first paragraph of the *UCITS implementing Directive*]

11.2B.28 R

A *management company* must:

- (1) (a) assess whether a material change has occurred in its order execution arrangements; and
 - (b) if so, consider making changes to the *execution venues* or entities on which it places significant reliance in meeting the overarching best execution requirement; and
- (2) review its execution policy, as well as its order execution arrangements:
 - (a) at least annually; and
 - (b) whenever a material change occurs that affects the *management company's* ability to continue to obtain the best possible result for the *scheme*.

[Note: article 25(4) second sentence, and article 26(3) second paragraph of the *UCITS implementing Directive*]

11.2B.29 G

For the purposes of ■ COBS 11.2B.28R, a material change is a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

11.2B.30 G

A *management company* should compare and analyse relevant data to monitor and review their order execution arrangements.[deleted]

11

Information requirements

11.2B.31 R

A *management company* must make available to the *unitholders* of each *scheme* it manages appropriate information on its execution policy and on any material changes to that policy.

[Note: articles 25(3) second sentence of the second paragraph and 26(2) second sentence of the second paragraph of the *UCITS implementing Directive*]

11.2B.32 R

The information on the execution policy must:

- (1) be customised depending on the type of *financial instrument* and type of service provided; and
- (2) include the information in ■ COBS 11.2B.33R and ■ COBS 11.2B.35R(1) to ■ COBS 11.2B.35R(4).

11.2B.33 R

A *management company* must make available the following details on its execution policy:

- (1) an account of the relative importance the *management company* assigns to the *execution factors*, or the process by which the

- management company* determines the relative importance of the *execution factors*;
- (2) a list of the *execution venues* on which the *management company* places significant reliance in meeting its obligation to take all reasonable steps to obtain the best possible result for the execution of *scheme* orders on a consistent basis, specifying which *execution venues* are used for each type of *financial instrument* and *SFT*;
 - (3) appropriate information about the *management company* and the entities chosen for execution;
 - (4) a list of the factors used to select an *execution venue* which:
 - (a) includes:
 - (i) qualitative factors such as clearing schemes, circuit breakers, scheduled actions, or any other relevant consideration; and
 - (ii) the relative importance of each factor; and
 - (b) is consistent with the controls used by the *management company* to demonstrate that best execution has been achieved on a consistent basis, when reviewing the adequacy of its policy and arrangements;
 - (5) how the *execution factors* of price, costs, speed, likelihood of execution and any other relevant factors are considered as part of all sufficient steps to obtain the best possible result for the *scheme*;
 - (6) where applicable:
 - (a) confirmation that the *management company* executes orders outside a *trading venue*;
 - (b) the consequences of this, for example counterparty risk arising from *execution* outside a *trading venue*; and
 - (c) a statement that additional information about the consequences of this means of *execution* is available on request; and
 - (7) a summary of:
 - (a) the selection process for *execution venues*;
 - (b) the execution strategies employed;
 - (c) the procedures and process used to analyse the quality of execution obtained; and
 - (d) how the *management company* monitors and verifies that the best possible results were obtained for the *schemes* it manages.

11.2B.34 R

A *management company* must make the information in ■ COBS 11.2B.31R available to *unitholders* or potential *unitholders*:

- (1) in a *durable medium*; or
- (2) by means of a website (where that does not constitute a *durable medium*) provided that the *website conditions* are satisfied; or
- (3) in the *prospectus* of the *scheme*.

11.2B.35 R

- (1) A *management company* must make information available about the inducements that the *management company* may receive from *execution venues* in accordance with ■ COBS 2.3 and ■ COBS 18 Annex 1.
- (2) The information in (1) must at least:
 - (a) specify the fees charged by the *management company* to all counterparties involved in the transaction; and
 - (b) where the fees vary depending on the *scheme*, indicate the maximum fees or range of the fees that may be payable.
- (3) Where a *management company* applies different fees depending on the *execution venue*, a *management company* must explain these differences in sufficient detail to allow *unitholders* to understand the advantages and the disadvantages of the choice of a particular *execution venue*.
- (4) Where a *management company* charges more than one participant in a transaction, the *firm* must make information available about the value of any monetary or non-monetary benefits received by the *firm*, in compliance with ■ COBS 2.3.1R.
- (5) Where a *unitholder* makes a reasonable and proportionate request to a *management company* for information about its policies or arrangements and how they are reviewed, that *management company* must answer clearly and within a reasonable time.

11.2B.36 R

[deleted]

11.2B.37 R

Upon reasonable request from a *unitholder* or potential *unitholder*, a *management company* must provide information about entities where orders are transmitted or placed for execution.



11.2C Quality of execution

11.2C.1 **R** [deleted]

11.2C.2 **R** [deleted]

11.3 Client order handling

General principles

11.3.1

R

- (1) A *firm* (other than a *UCITS management company* providing *collective portfolio management services*) which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client orders*, relative to other orders or the trading interests of the *firm*.

[Note: paragraph 1 of article 28(1) of *MiFID*]

- (2) These procedures or arrangements must allow for the execution of otherwise comparable orders in accordance with the time of their reception by the *firm*.

[Note: paragraph 2 of article 28(1) of *MiFID*]

- (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* it manages.

[Note: article 27(1) first paragraph of the *UCITS implementing Directive*]

11.3.1A

R

- (1) Subject to (2) and (3) in this chapter provisions marked "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.
- (2) Provisions which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to all *firms* as guidance.
- (3) ■ COBS 11.3.4AUK, which reproduces article 67(2) of the *MiFID Org Regulation*, does not apply to a *UCITS management company*.

11.3.2

R

[deleted]

Carrying out client orders

11.3.2A

UK

67(1) Investment firms shall satisfy the following conditions when carrying out client orders:

- (a) ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;
- (b) carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market

		conditions make this impracticable, or the interests of the client require otherwise;
		(c)inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.
11.3.3	G	For the purposes of the provisions of this section, orders should not be treated as otherwise comparable if they are received by different media and it would not be practicable for them to be treated sequentially. [Note: recital 110 to the <i>MiFID Org Regulation</i>]
11.3.4	R	Where a <i>management company</i> executes the order itself in the course of providing <i>collective portfolio management</i> services, it must take all reasonable steps to ensure that any <i>client financial instruments</i> or <i>client funds</i> received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate <i>UCITS scheme</i> . [Note: article 27(1) third paragraph of the <i>UCITS implementing Directive</i>]
		Settlement of executed orders
11.3.4A	UK	67(2)Where an investment firm is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client financial instruments or client funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.
11.3.5	R	[deleted]
		Use of information relating to pending client orders
11.3.5A	UK	67(3)An investment firm shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.
11.3.6	G	Without prejudice to the <i>Market Abuse Regulation</i> , for the purposes of the provision on the misuse of information (see ■ COBS 11.3.5AEU), any use by a <i>firm</i> of information relating to a pending <i>client order</i> in order to deal on own account in the <i>financial instruments</i> to which the <i>client order</i> relates, or in related <i>financial instruments</i> , should be considered a misuse of that information. However, the mere fact that <i>market makers</i> or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling <i>financial instruments</i> , or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information. [Note: recital 110 to the <i>MiFID Org Regulation</i>]
		Aggregation and allocation of orders
11.3.7	R	[deleted]

11.3.7A	UK	<p>68(1) Investment firms shall not carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:</p> <ul style="list-style-type: none"> (a) it is unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any client whose orders is to be aggregated; (b) it is disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order; (c) an order allocation policy is established and effectively implemented, providing for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.
11.3.7B	R	<p>A <i>management company</i> must ensure that the order allocation policy referred to in article 68(1)(c) of the <i>MiFID Org Regulation</i>, reproduced at COBS 11.3.7AUK, is in sufficiently precise terms.</p> <p>[Note: article 28(1) of the <i>UCITS implementing Directive</i>]</p>
11.3.8	R	[deleted]
Partial execution of aggregated client orders		
11.3.8A	UK	<p>68(2) Where an investment firm aggregates an order with one or more other client orders and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.</p>
Aggregation and allocation of transactions for own account		
11.3.9	R	[deleted]
11.3.9A	UK	<p>69(1) Investment firms which have aggregated transactions for own account with one or more client orders shall not allocate the related trades in a way that is detrimental to a client.</p>
11.3.10	R	[deleted]
11.3.10A	UK	<p>69 (2) Where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to the firm.</p> <p>Where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to the firm. Where an investment firm is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in Article 68(1)(c).</p>

11.3.11	R	[deleted]
11.3.11A	UK	69(3)As part of the order allocation policy referred to in Article 68(1)(c), investment firms shall put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.
11.3.12	G	For the purposes of the provisions of this section, the reallocation of transactions should be considered as detrimental to a <i>client</i> if, as an effect of that reallocation, unfair precedence is given to the <i>firm</i> or to any particular person. [Note: recital 109 to the <i>MiFID Org Regulation</i>]
11.3.13	G	In this section, carrying out <i>client</i> orders includes: (1) the execution of <i>orders on behalf of clients</i> ; (2) the placing of orders with other entities for execution that result from decisions to deal in <i>financial instruments</i> on behalf of <i>clients</i> when providing the service of <i>portfolio management</i> or <i>collective portfolio management</i> ; (3) the transmission of <i>client</i> orders to other entities for execution when providing the service of reception and transmission of orders.

Transposition of client order handling provisions in the UCITS Implementing Directive.....

- 11.3.14 **G**
- (1) This section applies to a *UCITS management company* as a result of ■ COBS 18.5B.2R.
 - (2) The provisions of the *MiFID Org Regulation* reproduced in this section apply to a *UCITS management company* as a result of ■ COBS 11.3.1AR.
 - (3) Some of these provisions 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)	COBS 11.3.2AUK	article 27(1) second paragraph
article 67(3)	COBS 11.3.5AUK	article 27(2)
article 68(1)	COBS 11.3.7AUK, as modified by COBS 11.3.7BR	article 28(1)
article 68(2)	COBS 11.3.8AUK	article 28(2)
article 69(1)	COBS 11.3.9AUK	article 28(3)
article 69(2)	COBS 11.3.10AUK	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 "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

11.4.1 **R** Unless a *client* expressly instructs otherwise, a *firm* must, in the case of a *client limit order* in respect of shares admitted to trading on a *regulated market* or traded on a *trading venue* which is not immediately executed under prevailing market conditions, take measures to facilitate the earliest possible execution of that order by making public immediately that *client limit order* in a manner which is easily accessible to other market participants.

[Note: article 28(2) of *MiFID*]

11.4.2 **G** In respect of transactions executed between *eligible counterparties*, the obligation to disclose *client limit orders* should only apply where the counterparty is explicitly sending a *limit order* to a *firm* for its execution.

[Note: recital 105 to *MiFID*]

How client limit orders may be made public

11.4.3 **EU** [deleted]

11.4.3A **UK** 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 ■ 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 person authorised to provide data reporting services under the *DRS Regulations* and can be easily executed as soon as market conditions allow.

11.4.4 **G** [deleted]

11.4.4A **G** Firms may comply with the obligations in ■ COBS 11.4.1R, to make public unexecuted *client limit orders*, by transmitting the *client limit order* to a *trading venue*.

[Note: article 28(2) of *MiFID*]

11.4.5**R****Orders that are large in scale**

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*.

[**Note:** article 28(2) of *MiFID*]

11.4.6**G**

[deleted]

11.5A Record keeping: client orders and transactions

11.5A.1 **R**

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

11.5A.2 **UK**

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.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.

11

Record keeping in relation to transactions and order processing

11.5A.3 **UK**

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.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 **UK**

Annex IV Section 1 of the *MiFID Org Regulation* makes provision for record keeping of client orders and decisions to deal.

1. Name and designation of the client
2. Name and designation of any relevant person acting on behalf of the client

- 11
- 3.A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision
 - 4.A designation to identify the algorithm (Algo ID) responsible within the investment firm for the investment decision;
 - 5.B/S indicator;
 - 6.Instrument identification
 - 7.Unit price and price notation
 - 8.Price
 - 9.Price multiplier
 - 10.Currency 1
 - 11.Currency 2
 - 12.Initial quantity and quantity notation
 - 13.Validity period
 - 14.Type of the order
 - 15.Any other details, conditions and particular instructions from the client
 - 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 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 UK**

- 1.Name and designation of the client
- 2.Name and designation of any relevant person acting on behalf of the client
- 3.A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision
- 4.A designation to identify the Algo (Ago ID) responsible within the investment firm for the investment decision
- 5.Transaction reference number
- 6.A designation to identify the order (Order ID)
- 7.The identification code of the order assigned by the trading venue upon receipt of the order
- 8.A unique identification for each group of aggregated clients' orders (which will be subsequently placed as one block order on a given trading venue). This identification should indicated "aggregated_X" with X representing the number of clients whose orders have been aggregated

- 9.The segment MIC code of the trading venue to which the order has been submitted
- 10.The name and other designation of the person to whom the order was transmitted
- 11.Designation to identify the Seller & the Buyer
- 12.The trading capacity
- 13.A designation to identify the Trader (Trader ID) responsible for the execution
- 14.A designation to identify the Algo (Algo ID) responsible for the execution
- 15.B/S indicator;
- 16.Instrument identification
- 17.Ultimate underlying
- 18.Put/Call identifier
- 19.Strike price
- 20.Upfront payment
- 21.Delivery type
- 22.Option style
- 23.Maturity date
- 24.Unit price and price notation
- 25.Price
- 26.Price multiplier
- 27.Currency 1
- 28.Currency 2
- 29.Remaining quantity
- 30.Modified quantity
- 31.Executed quantity
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 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.
- 33.The date and exact time of any message that is transmitted to and received from the trading venue in relation to any events affecting an order. The exact time must be measured according to the methodology prescribed under the RTS on clock synchronisation.
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 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.
- 35.Any message that is transmitted to and received from the trading venue in relation to orders placed by the investment firm

-
- 36.Any other details and conditions that was submitted to and received from another investment firm in relation with the order
 - 37.Each placed order's sequences in order to reflect the chronology of every event affecting it, including but not limited to modifications, cancellations and execution
 - 38.Short selling flag
 - 39.SSR exemption flag
 - 40.Waiver flag

11.7 Personal account dealing

Application

11.7.-1

R

This section does not apply to a *firm* in relation to *MiFID, equivalent third country or optional exemption business* (but see ■ COBS 11.7A (Personal account dealing relating to MiFID, equivalent third country or optional exemption business)).

11.7.1

R

A *firm* that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the *Market Abuse Regulation* or to other confidential information relating to *clients* or transactions with or for *clients* by virtue of an activity carried out by him or her on behalf of the *firm*:

- (1) entering into a *personal transaction* which meets at least one of the following criteria:
 - (a) that *person* is prohibited from entering into it under the *Market Abuse Regulation*;
 - (b) it involves the misuse or improper disclosure of that confidential information;
 - (c) it conflicts or is likely to conflict with an obligation of the *firm* to a *customer* under the *regulatory system* or any other obligation of the *firm* under *MiFID* or the *UCITS Directive*;
- (2) advising or procuring, other than in the proper course of his employment or contract for services, any other *person* to enter into a transaction in *designated investments* which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;
- (3) disclosing, other than in the normal course of his or her employment or contract for services, any information or opinion to any other *person* if the *relevant person* knows, or reasonably ought to know, that as a result of that disclosure that other *person* will or would be likely to take either of the following steps:
 - (a) to enter into a transaction in *designated investments* which, if a personal transaction of the relevant person, would be covered by (1) or a relevant provision;
 - (b) to advise or procure another *person* to enter into such a transaction.

[Note: article 13(1) of the *UCITS implementing Directive*]

- 11.7.2** **R** For the purposes of this section, the relevant provisions are:
- (1) the *rules* article 37(2)(a) and (b) of the *MiFID Org Regulation on personal transactions* undertaken by *financial analysts* copied out in ■ COBS 12.2.21EU which apply as *rules* as a result of ■ COBS 12.2.15R;
 - (2) article 67(3) of the *MiFID Org Regulation* on the misuse of information relating to pending *client orders* copied out in ■ COBS 11.3.5AEU which applies as a *rule* as a result of ■ COBS 11.3.1AR.
- 11.7.2A** **G** The requirements of this section are without prejudice to the prohibition under article 14(c) of the *Market Abuse Regulation*.
- 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*.
- 11.7.4** **R** The arrangements required under this section must in particular be designed to ensure that:
- (1) each *relevant person* covered by this section is aware of the restrictions on *personal transactions*, and of the measures established by the *firm* in connection with *personal transactions* and disclosure, in accordance with this section;
 - (2) the *firm*:
 - (a) is informed promptly of any *personal transaction* entered into by a *relevant person*, either by notification of that transaction or by other procedures enabling the *firm* to identify such transactions; or
 - (b) in the case of *outsourcing* arrangements, ensures that the service provider to which the activity is *outsourced* maintains a record of *personal transactions* entered into by any *relevant person* and provides that information to the *firm* promptly on request;
 - (3) a record is kept of the *personal transaction* notified to the *firm* or identified by it, including any authorisation or prohibition in connection with such a transaction.
- [Note: article 13(2) of the *UCITS implementing Directive*]
- Disapplication of rule on personal account dealing**
- 11.7.5** **R** This section does not apply to the following kinds of *personal transaction*:
- (1) *personal transactions* effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the *relevant person* or other *person* for whose account the transaction is executed;
 - (2) *personal transactions* in *units* or *shares* in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the *UCITS Directive* or are subject to supervision under the law of an

		<p>EEA State which requires an equivalent level of risk spreading in their assets, where the <i>relevant person</i> and any other <i>person</i> for whose account the transactions are effected, are not involved in the management of that undertaking;</p> <p>(3) <i>personal transactions in life policies.</i></p> <p>[Note: article 13(3) of the <i>UCITS implementing Directive</i>]</p>
11.7.6	R	<p>For the purposes of this section, a <i>person</i> who is not:</p> <p>(1) a director, partner or equivalent, manager or <i>appointed representative</i> (or, where applicable, a <i>tied agent</i>) of the <i>firm</i>; or</p> <p>(2) a director, partner or equivalent, or manager of any <i>appointed representative</i> (or where applicable, a <i>tied agent</i>) of the <i>firm</i>;</p> <p>will only be a <i>relevant person</i> to the extent that they are involved in the provision of <i>designated investment business</i> or <i>collective portfolio management services</i>.</p>
11.7.7	R	<p>Successive personal transactions</p> <p>Where successive <i>personal transactions</i> are carried out on behalf of a <i>person</i> in accordance with prior instructions given by that <i>person</i>, the obligations under this section do not apply:</p> <p>(1) separately to each successive transaction if those instructions remain in force and unchanged; or</p> <p>(2) to the termination or withdrawal of such instructions, provided that any <i>financial instruments</i> which had previously been acquired pursuant to the instructions are not disposed of at the same time as the instructions terminate or are withdrawn.</p> <p>Obligations under this section do apply in relation to a <i>personal transaction</i>, or the commencement of successive <i>personal transactions</i>, that are carried out on behalf of the same <i>person</i> if those instructions are changed or if new instructions are issued.</p>

11		11.7A Personal account dealing relating to MiFID, equivalent third country or optional exemption business
		Application
11.7A.1	R	This chapter applies to a <i>firm</i> in relation to its <i>MiFID, equivalent third country or optional exemption business</i> .
11.7A.2	R	<ul style="list-style-type: none">(1) Subject to (2), in this chapter provisions marked "UK" apply to a <i>firm</i> in relation to its <i>equivalent third country or optional exemption business</i> as if they were <i>rules</i>.(2) In this chapter, provisions which derive from recitals to <i>MiFID</i> or the <i>MiFID Org Regulation</i> apply to a <i>firm</i> in relation to its business which is the <i>equivalent business of a third country investment firm</i> or <i>MiFID optional exemption business</i> as <i>guidance</i>.
11.7A.3	R	A <i>firm</i> that conducts <i>designated investment business</i> must establish appropriate rules governing personal transactions undertaken by managers, employees and <i>tied agents</i> . [Note: article 16(2) of <i>MiFID</i>]
		Scope of personal transactions
11.7A.4	UK	<p>For the purposes of Article 29 and Article 37, a personal transaction shall be a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met:</p> <ul style="list-style-type: none">(a)the relevant person is acting outside the scope of the activities he carries out in this professional capacity;(b)the trade is carried out for the account of any of the following persons:<ul style="list-style-type: none">(i)the relevant person;(ii)any person with whom he has a family relationship, or with whom he has close links;(iii)a person in respect of whom the relevant person has a direct or indirect material interest in the outcome of the trade, other than obtaining a fee or commission for the execution of the trade.

11.7A.5 UK**Requirements relating to personal transactions**

(29) Investment firms shall ensure that relevant persons do establish, implement and maintain adequate arrangements aimed at preventing the activities set out in paragraphs 2, 3 and 4 in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 7(1) of Regulation (EU) No 596/2014 or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the firm.

(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 UK law on markets in financial instruments.

(3) Investment firms shall ensure that relevant persons do not advise or recommend, other than in the proper course of employment or contract for services, any other person to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraph 2 or Article 37(2)(a) or (b) or Article 67(3);

(4) Without prejudice to Article 10 (1) of Regulation (EU) No 596/2014, investment firms shall ensure that relevant persons do not disclose, other than in the normal course of his employment or contract for services, any information or opinion to any other person where the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

(a) to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraphs 2 or 3 or Article 37(2)(a) or (b) or Article 67(3);

(b) to advise or procure another person to enter into such a transaction.

(5) The arrangements required under paragraph 1 shall be designed to ensure that:

(a) each relevant person covered by paragraphs 1, 2, 3 and 4 is aware of the restrictions on personal transactions, and of the measures established by the investment firm in connection with personal transactions and disclosure, in accordance with paragraphs 1, 2, 3 and 4;

(b) the firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the firm to identify such transactions;

(c) a record is kept of the personal transaction notified to the firm of identified by it, including any authorisation or prohibition in connection with such a transaction.

In the case of outsourcing arrangements, the investment firm shall ensure that the firm to which the activity is outsourced maintains a record of

personal transactions entered into by any relevant person and provides that information to the investment firm promptly on request.

(6) Paragraphs 1 to 5 shall not apply to the following personal transactions:

- (a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
- (b) personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of 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.

11.7A.6 R

- (1) Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this section do not apply:
 - (a) separately to each successive transaction if those instructions remain in force and unchanged; or
 - (b) to the termination or withdrawal of such instructions, provided that any *financial instruments* which had previously been acquired pursuant to the instructions are nor disposed of at the same time as the instructions terminate or are withdrawn.
- (2) Obligations under this section do apply in relation to a *personal transaction*, or the commencement of successive *personal transactions*, that are carried out on behalf of the same *person* if those instructions are changed or if new instructions are issued.

[**Note:** recital 42 to the *MiFID Org Regulation*]

Regulatory Technical Standard 28 (RTS 28) [deleted]

Underwriting and placing

Chapter 11A

Underwriting and placing

11A.1 Underwriting and placing**11A.1.1 R**

- (1) This chapter applies only to *MiFID or equivalent third country business*.
- (2) Subject to (3), in this chapter provisions marked "UK" apply to the *equivalent business of a third country investment* as if they were *rules*.
- (3) In this chapter, provisions 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.1.2 UK**

38 (1) Investment firms which provide advice on corporate finance strategy, as set out in **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:

- (a)the various financing alternatives available with the firm, and an indication of the amount of transaction fees associated with each alternative;
- (b)the timing and the process with regard to the corporate finance advice on pricing of the offer;
- (c)the timing and the process with regard to the corporate finance advice on placing of the offering;
- (d)details of the targeted investors, to whom the firm intends to offer the financial instruments;
- (e)the job titles and departments of the relevant individuals involved in the provision of corporate finance advice on the price and allotment of financial instruments; and
- (f)firm's arrangements to prevent or manage conflicts of interest that may arise where the firm places the relevant financial instruments with its investment clients with its own proprietary book.

11A.1.3 UK**Requirements to identify underwriting and placing operations and to ensure that adequate controls are in place to manage conflicts of interest**

38(2) Investment firms shall have in place a centralised process to identify all underwriting and placing operations of the firm and record such information, including the date on which the firm was informed of potential underwriting and placing operations. Firms shall identify all potential conflicts of interest arising from other activities of the investment firm, or group, and implement appropriate management procedures. In cases where an investment firm cannot manage a conflict of interest by way of implementing appropriate procedures, the investment firm shall not engage in the operation.

(3) Investment firms providing execution and research services as well as carrying out underwriting and placing activities shall ensure adequate controls are in place to manage any potential conflicts of interest between these activities and between their different clients receiving those services.

11A.1.4 UK**Additional requirements in relation to pricings of offerings in relation to the issuance of financial instruments**

39(1) Investment firms shall have in place systems, controls and procedures to identify and prevent or manage conflicts of interest that arise in relation to possible under-pricing or over-pricing of an issue or involvement of relevant parties in the process. In particular, investment firms shall as a minimum requirement establish, implement and maintain internal arrangements to ensure both of the following:

- (a) that the pricing of the offer does not promote the interests of other clients or firm's own interests, in a way that may conflict with the issuer client's interests; and
- (b) the prevention or management of a situation where persons responsible for providing services to the firm's investment clients are directly involved in decisions about corporate finance advice on pricing to the issuer client.

11A.1.4A R**Application of requirements for information flows during equity IPOs**

■ COBS 11A.1.4BR to ■ COBS 11A.1.4FR apply to a *firm* that:

- (1) has agreed to carry on regulated activities for a *client* that is an *issuer* ("the *issuer client*") that include underwriting or placing of *financial instruments*, where:
 - (a) those *financial instruments* ("relevant securities") are either:
 - (i) *shares*; or
 - (ii) *certificates representing certain securities* where the certificate or other instrument confers rights in respect of *shares*;
 - (b) the relevant securities are intended to be admitted to trading in the UK for the first time;
 - (c) the trading under sub-paragraph (b) is intended to be effected by an admission to trading on a *regulated market*; and
 - (d) an approved *prospectus* will be required in accordance with article 3 of the *Prospectus Regulation* for the relevant securities; and

- (2) is intending to disseminate *investment research* or *non-independent research* on that *issuer client* or those relevant securities before the *admission to trading*.

Communications between the issuer and research analysts in equity IPOs

11A.1.4B R

- (1) Unless it complies with paragraphs (2) and (3) a *firm* must prevent its staff involved in the production of *investment research* or *non-independent research* ("the *firm's* analysts") from being in communication with the *issuer client* and/or the *issuer client's* representatives outside of the *firm* ("the *issuer team*").
- (2) Prior to the *firm's* analysts being in communication with the *issuer team*, the *firm* must ensure that a range of unconnected analysts (as defined in paragraph (4)) will have the opportunity (subject to ■ COBS 11A.1.4CR) either:
- (a) to join the *firm's* analysts in any communication with the *issuer team* that is made or received before the *firm* disseminates any *investment research* or *non-independent research* about the *issuer client* or the relevant securities as described in ■ COBS 11A.1.4AR(1); or
 - (b) to be in communication with the *issuer team* in a way that satisfies the following conditions:
 - (i) the communication results in those unconnected analysts receiving or being given access to all the information that is:
 - (A) given by the *issuer team* to the *firm's* analysts during the relevant period; and
 - (B) relevant for the purposes of the *firm* producing any *investment research* or *non-independent research* on the *issuer client* or the relevant securities;
 - (ii) the information that each of those unconnected analysts receives or can access is identical;
 - (iii) that communication is completed before the end of the relevant period; and
 - (iv) the relevant period for the purposes of sub-paragraphs (2)(b)(i) and (2)(b)(iii) starts from the time at which this *rule* applies and ends at the time at which the *firm* disseminates any *investment research* or *non-independent research* on the *issuer client* or the relevant securities.
- (3) (a) To select the range of unconnected analysts under paragraph (2) the *firm* must:
- (i) undertake an assessment of the potential range of unconnected analysts for the purposes of paragraph (2); and
 - (ii) use that assessment to ensure that the range of unconnected analysts given the opportunity under paragraph (2) is one that, in the *firm's* reasonable opinion, has a reasonable prospect of enabling potential investors to undertake a better-informed assessment of the present or future value of the relevant securities based on a more diverse set of substantiated opinions, compared to a situation in which the only research available to potential investors is that

disseminated by *firms* providing the service of underwriting or placing to the *issuer client*.

- (b) For its assessment and opinion under sub-paragraph (a) the *firm* may assume that an unconnected analyst that is given an opportunity to interact with the *issuer* team will publish an opinion on the *firm's issuer client* that will be available to potential investors.
 - (c) The *firm* must make a written record of its assessment and opinion under sub-paragraph (a) at the time at which it forms its opinion.
 - (d) The *firm's* record under sub-paragraph (c) must:
 - (i) set out the *firm's* process for conducting the assessment and forming the opinion under sub-paragraph (a);
 - (ii) identify the *firm's* staff that were involved in forming that opinion; and
 - (iii) explain the *firm's* consideration of the number and expertise of the unconnected analysts included in the range.
 - (e) The *firm* must retain the record made under sub-paragraph (c) for five years from the date on which it is made.
- (4) An "unconnected analyst" means a *person* other than the *firm* or its staff:
- (a) who does not provide the service of underwriting or placing of the same relevant securities to the same *issuer client*; and
 - (b) whose business or occupation may reasonably be expected to involve the production of research.

11A.1.4C R

- (1) If an opportunity communicated to the range of unconnected analysts under ■ COBS 11A.1.4BR(2) is subject to any restrictions that would apply to any of the unconnected analysts that accept the opportunity, a *firm* must ensure that those restrictions would not unreasonably prevent, limit or discourage those unconnected analysts from producing and disseminating research on the *issuer client* or the relevant securities.
- (2) The *firm* must also make and retain a written record of any such restrictions, regardless of whether the restrictions are subsequently applied to any unconnected analyst.
- (3) The *firm* must make the record at the time the opportunity is communicated to the range of unconnected analysts.
- (4) The *firm* must keep the record for a period of five years after the date it was made.

11A.1.4D E

- (1) A restriction is unreasonable under ■ COBS 11A.1.4CR(1) if it prevents an unconnected analyst from producing and disseminating research in circumstances in which the *firm* that is subject to ■ COBS 11A.1.4CR is itself able to produce and disseminate *investment research* or *non-independent research*.
- (2) Contravention of (1) may be relied upon as tending to establish non-compliance with ■ COBS 11A.1.4CR(1).

11A.1.4E R

- (1) Where a *firm* acts in accordance with ■ COBS 11A.1.4BR(2)(b) then it must make and retain a written record of:
 - (a) the information on the *issuer* or the relevant securities that is given by the *issuer* team to the *firm's* analysts during the relevant period under ■ COBS 11A.1.4BR(2)(b)(iv); and
 - (b) the information on the *issuer* or the relevant securities that is given by the *issuer* team to each of the relevant unconnected analysts during the same period.
- (2) The *firm* must make the record at the end of that period.
- (3) The *firm* must keep the record for a period of five years after the date it was made.

Timing restrictions for disseminating research on equity IPOs

11A.1.4F R

- (1) A *firm* must not disseminate *investment research* or *non-independent research* on the relevant *issuer client* or relevant securities as described in ■ COBS 11A.1.4AR(1) until after the relevant time in paragraph (2).
- (2) The relevant time is:
 - (a) where a *firm* acts in accordance with ■ COBS 11A.1.4BR(2)(a), one day after the publication of the relevant document in paragraph (3); or
 - (b) otherwise, seven days after the publication of the relevant document in paragraph (3).
- (3) The relevant document is:
 - (a) an approved *prospectus* regarding the relevant securities; or
 - (b) an approved *registration document* regarding the *issuer*.
- (4) For this *rule*, publication of the relevant document means making the relevant document available to the public in accordance with article 21 of the *Prospectus Regulation*.
- (5) This *rule* does not apply to a *firm* in circumstances where, as a result of the *firm's* analysts being prevented from being in communication with the *issuer* team, it has not needed to engage with any unconnected analysts for the purposes of ■ COBS 11A.1.4BR.

Further requirements concerning the provision of information

11A.1.5 UK

39(2) Investment firms shall provide clients with information about how the recommendation as to the price of the offering and the timings involved is determined. In particular, the firm shall inform and engage with the issuer client about any hedging or stabilisation strategies it intends to undertake with respect to the offering, including how these strategies may impact the issuer clients' interests. During the offering process, firms shall also take all reasonable steps to keep the issuer client informed about developments with respect to the pricing of the issue.

11A.1.6 UK

40(1) Investment firms placing financial instruments shall establish, implement and maintain effective arrangements to prevent recommendations on

placing from being inappropriately influenced by any existing or future relationships.

(2) Investment firms shall establish, implement and maintain effective internal arrangements to prevent or manage conflicts of interests that arise where persons responsible for providing services to the firm's investment clients are directly involved in decisions about recommendations to the issuer client on allocation.

(3) Investment firms shall not accept any third-party payments or benefits unless such payments or benefits comply with rules made by the Financial Conduct Authority under the **Financial Services and Markets Act 2000** which were relied on before IP completion 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:

(a) an allocation made to incentivise the payment of disproportionately high fees for unrelated services provided by the investment firm ('laddering'), such as disproportionately high fees or commissions paid by an investment client, or disproportionately high volumes of business at normal levels of commission provided by the investment client as a compensation for receiving an allocation of the issue;

(b) an allocation made to a senior executive or a corporate officer of an existing or potential issuer client, in consideration for the future or past award of corporate finance business ('spinning');

(c) an allocation that is expressly or implicitly conditional on the receipt of future orders or the purchase of any other service from the investment firm by an investment client, or any entity of which the investor is a corporate officer.

(4) Investment firms shall establish, implement and maintain an allocation policy that sets out the process for developing allocation recommendations. The allocation policy shall be provided to the issuer client before agreeing to undertake any placing services. The policy shall set out relevant information that is available at that stage, about the proposed allocation methodology for the issue.

(5) Investment firms shall involve the issuer client in discussions about the placing process in order for the firm to be able to understand and take into account the client's interests and objectives. The investment firm shall obtain the issuer client's agreement to its proposed allocation per type of client for the transaction in accordance with the allocation policy.

11A.1.7 [UK]

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 [■ 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.

(2) Investment firms engaging in the placement of financial instruments issued by themselves or by entities within the same group, to their own

clients, including their existing depositor clients in the case of credit institutions, or investment funds managed by entities of their group, shall establish, implement and maintain clear and effective arrangements for the identification, prevention or management of the potential conflicts of interest that arise in relation to this type of activity. Such arrangements shall include consideration of refraining from engaging in the activity, where conflicts of interest cannot be appropriately managed so as to prevent any adverse effects on clients.

(3) When disclosure of conflicts of interest is required, investment firms shall comply with the requirements in Article 34(4), including an explanation of the nature and source of the conflicts of interest inherent to this type of activity, providing details about the specific risks related to such practices in order to enable clients to make an informed investment decision.

(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 Council¹, the law of the United Kingdom or any part of the United Kingdom ("UK law") which was relied on before IP completion day to implement Directive 2013/36/EU of the European Parliament and of the Council² or Directive 2014/59/EU of the European Parliament and of the Council³, 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 IP completion day to implement Directive 2014/49/EU of the European Parliament and of the Council.

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.1)

² Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p.338)

³ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulation (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.201, p190)

Further requirements in relation to lending on provision of credit in the context of underwriting or placement

11A.1.8 [UK]

42(1) Where any previous lending or credit to the issuer client by an investment firm, or an entity within the same group, may be repaid with the proceeds of an issue, the investment firm shall have arrangements in place to identify and prevent or manage any conflicts of interest that may arise as a result.

(2) Where the arrangements taken to manage conflicts of interest prove insufficient to ensure that the risk of damage to the issuer client would be prevented, investment firms shall disclose to the issuer client the specific conflicts of interest that have arisen in relation to their, or group entities',

activities in a capacity of credit provider, and their activities related to the securities offering.

(3) Investment firms' conflict of interest policy shall require the sharing of information about the issuer's financial situation with group entities acting as credit providers, provided this would not breach information barriers set up by the firm to protect the interests of a client.

Record keeping requirements in relation to underwriting or placing

11A.1.9 UK

Investment firms shall keep records of the content and timing of instructions received from clients. A record of the allocation decisions taken for each operation shall be kept to provide for a complete audit trail between the movements registered in clients' accounts and the instructions received by the investment firm. In particular, the final allocation made to each investment client shall be clearly justified and recorded. The complete audit trail of the material steps in the underwriting and placing process shall be made available to competent authorities upon request.

11A.2 Prohibition of future service restrictions

- 11A.2.1 R** Unless exempted in ■ COBS 11A.2.2R, a *firm* must not enter into an agreement in writing with a *client* that contains a *future service restriction*.
- 11A.2.2 R** ■ COBS 11A.2.1R does not apply to *future service restrictions* that:
- (1) are included in an agreement in writing for the *firm* to provide a bridging loan; and
 - (2) only involve the *firm* providing the *primary market and M&A services* to which the bridging loan relates.
- 11A.2.3 R** For the purposes of ■ COBS 11A.2.2R, “bridging loan” means a loan provided to a client for the purpose of providing short-term financing, and with the commercial intention that it be replaced with another form of financing (such as a *debenture issue* or a *share issue*).
- 11A.2.4 G** A loan could be considered a bridging loan for the purposes of ■ COBS 11A.2.3 when, for example:
- (1) it is expressly documented that the intention of both parties is that the loan offers a temporary solution until the client is able to obtain longer-term financing from the capital markets or other future financing;
 - (2) it has a short term, typically of less than four years from signing, or the client is otherwise discouraged from retaining the loan as longer term financing, for example by stepping up the interest rates after an initial short period; and
 - (3) the terms provide that the proceeds from the future financing are used as mandatory pre-payment on the loan.
- 11A.2.5 G**
- (1) Agreements for the provision of a specified or certain *primary market and M&A service* by the *firm* to the *client* are not prohibited by ■ COBS 11A.2.1R, even where that service will take place in the future.
 - (2) ■ COBS 11A.2.1R prohibits *future service restrictions* related to *primary market and M&A services* which may be required in the future but which, at the date of the agreement, are not yet specified or certain. *Future service restrictions* are prohibited because they prevent a *client* from freely deciding, as and when the need for *primary market and M&A services* arises, which *firm* to appoint to provide those services.

11A.2.6 **G** (1) The *future service restrictions* prohibited by ■ COBS 11A.2.1R relate to services that will be provided in the future.

(2) An example of restrictions that would therefore not be caught are those which relate to the recuperation of fees for work already undertaken by a *firm* in relation to a particular service or transaction when the *client* decides to use another financial institution for the same service or transaction ('tailgunner clauses').

11A.2.7 **G** (1) *Future service restrictions* bind the *client* to use the *firm* (or an *affiliated company*).

(2) Provisions in an agreement that only give a *firm* the right or opportunity to:

- (a) pitch for future business; or
- (b) be considered in good faith alongside other providers for future business; or
- (c) match quotations from other providers, but which do not prevent the *client* from selecting the other providers,

are not *future service restrictions*. In these cases, the *client* is not obliged to use the *firm* (or an *affiliated company*).

Chapter 12

Investment research

12.1 Purpose and application

Purpose

12.1.1

G

The purpose of this chapter is to:

- (1) set out specific requirements relating to the production and dissemination of *investment research* and *non-independent research*; and
- (2) provide *guidance* on matters in the *Market Abuse Regulation* relating to the disclosures to be made in, and about, *investment recommendations*.

Application: Who?

12.1.2

R

This chapter applies to a *firm*.

- (1) [deleted]
- (2) [deleted]

Application: Where?

12.1.3

G

[deleted]



12.2 Investment research and non-independent research

12.2.1 **R** [deleted]

12.2.2 **G** [deleted]

12.2.3 **R** [deleted]

12.2.4 **G** [deleted]

12.2.5 **R** [deleted]

12.2.5A **G** [deleted]

12.2.6 **G** [deleted]

12.2.7 **G** [deleted]

12.2.8 **G** [deleted]

12.2.9 **G** [deleted]

12.2.10 **R** [deleted]

12.2.11 **G** [deleted]

12.2.12 **G** [deleted]

12.2.13 **G** [deleted]

Application		
12.2.14	G	This section applies to a <i>firm</i> that:
		(1) produces, or arranges for the production of, <i>investment research</i> that is intended or likely to be subsequently disseminated to <i>clients</i> of the <i>firm</i> or to the public, under its own responsibility or that of a member of its group; or
		(2) produces or disseminates <i>non-independent research</i> .
12.2.15	R	Where this section applies to a <i>firm</i> in relation to business other than its <i>MiFID business</i> , provisions in this section marked "UK" shall apply as if they were <i>rules</i> , other than those that copy out recitals, which shall apply as if they were <i>guidance</i> .
12.2.16	G	(1) This section applies to both <i>investment research</i> and <i>non-independent research</i> .
		(2) <i>Non-independent research</i> is not presented as objective or independent and is accordingly considered a marketing communication.
		(3) Both <i>investment research</i> and <i>non-independent research</i> are sub-categories of the type of information defined as an <i>investment recommendation</i> in ■ COBS 12.4.
Investment research and non-independent research		
12.2.17	UK	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:
		(a) the research or information is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;
		(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 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	UK	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 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.
		Additionally, firms shall ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral

recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

Conflicts of interest

12.2.19 **UK**

37(1) Investment firms which produce, or arrange for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public, under their own responsibility or that of a member of their group, shall ensure the implementation of all the measures set out in Article 34(3) in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

The obligations in the first subparagraph shall also apply in relation to recommendations referred to in Article 36(2).

Recital 51

The measures and arrangements adopted by an investment firm to manage the conflicts of interests that might arise from the production and dissemination of material that is presented as investment research should be appropriate to protect the objectivity and independence of financial analysts and of the investment research they produce. Those measures and arrangements should ensure that financial analysts enjoy an adequate degree of independence from the interests of persons whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom the investment research is disseminated.

Recital 52

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

Recital 55

The concept of dissemination of investment research to clients or the public should not include dissemination exclusively to persons within the group of the investment firm. Current recommendations should be considered to be those recommendations contained in investment research which have not been withdrawn and which have not lapsed. The substantial alteration of investment research produced by a third party should be governed by the same requirements as the production of research.

12.2.20 **G**

- (1) *Firms which produce, or arrange for the production of, investment research or non-independent research are also reminded of their obligations under **SYSC 10** (Conflicts of interest).*
- (2) **COBS 12.2.19UK** relates to the management of conflicts of interest in relation to *investment research*.
- (3) In relation to *non-independent research*, *firms* may wish to consider whether conflicts arise in relation to:
 - (a) *relevant persons* trading in *financial instruments* that are the subject of *non-independent research* which they know the *firm*

12.2.21 UK

has published or intends to publish before *clients* have had a reasonable opportunity to act on it (other than when the *firm* is acting as *market maker* in good faith and in the ordinary course of market making, or in the execution of an unsolicited *client* order); and

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

Measures and arrangements required for investment research

37(2)Investment firms referred to in the first subparagraph of paragraph 1 shall have in place arrangements designed to ensure that the following conditions are satisfied:

- (a)financial analysts and other relevant persons do not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the investment firm, in financial instruments to which investment research relates, or in any related financial instruments, with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;
- (b)in circumstances not covered by point (a), financial analysts and any other relevant persons involved in the production of investment research do not undertake personal transactions in financial instruments to which the investment research relates, or in any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the firm's legal or compliance function;
- (c)a physical separation exists between the financial analysts involved in the production of investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated or, when considered not appropriate to the size and organisation of the firm as well as the nature, scale and complexity of its business, the establishment and implementation of appropriate alternative information barriers;
- (d)the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research do not accept inducements from those with a material interest in the subject-matter of the investment research;
- (e)the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research do not promise issuers favourable research coverage;
- (f)before the dissemination of investment research issuers, relevant persons other than financial analysts, and any other persons are not permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any purpose other than verifying compliance with the firm's legal obligations, where the draft includes a recommendation or a target price.

For the purposes of this paragraph, 'related financial instrument' shall be any financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument.

Recital 53

Exceptional circumstances in which financial analysts and other persons connected with the investment firm who are involved in the production of investment research may, with prior written approval, undertake personal transactions in instruments to which the research relates should include those circumstances where, for personal reasons relating to financial hardship, the financial analyst or other person is required to liquidate a position.

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.

Recital 56

Financial analysts should not engage in activities other than the preparation of investment research where engaging in such activities are inconsistent with the maintenance of that person's objectivity. These include participating in investment banking activities such as corporate finance business and underwriting, participating in 'pitches' for new business or 'road shows' for new issues of financial instruments; or being otherwise involved in the preparation of issuer marketing.

12.2.21A G

- (1) The phrase "participating in 'pitches' for new business" in Recital 56 to the *MiFID Org Regulation* would generally include a *financial analyst* interacting with an *issuer* to whom the *firm* is proposing to provide underwriting or placing services (including the *issuer's* representatives outside of the *firm* and any *person* who has an ownership interest in the *issuer*), until both:
- the *firm* that employs the *financial analyst* has agreed to carry on regulated activities that amount to underwriting or placing services for the *issuer*; and
 - the extent of the *firm's* obligations to provide underwriting or placing services to the *issuer* as compared to the underwriting or placing services of any other *firm* that is appointed by the *issuer* for the same offering is confirmed in writing between the *firm* and *issuer*.
- (2) (a) It may nevertheless be possible, in limited circumstances, for a *financial analyst's* interactions with any such *person* referred to under paragraph (1) to be entirely separate from the *firm's* 'pitches' such that the risk to their objectivity being impaired would be reasonably low.
- (b) However, the *FCA* considers that would not be the case where the analyst is aware of the 'pitches', or may have reason to believe that the *firm* is conducting the 'pitches'.
- (3) In any case a *firm* should recognise that any situation in which there is a connection between its 'pitches' and a *person* with whom its *financial analyst* interacts can give rise to a conflict of interest (see ■ **SYSC 10** (Conflicts of interest) and the relevant provisions of the *MiFID Org Regulation*).

12.2.22 UK**Exemptions from article 37(1) of the MiFID Org Regulation.....**

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:

- (a)the person that produces the investment research is not a member of the group to which the investment firm belongs;
- (b)the investment firm does not substantially alter the recommendations within the investment research;
- (c)the investment firm does not present the investment research as having been produced by it;
- (d)the investment firm verifies that the producer of the research is subject to requirements equivalent to the requirements under this Regulation in relation to the production of that research, or has established a policy setting such requirements.

12.2.23 G

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

- (1) appropriate for a *firm* to take reasonable steps to ensure that its *investment research* is published or distributed only through its usual *distribution channels*;
- (2) inappropriate for an *employee* (whether or not a *financial analyst*) to communicate the substance of any *investment research*, except as set out in the *firm's conflicts of interest policy*; and
- (3) inappropriate for a *financial analyst* or other *relevant person* to prepare *investment research* which is intended first for internal use for the *firm's own advantage*, and then for later publication to its *clients* (in circumstances in which it might reasonably be expected to have a material influence on its *clients' investment decisions*).

12.2.24 G

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

12.4 Investment recommendations

Application

12.4.1 **R** [deleted]

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

[Note: This section applies to a person that prepares or disseminates investment recommendations.]

12.4.2 **G** [deleted]

12.4.3 **G** [deleted]

Fair presentation and disclosure

12.4.4 **R** [deleted]

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

12.4.5 **R** [deleted]

12.4.6 **R** [deleted]

Additional obligations in relation to fair presentation of recommendations

12.4.7 **R** [deleted]

12.4.8 **G** The disclosures required under article 20(3) of the *Market Abuse Regulation* may, if the person so chooses, be made by graphical means (for example by use of a line graph).

12.4.9 **R** [deleted]

Additional obligations for producers of investment recommendations in relation to disclosure of interests or conflicts of interest		
12.4.10	R	[deleted]
12.4.11	G	A person may choose to disclose significant shareholdings above a lower threshold than is required by article 20(3) of the <i>Market Abuse Regulation</i> .
12.4.12	G	[deleted]
12.4.13	G	In relation to companies limited by shares and incorporated in Great Britain, the most meaningful measure of "total issued share capital" is likely to be the concept of "paid up and issued share capital" under the <u>Companies Act 1985</u> or <u>Companies Act 2006</u> (as applicable).
12.4.14	G	Where article 20(3) of the <i>Market Abuse Regulation</i> requires a disclosure of the proportions of all <i>investment recommendations</i> published that are "buy", "hold", "sell" or equivalent terms, the FCA considers it important for these equivalent terms to be consistent and meaningful to the recipients in terms of the course of actions being recommended, particularly for non-equity material.
12.4.15	R	[deleted]
12.4.16	R	[deleted]
12.4.17	R	[deleted]

Chapter 13

Preparing product information

13.1 The obligation to prepare product information

Non-PRIIP packaged products, cash-deposit ISAs and cash-deposit CTFs

13.1.1

R

A firm must prepare:

- (1) a key features document for each non-PRIIP packaged product, cash-deposit ISA, cash-only lifetime ISA and cash-deposit CTF it produces; and
- (2) a key features illustration for each non-PRIIP packaged product it produces;

in good time before those documents have to be provided.

PRIIPs

13.1.1A

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.
[Note: article 5 of the PRIIPs Regulation]
- (2) Since the PRIIPs Regulation imposes 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 2026. 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 the United Kingdom applies rules on the format and content of the key investor information document which implemented articles 78 to 81 of the UCITS Directive to that fund (see article 32(2) of the PRIIPs Regulation).
(b) The FCA has made rules for authorised fund managers of non-UCITS retail schemes to give them the choice of benefiting from this exemption (see COLL 4.7).

- (c) An *authorised fund manager* of a *non-UCITS retail scheme* offered to *retail clients* in the *United Kingdom* may, until 31 December 2026, draw up either:
- (i) a *key information document* in accordance with the *PRIIPs Regulation*; or
 - (ii) a *NURS-KII document*.

[**Note:** Article 32(1) of the *PRIIPs Regulation* as amended by article 17(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019]

Information on life policies

13.1.2**R**

A *firm* must prepare the *Solvency II Directive* information for each *life policy* it effects:

- (1) in a clear and accurate manner and in writing; and
- (2) in an official language of the *State of the commitment*, or in another language if the *policyholder* so requests and the law of the *State of the commitment* so permits or the *policyholder* is free to choose the law applicable;

in good time before that information has to be provided.

[**Note:** article 185(1) and (6) of the *Solvency II Directive*]

13.1.2A**G**

A *firm* that effects *life policies* which are also *PRIIPs* should consider whether it is also required to draw up a *key information document* in respect of those *life policies* in accordance with the requirements of the *PRIIPs Regulation*.

13.1.3**R**

A *firm* is not required to prepare:

- (1) a *document*, if another *firm* has agreed to prepare it; or
- (2) a *key features document* for:
 - (a) a *unit* in a *regulated collective investment scheme*; or
 - (b) [deleted]
 - (c) [deleted]
 - (d) a *stakeholder pension scheme*, or *personal pension scheme* that is not a *personal pension policy*, if the information appears with due prominence in another *document*; or
 - (e) an interest in an *investment trust savings scheme*; or
- (3) a *key features illustration*:
 - (a) for a *unit* in a *regulated collective investment scheme*; or
 - (b) [deleted]
 - (c) if it includes in a *key features document*:
 - (i) the information from the *key features illustration*; and
 - (ii) the summary key information required by ■ COBS 13.4.1AR; or

13

13.1.4

R

- [deleted]
- (d) [deleted]
- (e) for an interest in an *investment trust savings scheme*.
- (4) [deleted]
- [deleted]

13

13.2 Product information: production standards, form and contents

13.2.1**G**

When a *firm* prepares *documents* or information in accordance with this chapter, the *firm* should consider the *rules* on providing product information (■ COBS 14). Those *rules* require a *firm* to provide the product information in a *durable medium* or via a website that meets the *website conditions* (if the website is not a *durable medium*).

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

13.2.1A**G**

When a *firm* prepares *documents* or information for a *life policy*, *personal pension* or *stakeholder pension* in accordance with this chapter, the *firm* should:

- (1) consider the *rules* on communicating with clients (■ COBS 4). Those *rules* require a *firm* to ensure that a communication is fair, clear and not misleading. In particular, a *firm* should:
 - (a) take into account its target market's understanding of financial services when preparing *documents* and information;
 - (b) present information in a logical order;
 - (c) use clear and descriptive headings, and where appropriate, cross references and sub-headings to aid navigation;
 - (d) where possible, use plain language and avoid the use of jargon, unfamiliar or technical language;
 - (e) if it is necessary to use jargon, unfamiliar or technical language, provide accompanying explanations in plain language;
 - (f) use short sentences;
 - (g) (if the *key features illustration* is separate from the *key features document*) clearly cross-reference between the two and avoid duplication where possible;
 - (h) concentrate on key product information, cross reference to background information, detailed explanations and information about how to apply for the product; and
 - (i) avoid duplication and unnecessary disclaimers;
- (2) taking into account the means of printing or display, consider whether the following can be used to improve the *client's* understanding of the product, in particular:
 - (a) design devices such as side annotations, shading, colour, bulleted lists, tables and graphics; and
 - (b) the type size, line width, line spacing, and use of white space; and

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13.2.2**R**

- (3) ensure that the use of colour in a *document* does not disguise, diminish or obscure important information if that *document* is printed or photocopied in black and white.
- A *key features document* and a *key features illustration* must also:
- (1) (if it is a *key features document*) be produced and presented to at least the same quality and standard as the sales or marketing material used to promote the relevant product;
 - (2) (if it is a *key features document*) display the *firm's* brand at least as prominently as any other;
 - (3) (if it is a *key features document* or a *key features illustration* which does not form an integral part of the *key features document*) include the 'Key facts' logo in a prominent position at the top of the *document*; and
 - (4) (if it is a *key features document* or a *key features illustration* which does not form an integral part of the *key features document*) include the following statement in a prominent position:

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

13.2.3**G**

The *Solvency II Directive information* can be included in one or more of a *key features document*, a *key features illustration*, (where permitted by the *PRIIPs Regulation*) a *key information document* or any other *document*.

13.2.4**R**

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

13.3 Contents of a key features document

General requirements

13.3.1

R

A key features document must:

- (1) include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a *retail client* to be able to make an informed decision about whether to proceed;
- (2) explain:
 - (a) the arrangements for handling complaints about the product;
 - (b) that compensation might be available from the FSCS if the *firm* cannot meet its liabilities in respect of the product (if applicable);
 - (c) that a right to cancel or withdraw exists, or does not exist, and, if it does exist, its duration and the conditions for exercising it, including information about the amount a *client* may have to pay if the right is exercised, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which any notice must be sent;
 - (d) (for a *CTF*) that *stakeholder CTFs*, *cash-deposit CTFs* and *security-based CTFs* are available and which type the *firm* is offering; and
 - (e) (for a *personal pension scheme* that is not an *automatic enrolment scheme*) clearly and prominently, that *stakeholder pension schemes* are generally available and might meet the *client's* needs as well as the scheme on offer; and
- (3) (for a *cash-only lifetime ISA*) include the information set out in
■ COBS 14 Annex 1.

13.3.1A

G

When preparing a key features document for *pension annuity* and *drawdown pension* options *firms* should consider the information requirements for *firms* communicating with *clients* about their pension decumulation product options in ■ COBS 19.4.12R and ■ COBS 19.4.14R.

13.3.2

R

Table

A key features document for a non-PRIIP packaged product must:

- (1) Include the title: 'key features of the [name of product]';

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13.3.3**R**

[deleted]

13.3.4**R**

[deleted]

13.3.5**G**

[deleted]

(2)	describe the product in the order of the following headings, and by giving the following information under those headings:	
Heading	Information to be given	
'Its aims'	A brief description of the product's aims	
'Your commitment' or 'Your investment'	What a <i>retail client</i> is committing to or investing in and any consequences of failing to maintain the commitment or investment	
'Risks'	The material risks associated with the product, including a description of the factors that may have an adverse effect on performance or are material to the decision to invest	
'Questions and Answers'	(in the form of questions and answers) the principle terms of the product, what it will do for a <i>retail client</i> and any other information necessary to enable a <i>retail client</i> to make an informed decision.	

[Note: in respect of 'Risks', article 185(4) of the *Solvency II Directive*]

13.4 Contents of a key features illustration

13.4.1 R A key features illustration;

- (1) must include *appropriate charges information*;
- (2) must include information about any interest that will be paid to *clients* on money held within a *personal pension scheme* bank account; and
- (3) if it is prepared for a *non-PRIIP packaged product* which is not a *financial instrument*:
 - (a) must include a *standardised deterministic projection*;
 - (b) the *projection* and charges information must be consistent with each other so that:
 - (i) the same intermediate growth rate and assumptions about regular contributions are used;
 - (ii) a *projection* in nominal terms is accompanied by an effect of charges table and reduction in yield information in nominal terms; and
 - (iii) a *projection* in real terms is accompanied by an effect of charges table and reduction in yield information in real terms; and
 - (c) it may also include *stochastic projections* if there are reasonable grounds for believing that a *retail client* will be able to understand the *stochastic projection* except that the most prominent *projection* must be a *standardised deterministic projection*.

13.4.1A R

- (1) If ■ COBS 14.2.1R(3B), ■ (3C) or ■ (3D) applies, a *key features illustration* must also include the summary key information in ■ COBS 13.4.7R.
- (2) There is no requirement to provide the summary key information in ■ COBS 13.4.7R if the *retail client* proposes to withdraw their pension scheme funds in full reducing the value of their rights to zero.
- (3) Where (2) applies and a *retail client* subsequently does not withdraw their pension scheme funds in full reducing the value of their rights to zero, the *firm* must provide the *client* with the summary key information in ■ COBS 13.4.7R.

13.4.2

R

Exceptions.....

- When the *rules* in this chapter require a *key features illustration* to be prepared, it must not take the form of a *generic key features illustration*:
- (1) unless there are reasonable grounds for believing that it will be sufficient to enable a *retail client* to make an informed decision about whether to invest; or
 - (2) if it is part of a *direct offer financial promotion* which contains a *personal recommendation*; or
 - (3) if a *personal pension scheme* or a *stakeholder pension scheme* is facilitating the payment of an *adviser charge*; or
 - (4) if a *group personal pension scheme* or a *group stakeholder pension scheme* is facilitating the payment of a *consultancy charge* and the combined effect of the *consultancy charges* facilitated by the product and the product charges is not consistent for all investors in the relevant group or sub-group; or
 - (5) unless it is prepared for groups or sub-groups of employees in a *group personal pension scheme* or a *group stakeholder pension scheme* and it contains:
 - (a) a *generic projection* which is prepared in accordance with ■ COBS 13 Annex 2 paragraph 1.3 and based on a default fund or other commonly selected fund;
 - (b) an effect of charges table calculated in accordance with ■ COBS 13 Annex 4 R paragraph 2 and contains additional rows that show a range of typical periods to retirement age; and
 - (c) reduction in yield information which is calculated in accordance with ■ COBS 13 Annex 4 R paragraph 3.3(2) and combines the product charge and, if applicable, the *consultancy charge*.

13.4.3

G

A *generic key features illustration* is unlikely to be sufficient to enable a *retail client* to make an informed decision about whether to invest if the *premium* or investment returns on the product will be materially affected by the personal characteristics of the investor.

13.4.4

R

There is no requirement under ■ COBS 13.4.1 R to include a *projection* in a *key features illustration*:

- (1) for a single *premium life policy* bought as a pure investment product, a product with benefits that do not depend on future investment returns or any other product if it is reasonable to believe that a *retail client* will not need one to be able to make an informed decision about whether to invest; or
- (2) if the product is a *life policy* that will be held in a *CTF* or sold with *basic advice* (unless the *policy* is a *stakeholder pension scheme*); or
- (3) if a *retail client* proposes to withdraw the funds in full from their *personal pension scheme* *stakeholder pension scheme* or *drawdown pension* reducing the value of their rights to zero.

13.4.4A **R** Where ■ COBS 13.4.4R(3) applies, if a *retail client* subsequently does not withdraw the funds in full from their *personal pension scheme, stakeholder pension scheme or drawdown pension* reducing their rights to zero, the *firm* must provide the *client* with a *standardised deterministic projection*.

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:

- (1) Comply with the requirements in this section unless the *projection* relates to an investment that is a *financial instrument*.
- (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.14UK) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*; or
 - (b) the requirements in ■ COBS 4.6.7R where the *firm* is not carrying on *MiFID, equivalent third country or optional exemption business*.

Summary key information for income withdrawal or lump sum withdrawal

13.4.6 **G** The purpose of the summary key information is to present the main information from the *key features illustration* to assist a *retail client* to understand and engage with their chosen *income withdrawal* or *uncrystallised funds pension lump sum* arrangement.

13.4.7 **R** (1) The summary key information is:

- (a) the value of the crystallised and uncrystallised funds in the *retail client's personal pension scheme*;
- (b) the value of the *pension commencement lump sum*, if applicable;
- (c) the projected value of the *retail client's personal pension scheme* or *stakeholder pension scheme* 5 and 10 years after the date of withdrawal;
- (d) reduction in yield information prepared in real terms in accordance with ■ COBS 13 Annex 3 3R or ■ COBS 13 Annex 4 3R and presented as A% or D% accordingly;
- (e) the *retail client's age* when their funds are projected to reduce to zero (if relevant);
- (f) first year charges expressed in cash terms and determined in accordance with (2);
- (g) if applicable, the following information about the *income withdrawal* or *uncrystallised funds pension lump sum* arrangement offered:
 - (i) an assumed start date;
 - (ii) for one-off payments, the withdrawal figure and date of withdrawal; and
 - (iii) if the *retail client* has chosen to take regular withdrawals or *uncrystallised funds pension lump sum* payments, the value of those withdrawals on an annual basis.

- (2) The first-year *charges* must be determined on the basis of the level of *charges* that the *retail client* would be expected to pay in the first year in accordance with the *firm's* charging structure before any promotional discount or reduction is applied, and:
- where the effect of charges table has been prepared in accordance with ■ COBS 13 Annex 3.2.2R(2), using the amount representing the "effect of deductions to date" for the first year of the projection; or
 - where the effect of charges table has been prepared in accordance with ■ COBS 13 Annex 4.2.2R, using the amount representing the difference between the values of "before charges are taken" and "after all charges are taken from this plan" for the first year of the projection.

13.4.8**G**

Charges information should be presented as prominently as any other information in the summary key information.

Presentation of summary key information

13.4.9**R**

- The summary key information must:
 - be on the front page of the *key features illustration* or *key features document* (where ■ COBS 13.1.3R(3)(c) applies);
 - not exceed a single side of A4-sized paper when printed; and
 - include the 'Key facts' logo in a prominent position at the top of the document.
- The requirement in (1)(b) does not apply if a *retail client* asks for summary key information to be provided in an accessible format and the fulfilment of that request will necessitate the use of more than a single side of A4-sized paper.

13.5 Preparing product information: other projections

Projections for in-force products

13.5.1**R**

A firm that communicates a projection for an in-force packaged product which is not a *financial instrument*:

- (1) must include a *standardised deterministic projection*;
- (2) may also include a *stochastic projection* except that the most prominent projection must be a *standardised deterministic projection*; and

must follow the *projection rules* in ■ COBS 13 Annex 2.

13.5.1A**R**

The requirement in ■ COBS 13.5.1R does not apply where a *retail client* proposes to withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing the value of their rights to zero.

13.5.2**R**

Projections: other situations

- (1) A firm that communicates a projection for a packaged product which falls within (2) must ensure that the projection is either a *standardised deterministic projection* or a *stochastic projection* in accordance with ■ COBS 13 Annex 2.
- (2) This rule applies to a packaged product which is:
 - (a) not a *financial instrument* or an in-force packaged product; and
 - (b) either:
 - (i) a non-PRIIP packaged product for which a *key features illustration* is not required to be provided; or
 - (ii) a PRIIP where the projection is not in the *key information document*.

13.5.2A**R**

The requirement in ■ COBS 13.5.2R does not apply where a *retail client* elects to withdraw the funds in full from their *personal pension scheme* or *stakeholder pension scheme* or *drawdown pension* reducing the value of their rights to zero.

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.14UK) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*; or
- (2) ■ COBS 4.6.7R where the *firm* is not carrying on *MiFID, equivalent third country or optional exemption business*.

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

13.5.3

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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.14UK) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*; or
- (2) ■ COBS 4.6.7R where the *firm* is not carrying on *MiFID, equivalent third country or optional exemption business*.

13.5.4

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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 4.6.7 R, or, if applicable, the requirement in article 44(6) of the *MiFID Org Regulation* (see ■ COBS 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.

13.6 Preparing product information: adviser and consultancy charges

- 13.6.1 **R** A firm that agrees to facilitate the payment of an *adviser charge* or *consultancy charge*, or an increase in such a charge, from a new or in-force *packaged product*, must prepare sufficient information for the *retail client* to be able to understand the likely effect of that facilitation, in good time before it takes effect.
- 13.6.2 **G** Where a firm agrees to facilitate the payment of an *adviser charge* or *consultancy charge* for a new *non-PRIIP packaged product*, it will satisfy the rule in ■ COBS 13.6.1R by including the *appropriate charges information* in the *key features illustration*.

Solvency II Directive Information

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

Information about the firm

- (1) The *firm's name and its legal form*;
- (2) The name of the state in which the head office and, where appropriate, agency or branch concluding the contract is situated;
- (3) The address of the head office and, where appropriate, agency or branch concluding the contract; and
- (3A) A concrete reference to the *firm's SFCR* allowing the *policyholder* easy access to this information.

Information about the commitment

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

[Note: article 185(2) and (3) of the *Solvency II Directive*]

Projections

This annex belongs to ■ COBS 13.4.1 R (Contents of a key features illustration), ■ COBS 13.5.1 R (Projections for in-force products) and ■ COBS 13.5.2 R (Projections: other situations).

R

Projections

1 Calculating standardised deterministic projections

1.1 A *standardised deterministic projection* must:

- (1) include a *projection* of benefits at the lower, intermediate and *higher rates of return*;
- (2) be rounded down; and
- (3) show no more than three significant figures.

R

1.2 Calculating projections: additional requirements for a *personal pension scheme* and *stakeholder pension scheme*

- (1) A *standardised deterministic projection* must be in real terms and be accompanied by information explaining why price inflation has been taken into account and that price inflation reduces the worth of all savings and investments.
- (2) A *standardised deterministic projection* in real terms must be calculated using:
 - (a) the appropriate *lower, intermediate and higher rates of return*;
 - (b) the intermediate rate of price inflation, in accordance with COBS 13 Annex 2 2.5R; and
 - (c) an annuity calculated in accordance with COBS 13 Annex 2 3.1R.

(3) The *standardised deterministic projection* must show only the numeric value of the three real rates of return after the appropriate price inflation assumption has been taken into account, that is, the real rate of projected growth which has been applied to the real value of the contributions.

G

1.2A A *firm* may provide a *retail client* with a *projection* in nominal terms:

- (1) of their fund or *pension commencement lump sum* for planning purposes (for example for a pension mortgage); or
- (2) of a *pension commencement lump sum* or *income withdrawal* or *uncrystallised funds pension lump sum* if the *retail client* requests it,

if the *projection* is prepared in a way which is consistent with the *standardised deterministic projection*.

R

- 1.3 (1) If a *generic projection* is prepared for a *stakeholder pension scheme* or *personal pension scheme* in circumstances where a *generic key features illustration* is permitted under COBS 13.4.2 R, sufficient separate *projections*, covering a range of different contractual periods and contributions, must be included for a *retail client* to be able to make an informed decision about whether to invest.

- (2) A *projection* prepared on that basis may omit projections at the *lower* and *higher rates of return* and only show a range of benefits in real terms at the *intermediate rate of return*.

G

- 1.4 A *firm* will provide sufficient separate *projections* if it prepares a table that shows *projections* in real terms for a variety of periods to maturity and a variety of contribution levels, taking into account the *charges* and other material terms that apply to the *stakeholder pension scheme* or *personal pension scheme*. Such a table could be laid out like a specimen benefits table (see COBS 13 Annex 2 1.8).

R

Providing a stochastic projection

- 1.5 A *stochastic projection* may only be provided if:

- (1) [deleted]
(2) [deleted]
 [deleted]

- (3) [deleted]
(4)

- it is based on a reasonable number of simulations and assumptions which are reasonable and supported by objective data;
(5) it is accompanied by enough information for the *retail client* to be able to understand the difference between the *stochastic projection* and the *standardised deterministic projection* being provided; and
(6) it is presented in real terms where the accompanying *standardised deterministic projection* is required to be in real terms.

- 1.6 [deleted]

R

Exceptions

- 1.7

A *projection* for an in-force product that will mature in six *months* or less may be prepared and presented on any reasonable basis.

- 1.7A If a *projection* is prepared in connection with an offer for or conclusion of a *personal pension scheme*, three different rates of return must be used.

[Note: article 185(5) of the *Solvency II Directive*]

R

- 1.8 In the case of a *stakeholder pension scheme* in circumstances where a *generic key features illustration* is permitted under COBS 13.4.2R, the *specimen benefits table*, contained within the "Stakeholder pension decision tree" factsheet available on <https://www.moneyhelper.org.uk> and headed "Pension Table...How much should I save towards a pension?" which sets out initial monthly pension amounts, may be used instead of a *standardised deterministic projection* but only if it is accompanied by an explanation of the caveats and assumptions behind the table.

R

- 1.9 The *rules* in this Annex do not apply to:

- (1) a *projection* for an in force product which is consistent with the *statutory money purchase illustration requirements*; and
(2) a *safeguarded-flexible benefits risk warning*.

R

- 1.10 A *standardised deterministic projection* for an in force product may omit the *intermediate rate of return* except for *personal pension scheme* and *stakeholder pension scheme* contracts taken out after 5 April 2014.

R

- 2 Assumptions to follow when calculating projections.

Assumptions: projection date

- 2.1 A *standardised deterministic projection* must be calculated to the *projection date* described below:

Product

Projection date

- | | |
|--|--|
| (1) A contract which is a <i>whole life assurance</i> the <i>premiums</i> under which are regular <i>premiums</i> | The anniversary of the commencement date:
(a) which first falls after the seventy-fifth birthday of the life assured; or
(b) (if there is more than one life assured) the anniversary of the commencement date which falls after the seventy fifth birthday of:
(i) (if benefits are payable on the first death) the oldest life assured; or
(ii) (in all other cases) the youngest life assured;
subject to a minimum <i>projection date</i> of ten years. |
| (2) A contract that is not in (1):
(a) where the relevant marketing refers to a surrender value or an option to take benefits before they would otherwise be paid; or
(b) that is open-ended, or linked to one or more lives, which is not a <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> | An appropriate date which highlights the features of the product |
| (3) A contract that is not in (1) or (2) and has a specified maturity date | The maturity date specified in the contract |
| (4) A contract that is not in (1) or (2) or (3) | The tenth anniversary of the commencement date |

R

Assumptions: contributions

- 2.2 A *standardised deterministic projection* must:

- (1) take account of all contributions due during the *projection period*;
- (2) be calculated on the basis that contributions are accumulated, net of *charges*, at the appropriate rate of return compounded on an annual basis;
- (3) (if it includes assumptions about contribution increases in line with an index) be based on an assumption that contribution increases are consistent with any assumptions regarding that index in this annex; and
- (4) deduct from contributions any rider benefits or extra *premium* which may be charged for an increased underwriting risk.

R

Assumptions: rates of return

- 2.3 A *standardised deterministic projection* must be calculated as follows:

(i)	the <i>intermediate rate of return</i> must accurately reflect the investment potential of each of the product's underlying investment options;		
(iii)	the <i>lower and higher rates of return</i> must maintain a differential of 3% relative to the <i>intermediate rate of return</i> ; and		
(iii)	the rates of return for each underlying investment option must not exceed the following maximum rates:		
Nominal rates	Lower rate	Inter-mediate rate	Higher rate
tax-exempt business held in a wrapper or by a <i>friendly society</i>	2%	5%	8%
<i>personal pension schemes, stakeholder pension schemes and investment-linked annuities</i>			
all other products	1½%	4½%	7½%

R

Exceptions

2.4 A *standardised deterministic projection*:

- (1) [deleted]
- (2) may be calculated using a lower rate of return if a *retail client* requests it; and
- (3) where there is a contractual obligation to provide a minimum rate of return that exceeds any one or more of the *lower, intermediate or higher rates of return*, the *standardised deterministic projection* must be calculated by substituting the obligated rate of return for the *lower, intermediate or higher rate of return*, as appropriate.

R

Assumptions: inflation

2.5 If inflation is taken into account, the *standardised deterministic projection* must be calculated using the following rates:

	Lower rate	Inter-mediate rate	Higher rate
Price inflation	0.00%	2.00%	4.00%
Earnings inflation	≥1.5%	≥3.5%	≥5.5%

2.5A R If inflation is taken into account, and the level of future contributions, charges or benefits is linked to *RPI*, the *standardised deterministic projection* must be calculated using the following rates in respect of those future contributions, charges or benefits:

	Lower rate	Inter-mediate rate	Higher rate
RPI price inflation	1.00%	3.00%	5.00%

R

Assumptions: charges

2.6 The *charges* allowed for in a *standardised deterministic projection*:

- (1) must properly reflect:
 - (a) all of the charges, expenses and deductions a *client* will, or may expect to be taken after investment into the product;

- (b) the tax relief available to the *firm* in respect of so much of the *firm's* gross expenses as can properly be attributed to the contract; and
 - (c) the fact that certain *charges* will be fully or partially off-set, but only to the extent that the *firm* can show that the off-set funds will be available when the relevant *charges* arise; and
- (2) must not include the *firm's* dealing costs incurred on the underlying portfolio; and
- (3) must include the retained interest *charges* specified in COBS 13 Annex 3 1.1R(4) or COBS 13 Annex 4 1.1R(4), where relevant.

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- 2.7 (1) Development and capital costs should normally be written off in the year in which they are incurred. However, some costs (for example, exceptional new business expenses) may be amortised and previous years' costs may then be brought into account.
- (2) If it is reasonable to assume that higher expenses will be incurred in the future, appropriate allowances should be made, and any inflation assumptions should be consistent with those prescribed in these rules.
- (3) Expenses should be apportioned appropriately between products so that scales of expenses can be calculated and applied.
- (4) Where appropriate, mortality and morbidity should be allowed for on a best estimate basis. The basis for annuities should allow for future improvements in mortality.
- (5) A projection should not assume that *charges* will fall over time to a rate that is lower than the rate currently being charged on the relevant product (or, if there is no such charge, on a similar product).
- (6) A projection of surrender value, cash-in value or transfer value should take into account any specific current surrender value basis and penalties which may be applied.
- (7) If a *personal pension scheme* is invested in assets that are volatile or difficult to value, the *standardised deterministic projection* should be prepared using the best available reasonable assumptions.
- (8) The methodology for a projection including retained interest *charges* should:
 - (a) take account of any required minimum cash balances;
 - (b) be based on reasonable assumptions such that the overall charges in relation to the product and the investments are unlikely to be understated; and
 - (c) have regard to the overall level of retained interest *charges* across all relevant business.

R

Additional requirements: with-profits policies

- 2.8 (1) A *standardised deterministic projection* for a *with-profits policy* must properly reflect the deductions from asset share which a *firm* expects to make in accordance with its *deductions plan*.
- (2) A *standardised deterministic projection* for a *with-profits policy* where bonus rates apply must assume that the bonus rates supported by the relevant premium and rate of return apply throughout the term of the contract.

R

Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum* payments

- 2.9 (1) A *standardised deterministic projection* for a *drawdown pension* or regular *uncrystallised funds pension lump sum* payments must be based on the requirements contained in (2) to the extent that they impose additional or conflicting requirements to the balance of the *rules* in this section.
- (2) A *standardised deterministic projection* for a *drawdown pension* or regular *uncrystallised funds pension lump sum* payments must include:

- (a) where relevant the maximum initial income specified in the tables published by the Government Actuaries Department for a *drawdown pension*;
 - (b) the assumed level of income;
 - (c) for a *short-term annuity*, where subsequent *short-term annuities* are assumed, a statement reflecting that fact;
 - (d) (under 'What the benefits might be' or similar heading, either:
 - (i) the amount of income and the projected value of the fund at five yearly intervals to age 99 for the *lower, intermediate and higher rate of return* for as long as the fund is projected to exist (at the *higher rate of return*); or
 - (ii) a description of the income and a projection of the age at which the fund will cease to exist for the *lower, intermediate and higher rate of return*; and
 - (e) [deleted]
 - (f) the amount of annuity that could be secured using an immediate annuity rate available in the market.
- (3) A *standardised deterministic projection* for a *drawdown pension* or regular *uncrystallised funds pension lump sum* payments may also include the projected open market values and the amounts of annuity that might be purchased at some point in the future.
- (4) A *standardised deterministic projection* for a *drawdown pension* entered into before 6 April 2015 must, where relevant, be based on an assumption that the current gilt index yield will continue to apply throughout the relevant term.

R

2.10

[deleted]

R

3 How to calculate a projection for a future annuity

3.1 A *projection* for a future annuity must:

- (1) be calculated by rounding all factors to three decimal places before applying them to the relevant retirement fund;
- (2) use a mortality rate based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables PMA16 and PFA16 and including mortality improvements derived from each of the male and female annual mortality projection models, in equal parts;
- (3) [deleted]
- (4) (for an annuity where two lives are concerned):
 - (a) reflect the age difference between the two lives; or
 - (b) be based on the assumption that the male life is three years older than the female (if the genders differ) or the two lives have the same age (if the genders are the same);
- (5) include an expenses allowance of 4%;
- (6) be based on the following rates of return as appropriate:

R

	Lower rate	Intermediate rate	Higher rate
Level or fixed rate	Y+1.5%	Y+3.5%	Y+5.5%

of in-
crease
annuities

RPI or Y-1%
LPI
linked
annuities

Y

Y+1%

R

where:

'Y' is $0.5^* (ILG0 + ILG5) - 0.5$ rounded to the nearest 0.2%, with an exact 0.1% rounded down; and

'ILG0' and 'ILG5' are the real yield on the FTSE Actuaries Government Securities Index-linked Real Yields over 5 years, assuming 0% and 5% inflation respectively, updated every 6 April to use the ILG0 and ILG5 which applied on or, if necessary, the *business day* immediately before, the preceding 15 February; and

- (7) (in the case of a future annuity with less than one year to maturity) be calculated using annuity rates that are no more favourable than the *firm's* relevant current immediate annuity rate or (if there is no such rate) the relevant immediate annuity rate available in the market; and
- (8) be assumed to be payable monthly in advance with a guaranteed period of 5 years, unless it is unreasonable to do so.

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- 3.1A For any year commencing 6 April, the use of the male and female annual CMI Mortality Projections Models in the series CMI(20YY-2)_M_[1.25%] and CMI (20YY-2_F_[1.25%], where YY-2 is the year of the Model used, will tend to show compliance with COBS 13 Annex 2 3.1 R (2).

R

- 3.3 A projection for an annuity with a *guaranteed annuity rate* must:
- (1) show an additional projection of the income that could be provided where that *guaranteed annuity rate* provides higher rates of return than those otherwise shown; and
 - (2) calculate the income that could be provided on the basis of the rates in the *guaranteed annuity rate*, using a projection of the fund calculated using the *intermediate rate of return*.

G

- 3.4 When providing an additional projection for an annuity with a *guaranteed annuity rate*, a *firm* should:
- (1) [deleted]
 - (2) take account of multiple *guaranteed annuity rates* on the fund or non-guaranteed elements of the fund on a proportionate basis; and
 - (3) provide an explanation of the key restrictions which may apply when the *guaranteed annuity rate* is taken up, particularly where these differ from the other projections shown.

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- 3.2 A *projection* for a future annuity:
- (1) must be calculated using lower rates of return , if the rates described in this section overstate the investment potential of the product;
 - (2) may be calculated using a lower rate of return if a *retail client* requests it.

4 [deleted]

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- 5 Projections: accompanying statements and presentation
- 5.1 A *standardised deterministic projection* must be accompanied by:
- (1) appropriate risk warnings, including warnings about volatility and the impact of inflation and that the product may pay back less than paid in (if that could be the case), and the degree to which any figures can be relied upon; and
 - (2) a statement:
 - (a) [deleted]
 - (b) that *charges* may vary;
 - (c) of the contributions that have been assumed;
 - (d) that increases in contributions have been assumed (if that is the case), together with sufficient information for a *retail client* to be able to understand the nature and magnitude of the assumed increases;
 - (e) of the sum of any actual *premiums* charged for any rider benefits or increased underwriting risks (where these have been charged);
 - (f) (for *personal pension schemes* and *stakeholder pension schemes*) of the assumptions used to calculate the regular income and that the *client* may choose when to take this income (if that is the case); and
 - (g) that the projection takes account of the existence of contractual obligations to provide a minimum rate (if that is the case).

[Note: article 185(5) of the *Solvency II Directive*]

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- 5.1A When presenting a *standardised deterministic projection* a *firm* must:
- (1) include a short introductory explanation of what the *projection* seeks to illustrate;
 - (2) use a descriptive heading such as 'What your regular income might be worth in future' or 'What might I get back from my plan?';
 - (3) place the *projection* and the associated explanation adjacent to each other on the same page; and
 - (4) explain that the *client* will be sent annual statements (if that is the case) which will allow them to keep track of their benefits.

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Additional requirements: pension schemes and products linked to other products

- 5.2 A *standardised deterministic projection* for a product where the benefits illustrated depend on a link to a separate product must include an appropriate description of the material factors that might influence the returns available overall and any restrictions assumed in providing an illustration of benefits in relation to that separate product.

[Note: article 185(5) of the *Solvency II Directive*]

Charges information for a non-PRIIP packaged product

(except for a personal pension scheme and a stakeholder pension scheme where adviser charges or consultancy charges are to be facilitated by the product)

This annex belongs to ■ COBS 13.4.1 R (Contents of a key features illustration)

R

Charges

1 Appropriate charges information

1.1 *Appropriate charges information* comprises:

- (1) (a) a description of the nature and amount of the *charges* (including, where applicable, any retained interest *charges* under (4), below) a *client* will or may be expected to bear in relation to the product and, if applicable, any investments within the product; and
 - (b) if applicable, a description of the nature and amount of the *adviser charges* a *retail client* has agreed may be taken, including whether it is taken before or after investment into the product;
 - (2) an 'effect of charges' table;
 - (3) 'reduction in yield' information; and
 - (4) in relation to a *personal pension scheme*, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated) of the *charges*, if any, which a *personal pension scheme operator* or *pension scheme* trustee will receive as retained interest in relation to money held within the *personal pension scheme*.
- 1.2 Where a *firm* does not include a *projection* within its *key features illustration* the charges information can be on a generic basis.
- 1.2A The information described in 1.1(4) must be disclosed alongside information about any other *charges* the *client* will be expected to bear, and information about any interest that will be paid to *clients* on money held within a *personal pension scheme* bank account.

Exceptions

1.3 An effect of charges table and reduction in yield information are not required for:

- (1) a *life policy* without a *surrender value*, but an appropriate warning must be included to make it clear that the *policy* has no cash-in value at any time;
- (2) [deleted];
- (3) [deleted]
- (4) a *stakeholder product* or a product that will be held in a *CTF* where the relevant product and the *CTF* levy their *charges* annually, if the following is included instead:

"There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £250 throughout the year, this means we charge [£250 x y/100] that year. If your fund is valued at £500 throughout the year, this means we charge [£500 x y/100] that year. [After ten years these deductions reduce to [£250 x r/100] and [£500 x r/100] respectively.]"

- (5) where 'y' is the annual charge and 'r' is the reduced annual charge (if any); or a *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* where the *client* elects to withdraw their funds in full, reducing the value of their rights to zero.

1.3A	Where 1.3(5) applies, if a <i>client</i> subsequently does not withdraw the funds in full from their <i>personal pension scheme</i> , <i>stakeholder pension scheme</i> or <i>drawdown pension</i> reducing their rights to zero, the <i>firm</i> must provide the <i>client</i> with an 'effect of charges' table and 'reduction in yield' information.
1.4	Reduction in yield information is not required for a without profits <i>life policy</i> with guaranteed benefits (except on surrender or variation), a <i>life policy</i> with a term not exceeding five years or a <i>life policy</i> that will be held in a <i>CTF</i> .
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2	Effect of charges table
2.1	Each 'effect of charges' table must be accompanied by, or refer to:
(1)	a statement that all relevant guarantees have been taken into account (if there are any);
(2)	[deleted]
(3)	the rate of return (for <i>personal pension schemes</i> and <i>stakeholder pension schemes</i> , this must be net of price inflation, where appropriate) used to calculate the figures in the table; and
(4)	an explanation of the purpose of the table and what the table shows.

2.2 The effect of charges table:

(1) for a *life policy* must be in the following form unless the firm chooses to adopt the form of the effect of charges table in ■ COBS 13 Annex 4:

R	Note 1A	Note 2	Note 3	Note 4	Note 5	Note 6
	At end of year	Total paid in to date	With-drawals	Total actual deductions to date	Effect of deductions to date	What you might get back
		£	£	£	£	£
1						
...						
5						
10						
...						

(2) for any other *non-PRIIP packaged product* must be in the following form:

R	Note 1B	Note 2	Note 3	Note 5	Note 6
	At end of year	Investment to date	Income	Effect of deductions to date	What you might get back
		£	£	£	£
1					
5					
10					
...					

(3) must be completed in accordance with the following notes:

R	Note 1A	(a)	This column must include the first five years, every subsequent fifth year and the final year of the <i>projection period</i> .
		(b)	Figures may be shown for every subsequent tenth year rather than subsequent fifth year where the <i>projection period</i> exceeds 25 years, or for whole of life policies.

	<ul style="list-style-type: none"> (c) For whole of life policies, should the projected fund reach zero before the end of the <i>projection period</i> this must be highlighted. (d) [deleted] (e) If there is discontinuity in the trend of <i>surrender values</i>, the appropriate intervening years must also be included. (f) Figures for a longer term may be shown.
Note 1B	<ul style="list-style-type: none"> (a) This column must include the first year, the fifth year and every subsequent fifth year of the <i>projection period</i>. (b) [deleted] (c) Figures for a longer term may be shown.
Note 2	This column must show the cumulative contributions paid to the end of each relevant year.
Note 3	This column must show the cumulative withdrawals taken or income paid to the end of each relevant year (if any). The column may be omitted if withdrawals or income are not anticipated or allowed.
Note 4	<p>This column is optional. If it is retained, it must show the total actual deductions to the end of each relevant year calculated using the following method:</p> <ul style="list-style-type: none"> (a) apply the <i>intermediate rate of return</i> for the relevant product to the figure in the 'effect of deductions to date' column for the previous year; (b) subtract this figure from the figure in the 'effect of deductions to date' column for the year being shown; and (c) add the resulting figure to the figure in the 'total actual deductions to date' column for the previous year (if any).
Note 5	<p>This column may be deleted if the product is a without profits <i>life policy</i> with benefits that are guaranteed except on surrender or variation, a <i>life policy</i> with a term not exceeding five years, or a <i>life policy</i> that will be held in a CTF.</p> <p>If this column is not deleted, the 'effect of deductions to date' figure must be calculated by taking the accumulated value of the fund without reference to charges and then subtracting from this figure the figure in the 'what you might get back column' for the same year.</p>
Note 6	This column must show the <i>standardised deterministic projection</i> of the surrender value, cash-in value or transfer value, calculated in accordance with the rules in COBS 13 Annex 2 (Projections) at the appropriate <i>intermediate rate of return</i> to the end of each relevant year.

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Exception

2.3 An effect of charges table and its title can be amended to the extent that it is necessary:

- (1) to properly reflect the nature and effect of, for example, the *adviser charges*, *consultancy charges* or the charges inherent in a particular product; or
- (2) to ensure that the column labels and any explanatory text reflect the product and whether inflation has been taken into account; or
- (3) to ensure consistency with the terminology used in relation to a particular product.

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2.4 [deleted]

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3 Reduction in yield

3.1 Reduction in yield ('A') is 'B' less 'C' where:

- (1) 'B' is the *intermediate rate of return* (for *personal pension schemes* and *stakeholder pension schemes*, net of price inflation, where appropriate) for the relevant product; and
- (2) 'C' is determined by:
- (a) carrying out a *standardised deterministic projection* to the *projection date*, using 'B'; and then
 - (b) calculating the annual rate of return ('C') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are left out of account.
- 3.2 A *firm* must present reduction in yield as 'A%', as part of statements which explain that:
- (1) charges have the effect of reducing investment growth (after price inflation for personal pension schemes and stakeholder pension schemes) from 'B%' to 'C%', or in some other appropriate way; and
 - (2) the information about the reduction in investment growth can be used to compare the effect of charges with similar products.
- 3.3 If contributions will be invested in more than one fund in a single designated investment or made by an initial lump sum payment that is followed by regular contributions, the reduction in yield must be:
- (1) calculated separately for each fund or for the single contribution and the regular contributions (as the case may be); and
 - (2) presented:
 - (a) on a fund by fund, or single contribution and regular contribution, basis, together with a statement which explains the nature and effect of a reduction in yield, the reason for the inclusion of more than one reduction in yield figure and the reason for the differences between them; or
 - (b) (if the reduction in yield results are so similar that one figure could reasonably be regarded as representative of the others), as a single figure together with a statement which explains the nature and effect of a reduction in yield, and that the reduction in yield figure given is representative of the reduction in yield figures for each of the funds or for the single and regular contributions (as the case may be); or
 - (c) through a single figure combining the separate figures for each fund or contribution in a proportionate manner, with an appropriate description.
- 3.4 Where a *firm* is calculating reduction in yield information, it must:
- (1) disregard charges related to mortality and morbidity risks; or
 - (2) (where the requirement in (1) produces figures that are misleading) include a statement with the reduction in yield information that it has been calculated taking into account charges related to mortality and morbidity risk.

Charges information for a personal pension scheme and a stakeholder pension scheme

(where adviser charges or consultancy charges are facilitated by the product)

This annex belongs to ■ COBS 13.4.1 R (Contents of a key features illustration)

R

Charges

1 Appropriate charges information

1.1 *Appropriate charges information* comprises:

- (1) (a) a description of the nature and amount of the *charges* (including, where applicable, any retained interest *charges* under (4), below) a *client* will or may be expected to bear in relation to the product and, if applicable, any investments within the product;
- (b) if applicable, a description of the nature and amount of the *adviser charges* and *consultancy charges* a *retail client* or employer has agreed may be taken before investment into the product;
- (c) if applicable, a description of the nature and amount of the *adviser charges* and *consultancy charges* a *retail client* or employer has agreed may be taken after investment into the product;
- (2) an 'effect of charges' table;
- (3) 'reduction in yield' information; and
- (4) in relation to a *personal pension scheme*, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated) of the *charges*, if any, which a *personal pension scheme operator* or *pension scheme trustee* will receive as retained interest in relation to money held within the *personal pension scheme*.

Exceptions

1.2 An effect of charges table and reduction in yield information are not required for a *stakeholder pension scheme*, where *adviser charges* or *consultancy charges* are not being facilitated by the scheme, if the following is included instead:

"There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £500 throughout the year, this means we charge [£500 x y/100] that year. If your fund is valued at £7500 throughout the year, we will charge [£7500 x y/100] that year."

1.3 An effect of charges table and reduction in yield information are not required for a *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* where the *client* elects to withdraw their funds in full, reducing the value of their rights to zero.

1.3A Where 1.3 applies, if a *client* subsequently does not withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing their rights to zero, the *firm* must provide the *client* with an 'effect of charges' table and 'reduction in yield' information.

1.2A The information described in 1.1(4) must be disclosed alongside information about any other *charges* the *client* will be expected to bear, and information about any interest that will be paid to *clients* on money held within a *personal pension scheme* bank account.

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2 Effect of charges table

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- 2.1 Each effect of charges table must be accompanied by:
- (1) an explanation of what the table shows;
 - (2) a statement that all relevant guarantees have been taken into account (if there are any); and
 - (3) [deleted]
 - (4) the rate of return (after price inflation, where appropriate) used to calculate the figures in the table.

- 2.2 An effect of charges table must be in the following form:

Note 1	Note 2	Note 3	Note 4	Note 5	Note 6
At end of year	The payments into your plan	Withdrawals	Before charges are taken	If only plan and investment charges are taken	After all charges are taken from this plan
	£	£	£	£	£
1					
...					
5					
At age [xx]					

- Note 1 This column must include at least the first, third and fifth year and the intended date of retirement.
For a *drawdown pension* or *uncrystallised funds pension lump sum* payments, figures must be included for each of the first ten years, or less if the value of the fund is projected at the *intermediate rate of return* to reach zero before then.
- Note 2 This column must show the cumulative contributions paid to the end of each relevant year.
- Note 3 This column must show the cumulative withdrawals intended to be taken to the end of each relevant year. The column may be omitted if withdrawals are not anticipated or allowed.
- Note 4 This column must show a *standardised deterministic projection* of the benefits, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return*, to the end of each relevant year, but without taking any *charges* into account.
- Note 5 This column must show a *standardised deterministic projection* of the benefits, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return* to the end of each relevant year, but taking into account only the *charges* described in COBS 13 Annex 4 R paragraph 1.1(1)(a).
- Note 6 This column must show a *standardised deterministic projection* of the benefits, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return* to the end of each relevant year taking into account all charges described in COBS 13 Annex 4 R paragraph 1.1(1)(a) and (c).
- Where both *adviser charges* and *consultancy charges* are being facilitated from a product this column should show the combined effect of those charges.
- This column may be omitted if there are no *adviser charges* or *consultancy charges*.

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Exception

- 2.3 An effect of charges table and its title can be amended, to the extent that it is necessary:
- (1) to properly reflect the nature and effect of, for example, the adviser charges, consultancy charges or the charges inherent in a particular product; or

- (2) to ensure that the column labels and any explanatory text reflect the nature of the product and to make it clear whether price inflation has been taken into account; or
- (3) to ensure consistency with the terminology used in relation to a particular product.

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- 2.4 [deleted]
- 2.5 An effect of charges table must be appropriately titled, for example, 'How the charges reduce the value of your pension fund'.

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- 3 Reduction in yield
- 3.1 Product reduction in yield ('A') is 'B' less 'C' where:
 - (1) 'B' is the *intermediate rate of return* (net of price inflation, where appropriate) for the relevant product; and
 - (2) 'C' is determined by:
 - (a) carrying out a *standardised deterministic projection* to the *projection date*, but without taking any *adviser charges* or *consultancy charges* into account, using 'B'; and then
 - (b) calculating the annual rate of return ('C') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are excluded.
- 3.2 Total reduction in yield ('D') is 'B' less 'E' where:
 - (1) 'B' is the *intermediate rate of return* (net of price inflation, where appropriate) for the relevant product; and
 - (2) 'E' is determined by:
 - (a) carrying out a *standardised deterministic projection* to the *projection date* taking all *charges* into account, using 'B'; and then
 - (b) calculating the annual rate of return ('E') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are excluded.
- 3.3
 - (1) A *firm* must present the product reduction in yield as 'A%', as part of statements which explain that:
 - (a) 'product charges reduce investment growth after price inflation from 'B%' to 'C%'', or in some other appropriate way; and
 - (b) the information about the reduction in investment growth can be used to compare the effect of charges with similar products.
 - (2) If *adviser charges* or *consultancy charges*, or both *adviser charges* and *consultancy charges* are to be facilitated by the product, a *firm* must also present the reduction in yield as 'D%', as part of a statement which explains that 'all charges reduce the investment growth (after price inflation, where appropriate) from 'B%' to 'E%'', or in some other appropriate way and explain the difference between the two reduction in yield figures.
- 3.4 If contributions will be invested in more than one fund in a single designated investment or made by an initial lump sum payment that is followed by regular contributions, the reduction in yield must be:
 - (1) calculated separately for each fund or for the single contribution and the regular contributions, as applicable; and
 - (2) presented:
 - (a) on a fund-by-fund, or single contribution and regular contribution, basis, together with a statement which explains the nature and effect of a reduction in yield, the reason for the inclusion of more than one reduction in yield figure and the reason for the differences between them; or

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- (b) (if the reduction in yield results are so similar that one figure could reasonably be regarded as representative of the others) as a single figure together with a statement which explains the nature and effect of a reduction in yield, and that the reduction in yield figure given is representative of the reduction in yield figures for each of the funds or for the single and regular contributions, as applicable; or
 - (c) through a single figure combining the separate figures for each fund or contribution in a proportionate manner, with an appropriate description.

Chapter 14

Providing product information to clients

14.1 Interpretation

14.1.1

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In this chapter:

- (1) '*retail client*' includes the trustee or *operator* of a *stakeholder pension scheme* or *personal pension scheme* and the trustee of a *money-purchase occupational pension scheme*; and
- (2) (except in relation to the requirements under the *PRIIPs Regulation*) '*sell*' includes '*sell, personally recommend or arrange the sale of*' in relation to a *designated investment* and equivalent activities in relation to a *cash-deposit ISA*, *cash-only lifetime ISA* and *cash-deposit CTF*.

14.2 Providing product information to clients

Providing information about PRIIPs

14.2.-1

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- (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 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*).
- (3) A *firm* that sells a *life policy* that is also a *PRIIP* must provide the information required by ■ COBS 14.2.1R(2). Some or all of this information may be included in a *key information document* if this is required to be provided by, and such inclusion is permitted under, the *PRIIPs Regulation*.

The provision rules for products other than PRIIPs

14.2.1

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A *firm* that sells, or (where relevant) gives effect to:

- (1) a *non-PRIIP packaged product* to a *retail client*, must provide a *key features document* and a *key features illustration* to that *client* (unless the *packaged product* is a *unit* in a *regulated collective investment scheme*);
- (2) a *life policy* to a *client*, must provide:
 - (a) the *Solvency II Directive information* to that *client*;
 - (b) a *client* with objective and relevant information about the *policy*:
in a comprehensible form to allow the *client* to make an informed decision;
modulated in a way that takes into account the complexity of the *policy* and the type of *client*;
whether or not the *firm* makes a *personal recommendation*;
and
irrespective of whether the *policy* is offered as part of a package pursuant to ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16ER;
- (c) the information in (b) must be provided prior to the conclusion of the *life policy* and in accordance with ■ COBS 7.4, rather than in accordance with the other *rules* in this section;

- (3) the variation of a *life policy or personal pension scheme* to a *retail client*, must provide that *client* with sufficient information about the variation for the *client* to be able to understand the consequences of the variation;
- (3A) [deleted]
- (3B) a *retail client's request* to make *income withdrawals* from their *personal pension scheme* or *stakeholder pension scheme* for the first time must provide that *retail client* with:
- (a) a *key features illustration*; and
 - (b) such other information as is necessary for the *client* to understand the consequences of the request;
- (3C) a *retail client's request* to make one-off or regular *uncrystallised funds pension lump sum payments* from their *personal pension scheme* or *stakeholder pension scheme* for the first time must provide that *client* with:
- (a) a *key features illustration*; and
 - (b) such other information as is necessary for the *client* to understand the consequences of the request;
- a *retail client's request* to designate *personal pension scheme* or *stakeholder pension scheme* funds to enable the *retail client* to make *income withdrawals* must provide that *client* with:
- (a) a *key features illustration*; and
 - (b) such other information as is necessary for the *retail client* to understand the consequences of the request;
- (3E) a *retail client's request* to make an *income withdrawal* subsequent to (3B) or *uncrystallised funds pension lump sum payment* subsequent to (3C) must provide:
- (a) such information as is necessary for the *client* to understand the consequences of the request; and
 - (b) where relevant, the information required by ■ COBS 13 Annex 2.2.9R (Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum payments*);
- (3E) a *retail client's request* for a *short-term annuity* must provide:
- (a) a *key features illustration*; and
 - (b) such other information as is necessary for the *client* to understand the consequences of the request;
- (4) a *cash-deposit ISA, cash-only lifetime ISA or cash-deposit CTF* to a *retail client*, must provide a *key features document* to that *client*;
- (4A) a *lifetime ISA*, which is not a *cash-only lifetime ISA*, to a *retail client* must provide to that *client* the information in ■ COBS 14 Annex 1;
- (5) [deleted]
- (5A) a *unit in a KII-compliant NURS* must provide the following to a *retail client*:

- (a) a copy of the *scheme's NURS-KII document* and (unless already provided) the information required by ■ COBS 13.3.1R(2) (General requirements); and
- (b) if that *client* is present in the *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);
- (6) [deleted]
- (7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which is a *recognised scheme* (other than a *scheme* in (7A)), to a *client*, must:
- (a) provide a copy of the *scheme's key investor information document* or, as the case may be, *EEA key investor information document* to that *client*; and
- (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 *United Kingdom*, the information required by (5A)(b); and
- (7A) a *unit* in an *OFR recognised scheme* to a *client*, must provide the *documents* and information specified in ■ COBS 14.2.1-BR.
- (8) [deleted]

[**Note:** in respect of (2) article 185(1) of the *Solvency II Directive* and in respect of (2)(b) articles 20(1) first paragraph, 20(2), 20(4) and 23 of the *IDD*]

[**Note:** in respect of (7), articles 1 and 80 of the *UCITS Directive*]

14.2.1-A G

If a *retail client* is invested in a *pathway investment* and makes a request falling within ■ COBS 14.2.1R(3B) or ■ (3E), but which is clearly incompatible with the *investment pathway* option selected by the client under ■ COBS 19.10.17R(1), this should be brought to the client's attention.

14.2.1-B R

For the purpose of ■ COBS 14.2.1R(7A), in relation to a *unit* in a *scheme* which is an *OFR recognised scheme*, the specified *documents* and information are as follows:

- (1) Where the *scheme* is an *EEA UCITS scheme*, the *firm* must provide a copy of the *scheme's EEA key investor information document* to that *client*.
- (2) Where the *client* is a *retail client*, the *firm* must provide separately (unless already provided):
- (a) the information required by ■ COBS 13.3.1R(2)(a) and ■ (b) (General requirements);
- (b) if the *client* is present in the *United Kingdom*, the information required by ■ COBS 14.2.1R(5A)(b); and
- (c) information that clearly explains:
- (i) whether the *Financial Ombudsman Service* is likely to be able to consider *complaints* against the *scheme*, its *operator* or its *depositary*; and
- (ii) what arrangements, if any, exist that would enable investors in the *United Kingdom* to have a complaint against the

14.2.1-C**G**

- scheme, its operator or its depositary considered by an alternative dispute resolution mechanism in the relevant Home State;*
- (iii) *that the activities of the scheme's operator and its depositary are unlikely to be covered by the compensation scheme and investors might not be protected under the regulatory system if either person should become unable to meet its liabilities to them; and*
 - (iv) *what arrangements, if any, exist in the Home State(s) of the scheme's operator or its depositary for the payment of compensation to investors in the United Kingdom if either person should become unable to meet its liabilities to them.*

14.2.1A**R**

Provision of key investor information document or NURS-KII document

- (1) *This rule applies to:*

- (a) *an authorised fund manager of a UCITS scheme or a KII-compliant NURS that is either an authorised unit trust, authorised contractual scheme or an ICVC; and*
- (b) *an ICVC that is a UCITS scheme or KII-compliant NURS.*

- (2) *An authorised fund manager and an ICVC in (1) that sells units in a UCITS scheme or a KII-compliant NURS directly, or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, must ensure that investors are provided with the key investor information document for the UCITS scheme or the NURS-KII document for the KII-compliant NURS.*

- (3) *An authorised fund manager and an ICVC in (1) that does not sell units in a UCITS scheme or a KII-compliant NURS directly, or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, must ensure that the key investor information document for the UCITS scheme or the NURS-KII document for the KII-compliant NURS is provided on request to product manufacturers and intermediaries selling, or advising investors on, potential investments in those UCITS schemes or KII-compliant NURS or in products offering exposure to them.*

- (4) *The key investor information document or the NURS-KII document must be provided to investors free of charge.*

- (5) *An authorised fund manager and an ICVC in (1) may, instead of providing the key investor information document or NURS-KII document to investors in paper copy in accordance with (2), provide it in a durable medium other than paper or by means of a website that meets the website conditions, in which case the authorised fund manager and ICVC must:*

- (a) *deliver a paper copy of the key investor information document or NURS-KII document to the investor on request and free of charge; and*

		(b) make available an up-to-date version of the <i>key investor information document</i> or <i>NURS-KII document</i> to investors on the website of the <i>ICVC</i> or <i>authorised fund manager</i> .
		[Note: articles 80 and 81 of the <i>UCITS Directive</i>]
14.2.1B	R	Provision of a generic key features illustration When the <i>rules</i> in this chapter require the offer or provision of a <i>key features illustration</i> , a <i>firm</i> may provide a <i>generic key features illustration</i> if that <i>generic key features illustration</i> has been prepared in accordance with ■ COBS 13.4.2 R .
14.2.1C	R	Provision of information: other requirements A <i>firm</i> that arranges to facilitate the payment of an <i>adviser charge</i> or <i>consultancy charge</i> , or an increase in such a charge from an <i>in-force packaged product</i> , must provide to the <i>retail client</i> sufficient information for the <i>retail client</i> to be able to understand the likely effect of that facilitation.
14.2.1D	G	Where a <i>firm</i> arranges to facilitate the payment of an <i>adviser charge</i> or <i>consultancy charge</i> for a new <i>non-PRIIP packaged product</i> , the information required by ■ COBS 14.2.1CR should be included in the <i>key features illustration</i> .
14.2.2	R	The <i>documents</i> or information required to be provided or offered by ■ COBS 14.2.1 R and ■ COBS 14.2.1CR must be in a <i>durable medium</i> or made available on a website (where that does not constitute a <i>durable medium</i>) that meets the <i>website conditions</i> .
14.2.3	R	(1) A <i>firm</i> that <i>personally recommends</i> that a <i>retail client</i> holds a particular asset in a <i>SIPP</i> must provide that <i>client</i> with sufficient information for the <i>client</i> to be able to make an informed decision about whether to buy or invest. (2) This <i>rule</i> does not apply if the asset is described in ■ COBS 14.2.1 R .
14.2.4	R	Firm not to cause confusion about the identity of the producer of a product When a <i>firm</i> provides a <i>document</i> or information in accordance with the <i>rules</i> in this section, it must not do anything that might reasonably cause a <i>retail client</i> to be mistaken about the identity of the <i>firm</i> that has produced, or will produce, the product.
14.2.5	R	Exception to the provision rules: key features documents and key investor information documents A <i>firm</i> is not required to provide: <ol style="list-style-type: none">(1) a <i>document</i>, if the <i>firm</i> produces the product and the <i>rules</i> in this section require another <i>firm</i> to provide the document;(2) [deleted]

		(3) [deleted] (4) [deleted]
<p>[Note: in respect of (3), article 185(8) of the <i>Solvency II Directive</i>]</p>		
14.2.6	R	<p>Exception: key features illustrations</p> <p>A firm is not required to provide a <i>key features illustration</i> for a product if the information that would have been included in that illustration is included in the <i>key features document</i> provided to the client.</p>
<p>14.2.6A</p>		
	R	<p>A firm is not required to provide a <i>key features illustration</i> in relation to a <i>pension annuity</i> if the firm provides the information required by ■ COBS 19.9 (Pension annuity comparison information).</p>
<p>14.2.7</p>		
	R	<p>Exception to the provision rules: key features documents and key features illustrations</p> <p>A firm is not required to provide a <i>key features document</i> or a <i>key features illustration</i> for:</p> <ul style="list-style-type: none">(1) [deleted](2) a <i>life policy</i> if:<ul style="list-style-type: none">(a) [deleted](b) the client is habitually resident outside the United Kingdom and the sale is not by <i>distance contract</i>.(3) a <i>traded life policy</i>; or(4) an interest in an <i>investment trust savings scheme</i>.
<p>[Note: in respect of (2), articles 4(1) and 16 of the <i>Distance Marketing Directive</i> and article 185 of the <i>Solvency II Directive</i>]</p>		
14	14.2.8	<p>Exception to the provision rules: key features documents and key features illustrations</p> <p>A firm is not required to provide a <i>key features document</i> or a <i>key features illustration</i>, if:</p> <ul style="list-style-type: none">(1) the client is buying or investing in response to a <i>direct offer financial promotion</i> without receiving a <i>personal recommendation</i> to buy or invest; and(2) the firm provides materially the same information in some other way.
<p>14.2.9</p>		
	R	<p>Exception to the provision rules: key features documents, key features illustrations, key investor information documents and NURS-KII documents</p> <p>A firm is not required to provide a <i>key features document</i> or a <i>key features illustration</i> if:</p> <ul style="list-style-type: none">(1) the client is habitually resident outside the United Kingdom and not present in the United Kingdom when the relevant application is signed; or

- (2) the purchase is by a *discretionary investment manager* on behalf of a *retail client*; or
- (3) the sale is *arranged or personally recommended* by an *investment manager* and the *client* has agreed that a *key features document* is not required.
- (4) [deleted]
- 14.2.9A R** For the purposes of the provision rules in relation to a *key investor information document* or a *NURS-KII document*, a *firm*:
- (1) may satisfy the requirement to provide the document to the investor by providing it to a *person* who has written authority to make investment decisions on that investor's behalf; and
- (2) is not required to consider as a new transaction:
- (a) a subscription to *units* in a *UCITS scheme*, an *EEA UCITS scheme* or a *KII-compliant NURS* in which the *client* already holds *units*; or
- (b) a series of connected transactions undertaken as the consequence of a single investment decision; or
- (c) a decision by the *client* to switch from one class of *units* to another in the same *scheme*;
- if an up-to-date version of the *key investor information document* or *NURS-KII document* for the *scheme* or the relevant class of *units* has already been provided to that *client*.
- [Note: article 80 of the *UCITS Directive*]
- 14.2.10 G**
- (1) [deleted]
- (2) The FCA would regard a decision to subscribe to a regular monthly savings plan as a single investment decision for the purpose of **COBS 14.2.9AR (2)(a)**. However, a subsequent decision by the *client* to increase the amount of the regular contributions to be invested in *units* of a particular *scheme* or to direct the contributions to a different *scheme*, would in each case constitute a new transaction.
- 14.2.11 R** [deleted]
- Exception: successive operations**
- 14.2.12 R** In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.
- 14.2.13 R** If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the *rules* in this section only apply:
- (1) when the first operation is performed; and

- (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).
- The timing rules**
- 14.2.14 R** When the *rules* in this section require a *firm* to:
- (1) [deleted]
 - (2) provide a *key features document* or any other *document* or information to a *client*, the *document* or information must be provided free of charge and in good time before the *firm* carries on the relevant business; or
 - (3) provide a *key investor information document*, *EEA key investor information document* or *NURS-KII document* to a *client*, it must be provided in good time before the *client's* proposed subscription for *units* in the *scheme*.
- [Note: article 80 of the *UCITS Directive*]
- Exception to the timing rules: child trust funds**
- 14.2.15 R** A *key features document* for an *HMRC allocated CTF* must be provided as soon as reasonably possible after the *CTF* has been opened.
- Exception to the timing rules: distance contracts and voice telephony communications**
- 14.2.16 R**
- (1) A *firm* may provide a *document*, or the information required to be provided by the *rules* in this section, in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *client's* request using a means of distance communication that does not enable the *document* or information to be provided in that form in good time before the *client* is bound by the contract.
 - (2) The exception in (1) does not apply in relation to the provision of an *EEA key investor information document*, a *key investor information document* or a *NURS-KII document* required to be provided under **■ COBS 14.2.1 R** and **■ COBS 14.2.1A R**.
- 14.2.17 R**
- (1) Where the *rules* in this section require a *document* or information to be provided, in the case of a voice telephony communication, a *firm* must:
 - (a) if the *client* gives explicit consent to receiving only limited information, provide the abbreviated distance marketing disclosure information () orally to the *client*;
 - (b) if the *client* does not give explicit consent to only receiving limited information, and the parties wish to proceed by voice telephony communication, provide the distance marketing information () orally to the *client*;
 - (c) in the case of (a) or (b), send the *documents* or information to the *client* in a *durable medium* immediately after the contract is concluded.

- (2) The exception in (1) does not apply in relation to the provision of an *EEA key investor information document*, a *key investor information document* or a *NURS-KII document* required to be provided under ■ COBS 14.2.1 R and ■ COBS 14.2.1A R.

Providing additional information to the client

14.2.18

G

- (1) A *firm* that provides the product information required by this section is not precluded from providing additional information to the *client* (for example, in order to assist the *client's* understanding of the proposed transaction).
- (2) When a *firm* provides additional information it should:
- ensure that the additional information does not disguise, diminish or obscure important information contained in the product information required by this section;
 - consider whether any other *rules* or requirements in any *EU-derived regulations* apply to the communication of that additional information. For example, for marketing communications relating to a *UCITS scheme* see ■ COBS 4.13.2 R; and
 - have regard to the *fair, clear and not misleading rule*, the *client's best interests rule* and *Principles 6 and 7*.

14.3 Information about designated investments (non-MiFID provisions)

Application

14.3.1

R

This section applies to a *firm* in relation to:

- (1) [deleted]
- (2) any of the following *regulated activities* when carried on for a *retail client*:
 - (a) making a *personal recommendation* about a *designated investment*; or
 - (b) *managing investments* that are *designated investments* (other than a *P2P agreement*); or
 - (c) *arranging* (bringing about) or *executing a deal* in a *warrant*, *non-readily realisable security*, *speculative illiquid security*, or *derivative*; or
 - (d) engaging in *stock lending activity*; or
 - (e) *operating an electronic system in relation to lending*, but only in relation to facilitating a person becoming a lender under a *P2P agreement*.

except to the extent that the carrying on of such a *regulated activity* constitutes *MiFID*, *equivalent third country* or *optional exemption business*.

- (3) Where a *rule* in this chapter applies to a *firm* which is *arranging* (bringing about) or *executing a deal* in a *speculative illiquid security*, the *rule* also applies to:
 - (a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of ■ **GEN 2.2.26R**); and
 - (b) a Gibraltar-based firm (having the same meaning as in the *Gibraltar Order*) to the extent that the *rule* does not already apply to such a Gibraltar-based firm as a result of ■ **GEN 2.3.1R**).

14.3.1A

G

A *firm* carrying on *MiFID*, *equivalent third country* or *optional exemption business* should consider whether the requirements in articles 46 and 48 of the *MiFID Org Regulation* apply; see ■ **COBS 14.3A** (Information about financial instruments (MiFID provisions)).

14.3.2**Providing a description of the nature and risks of designated investments****R**

A firm must provide a client with a general description of the nature and risks of *designated investments*, taking into account, in particular, the client's categorisation as a *retail client* or a *professional client*. That description must:

- (1) explain the nature of the specific type of *designated investment* concerned, as well as the risks particular to that specific type of *designated investment*, in sufficient detail to enable the client to take investment decisions on an informed basis; and
- (2) include, where relevant to the specific type of *designated investment* concerned and the status and level of knowledge of the client, the following elements:
 - (a) the risks associated with that type of *designated investment* including an explanation of leverage and its effects and the risk of losing the entire investment;
 - (b) the volatility of the price of *designated investments* and any limitations on the available market for such investments;
 - (c) the fact that an investor might assume, as a result of transactions in such *designated investments*, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the *designated investments*; and
 - (d) any margin requirements or similar obligations, applicable to *designated investments* of that type.

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 Regulation*, that firm must inform the *retail client* where that prospectus is made available to the public.

14.3.4**R**

Where the risks associated with a *designated investment* composed of two or more different *designated investments* or services are likely to be greater than the risks associated with any of the components, a firm must provide an adequate description of the components of that *designated investment* and the way in which its interaction increases the risks.

14.3.5**R**

In the case of a *designated investment* that incorporates a guarantee by a third party, the information about the guarantee must include sufficient detail about the guarantor and the guarantee to enable the *retail client* to make a fair assessment of the guarantee.

14**Satisfying the provision rules****14.3.6****G**

[deleted]

14.3.7**G**

Providing a *key features document*, *key investor information document*, *EEA key investor information document* or *NURS-KII document* may satisfy the requirements of the rules in this section.

14.3.7A**G****Firms advising on P2P agreements**

- Examples of information a *firm advising on P2P agreements or P2P portfolios* should provide to explain the specific nature and risks of a *P2P agreement* or a *P2P portfolio* include:
- (1) expected and actual default rates in line with the requirements in ■ COBS 4.6 on past and future performance;
 - (2) a summary of the assumptions used in determining expected future default rates;
 - (3) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the *operator of the electronic system in relation to lending* considers the borrower eligible for a *P2P agreement*;
 - (4) where lenders have the choice to invest in specific *P2P agreements*, details of the creditworthiness assessment of the borrower carried out;
 - (5) whether the *P2P agreement* benefits from any security and if so, what;
 - (6) a fair description of the likely actual return, taking into account fees, default rates and taxation;
 - (7) an explanation of how any tax liability for lenders arising from investment in *P2P agreements* would be calculated;
 - (8) an explanation of the *operator of the electronic system in relation to lending*'s procedure for dealing with a loan in late payment or default;
 - (9) the procedure for a lender to access their money before the term of the *P2P agreement* has expired; and
 - (10) an explanation of what would happen if the *operator of the electronic system in relation to lending* fails, including confirmation that there is no recourse to the Financial Services Compensation Scheme.

14.3.7B**G**

- When complying with the information requirements set out in this chapter and other parts of the *FCA Handbook*, *firms advising on a P2P agreement or a P2P portfolio* may also wish to consider providing to *retail clients* any other information that an *operator of an electronic system in relation to lending* must disclose in accordance with ■ COBS 18.12.

14.3.7C**G**

- Firms* providing information to *clients*, and communicating information, about an *innovative finance ISA* should also have regard to the *guidance* in ■ COBS 4.5.9G.

Product information: form**14.3.8****R**

- The *documents* and information provided in accordance with the *rules* in this section must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

14.3.9

The timing rules**R**

- (1) The information to be provided in accordance with the *rules* in this section must be provided in good time before a *firm* carries on *designated investment business* with or for a *retail client*.
- (2) A *firm* may provide that information immediately after it begins to carry on that business if:
 - (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from complying with that *rule*; and
 - (b) in any case where the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* as if the *client* was a *consumer*.

14.3.10

Keeping the client up-to-date**R**

A *firm* must notify a *client* in good time about any material change to the information provided under the *rules* in this section which is relevant to a service that the *firm* is providing to that *client*. That notification must be given in a *durable medium* if the information to which it relates is given in a *durable medium*.

14.3.11

Information about UCITS schemes**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 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 6.1.9 R;

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

14

14.3.11A

Information about KII-compliant NURS**R**

If a *firm* provides a *client* with a *NURS-KII document* it will have provided appropriate information for 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 for the *KII-compliant NURS* itself, including the exit and entry commissions.

14.3.12**G****Distributor disclosure requirements for UCITS or KII-compliant NURS**

A key investor information document and EEA key investor information document or a NURS-KII document provide sufficient information in relation to the costs and associated charges in respect of the UCITS or KII-compliant NURS itself. However, a firm distributing units in a UCITS or KII-compliant NURS should also inform a client about all of the other costs and associated charges related to the provision of its services in relation to units in the UCITS or KII-compliant NURS.

14.3A Information about financial instruments (MiFID provisions)

Application

14.3A.1 **R** This section applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

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

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

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

Providing a description of the nature and risks of financial instruments

14.3A.3 **R** A *firm* must provide a *client* with:

- (1) appropriate guidance on, and warnings of, the risks associated with investments in *financial instruments* or in respect of particular investment strategies;
- (2) information on whether a particular *financial instrument* is intended for *retail* or *professional clients*, taking account of the identified target market in accordance with the *rules* in ■ PROD 3; and
- (3) the information required by this section in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* that is being offered and, consequently, to take investment decisions on an informed basis. That information may be provided in a standardised format.

[Note: article 24(4)(b) and article 24(5) of *MiFID*]

14.3A.4 **G** ■ COBS 14.3A.3R supplements ■ COBS 2.2A.2R (Information disclosure before providing services (MiFID provisions)).

14.3A.5 **UK**

48(1) Investment firms shall provide clients or potential clients in good time before the provision of investment services or ancillary services to clients or potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation as either a retail client, professional client or eligible counterparty. That description shall explain the nature of the specific type of instrument concerned, the functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.

48(2) The description of risks referred to in paragraph 1 shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements:

- (a) the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment including the risks associated with insolvency of the issuer or related events, such as bail in;
- (b) the volatility of the price of such instruments and any limitations on the available market for such instruments;
- (c) information on impediments or restrictions for disinvestment, for example as may be the case for illiquid financial instruments or financial instruments with a fixed investment term, including an illustration of the possible exit methods and consequences of any exit, possible constraints and the estimated time frame for the sale of the financial instrument before recovering the initial costs of the transaction in that type of financial instruments;
- (d) the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments;
- (e) any margin requirements or similar obligations, applicable to instruments of that type.

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 IP completion 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.

48(4) Where a financial instrument is composed of two or more different financial instruments or services, the investment firm shall provide an adequate description of the legal nature of the financial instrument, the components of that instrument and the way in which the interaction between the components affects the risks of the investment.

48(5) In the case of financial instruments that incorporate a guarantee or capital protection, the investment firm shall provide a client or a potential client with information about the scope and nature of such guarantee or capital protection. When the guarantee is provided by a third party, information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the client or potential client to make a fair assessment of the guarantee.

[**Note:** article 48 of the *MiFID Org Regulation*]

14.3A.6**Satisfying the provision rules****G**

- (1) Where a *firm* is required to provide information to a *client* before the provision of a service, each transaction in respect of the same type of *financial instrument* should not be considered as the provision of a new or different service.

[Note: recital 69 to the MiFID Org Regulation]

- (2) But a *firm* should ensure that the *client* has received all relevant information in relation to a transaction which subsequently takes place, such as details of product charges that differ from those disclosed in respect of the prior transaction or transactions.

Timing of disclosure**14.3A.7****UK**

46(2) 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*]

14.3A.8**G**

The provisions in COBS that reproduce the information requirements contained in articles 47 to 50 of the *MiFID Org Regulation* are:

- COBS 6.1ZA.5UK, ■ COBS 6.1ZA.8UK, ■ COBS 6.1ZA.9UK, ■ COBS 6.1ZA.14UK and ■ COBS 14.3A.5UK.

14**Medium of disclosure****14.3A.9****UK**

46(3) The information referred to in paragraphs 1 to 2B shall be provided in a durable medium or by means of a website (where it does not constitute a

14.3A.10 UK

durable medium) provided that the conditions specified in Article 3(2) are satisfied.

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

Keeping the client up-to-date**14.3A.11 UK**

46(4) Investment firms shall notify a client in good time about any material change to the information provided under Articles 47 to 50 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

[**Note:** article 46(4) of the *MiFID Org Regulation*]

Information provided in relation to units in collective investment undertakings or PRIIPs

51 Investment firms distributing units in collective investment undertakings or PRIIPs shall additionally inform their clients about any other costs and associated charges related to the product which may have not been included in the UCITS KID or PRIIPs KID and about the costs and charges relating to their provision of investment services in relation to that financial instrument.

[**Note:** article 51 of the *MiFID Org Regulation*]

14.4 Provision of information by an intermediate Unitholder

14.4.1 **R** [not used]

14.4.2 **R** [not used]

14.4.3 **R** [not used]

14.4.4 **R** [not used]

14.4.5 **R** [not used]

14.4.6 **R** [not used]

14.4.7 **R** [not used]

14.4.8 **R** [not used]

14.4.9 **R** [not used]

Information requests by authorised fund managers for liquidity management purposes

14.4.10 **R** If an *intermediate Unitholder* receives a reasonable request from an *authorised fund manager* for information relating to the beneficial owners of the *units* of a *scheme* that it operates which the *authorised fund manager* reasonably needs for the purposes of liquidity management, the *intermediate Unitholder* must provide that information to the *authorised fund manager* as soon as is reasonably practicable.

14.4.11 **G** Examples of information which may be reasonably requested by an *authorised fund manager* include:

- (1) a breakdown of the total number of *units* held by the *intermediate Unitholder* in each *scheme* to indicate the number of *units* attributable to individual beneficial owners; and
- (2) information about the types of distribution channel which have been used to sell the *units* to the relevant beneficial owners.

14.4.12

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In determining whether a request from an *authorised fund manager* is reasonable, an *intermediate Unitholder* may take into account the frequency with which such requests have been received from that *authorised fund manager*.

Lifetime ISA information

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

Information which comprises the following:

1 Features of a lifetime ISA

1.1 R An explanation to the *retail client* of the key features of a *lifetime ISA*, including:

- (1) eligibility criteria to open and subscribe to a *lifetime ISA*;
- (2) annual *lifetime ISA* subscription limits;
- (3) tax treatment of qualifying investments held in a *lifetime ISA*;
- (4) process for transferring a *lifetime ISA*;
- (5) eligibility for the *lifetime ISA government bonus*; and
- (6) the *lifetime ISA government withdrawal charge* and the circumstances in which this might be incurred.

1.2 R The explanation in COBS 14 Annex 1.1R(6) should include a warning that:

- (1) the *lifetime ISA government withdrawal charge* recovers any *lifetime ISA government bonus* and any investment growth on that bonus plus an additional amount; and
- (2) if the *lifetime ISA government withdrawal charge* is incurred, the *retail client* could receive back less than they paid in.

2 Additional factors for a retail client to consider when deciding whether to invest in a lifetime ISA

2.1 R An explanation to the *retail client* of:

- (1) the different savings objectives for which the *lifetime ISA* is intended, being house purchase and/or saving for retirement, either in the alternative or in combination; and
- (2) the types of qualifying investments which can be held in the *lifetime ISA* being sold by the *firm*.

2.2 R A warning that if a *retail client* saves in a *lifetime ISA* instead of enrolling in, or contributing to, a *qualifying scheme, occupational pension scheme or personal pension scheme*:

- (1) the *retail client* may lose the benefit of contributions by an employer (if any) to that scheme; and
- (2) the *retail client's* current and future entitlement to means tested benefits (if any) may be affected.

2.3 G The explanation in COBS 14 Annex 1.2.1R should:

- (1) encourage a *retail client* to consider their *lifetime ISA* subscription level and choice of qualifying investment in relation to their savings objectives, their expected investment horizon and their financial circumstances as a whole, including other provision for retirement; and
- (2) inform the *retail client* that the factors in (1) may change over time and that the *retail client* should regularly review their *lifetime ISA* subscription and/or qualifying investments.

3 Example outcome of retirement saving by a retail client in a lifetime ISA

3.1 R A descriptive heading such as 'What a lifetime ISA might be worth at age 60?'

- 3.2 R A completed version of the table in COBS 14 Annex 1 3.5R.
- 3.3 R An explanation, positioned adjacent to this table on the same page, stating that:
- (1) the table is designed to:
 - (a) help the *retail client* understand what the value of a *lifetime ISA* might be at age 60, depending on the age at which saving starts and assuming the maximum annual subscription at the beginning of each tax year up to age 50 and receipt of the *lifetime ISA government bonus*; and
 - (b) provide information for a *retail client* who is saving for retirement in a *lifetime ISA* and so may not be relevant to a *retail client* whose saving objective for a *lifetime ISA* is house purchase; and
 - (2) the estimated outcomes in Columns 4 and 5:
 - (a) are based on standardised rates of return which may not reflect:
 - (i) actual or expected returns; or
 - (ii) the *retail client's* choice of qualifying investment for a *lifetime ISA* (accompanied by an indication of how the *retail client* can access information relating to the qualifying investments which the *retail client* may purchase from the *firm*); and
 - (b) include the effect of *lifetime ISA charges* and inflation on estimated outcomes from a *lifetime ISA*; and
 - (3) Column 6 shows the effect of *lifetime ISA charges* and inflation on the returns from a *lifetime ISA* which the *retail client* can use to compare the *lifetime ISA charges* applicable to other *lifetime ISAs* and charges applicable to longer-term savings products.
- 3.4 R The explanations in COBS 14 Annex 1 3.3R(2) and COBS 14 Annex 1 3.3R(3) must include a statement that *lifetime ISA charges* taken into account in the table:
- (1) may vary over time; and
 - (2) exclude any fee or charge:
 - (a) payable by or on behalf of a *retail client* to a *firm* in relation to the provision of a *personal recommendation* by the *firm* in respect of the *lifetime ISA*; and
 - (b) relating to the qualifying investments held in the *lifetime ISA* (including in relation to the provision of a *personal recommendation* in respect of those investments).
- 3.5 R This table belongs to COBS 14 Annex 1 3.2R.
- | 1 | 2 | 3 | 4 | 5 | 6 |
|--------------------------------------|---|--|--|--|---|
| Age saving in a lifetime ISA started | Total amount paid in by a lifetime ISA saver/investor | Total amount paid in, plus lifetime ISA government bonus | Estimated outcome at age 60 from 0% return | Estimated outcome at age 60 from x% return | Charges and estimated inflation would reduce a x% return to |
| | £ | £ | £ | £ | % |
| 18 | | | | | |
| 25 | | | | | |
| 30 | | | | | |
| 35 | | | | | |
| 40 | | | | | |
- 3.6 R In preparing the table in COBS 14 Annex 1 3.5R, firms must:

- (1) Round all sterling amounts down to the nearest whole pound.
- (2) Complete Column 2 on the basis of:
 - (a) the *retail client* attaining each age listed in Column 1 in the tax year in respect of which the *retail client* is proposing to make a *lifetime ISA* subscription; and
 - (b) a maximum annual *lifetime ISA* subscription being made on 6 April of that tax year and each subsequent tax year, up to and including the tax year in which the *retail client* would reach age 50 (based on each assumed age in (a)).
- (3) Complete Column 3 on the basis of:
 - (a) subscriptions as calculated in Column 2; and
 - (b) receipt by the *retail client* of the *lifetime ISA government bonus* on:
 - (i) 5 April 2018 for the tax year 2017/18 (where relevant); and
 - (ii) 6 April of each subsequent tax year, up to and including the tax year in which the *retail client* would reach age 50 (based on each assumed age in 2(a)).
- (4) Complete Columns 4 and 5 on the basis of:
 - (a) investment of the *retail client's* assumed subscriptions and the *lifetime ISA government bonus*, as calculated for the purposes of Columns 2 and 3;
 - (b) (for Column 4) a nominal annual rate of return of 0%;
 - (c) (for Column 5) a nominal annual rate of return equal to the maximum intermediate rate of return 'x' given in COBS 13 Annex 2.2.3R; and
 - (d) the outcome in sterling in real terms:
 - (i) based on the nominal annual rate of return in the relevant column;
 - (ii) net of the intermediate rate of price inflation given in COBS 13 Annex 2.2.5R;
 - (iii) net of the effect of any *lifetime ISA charges*; and
 - (iv) compounded annually at the end of each tax year, up to and including the tax year in which the *retail client* would reach age 60 (based on each assumed age in 2(a)).
- (5) Complete Column 6 on the basis of a percentage rate 'y' (rounded to the nearest tenth of 1%), where 'y' is the annual rate of return which must be applied to each amount shown in Column 3 and compounded annually over the relevant period to achieve the sterling amount shown in Column 5.

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:
- (1) the information in COBS 14 Annex 1.3 is displayed at least as prominently as the *projection*;
 - (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.14UK); and

- (3) where a *firm* that communicates a *projection* for a *lifetime ISA* which is not in relation to its *MiFID or equivalent third country business*, the *projection* must be either a *standardised deterministic projection* or a *stochastic projection* in accordance with COBS 13 Annex 2.

5 Qualifying investments

- 5.1 G The information which a *firm* provides to a *retail client* in accordance with this Annex is intended to inform the *retail client* about the implications of that *retail client* saving and/or investing in a *lifetime ISA* (as opposed to saving and/or investing outside a *wrapper* or in a different *wrapper* or *pension wrapper*). A *firm* must still take into account and comply with any other requirements of this sourcebook in connection with the sale by the *firm* of qualifying investments to be held in a *lifetime ISA*.

Chapter 15

Cancellation

15.1 Application

15.1.1

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

- (1) most providers of retail financial products that are based on *designated investments*; and
- (2) *firms* that enter into *distance contracts* with *consumers* that relate to *designated investment business*; and
- (3) *firms* that enter into *distance contracts* the making or performance of which by the *firm* constitutes, or is part of, the activity of *issuing electronic money*.

Definitions

15.1.2

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In this section:

- (a) “pension transfer” means a transaction, resulting from the decision of a *retail client* who is an individual to require a transfer payment of benefits from a pension scheme to:
 - (i) benefits under a non-occupational pension scheme; or
 - (ii) (for transfers from a non-occupational pension scheme) benefits under a *defined contribution occupational pension scheme*;
- (b) “non-occupational pension scheme” means a *stakeholder pension scheme*, a *personal pension scheme* or a deferred annuity contract; and
- (c) “pension scheme” means an *occupational pension scheme* or a non-occupational pension scheme.

15.2 The right to cancel

15.2.1

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Cancellable contracts

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

Cancellable contract	Cancellation period	Supplementary provisions
Life and pensions:		
<ul style="list-style-type: none"> • a <i>life policy</i> (including a <i>pension annuity</i>, a <i>pension policy</i> or within a <i>wrapper</i>) • a contract to join a <i>personal pension scheme</i> or a <i>stakeholder pension scheme</i> • a <i>pension contract</i> • a contract for a <i>pension transfer</i> • a contract to vary an existing <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> by exercising, for the first time, an option to make <i>income withdrawals</i> 	30 calendar days	<p>For a <i>life policy</i> effected when opening or transferring a <i>wrapper</i>, the 30 calendar day right to cancel applies to the entire arrangement</p> <p>For a contract to buy a unit in a <i>regulated collective investment scheme</i> within a <i>pension wrapper</i>, the cancellation right for 'non-life/pensions (advised but not at a distance)' below may apply</p> <p>Exemptions may apply (see COBS 15 Annex 1)</p>
Lifetime ISAs (advised but not at a distance):		
<ul style="list-style-type: none"> • a <i>non-distance contract</i> to open or transfer a <i>lifetime ISA</i> 	30 calendar days	<p>These rights arise only following a <i>personal recommendation</i> of the contract (by the firm or any other person).</p> <p>Exemptions may apply (see COBS 15 Annex 1)</p>
Cash deposit ISAs:		
<ul style="list-style-type: none"> • a contract for a <i>cash deposit ISA</i> 	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)
Non-life/pensions (advised but not at a distance): a <i>non-distance contract</i> :		
<ul style="list-style-type: none"> • to buy a unit in a <i>regulated collective investment scheme</i> (in- 	14 calendar days	These rights arise only following a <i>personal recommendation</i> of the

Cancellable contract	Cancellation period	Supplementary provisions
cluding within a <i>wrapper or pension wrapper</i>		contract (by the <i>firm</i> or any other <i>person</i>).
<ul style="list-style-type: none"> • to open or transfer a child trust fund (<i>CTF</i>) • to open or transfer an <i>ISA</i> (other than a lifetime <i>ISA</i>) • for an <i>Enterprise Investment Scheme</i> 		
Non-life/pensions (at a distance): a <i>distance contract</i> , relating to:		
<ul style="list-style-type: none"> • <i>accepting deposits</i> • <i>designated investment business</i> • <i>issuing electronic money</i> 	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)

[Note: article 186 of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

15.2.2

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- (1) If the same transaction attracts more than one right to cancel, the *firm* should apply the longest cancellation period applicable.
- (2) A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *consumer* as those in this chapter, unless the differences are clearly explained.
- (3) If the right to cancel applies to a *wrapper or pension wrapper* and underlying investments, the *firm* may give the *consumer* the option of cancelling individual components separately if it wishes.

Start of cancellation period

15.2.3

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The cancellation period begins:

- (1) either from the day of the conclusion of the contract, except in respect of contracts relating to *life policies* where the time limit will begin from the time when the *consumer* is informed that the contract has been concluded; or
- (2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook or the *PRIIPs Regulation*, if that is later than the date referred to above.

[Note: article 186 of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

15.2.4

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

15.2.5

R**Disclosing a right to cancel or withdraw**

- (1) The *firm* must disclose to the *consumer*:
- (a) in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract that attracts a right to cancel or withdraw; and
 - (b) in a *durable medium*;
- the existence of the right to cancel or withdraw, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it indicating the address to which the notification of cancellation or withdrawal should be sent.
- (1A) If the *firm* offers to facilitate, directly or through a third party, the payment of *adviser charges* or *consultancy charges*, it must disclose to the *consumer* at the same time as it makes the disclosure in (1):
- (a) whether any refund will include an *adviser charge* or *consultancy charge*; and
 - (b) that the *consumer* may be liable to pay any outstanding *adviser charges* or *consultancy charges*.
- (2) This *rule* applies only where a *consumer* would not otherwise receive similar information under a *rule* in this sourcebook or in a *key information document* from the *firm* or another *authorised person* (such as under the distance marketing disclosure rules (**■ COBS 5.1.1 R** to **■ 5.1.4 R**), **■ COBS 14** (Providing product information) or the *PRIIPs Regulation*).

15.3 Exercising a right to cancel

Notice of exercise

15.3.1 **R** If a *consumer* exercises his right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a durable medium available and accessible to the recipient, is dispatched before the deadline expires.

[**Note:** article 6 (6) of the *Distance Marketing Directive*]

15.3.2 **R** A *consumer* need not give any reason for exercising his right to cancel.

[**Note:** article 6(1) of the *Distance Marketing Directive*]

15.3.3 **G** The *firm* should accept any indication that the *consumer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as the date when the notification was dispatched.

Record keeping

15.3.4 **R** The *firm* must make adequate records concerning the exercise of a right to cancel or withdraw and retain them:

- (1) indefinitely in relation to a pension transfer, *pension opt-out* or *FSAVC*;
- (2) for at least five years in relation to a *life policy*, *pension contract*, *personal pension scheme*, *stakeholder pension scheme* or *lifetime ISA*; and
- (3) for at least three years in any other case.

15.4 Effects of cancellation

Termination of contract

- 15.4.1 R By exercising a right to cancel, the *consumer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

- 15.4.2 R
- (1) This *rule* applies in relation to a *distance contract* that is not a *life policy, personal pension scheme, cash deposit ISA, cash-only lifetime ISA or CTF*.
 - (2) When the *consumer* exercises their right to cancel they may be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The performance of the contract may only begin after the *consumer* has given their approval. The amount payable must not:
 - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract; and
 - (b) in any case be such that it could be construed as a penalty.
 - (3) The *firm* may not require the *consumer* to pay any amount on the basis of this *rule* unless it can prove that the *consumer* was duly informed about the amount payable, in conformity with the distance marketing disclosure rules. However, in no case may the *firm* require such payment if it has commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive*]

15

Shortfall

- 15.4.3 R
- (1) The *firm* may require the *consumer* to pay for any loss under a contract caused by market movements that the *firm* would reasonably incur in cancelling it. The period for calculating the loss shall end on the day on which the *firm* receives the notification of cancellation.
 - (2) This *rule*:
 - (a) does not apply for a *distance contract* or for a contract established on a regular or recurring premium or payment basis; and
 - (b) only applies if the *firm* has complied with its obligations to disclose information concerning the right to cancel.

15.4.4**Obligations on cancellation****R**

The *firm* must, without any undue delay and no later than within 30 calendar days, return to the *consumer* any sums it has received from him in accordance with the contract, except for any amount that the *consumer* may be required to pay under this section. This period shall begin from the day on which the *firm* receives the notification of cancellation.

[**Note:** article 7(4) of the *Distance Marketing Directive*]

15.4.5**R**

The *firm* is entitled to receive from the *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the *consumer* dispatches the notification of cancellation.

[**Note:** article 7(5) of the *Distance Marketing Directive*]

15.4.6**R**

Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

15.5 Special situations

Contracts with trustees and operators of pension schemes

15.5.1

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In this chapter:

- (1) references to a *consumer* include the trustees of an *occupational pension scheme* and the trustees or *operator* of a *personal pension scheme* or *stakeholder pension scheme*; and
- (2) any contract with such persons is to be treated as a *non-distance contract*.

Other legislation including for child trust funds and automatic enrolment into pensions

15.5.2

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This chapter applies as modified to the extent necessary for it to be compatible with any enactment.

15.5.3

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For example:

- (1) the *Child Trust Fund Regulations* contain provisions relevant to cancellation rights; in particular they provide that any uninvested sums held in connection with a *CTF* should be held in a designated bank account; and the effect of conditions 4(a) and (b) in regulation 5 of the *Child Trust Fund Regulations* (applicable to non-HMRC *allocated CTF*) is that a *CTF* opened by way of *distance contract* has a cancellable management agreement in all cases and the *CTF* cannot be opened until the cancellation period has expired, therefore the price fluctuation exemption is not engaged;
- (2) where legislation does not permit sums within a *personal pension scheme* or *CTF* to be returned to a *consumer*, the requirement to do so on cancellation is modified to permit payment to another provider on behalf of the *consumer*; the *firm* should notify him, where relevant, as soon as possible that it holds money awaiting re-investment instructions; if that money is held in a non-interest bearing account this should be drawn to his attention;
- (3) the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 contain provisions relevant to cancellation rights; in particular they provide rights of opt-out from an *automatic enrolment scheme*; the cancellation rights in this chapter are modified to permit a provider to adopt the opt-out process in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 in relation to all members of an *automatic enrolment scheme*; the cancellation rules will continue to

apply for any single premium contributions or transfers where these would normally attract this right.

Automatic cancellation of an attached distance contract

15.5.4

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When a *consumer* cancels a *distance contract* under this chapter, his notice may also operate to cancel any attached contract which is also a distance financial services contract unless the *consumer* gives notice that cancellation of the main contract is not to operate to cancel the attached contract (see regulation 12 of the *Distance Marketing Regulations*). Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.

Appointed representatives

15.5.5

G

This chapter does not act to cancel *distance contracts* entered into by an *appointed representative* or where applicable, by a *tied agent*, as principal such as a *distance contract* to provide advisory services, but the *Distance Marketing Regulations* (regulations 9 to 13, see regulation 4(3)) may have this effect.

Maxi-ISAs

15.5.6

G

Where a *life policy* or *unit* bought on opening or transferring an *ISA* is cancellable, the right to cancel, or substitute right to withdraw, applies to the entire arrangement. For example, a maxi-ISA comprising a *life policy* in the stocks and shares component and a *cash component* would be cancellable as a whole with a cancellation period of 30 calendar days. However, a *firm* is free to give the *consumer* the option of cancelling individual components separately with the same cancellation period if it wishes.

Exemptions from the right to cancel

Exemptions for life policies and pension contracts (non-distance)

- 1.1 R There is no right to cancel a non-distance contract that is a *life policy* or a *pension contract*:
- (1) that is a *pension fund management policy*; or
 - (2) that relates to or is associated with securing benefits under a *defined benefits pension scheme*; or
 - (3) for a term of six months or less, unless it is a single *premium contract* where the designated retirement date is within six months of the date of the policy; or
 - (4) that is effected by the trustees of an *occupational pension scheme* or the employer, trustees or operator of a *stakeholder pension scheme* and that represents a:
 - (a) *pension buy-out contract*; or
 - (b) purchase of a without-profits deferred *pension annuity*; or
 - (c) *defined benefits pension scheme* or a single *premium payment* to any *occupational pension scheme* with a pooled fund (that is, underlying investments are not earmarked for individual scheme members); or
 - (d) purchase made to insure and secure members' pension benefits under a *money-purchase occupational scheme* or *stakeholder pension scheme* (unless it is the master, first or only policy); or
 - (5) if the *consumer*, at the time he signs the application, is *habitually resident* outside the UK and is not present in the UK.

- 1.2 G There is no right to cancel a non-distance contract for a *traded life policy*. This is because the 30-day right to cancel a *life policy* (in COBS 15.2.1 R) applies at the point of conclusion of the *life policy* not on its assignment. However, there may be a 14-day right to cancel a *distance contract* for a *traded life policy* unless an exemption applies, since that *distance contract* relates to *designated investment business*.

Exemption for SIPPs

- 1.3 R There is no right to cancel a contract to join a *SIPP* whose performance has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel.
- 1.4 G If a *consumer* requests that a *firm* complete a transaction to join a *SIPP* before the expiry of the cancellation period, the *firm* should, in having regard to the information needs of the *consumer*, make him aware that he will lose his right to cancel and satisfy itself on reasonable grounds that the customer understands the cost and other implications.

Exemptions for certain pension arrangements (the 'cancellation substitute')

- 1.5 R There is no right to cancel:
- (1) a contract for or funded (wholly or in part) from a pension transfer; or
 - (2) a *pension annuity* due to commence within a year and a day of the contract or a variation of one with similar commencement; or
 - (3) the exercise of an option to make *income withdrawals*;

to the extent that the right to cancel is replaced with a pre-contract right to withdraw the *consumer's offer* of at least 14 calendar days. The combined period of the right to withdraw and any residual right to cancel must be at least 30 calendar days.

Exemption for pension compensation

- 1.6 R There is no right to cancel a *pension annuity*, a *pension policy*, a *pension contract*, or a contract to join a *personal pension scheme* or *stakeholder pension scheme*, which in each case is funded (wholly or in part) from payments derived from compensation or redress following a review undertaken in relation to a complaint.

Exemption for annuities after death of the life assured

- 1.7 R A *firm* need not accept notification of cancellation of a *pension annuity* contract if the life (or any of the lives) assured under it has died before notice is given.

Exemptions for units (non-distance)

- 1.8 R There is no right to cancel a *non-distance contract* to *buy a unit* in a *regulated collective investment scheme*:
- (1) if the *unit* is not purchased from the scheme's *operator*, from the *operator's associate* acting as provider of a *wrapper*; or
 - (2) if the *consumer* is not a *retail client*; or
 - (3) if the contract represents an exchange of *units* between *sub-funds* of the same *umbrella*; or
 - (4) if the contract relates to a change between *units* of one class and *units* of another class in the same *scheme*; or
 - (5) if the contract relates to a *recognised scheme* and is with an *operator* who is not an *authorised person* or carrying on business in the UK; or
 - (6) if the *consumer* is not *habitually resident* in the UK at the date of the offer of the contract; or
 - (7) if the *firm* has reasonable grounds for assuming that no *personal recommendation* of the contract was provided by anyone carrying on *designated investment business* in the UK; or
 - (8) for the second and subsequent purchases of *units* under recurring single payment *unit savings plans*, provided that:
 - (a) the intention or option to make a series of single payments is disclosed at the outset (for example in pre-contract disclosure documents); or
 - (b) the intention is evidenced (for example, by the establishment of a direct debit mandate).

Exemptions for ISAs, CTFs and EISs (non-distance)

- 1.9 R There is no right to cancel a *non-distance contract*:
- (1) to open or transfer an *ISA* (mini or maxi and including all components whatever the underlying investment, but not a *cash deposit ISA* or an *ISA* containing a *life policy*); or
 - (2) to open or transfer a *CTF*; or
 - (3) [deleted]
 - (4) for an *EIS*;
- provided that:

- (5) (for an *EIS* or *ISA* which is not a *lifetime ISA*) the right to cancel is replaced with a seven calendar day, pre-contract right to withdraw the consumer's offer; or
- (5A) (for a *lifetime ISA*) the right to cancel is replaced with a fourteen calendar day, pre-contract right to withdraw the consumer's offer; or
- (6) the contract relates to an *EIS* or a non-packaged product *ISA* (which is not a *lifetime ISA*) or *CTF* and is entered into following an explanation that neither a right to cancel nor a right to withdraw will apply given in accordance with the relevant rules on pre-contractual disclosure; or
- (7) (for an *ISA* or *EIS*) the contract entered into is a second or subsequent *ISA* or *EIS* on substantially the same terms (such as mini-to-mini *ISA* or maxi-to-maxi *ISA*) as an *ISA* or *EIS* purchased from the same *ISA manager* or *EIS manager* in the previous tax year.

Exemptions for distance contracts (all products and services)

- 1.10 R There is no right to cancel a *distance contract*:
- (1) whose price depends on fluctuations in the financial market outside the *firm's* control, which may occur during the cancellation period, such as:
 - (a) foreign exchange; or
 - (b) money market instruments; or
 - (c) transferable securities; or
 - (d) units in collective investment undertakings; or
 - (e) financial-futures contracts, including equivalent cash-settled instruments; or
 - (f) forward interest-rate agreements; or
 - (g) interest-rate, currency and equity swaps; or
 - (h) options to acquire or dispose of any instruments referred to above including cash-settled instruments and options on currency and on interest rates; or
 - (2) whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right to cancel; or
 - (3) to *deal as agent, advise or arrange* if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another person.

[**Note:** article 6(2) and recital 19 of the *Distance Marketing Directive*]

- 1.11 R In the case of *distance contracts* for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the right to cancel shall apply only to the initial agreement.

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

Chapter 16

Reporting information to clients (non-MiFID provisions)

16.1 Application

16.1.1 **R** [deleted]

16.1.2 **R** **■ COBS 16.2 to ■ COBS 16.4 apply in relation to *designated investment business* other than *MiFID, equivalent third country or optional exemption business*.**

16.2 Occasional reporting

Execution of orders other than when managing investments

16.2.1

R

- (1) If a *firm* has carried out an order in the course of its *designated investment business* on behalf of a *client*, it must:
 - (a) promptly provide the *client*, in a *durable medium*, with the essential information concerning the execution of the order;
 - (b) in the case of a *retail client*, send the *client* a notice in a *durable medium* confirming the execution of the order and such of the *trade confirmation information* (■ COBS 16 Annex 1R) as is applicable:
 - (i) as soon as possible and no later than the first *business day* following that execution; or
 - (ii) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party; and
 - (c) supply a *client*, on request, with information about the status of his order.
- (2) Paragraph (1) does not apply to a *firm managing investments*.
- (3) Paragraph (1)(b) does not apply if the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *client* by another person.
- (4) Paragraphs (1)(a) and (b) do not apply to an order executed on behalf of a *client* that relates to a bond funding a mortgage loan agreement with the *client*. The report on the transaction must be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.
- (5) If a *firm* carries out an order for a *retail client* relating to *units* or *shares* in a collective investment undertaking that is part of a series of orders that are executed periodically, it must:
 - (a) comply with paragraph (1)(b) in relation to that order; or
 - (b) provide the *client* at least once every six months with such of the *trade confirmation information* (■ COBS 16 Annex 1R) as is applicable in relation to each transaction in that series carried out in the relevant reporting period.
- (6) In relation to subscription and *redemption* orders for *units* in a *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* executed by an *authorised fund manager*, include the following information:
- (a) the identification of the *management company*;
 - (b) the name or other designation of the *Unitholder*;
 - (c) the date and time of receipt of the order and method of payment;
 - (d) the date of execution;
 - (e) the identification of the *UCITS scheme* or;
 - (f) the nature of the order (subscription or *redemption*);
 - (g) the number of *units* involved;
 - (h) the *unit* price at which the *units* were subscribed or redeemed;
 - (i) the reference valuation date;
 - (j) the gross value of the order including charges for subscription or net amount after charges for *redemptions*; and
 - (k) the total sum of the commissions and expenses charged and where the investor so requests, an itemised breakdown.

[Note: article 24 of the *UCITS implementing Directive*]

- 16.2.2** **G** The requirement concerning orders relating to bonds funding a mortgage loan agreement is unlikely to be relevant to products in the *United Kingdom market*.
- 16.2.3** **R** For the purposes of calculating the unit price in the *trade confirmation information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.
- 16.2.3A** **G** In determining what is essential information, a *firm* should consider including:
- (1) for transactions in a *derivative*:
 - (a) the maturity, delivery or expiry date of the derivative;
 - (b) in the case of an *option*, a reference to the last exercise date, whether it can be exercised before maturity and the strike price;

- (c) if the transaction *closes out* an open *futures* position, all essential details required in respect of each contract comprised in the open position and each contract by which it was *closed out* and the profit or loss to the *client* arising out of *closing out* that position (a difference account);
- (2) for the exercise of an *option*:
- the date of exercise, and either the time of exercise or that the *client* will be notified of that time on request;
 - whether the exercise creates a sale or purchase in the underlying asset; and
 - the strike price of the *option* (for a currency *option*, the rate of exchange will be the same as the strike price) and, if applicable, the total consideration from or to the *client*; and
- (3) the fact that the transaction involves any dividend or capitalisation or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the *investment*, and under the terms of the transaction the benefit of which will not pass to the purchaser.

Guidance on the requirements

16.2.4

G

Where a *firm* executes an order in tranches, the *firm* may, where appropriate, indicate the trading time and the execution venue in a way that is consistent with this, such as, "multiple". In accordance with the *client's best interests rule*, a *firm* should provide additional information at the *client's* request.

16.2.5

G

In accordance with ■ COBS 2.4.9 R, a *firm* may dispatch a confirmation to an agent, other than the *firm* or an associate of the *firm*, nominated by the *client* in writing.

16.2.6

R

A *firm* need not despatch a confirmation if:

- the *firm* has agreed with the *client* (in the case of a *retail client*, in writing and with the *client's* informed consent) that confirmations need not be supplied, either generally or in specified circumstances; or
- the *designated investment* is a *life policy*, *stakeholder pension scheme* or a *personal pension scheme* (other than a *SIPP*); or
- the *designated investment* is held within a *CTF* and the statement provided under the *CTF Regulations* includes the information that would have been contained in a confirmation under this section (other than information that has since become irrelevant).

16.2.7

R

Record keeping: occasional reporting

A *firm* must retain a copy of any confirmation despatched to a *client* under this section for a period of at least three years from the date of despatch.

16.3 Periodic reporting

Provision by the firm and contents.....

16.3.1

R

- (1) If a *firm* is *managing investments* on behalf of a *client*, it must provide the *client* with a *periodic statement* in a *durable medium* unless:
 - (a) such a statement is provided by another *person*; or
 - (b) all of the conditions in (1A) are satisfied.

(1A) The conditions are that:

 - (a) the *firm* provides the *client* with access to an online system which qualifies as a *durable medium*;
 - (b) the online system provides the *client* with easy access to:
 - (i) up-to-date valuations of the *client's designated investments* and *client money*; and
 - (ii) the information that would otherwise be contained in a *periodic statement*; and
 - (c) the *firm* has evidence that the *client* has accessed a valuation of their *designated investments* or *client money* at least once during the previous quarter.

(2) If the *client* is a *retail client*, the *periodic statement* must include such of the *periodic information* (■ COBS 16 Annex 2R) as is applicable.

16.3.2

R

- (1) In the case of a *retail client*, the *periodic statement* must be provided once every six *months*, except in the following cases:
 - (a) if the *retail client* so requests, the *periodic statement* must be provided every three *months*;
 - (b) if the *retail client* elects to receive information about executed transactions on a transaction-by-transaction basis (■ COBS 16.3.3 R) and there are no transactions in *derivatives* or other securities giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures, the *periodic statement* must be provided at least once every twelve *months*;
 - (c) if the agreement between a *firm* and a *retail client* for the *managing of investments* authorises a leveraged portfolio, the *periodic statement* must be provided at least once a *month*.
- (2) A *firm* must inform a *retail client* that he has the right to request the provision of a *periodic statement* every three *months*.

- 16.3.3 R**
- (1) If the *client* elects to receive information about executed transactions on a transaction-by-transaction basis, a *firm managing investments* must provide promptly to the *client*, on the execution of a transaction, the essential information concerning that transaction in a *durable medium*.
- (2) If the *client* is a *retail client*, the *firm* must send the *client* a notice confirming the transaction and containing such of the information identified in column (1) of the table in ■ COBS 16 Annex 1R as is applicable:
- (a) no later than the first *business day* following that execution; or
- (b) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party;
- unless the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *retail client* by another person.
- 16.3.4 G**
- In accordance with ■ COBS 2.4.9 R, a *firm* may dispatch a periodic statement to an agent, other than the *firm* or an associate of the *firm*, nominated by the *client* in writing.
- 16.3.5 R**
- For the purposes of calculating the unit price in the *trade confirmation information* or *periodic information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.
- 16.3.6 R**
- (1) If a *firm*:
- (a) *manages investments* for a *retail client*; or
- (b) operates a *retail client* account that includes an uncovered open position in a contingent liability transaction,
- it must report to the *retail client* any losses exceeding any predetermined threshold, agreed between it and the *retail client*.
- (2) The *firm* must report:
- (a) no later than the end of the *business day* in which the threshold is exceeded; or
- (b) if the threshold is exceeded on a non-*business day*, the close of the next *business day*.
- Contingent liability transactions**
- 16.3.7 R**
- For the purposes of this section, a contingent liability transaction is one that involves any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument.
- 16.3.8 R**
- [intentionally blank]

- 16.3.9** **G** When providing a *periodic statement* to a *retail client*, a *firm* should consider whether to include:

- (1) the *collateral value* in respect of any contingent liability transaction in the *client's portfolio* during the relevant period; and
- (2) *option account valuations* in respect of each open *option* written by the *client* in the *client's portfolio* at the end of the relevant period; stating:
 - (a) the *share, future, index or other investment* involved;
 - (b) the trade price and date for the opening transaction, unless the valuation statement follows the statement for the period in which the option was opened;
 - (c) the market price of the contract; and
 - (d) the exercise price of the contract.
- (3) Option account valuations may show an average trade price and market price in respect of an *option series* if the *retail client* buys a number of contracts within the same series.

Periodic reporting: special situations

16.3.10

R

A firm need not provide a *periodic statement*:

- (1) to a *client* habitually resident outside the *United Kingdom* if the *client concerned* has so requested or the *firm* has taken reasonable steps to establish that he does not wish to receive it;
- (2) in respect of a *CTF*, if the statement provided under the *CTF Regulations* contains the *periodic information*.

Record keeping: periodic reporting

16.3.11

R

A firm must make, and retain, a copy of any *periodic statement* for a period of at least three years from the date of despatch.

16.4 Statements of client designated investments or client money

- 16.4.1 R**
- (1) A *firm* that holds *client designated investments* or *client money* for a *client* must send that *client* at least once a year a statement in a *durable medium* of those *designated investments* or that *client money* unless:
 - (a) such a statement has been provided in a *periodic statement*; or
 - (b) the *firm*:
 - (i) provides the *client* with access to an online system, which qualifies as a *durable medium*, where up-to-date statements of a *client's designated investments* or *client money* can be easily accessed by the *client*; and
 - (ii) the *firm* has evidence that the *client* has accessed an up-to-date statement at least once during the previous quarter.
 - (2) A *credit institution* need not send a statement in respect of *deposits* held by it.
 - (3) This *rule* does not apply in relation to a *firm* holding *client designated investments* or *client money* under a *personal pension scheme* or a *stakeholder pension scheme*.
 - (4) A *CTF* account provider holding *client designated investments* or *client money* under a *CTF* must provide a statement but need not do so more frequently than required by Regulation 10 of the *CTF Regulations*.
- 16.4.2 R**
- A *firm* must include the following information in a statement of *client assets* referred to under this section:
- (1) details of all the *designated investments* or *client money* held by the *firm* for the *client* at the end of the period covered by the statement;
 - (2) the extent to which any *client designated investments* or *client money* have been the subject of *securities financing transactions*; and
 - (3) the extent of any benefit that has accrued to the *client* by virtue of participation in any *securities financing transactions*, and the basis on which that benefit has accrued.
- 16.4.3 R**
- In cases where the portfolio of a *client* includes the proceeds of one or more *unsettled transactions*, the information in a statement provided under this section may be based either on the *trade date* or the *settlement date*,

provided that the same basis is applied consistently to all such information in the statement.

16.4.4 **R** A firm which holds *designated investments* or *client money* and is *managing investments* for a *client* may include the statement under this section in the *periodic statement* it provides to that *client*.

16.4.5 **G** In reporting to a *client* in accordance with this section, a *firm* should consider whether to provide details of any assets loaned or charged including:

- (1) which *investments* (if any) were at the end of the relevant period loaned to any third party and which *investments* (if any) were at that date charged to secure borrowings made on behalf of the portfolio; and
- (2) the aggregate of any interest payments made and income received during the period in respect of loans or borrowings made during that period

16.4.6 **G** Firms subject to either or both the *custody chapter* and the *client money chapter* are reminded of the reporting obligations to *clients* in ■ CASS 9.2 (Prime broker's daily report to clients) and ■ CASS 9.5 (Reporting to clients on request).

16.5 Quotations for surrender values

16.5.1

R

When a *long-term insurer* receives any indication that a *retail client* wishes to surrender a *life policy* which is of the type that may be traded on an existing secondary market for *life policies*, it must, before accepting a surrender, make the *policyholder* aware that he may be able to sell his *policy* instead, how he may do so and that there may be financial benefits in doing so.

16.6 Communications to clients – life insurance, long term care insurance and drawdown pensions

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* outside the *United Kingdom* and he was not present in the *United Kingdom*.
- (2) In addition, ■ COBS 16.6.8 R applies to an *operator of a personal pension scheme* or *stakeholder pension scheme* in relation to a *retail client* who elects to make *income withdrawals*.

16.6.2

R

- (1) The *policyholder* must be informed if during the term of a *life policy* entered into on or after 1 July 1994 there is any change in the following information:
 - (a) the *policy conditions*;
 - (b) the name of the *insurer*, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract; and
 - (c) the information in (8) to (13) of ■ COBS 13 Annex 1 (The Solvency II Directive information) in the event of a change in the *policy conditions* or amendment of the law applicable to the contract.
- (2) A notification in (1) must be made:
 - (a) in a clear and accurate manner and in writing; and
 - (b) in an official language of the *State of commitment* or in another language if the *policyholder* so requests and the law of the *State of commitment* so permits or the *policyholder* is free to choose the law applicable.

[Note: article 185(5) and (6) of the *Solvency II Directive*]

16.6.3

R

If a *life policy* entered into on or after 1 July 1994 provides for the payment of bonuses and the amounts of bonuses are unspecified, the *long-term insurer* must, in every calendar year except the first, either:

- (1) notify the *policyholder* in writing of the amount of any bonus which has become payable under the contract, and which has not previously been notified under this rule; or
- (2) give the *policyholder* in writing sufficient information to enable him to determine the amount of any such bonus.

[Note: in respect of (1), article 185(5) of the *Solvency II Directive*]

16.6.3A	R	If a <i>firm</i> provides figures, on or after 1 January 2016, about the potential future development of bonuses under a <i>with-profits policy</i> it must inform the <i>policyholder</i> annually in writing of any differences between the actual bonuses payable to date and the figures previously provided. [Note: article 185(5) of the <i>Solvency II Directive</i>]
16.6.4	R	<ol style="list-style-type: none">(1) When a <i>firm</i> provides information in accordance with this section, it must provide the information in a <i>durable medium</i>, unless (2) applies.(2) If the contract is being made by telephone, the <i>firm</i> may give the information orally to the <i>customer</i>. If the <i>customer</i> enters into the contract, a written version of the required information must be sent to the <i>customer</i> within five <i>business days</i> of the contract being entered into.
16.6.5	R	Where a <i>life policy</i> is effected jointly, the information required by this section may be sent to the first named <i>client</i> .
16.6.6	R	A <i>firm</i> must make an adequate record of information provided to a <i>customer</i> under this section and retain that record for a minimum period after the information is provided of five years.
Long term care insurance		
16.6.7	R	At each anniversary of the date on which a <i>long-term care insurance contract</i> which is based on single premium investment bonds was entered into, the <i>insurer</i> must: <ol style="list-style-type: none">(1) provide the <i>retail client</i> with a table based on the format of ■ COBS 13 Annex 3 2.2R containing at least the current fund value and projected future <i>policy values</i> (as in column "What you might get back");(2) where it is the case, inform the <i>retail client</i> of the possibility that future <i>policy values</i> may be insufficient to fulfil the original purpose of the contract; and(3) inform the <i>retail client</i> how to obtain advice on <i>investments</i> in respect of <i>long-term care insurance contracts</i>, and that it is in his best interest to do so.
Drawdown pensions: annual statements		
16.6.7A	R	In the rest of ■ COBS 16.6: <ol style="list-style-type: none">(1) "annual statement" is the information required to be provided to a <i>retail client</i> on an annual basis at ■ COBS 16.6.8R;(2) "cash terms" means pounds and pence;(3) "cash-like investments" includes <i>cash</i> or <i>near cash</i>, units in a <i>regulated money market fund</i>, or units in a fund authorised as a <i>money market fund</i> for the purposes of the UK version of the European Parliament and Council Regulation on money market funds (2017/1131/EU), which is part of UK law by virtue of the <i>EUWA</i>; and

- (4) "drawdown fund" means either a *capped drawdown pension fund* or *flexi-access drawdown pension fund*;
- (5) a *retail client* is a "non-advised *retail client*" if a *firm* has not determined on reasonable grounds that the client has received a *personal recommendation* in relation to how to invest the sums or assets in their drawdown fund, in accordance with ■ COBS 19.10.10R (4);

Income withdrawals - annual statements

16.6.8

R

At intervals of no longer than 12 months, beginning on the date a *retail client* first takes a *pension commencement lump sum* or an *uncrystallised funds pension lump sum payment*, or first makes an *income withdrawal*, the relevant operator of a *personal pension scheme* or *stakeholder pension scheme* must:

- (1) provide the *retail client* with such information as is necessary for the *retail client* to review the decision, including where relevant the information required by ■ COBS 13 Annex 2 2.9R (Additional requirements: drawdown pensions and regular uncrystallised funds pension lump sum payment), ■ COBS 16.6.8AR (pathway investments) and ■ COBS 16.6.10R (costs and charges disclosure); and
- (2) inform the *retail client* that if their circumstances or retirement objectives have changed it may be in their best interests to:
 - (a) review their choice of pension product;
 - (b) review their investment choices;
 - (c) take regulated advice to understand their options at retirement; and
 - (d) seek out guidance.

16.6.8A

R

If a *retail client* is invested in a *pathway investment* the annual statement must include the following:

- (1) a short description of each *pathway investment* the *retail client* is invested in, including the corresponding *investment pathway* option under ■ COBS 19.10.17R(1) and the current value of each *pathway investment* in cash terms;
- (2) (for those *retail clients* invested in two or more *pathway investments*) how the *retail client's* drawdown fund is split, in cash terms, across the different *pathway investments* and the corresponding *investment pathway* options;
- (3) a short description of the *investment pathway* options the *retail client* is not currently invested in (■ COBS 19.10.17R(1));
- (4) a statement reminding the *retail client* that they can, at any time:
 - (a) select a different *investment pathway* option and change their *pathway investment*;
 - (b) select an investment that is not a *pathway investment*;
 - (c) (where this option is available) split their drawdown fund across two or more *pathway investments*;
 - (d) choose a different product to access their pension savings;
 - (e) shop around, with an explanation of how they may do so.

- 16.6.8B** **G** If a *retail client* has been invested in the same *pathway investment* for 5 years (or a multiple of 5 years) a *firm* should consider including in the *retail client's* next annual statement:
- (1) a reminder of the number of years the *retail client* has been invested in the same *pathway investment*; and
 - (2) a statement that the *retail client* should review the *investment pathway* option.
- 16.6.9** **G** The information provided to the *retail client* in ■ COBS 16.6.8R(1) is likely to be sufficient for the *client* to review the decision if it contains at least one of the following (in addition to the information required by ■ COBS 16.6.8AR and ■ COBS 16.6.10R, as relevant):
- (1) the information required by ■ COBS 13 Annex 2.2.9R (Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum* payments); or
 - (2) the effect of any significant one-off withdrawals or payments since the previous information was provided; or
 - (3) (where regular income is being taken) information about the sustainability of the *client's* income over time, which may refer to:
 - (a) the proportion of the fund remaining since outset; or
 - (b) an indication of when the fund may cease to exist; or
 - (c) the rate of withdrawals or payments relative to a sustainable rate; or
 - (4) (if a *client* has only taken a *pension commencement lump sum*) information about their investment, fund choices, fund value and charges.
- Personal or stakeholder pension schemes in decumulation:
actual costs and charges disclosure**
- 16.6.10** **R**
- (1) The annual statement must include costs and charges information which must be:
 - (a) based on actual costs and charges (including transaction costs and the cost of advice) charged by the *operator* or other parties, which have been paid out of the *retail client's*:
drawdown fund; or
personal pension scheme or *stakeholder pension scheme* from which an *uncrystallised funds pension lump sum payment* was paid;
 - (b) aggregated and totalled; and
 - (c) expressed in pounds and pence.
 - (2) When a *retail client's personal pension scheme* or *stakeholder pension scheme* is in partial drawdown, the *operator*:
 - (a) may include costs and charges information for the whole pension scheme; and
 - (b) must make clear whether the costs and charges information relates to the whole pension scheme or only to the drawdown fund.

- (3) If the *operator* does not have the information necessary to comply with (1), it must take all reasonable steps to obtain it.
- (4) If the operator does not have exact figures for certain costs and charges, despite taking all reasonable steps to obtain them, the *operator*:
 - (a) must provide a reasonable estimate of such costs and charges when providing the costs and charges information; or
 - (b) if it is not possible to provide a reasonable estimate of such costs and charges, must include a written statement, with the costs and charges information, to explain which costs and charges are not included.
- (5) The *operator* must include a written statement with the costs and charges information, stating whether any adviser remuneration, including *adviser charges, consultancy charges, commission or commission equivalent*, is included in the aggregated costs and charges figure.
- (6) The *operator* must make clear what period is covered by the costs and charges information.

- 16.6.11** **R** ■ COBS 16.6.10R does not apply where costs and charges are discharged by payment of the fixed price of a drawdown pension product, which has been clearly disclosed to the *retail client*.
- 16.6.12** **G** Where ■ COBS 16.6.10R(1)(a)(ii) applies, the annual statement must include costs and charges for the whole of the *retail client's personal pension scheme or stakeholder pension scheme*.
- 16.6.13** **G** The *operator's* reasonable steps to obtain costs or charges information should include, where relevant, requesting this information from third parties that provide services relating to the *retail client's drawdown fund, personal pension scheme or stakeholder pension scheme*.

Trade confirmation and periodic information

This annex forms part of ■ COBS 16.2.1 R

	General	(1) Trade confirmation information		(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
1.	the reporting <i>firm</i> identification;	Y		
2.	the name or other designation of the <i>client</i> ;	Y		
3.	the trading day;	Y	Y	
4.	the trading time;	Y	Y	
5.	the type of the order (for example, a limit order or a market order);	Y	Y	
6.	the venue identification;	Y	Y	
7.	the instrument identification;	Y	Y	
7A.	the underlying instrument identification (Note 1);	Y	Y	
7B.	the instrument type (Note 2);	Y	Y	
7C.	the maturity date (Note 3);	Y	Y	
7D.	the derivative type (Note 4);	Y	Y	
7E.	put/call (Note 5);	Y	Y	
7F.	the strike price (Note 6);	Y	Y	
7G.	the price multiplier (Note 7);	Y	Y	
8.	the buy/sell indicator;	Y	Y	
9.	the nature of the order if other than buy/sell;	Y	Y	
9A.	the counterparty;	Y	Y	
10.	the quantity;	Y	Y	

		(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
	General		
10A.	the quantity notation (Note 8);	Y	Y
11.	the unit price;	Y	Y
12.	the total consideration;	Y	Y
13.	a total sum of the commissions and expenses charged (for a <i>collective investment scheme operator</i> , initial charges may be disclosed in cash or percentage terms) and, where the <i>retail client</i> so requests, an itemised breakdown, including, where relevant, the amount of any <i>mark-up or mark-down</i> imposed by the <i>firm</i> or its associate where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in executing the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i> ;	Y	Y
14.	the rate of exchange obtained where the transaction involves a conversion of currency;	Y	Y
15.	[intentionally blank]		
16.	[intentionally blank]		
17.	the <i>client's</i> responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the <i>client</i> ;	Y	
18.	if the <i>client's</i> counter-party was the <i>firm</i> itself	Y	

		(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
	General		
19.	the transaction reference number (Note 9); and	Y	Y
20.	the customer / client identification (Note 10).	Y	Y
A <i>firm</i> may provide the <i>client</i> with the information referred to in this Annex using standard codes if it also provides an explanation of the codes used.			
<i>Firms</i> are reminded that COBS 16.2.1R only requires a <i>retail client</i> to be provided with the <i>trade confirmation information</i> that applies to them. Where a piece of information is not applicable to the circumstances of a particular trade, the <i>firm</i> is not required to report that information to the <i>client</i> or to include the field on the confirmation.			
The following Notes explain certain of the information requirements in the table above.			
Note 1	This is the instrument identification applicable to the security that is the underlying asset in a derivative contract.		
Note 2	This is the harmonised classification of the instrument that is the subject of the transaction (e.g. equity, bond). This item is only required when an explanation of the instrument type has not been provided in relation to the instrument identification in line 7.		
Note 3	This is the maturity date of a bond or other form of securitised debt, or the exercise date/maturity date of a derivative contract. Where the derivative type is spread bet on an equity option or contract for difference on an equity option, the expiry of the option must be indicated.		
Note 4	This is the harmonised description of the derivative type (e.g. option, future, contract for difference, complex derivative, warrant, spread bet, credit default swap or other swap).		
Note 5	This is only relevant when the instrument is an option, warrant, spread bet on an equity option or contract for difference on an equity option. Where the instrument is a spread bet on an equity option or a contract for difference on an equity option this field should be used to indicate the put/call status of the equity option.		
Note 6	This is only relevant when the instrument is an option, warrant, spread bet on an equity option or contract for difference on an equity option. Where the instrument is a spread bet on an equity option or a contract for difference on an equity option this field should be used to indicate the strike price of the equity option.		

		(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
General			
Note 7		This is the number of units of the instrument in question which are contained in a trading lot; for example, the number of derivatives or securities represented by one contract.	
Note 8		This should be used to indicate whether the quantity is the number of units of the instrument, the nominal value of bonds, or the number of derivative contracts.	
Note 9		This should be the unique identification number for the transaction provided by the <i>firm</i> .	
Note 10		This is the identity of the <i>client</i> or customer on whose behalf the <i>firm</i> was acting.	

Information to be included in a periodic report

This annex forms part of ■ COBS 16.3.1 R.

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

Chapter 16A

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

16A.1 Application

- 16A.1.1 R** This chapter applies to a *firm* in relation to:
- (1) its *MiFID, equivalent third country or optional exemption business*; and
 - (2) carrying on *insurance distribution activities* relating to an *insurance-based investment product*.
- Effect of provisions marked “UK” for third country investment firms and MiFID optional exemption firms**
- 16A.1.2 R** Provisions in this chapter marked “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 “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.
- 16A.1.3 R** [deleted]

16A.2 General client reporting and record keeping requirements

- 16A.2.1 R**
- (1) A *firm* must provide a *client* with adequate reports on the service provided in a *durable medium*.
 - (2) The reports must include:
 - (a) periodic communications to the *client*, taking into account the type and the complexity of the *financial instruments or insurance-based investment products* involved and the nature of the service provided to the *client*; and
 - (b) where applicable, the costs associated with the transactions and services undertaken on behalf of the *client*.

[Note: article 25(6) of *MIFID*, article 30(5) of the *IDD*]

- 16A.2.2 G**
- A *firm* should refer to ■ SYSC 3.2 (for *insurers* and *managing agents*) and ■ SYSC 9 (for other *firms*) for the requirements that apply in relation to the retention of records.

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 retail client or a professional client, other than for portfolio management, shall, in respect of that order:

- (a) promptly provide the 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 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.

Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person.

Points (a) and (b) shall not apply where orders executed on behalf of clients relate to bonds funding mortgage loan agreements with the said clients, in which case the report on the transaction shall be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.

59(2) In addition to the requirements under paragraph 1, investment firms shall supply the client, on request, with information about the status of his order.

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*]

16A.3.2

G

In determining what is essential information, a *firm* should consider including:

- (1) for transactions in a *derivative*:
 - (a) the maturity, delivery or expiry date of the *derivative*;
 - (b) in the case of an *option*, a reference to the last exercise date, whether it can be exercised before maturity and the strike price; and
 - (c) if the transaction *closes out* an open *futures* position, all essential details required in respect of each contract comprised in the open position and each contract by which it was *closed out* and the profit or loss to the *client* arising out of *closing out* that position (a difference account);
- (2) for the exercise of an *option*:
 - (a) the date of exercise, and either the time of exercise or that the *client* will be notified of that time on request;
 - (b) whether the exercise creates a sale or purchase in the underlying asset; and
 - (c) the strike price of the *option* (for a currency *option*, the rate of exchange will be the same as the strike price) and, if applicable, the total consideration from or to the *client*; and

- (3) the fact that the transaction involves any dividend or capitalisation or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the *investment*, and under the terms of the transaction the benefit of which will not pass to the purchaser.

Guidance on the requirements

16A.3.3

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Where a *firm* executes an order in tranches, the *firm* may, where appropriate, indicate the trading time and the execution venue in a way that is consistent with this, such as, "multiple". In accordance with the *client's best interests rule*, a *firm* should provide additional information at the *client's* request.

16A.3.4

G

In accordance with ■ COBS 2.4.9R, a *firm* may dispatch confirmation to an agent, other than the *firm* or an associate of the *firm*, nominated by the *client* in writing.

Reporting obligations in respect of eligible counterparties

16A.3.5

UK

61 The requirements 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;
- (b) the name or other designation of the client's account;
- (c) a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;
- (d) the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;
- (e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the investment firm and the client;
- (f) the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;
- (g) information about other corporate actions giving rights in relation to financial instruments held in the portfolio;
- (h) for each transaction executed during the period, the information referred to in Article 59(4)(c) to (l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case paragraph 4 of this Article shall apply.

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*]

16A.4.2

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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.4.1UK) 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.4.2A

R

(1) Without prejudice to ■ COBS 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, in relation to an *insurance-based investment product*, a *firm* must provide the *client* with a *periodic report*, on a *durable medium*, of the services provided to and transactions undertaken on behalf of the *client*.

(2) The *periodic report* required (1) must provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that *client* during the reporting period and must include, where relevant, the total costs associated with these services and transactions, and the value of each underlying investment asset.

(3) The *periodic report* required under (1) must be provided at least annually.

[**Note:** article 18 of the *IDD Regulation*]

16A.4.3 **UK**

Additional reporting obligations for portfolio management or contingent liability transactions

62(1) Investment firms providing the service of portfolio management 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*]

16A.4.4 **G**

For the purposes of this section, a contingent liability transaction should be understood as being a transaction that involves any actual or potential liability for the client that exceeds the cost of acquiring the instrument.

[Note: recital 96 to the *MiFID Org Regulation*]

Guidance on contingent liability transactions

16A.4.5 **G**

When providing a *periodic statement* to a *retail client*, a *firm* should consider whether to include:

- (1) the *collateral* value in respect of any contingent liability transaction in the *client's* portfolio during the relevant period; and
- (2) *option* account valuations in respect of each open *option* written by the *client* in the *client's* portfolio at the end of the relevant period; stating:
 - (a) the *share, future, index or other investment* involved;
 - (b) the trade price and date for the opening transaction, unless the valuation statement follows the statement for the period in which the option was opened;
 - (c) the market price of the contract; and
 - (d) the exercise price of the contract.
- (3) *Option* account valuations may show an average trade price and market price in respect of an *option* series if the *client* buys a number of contracts within the same series.

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

16A.5.1 UK

63(1) Investment firms that hold client financial instruments 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 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 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:

- (a) details of all the financial instruments or funds held by the investment firm for the client at the end of the period covered by the statement;
- (b) the extent to which any client financial instruments or client funds have been the subject of securities financing transactions;
- (c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued;
- (d) a clear indication of the assets or funds which are subject to the rules of the UK law on markets in financial instruments and those that are not, such as those that are subject to Title Transfer Collateral Agreement;
- (e) a clear indication of which assets are affected by some peculiarities in their ownership status, for instance due to a security interest;
- (f) the market or estimated value, when the market value is not available, of the financial instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity. The evaluation of the estimated value shall be performed by the firm on a best effort basis.

In cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in point (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

The periodic statement of client assets referred to in paragraph 1 shall not be provided where the investment firm provides its clients with access to an online system, which qualifies as a durable medium, where up-to-date statements of client's financial instruments or funds can be easily accessed by the client and the firm has evidence that the client has accessed this statement at least once during the relevant quarter.

63(3) Investment firms which hold financial instruments or funds and which carry out the service of portfolio management for a client may include the statement of client assets referred to in paragraph 1 in the periodic statement it provides to that client pursuant to Article 60(1).

[**Note:** article 63 of the *MiFID Org Regulation*]

16A.5.2

G

Firms subject to either or both the custody chapter and the client money chapter are reminded of the reporting obligations to clients in ■ CASS 9.2 (Prime broker's daily report to clients) and ■ CASS 9.5 (Reporting to clients on request).

Chapter 17

Claims handling for long-term care insurance

17.1 Providing information to claimants, dealing with claims and warranties in policies

17.1.1 **R** When an *insurer* or *managing agent* receives a claim under a *long-term care insurance contract*, it must respond promptly by providing the *policyholder*, or the *person* acting on the *policyholder's* behalf, with:

- (1) a claim form (if it requires one to be completed);
- (2) a summary of its claims handling procedure; and
- (3) appropriate information about the medical criteria that must be met, and any waiting periods that apply, under the terms of the *policy*.

Responding to a claim

17.1.2 **R** As soon as reasonably practicable after receipt of a claim, the *insurer* or *managing agent* must tell the *policyholder*, or the *person* acting on the *policyholder's* behalf:

- (1) (for each part of the claim it accepts), whether the claim will be settled by paying the *policyholder*, providing goods or services to the *policyholder* or paying another *person* to provide those goods or services; and
- (2) (for each part of the claim it rejects), why the claim has been rejected and whether any future rights to claim exist.

Rejecting a claim

17.1.3 **R** An *insurer* and a *managing agent* must not unreasonably reject a claim.

Cases where rejection of consumer's claim is unreasonable: contracts or variations before 1 August 2017

17.1.4 **R** For contracts entered into or variations agreed before 1 August 2017, except where there is evidence of fraud, an *insurer* and a *managing agent* must not reject a claim for:

- (1) (in relation to contracts entered into or variations agreed on or before 5 April 2013) non-disclosure of a fact material to the risk which the *policyholder* could not reasonably have been expected to disclose; or
- (2) misrepresentation of a fact material to the risk, unless the misrepresentation is negligent; or

- (3) breach of warranty, unless the circumstances of the claim are connected to the breach, the warranty is material to the risk and was drawn to the *policyholder's* attention before the conclusion of the contract.

Cases where rejection of consumer's claim is unreasonable: contracts or variations on or after 1 August 2017**17.1.5****G**

- (1) Cases in which rejection of a *consumer's* claim would be unreasonable (in the FCA's view) include, but are not limited to rejection:
- for misrepresentation, unless it is a "qualifying misrepresentation" in ■ ICOBS 8.1.3R;
 - where the claim is subject to the **Insurance Act 2015** for breach of warranty or term, or for fraud, unless the *insurer* is able to rely on the relevant provisions of the **Insurance Act 2015**; and
 - where the *policy* is drafted or operated in a way that does not allow the *insurer* to reject.
- (2) The **Insurance Act 2015** sets out a number of situations in which an *insurer* may have no liability or obligation to pay. For example:
- section 10 provides situations in which an *insurer* has no liability under a *policy* due to a breach of warranty;
 - section 11 places restrictions on an *insurer's* ability to reject a claim for breach of a term where compliance is aimed at reducing certain types of risk; and
 - sections 12 and 13 provide for the extent to which a *firm* is entitled to reject fraudulent claims.

17.1.6**R**

For contracts entered into or variations agreed on or after 1 August 2017, a rejection of a *consumer policyholder's* claim for breach of a condition or warranty (that is not subject to and within **section 10** or **11** the Insurance Act 2015) is unreasonable unless the circumstances of the claim are connected to the breach.

17.1.7**R**

An *insurer* must ensure that any condition or warranty included in a *long-term care insurance contract* with a *consumer*:

- has operative effect only in relation to the types of crystallised risk covered by the *policy* that are connected to that condition or warranty; and
- is material to the risks to which it relates and is drawn to the *customer's* attention before the conclusion of the contract.

Chapter 18

Specialist Regimes

18.1 Trustee Firms

Application

- 18.1.1** **R** (1) This section applies to the *MiFID, equivalent third country or optional exemption business* carried on by a *trustee firm*.
- (2) It does not apply to a *trustee firm* when acting as:
- a *depositary*; or
 - the trustee of a *personal pension scheme* or *stakeholder pension scheme*.

Application of COBS to trustee firms

- 18.1.2** **R** The provisions of COBS in the table do not apply to a *trustee firm* to which this section applies:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
6.4	Disclosure of charges, remuneration and commission
9.6	Special rules for providing basic advice on a stakeholder product
16A.4.5	Guidance on contingent liability transactions

- 18.1.2A** **G** This section applies to the *MiFID, equivalent third country or optional exemption business* carried on by a *trustee firm*. As such, the list in **COBS 18.1.2R** above does not include any provisions in COBS which do not apply to *MiFID, equivalent third country or optional exemption business*.

- 18.1.3** **G** The provisions of COBS in the table are unlikely to be relevant in relation to a *trustee firm* to which this section applies:

COBS	Description
5	Distance communications
13	Preparing product information
14.2	Providing product information
15	Cancellation
17	Claims handling for long-term care insurance
18.2	Energy market activity and oil market activity
18.3	Corporate finance business
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

Duties of trustee firms under the general law

18.1.4

G

To the extent a *rule* in COBS applies to a *trustee firm*, that *rule*:

- (1) applies in addition to any duties or powers imposed or conferred upon a trustee by the general law; and
- (2) does not qualify or restrict the duties or powers that the general law imposes or confers upon a trustee; *trustee firms* will be under a duty to observe the provisions of their trust instrument; if its provisions conflict with any applicable *rule*, *trustee firms* will need to take advice in resolving the conflict.

Considering and complying with applicable COBS rules

18.1.5

G

In considering and reaching decisions as to how applicable rules in COBS apply in the context of a particular trust arrangement, a *trustee firm* should consider the nature of that arrangement and the provisions of the relevant trust instrument.

References to "client" in applicable COBS rules

18.1.6

G

Where an applicable *rule* in COBS requires the doing of any thing in relation to a *client*, the *trustee firm* should consider who, in the context of that *rule* and having regard to the particular trust arrangement, is the most appropriate person to treat as its *client*. This might, for example, be the beneficiary, another trustee or the trust, depending on the particular circumstances.

18.2 Energy market activity and oil market activity

Energy market activity and oil market activity - MiFID business

18.2.1

R

The provisions of COBS in the table do not apply in relation to any *energy market activity or oil market activity* carried on by a *firm* which is *MiFID or equivalent third country business*:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
16.3.9	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

18.2.2

G

The provisions of COBS in the table are unlikely to be relevant to any *energy market activity or oil market activity* carried on by a *firm* which is *MiFID or equivalent third country business*:

COBS	Description
5	Distance communications
7	Insurance distribution
13	Preparing product information
14.2	Providing product information to clients

COBS	Description
15	Cancellation
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime
18.3	Corporate finance business
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

Energy market activity and oil market activity - non-MiFID business

18.2.3

R

Only the COBS provisions in the table apply to *energy market activity or oil market activity* carried on by a *firm* which is not:

(1) *MiFID or equivalent third country business*; or

(2) *energy market activity or oil market activity* set out in ■ COBS 18.2.4 R.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, but only in relation to <i>communicating or approving a financial promotion</i>
5.2	E-commerce
12	Investment research and non-independent research
16.2	Occasional reporting

Energy market activity and oil market activity - dealings with or through authorised persons

18.2.4

R

Only the COBS provisions in the table apply to *energy market activity or oil market activity* carried on by a *firm* which is not *MiFID or equivalent third country business* but which, if the *firm* were not *authorised*, would not be a *regulated activity* because of article 16 of the *Regulated Activities Order* (Dealing in contractually based investments) or article 22 of the *Regulated Activities Order* (Deals with or through authorised persons etc.).

COBS	Description
1	Application
2.4	Agent as client and reliance on others
4.12	Unregulated collective investment schemes
5.2	E-commerce

18.2.5**R****Other non-MiFID business related to commodity or exotic derivative instruments**

COBS applies as set out in the table to firms in respect of activities referred to in the general application rule related to:

- (1) *commodity futures;* or
- (2) *commodity options;* or
- (3) *contracts for differences related to an underlying commodity;* or
- (4) *other futures or contracts for differences which are not related to commodities, financial instruments or cash;*

which is not MiFID or equivalent third country business and energy market activity or oil market activity.

Application of COBS to other non-MiFID business related to commodity derivative instruments

All of COBS applies, except COBS 18.2.6 R to COBS 18.2.9 E applies instead of COBS 11.2 (Best execution)

18.2.6**R****Best execution for other non-MIFID business related to commodity and exotic derivative instruments**

A firm that executes a customer order in the course of carrying out activities referred to in ■ COBS 18.2.5 R must provide best execution.

18.2.7**R****Exceptions to best execution**

The duty to provide best execution does not apply where:

- (1) *the firm has agreed with a professional client that it does not owe a duty of best execution to him; or*
- (2) *the firm relies on another person to whom it passes a customer order for execution to provide best execution, but only if it has taken reasonable care to ensure that he will do so.*

18.2.8**R****Providing best execution**

To provide best execution, a firm must:

- (1) *take reasonable care to ascertain the price which is the best available for the customer order in the relevant market at the time for transactions of the kind and size concerned; and*
- (2) *execute the customer order at a price which is no less advantageous to the customer, unless the firm has taken reasonable steps to ensure that it would be in the customer's best interests not to do so.*

18.2.9**E**

- (1) *In order to take reasonable care to ascertain the price which is the best available, a firm:*

- (a) should disregard any *charges and commission* made by it or its agents that are disclosed to the *customer* under ■ COBS 6.1.9 R (Information about costs and associated charges);
 - (b) need not have access to competing exchanges, or to all, or a minimum number of, available price sources; but if a *firm* can access prices displayed by different exchanges and trading platforms and make a direct and immediate comparison, it should execute the *customer order* at the best price available to the firm on such exchanges or trading platforms, if this is in the best interests of the *customer*;
 - (c) should pass on to the *customer* the price at which it executes the transaction to meet the *customer order*; and
 - (d) should not take a *mark-up or mark-down* from the price at which it executes the *customer order*.
- (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))
- (3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))

18.3 Corporate finance business

Corporate finance business - MiFID business

18.3.1

R

The provisions of COBS in the table do not apply in respect of any *corporate finance business* carried on by a *firm* which is *MiFID or equivalent third country business*:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
COBS 16.3.7	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

18.3.2

G

The provisions of COBS in the table are unlikely to be relevant to any *corporate finance business* carried on by a *firm* which is *MiFID or equivalent third country business*:

COBS	Description
5	Distance communications, except in relation to <i>distance contracts</i> concluded with <i>consumers</i>
7	Insurance distribution

13	Preparing product information
14.2	Providing product information
15	Cancellation, except cancellation and withdrawal rights in relation to <i>distance contracts</i> concluded with <i>consumers</i>
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime
18.2	Energy market activity and oil market activity
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

Corporate finance business - non-MiFID business

18.3.3

R

Only the provisions of COBS in the table apply to *corporate finance business* carried on by a *firm* which is not *MiFID or equivalent third country business* or *MiFID optional exemption business*.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.3A	Inducements
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, except COBS 4.5 - COBS 4.11
5.1	The information and other requirements of the Distance Marketing Directive, but only in relation to <i>distance contracts</i> concluded with <i>consumers</i>
5.2	E-commerce
11.7A	Personal account dealing
11A.2	Prohibition of future service restrictions
12	Investment research and non-independent research
15	Cancellation, but only in relation to <i>distance contracts</i> concluded with <i>consumers</i>

18

Corporate finance business – optionally exempt business

18.3.3A

R

Only the provisions of COBS in the table apply to *corporate finance business* which is *MiFID optional exemption business*.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.2A	Information disclosures before providing services
2.3A	Inducements
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, except COBS 4.5-COBS 4.6 and COBS 4.8 - COBS 4.11
5.1	The information and other requirements of the Distance Marketing Directive, but only in relation to distance contracts concluded with consumers
5.2	E-commerce
6.1A	Information about the firm, its services and remuneration
6.2B	Describing advice services
8A	Client agreements
9A	Suitability
11.7A	Personal account dealing
12	Investment research
14.3.1A	Information about financial instruments
15	Cancellation, but only in relation to distance contracts concluded with consumers
16A	Reporting information to clients

18.3.4**G**

■ COBS 15 (Cancellation) is likely to be of limited application to *corporate finance business*. *Distance contracts* concluded with *consumers* in the course of *corporate finance business* will be exempt from ■ COBS 15 if the price of the financial service is dependent on fluctuations in the financial market outside the *firm's control*.

18.4 Stock lending activity

18.4.1 R The provisions of COBS in the table do not apply in relation to any stock lending activity carried on by a firm:

COBS	Subject
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
COBS 16A.4.5	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

18.4.2 G The provisions of COBS in the table are unlikely to be relevant in relation to any stock lending activity carried on by a firm:

COBS	Description
5	Distance communications, except in relation to <i>distance contracts</i> concluded with <i>consumers</i>
7	Insurance distribution
13	Preparing product information
14.2	Providing product information
15	Cancellation, except cancellation and withdrawal rights in relation to <i>distance contracts</i> concluded with <i>consumers</i>
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime

18.2	Energy market activity and oil market activity
19	Pensions - supplementary provisions
20	With-profits

18.5 Residual CIS operators and small authorised UK AIFMs

Application

18.5.1

R

Subject to **COBS 18.5.1A R**, this section applies to a *firm* which is:

- (1) [deleted]
- (2) [deleted]
- (3) a *small authorised UK AIFM*; or
- (4) a *residual CIS operator*.
- (5) [deleted]

18.5.1A

R

COBS 18.5.3 R (2) and **COBS 18.5.5 R** to **COBS 18.5.18 E** do not apply to a *small authorised UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme*.

18.5.1B

R

[deleted]

Application or modification of general COBS rules

18.5.2

R

A *firm* when it is carrying on *scheme management activity* or, for an *AIFM*, *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	Small authorised UK AIFM and a residual CIS operator
1 (Application)	Applies
2.1.1R (The client's best interests rule)	Applies
2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)	Applies
2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1

	2.4 (Agent as client and reliance on others)	Applies
	4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies
	5.2 (E-commerce)	Applies
	11.2 (Best execution for AIFMs and residual CIS operators)	Applies to a <i>small authorised UK AIFM</i> of an <i>authorised AIF</i> . Applies (as modified by COBS 18.5.4R) to a <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or <i>residual CIS operator</i> .
	11.3 (Client order handling)	Applies
	16.3 (Periodic reporting)	Applies to a <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> which is not a <i>collective investment scheme</i> , as modified by COBS 18.5.4BR. Otherwise does not apply.
	18.5 (Residual CIS operators and small authorised UK AIFMs)	Applies
	18 Annex 1 (Research and inducements for collective portfolio managers)	Applies (subject to COBS 18.5.3CR)
	18 Annex 2 (Record keeping: client orders and transactions)	Applies

18.5.2-A G [deleted]

- 18.5.2-B G
- (1) For activities which are not *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*, the *COBS rules* apply under the general application rule, as modified in ■ COBS 1 Annex 1.
 - (2) This may include, for example, activities relating to the administration of the fund and *marketing*.

18.5.2A R [deleted]

General modifications

- 18.5.3 R Where *COBS rules* specified in the table in ■ COBS 18.5.2 R apply to a *firm* carrying on *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*, the following modifications apply:
- (1) subject to (2), references to *customer* or *client* are to be construed as references to any *fund* for which the *firm* is acting or intends to act;
 - (2) in the case of a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator*, when a *firm* is required by the *rules* in *COBS* to provide information to, or obtain consent from, a *customer* or *client*, the *firm* must ensure that the information is provided to, or consent obtained from, an *investor* or a potential *investor* in the *fund* as the case may be; and

(3) references to the service of *portfolio management* in ■ COBS 11.2 (Best execution for AIFMs and residual CIS operators) and ■ 11.3 (Client order handling) are to be readas references to the management by a *firm of financial instruments* held for or within thefund.

(4) [deleted]

18.5.3A G

- (1) ■ COBS 1.2 (Markets in Financial Instruments Directive) contains modifications to the text of the *MiFID Org Regulation* where this is applied as *rules* to *firms* that are not subject to those provisions directly.
- (2) These modifications apply to ■ COBS 11.3 (Client order handling), which is applied in the table at ■ COBS 18.5.2R.

Research and inducements

18.5.3B R

Subject to ■ COBS 18.5.3CR, a *firm* must comply with ■ COBS 18 Annex 1 (Research and inducements for collective portfolio managers) when executing orders, or placing orders with other entities for *execution*, that relate to *financial instruments* for, or on behalf of, the *fund*.

18.5.3C R

- COBS 18 Annex 1 does not apply in relation to an *AIF* or *CIS* which in accordance with its core investment policy:
 - (1) does not generally invest in *financial instruments* that can be:
 - (a) registered in a *financial instruments* account opened in the books of a *depositary*; or
 - (b) physically delivered to the *depositary*; or
 - (2) generally invests in *issuers* or *non-listed companies* to potentially acquire *control* over such companies, either individually or jointly with other *funds*.

Modification of best execution

18.5.4 R

The best execution provisions in ■ COBS 11.2 (Best execution for AIFMs and residual CIS operators) do not apply to a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* of a *fund* whose *fund documents* include a statement that best execution does not apply in relation to the *fund* and in which:

- (1) no investor is a *retail client*; or
- (2) no current investor in the *fund* was a *retail client* when it invested in the *fund*.

18.5.4A R

[deleted]

18

Modification of periodic reporting requirements

18.5.4B R

A *small authorised UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme* must comply with ■ COBS 16.3 (Periodic reporting) with

		references to <i>managing investments</i> to be construed as providing <i>AIFM investment management functions</i> .
18.5.4C	R	[deleted]
18.5.4D	G	[deleted]
18.5.5	R	Scheme documents for an unauthorised fund A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator must not accept a <i>retail client</i> as an investor in the <i>fund</i> unless it has taken reasonable steps to offer and, if requested, provide to the potential investor, fund documents which adequately describe how the <i>fund</i> is governed.
18.5.5-A	G	Prohibition on issue of bearer units The effect of section 241A of the Act is that no bearer <i>units</i> in a <i>collective investment scheme</i> may be issued, converted or cancelled from 1 January 2021. However, the <i>Bearer Certificates (Collective Investment Schemes) Regulations 2020</i> (SI 2020/1346) contain transitional provisions for the conversion of bearer <i>units</i> to registered <i>units</i> and the cancellation of bearer <i>units</i> on or before 1 January 2022.
18.5.5A	G	Distance marketing 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, COBS 5.1 applies specific requirements for that activity.
18.5.6	G	Format and content of fund documents The fund documents required under COBS 18.5.5 R may consist of any number of <i>documents</i> provided that it is clear that collectively they constitute the fund documents and provided the use of several <i>documents</i> in no way diminishes the significance of any of the statements which are required to be given to the potential investor.
18.5.6A	G	Where a small authorised UK AIFM of an unauthorised AIF or a residual CIS operator is required to publish a key information document, only information that is additional to that contained in the key information document needs be disclosed under COBS 18.5.5R.
18.5.7	G	The fund documents of an unauthorised fund managed by a small authorised UK AIFM or a residual CIS operator (if those fund documents exist) should make it clear that if an investor is reclassified as a <i>retail client</i> , this reclassification will not affect certain activities of the firm. In particular, despite such a reclassification, the firm will not be required to comply with the best execution provisions. It should be noted that there is no requirement that fund documents must be produced by a small authorised UK AIFM of an unauthorised fund or a residual CIS operator unless they are required to prepare a key information document under the PRIIPs Regulation.

18.5.8 **R** Where the fund is an *unauthorised fund* managed by a *small authorised UK AIFM* or a *residual CIS operator* and no current investor in the fund was a *retail client* when it invested in the fund, the fund documents must include a statement that:

- (1) explains that if an investor is reclassified as a *retail client* subsequent to investing in the fund, then the firm may continue to treat all investors in the fund as though they were not *retail clients*;
- (2) explains that if an investor is reclassified as a *retail client* subsequent to investing in the fund, then the modification of best execution (see ■ COBS 18.5.4 R) will continue to apply to that fund; and
- (3) explains that, in the event of such a reclassification, the firm will not be required to provide best execution in relation to the fund.

18.5.9 **G** A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* will still have to comply with other COBS provisions as a result of the reclassification of an investor as a *retail client*. For example, the firm must provide *periodic statements* to investors who are *retail clients* in an *unauthorised fund* (see the rule on periodic statements for an unauthorised fund (■ COBS 18.5.11 R)).

18.5.9A **G** A *small authorised UK AIFM* that uses a *sustainability label*, or one of the terms in ■ ESG 4.3.2R(2) in accordance with ■ ESG 4.3.2R(1), in relation to a *UK AIF* is reminded of its obligations in ■ ESG 5.3 to ■ ESG 5.5 relating to the preparation of Part A of a *public product-level sustainability report*.

Adequate information

18.5.10 **E**

- (1) In order to provide adequate information to describe how the fund is governed, a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* should include in the fund documents a provision about each of the items of relevant information set out in the following table (Content of fund documents).
- (2) Compliance with (1) may be relied on as tending to establish compliance with ■ COBS 18.5.5 R.
- (3) Contravention of (1) may be relied on as tending to establish contravention of ■ COBS 18.5.5 R.

Table: Content of fund documents

The fund documents should include provision about:

- | | |
|-----|---|
| (1) | Regulator |
| | The firm statutory status in accordance with GEN 4 Annex 1 R (Statutory status disclosure); |
| (2) | Services |
| | the nature of the services that the firm will provide; |
| (3) | Payments for services |
| | details of any payment for services payable by the fund or from the property of the fund or investors in the fund to the firm, including where appropriate: |
| (a) | the basis of calculation; |

The fund documents should include provision about:	
	(b) how it is to be paid and collected; (c) how frequently it is to be paid; and (d) whether or not any other payment is receivable by the firm (or to its knowledge by any of its associates) in connection with any transactions effected by the firm with or for the fund, in addition to or in lieu of any fees;
(4)	Commencement when and how the firm is appointed;
(5)	Accounting the arrangements for accounting to the fund or investors in the fund for any transaction effected;
(6)	Termination method how the appointment of the firm may be terminated;
(7)	Complaints procedure how to complain to the firm and a statement that the investors in the fund may subsequently complain direct to the Financial Ombudsman Service;
(8)	Compensation whether or not compensation may be available from the compensation scheme should the firm be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable compensation scheme, the extent and level of cover and how further information can be obtained;
(9)	Investment objectives the investment objectives for the portfolio of the fund;
(10)	Restrictions (a) any restrictions on: (i) the types of investments or property which may be included in the portfolio of the fund; (ii) the markets on which investments or property may be acquired for the portfolio of the fund; (iii) the amount or value of any one investment or asset, or on the proportion of the portfolio of the fund which any one investment or asset or any particular kind of investment or asset may constitute; or (b) that there are no such restrictions;
(11)	Holding fund assets (a) if it is the case, that the firm will: (i) hold money on behalf of the fund or be the custodian of investments or other property of the fund; or (ii) arrange for some other person to act in either capacity and, if so, whether that person is an associate of the firm

The fund documents should include provision about:

- (b) identifying that person and describing the nature of any association; and
- (i) in either case:
 - (ii) how any money is to be deposited;
 - (iii) the arrangements for recording and separately identifying registrable investments of the fund and, where the registered holder is the firm's own nominee, that the firm will be responsible for the acts and omissions of that person;
 - (iv) the extent to which the firm accepts liability for any loss of the investment of the fund;
 - (v) the extent to which the firm or any other person mentioned in (11)(a)(ii), may hold a lien or security interest over investments of the fund;
 - (vi) where investments of the fund will be registered collectively in the same name, a statement that the entitlements of the fund may not be identifiable by separate certificates or other physical documents of title, and that, should the firm default, any shortfall in investments of the fund registered in that name may be shared proportionately among all fund and any other customers of the firm whose investments are so registered;
 - (vii) whether or not investments or other property of the fund can be lent to, or deposited by way of collateral with, a third party and whether or not money can be borrowed on behalf of the fund against the security of those investments or property and, if so, the terms upon which they may be lent or deposited;
 - (viii) the arrangements for accounting to the fund for investments of the fund, for income received (including any interest on money and any income earned by lending investments or other property) of the fund, and for rights conferred in respect of investments or other property of the fund;
 - (ix) the arrangements for determining the exercise of any voting rights conferred by investments of the fund; and
 - (x) where investments of the fund may be held by an eligible custodian outside the United Kingdom, a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those investments, may apply;

The fund documents should include provision about:	
(12)	Clients' money outside the United Kingdom if it is the case, that the <i>firm</i> may hold the <i>money of the fund</i> in a <i>client bank account</i> outside the <i>United Kingdom</i> ;
(13)	Exchange rates if a liability of the <i>fund</i> in one currency is to be matched by an asset in a different currency, or if the services to be provided to the <i>firm</i> for the <i>fund</i> may relate to an <i>investment</i> denominated in a currency other than the currency in which the <i>investments</i> of the <i>fund</i> are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the <i>investments</i> of the <i>fund</i> ;
(14)	Stabilised investments if it is the case, that the <i>firm</i> is to have the right under the <i>fund documents</i> to effect transactions in <i>investments</i> the prices of which may be the subject of stabilisation;
(15)	Conflict of interest and material interest if it is the case, that the <i>firm</i> is to have the right under the agreement or <i>instrument constituting the fund</i> to effect transactions on behalf of the <i>fund</i> in which the <i>firm</i> has directly or indirectly a material interest (except for an interest arising solely from the investment of the <i>firm</i> as agent for the <i>fund</i>), or a relationship of any description with another party which may involve a conflict with the <i>firm</i> duty to the <i>fund</i> , together with a disclosure of the nature of the interest or relationship;
(16)	Research and inducements how the firm intends to pay for research. For example, whether the firm proposes to pay for research directly or to use a research payment account;
(17)	Acting as principal if it is the case, that the <i>firm</i> may act as <i>principal</i> in a transaction with the <i>fund</i> ;
(18)	Stock lending if it is the case, that the <i>firm</i> may undertake <i>stock lending activity</i> with or for the <i>fund</i> specifying the type of assets of the <i>fund</i> to be lent, the type and value of <i>relevant collateral</i> from the borrower and the method and amount of payment due to the <i>fund</i> in respect of the lending;
(19)	Transactions involving contingent liability investments <ul style="list-style-type: none"> (a) if it is the case, that the agreement or <i>instrument constituting the fund</i> allows the <i>firm</i> to effect transactions involving <i>contingent liability investments</i> for the account of the portfolio of the <i>fund</i>; (b) if applicable, whether there are any limits on the amount to be committed by way of margin and, if so, what those limits are; and (c) if applicable, that the <i>firm</i> has the authority to effect transactions involving <i>contingent liability investments</i> otherwise than under the rules of a <i>recognised investment exchange</i> and in a contract traded thereon;

The fund documents should include provision about:	
(20)	Periodic statements
(a)	the frequency of any <i>periodic statement</i> (this should not be less than once every 12 months) except where a <i>periodic statement</i> is not required (see COBS 18.5.13R); and
(b)	whether those statements will include some measure of performance, and, if so, what the basis of that measurement will be;
(21)	Valuation
	the bases on which assets comprised in the portfolio of the <i>fund</i> are to be valued;
(22)	Borrowings
	if it is the case, that the <i>firm</i> may supplement the funds in the portfolio of the <i>fund</i> and, if it may do so:
(a)	the circumstances in which the <i>firm</i> may do so;
(b)	whether there are any limits on the extent to which the <i>firm</i> may do so and, if so, what those limits are; and
(c)	any circumstances in which such limits may be exceeded;
(23)	Underwriting commitments
	if it is the case, that the <i>firm</i> may for the account of the portfolio of the <i>fund</i> underwrite or sub-underwrite any issue or offer for sale of <i>securities</i> , and:
(a)	whether there are any restrictions on the categories of <i>securities</i> which may be underwritten and, if so, what these restrictions are; and
(b)	whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;
(24)	Investments in other funds
	whether or not the portfolio may invest in <i>fund</i> either managed or advised by the <i>firm</i> or by an <i>associate</i> of the <i>firm</i> or in a <i>fund</i> which is not a <i>regulated collective investment scheme</i> ;
(25)	Investments in securities underwritten by the firm
	whether or not the portfolio may contain <i>securities</i> of which any issue or offer for sale was underwritten, managed or arranged by the <i>firm</i> or by an <i>associate</i> of the <i>firm</i> during the preceding 12 months.

18.5.10A R [deleted]18.5.10B G [deleted]**Periodic statements for an unauthorised fund**18.5.11 R A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator must, subject to the exceptions from the requirement to provide a *periodic statement*, provide to investors in the *fund*, promptly and at suitable intervals, a statement in a *durable medium* which contains adequate

18.5.12

E

information on the value and composition of the portfolio of the *fund* at the beginning and end of the period of the statement.

Promptness, suitable intervals and adequate information

- (1) A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* should act in accordance with the provisions in the right hand column of the periodic statements table (see ■ COBS 18.5.15E) to fulfil the requirement to prepare and issue *periodic statements* indicated in the left hand column against these provisions.
- (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to prepare and issue *periodic statements*.
- (3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to prepare and issue *periodic statements*.

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Exceptions from the requirement to provide a periodic statement

- (1) A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* need not provide a *periodic statement*:
 - (a) (i) to an investor in the *fund* who is a *retail client* ordinarily resident outside the *United Kingdom*; or
 - (ii) to an investor in the *fund* who is a *professional client*; if the investor has so requested or the *firm* has taken reasonable steps to establish that the investor does not wish to receive it; or
- (b) if it would duplicate a statement to be provided by someone else.
- (2) [deleted]

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A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* must make a copy of any *periodic statement* it has provided in accordance with the requirement to prepare and issue *periodic statements* to investors in the *fund*. The record must be retained for a minimum period of three years.

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Table: Periodic statements

This table belongs to ■ COBS 18.5.12 E.

Periodic statements		
Suitable intervals	(1)	A <i>periodic statement</i> should be provided at least:
	(a)	six-monthly; or
	(b)	once in any other period, not exceeding 12 months, which has been mutually agreed between the <i>firm</i> and the investor in the <i>fund</i> .

Periodic statements			
Adequate information	(2)	(a)	A <i>periodic statement</i> should contain:
		(i)	(A) The information set out in the table of general contents of a <i>periodic statement</i> ;
		(B)	where the portfolio of the <i>fund</i> includes uncovered open positions in <i>contingent liability investments</i> , the additional information in the table listing the contents of a <i>periodic statement</i> (see COBS 18.5.18 E) in respect of contingent liability investments; or
		(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)	[deleted]

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G

Examples of uncovered open positions include:

- (1) selling a call *option* on an *investment* not held in the portfolio;
- (2) unsettled sales of call *options* on currency in amounts greater than the portfolio's holding of that currency in cash or in *readily realisable investments* denominated in that currency; and
- (3) transactions having the effect of *selling* an index to an amount greater than the portfolio's holdings of *investments* included in that index.

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Table: General contents of a periodic statement

This table belongs to ■ COBS 18.5.15 E.

General contents of periodic statements			
1	Contents and value		
	(a)	As at the beginning of the account period, the total value of the portfolio of the <i>fund</i> , being either:	
		(i)	the value of the assets comprised in the portfolio on the date as at which the statement provided for the immediately preceding period of account is made up; or
		(ii)	in the case of the first <i>periodic statement</i> , the value of the assets comprised in the portfolio on the date on which the <i>firm</i> assumed responsibility for the management of the portfolio.
	(b)	As at the end of the account period:	

General contents of periodic statements	
	(i) the number, description and value of each <i>investment</i> held on behalf of the <i>fund</i> ;
	(ii) the amount of cash held on behalf of the <i>fund</i> ; and
	(iii) the total value of the portfolio of the <i>fund</i> .
2	Basis of valuation A statement of the basis on which the value of each <i>investment</i> has been calculated and, if applicable, a statement that the basis for valuing a particular <i>investment</i> has changed since the previous <i>periodic statement</i> . Where any <i>investments</i> are shown in a currency other than the usual one used for valuation of the portfolio of the <i>fund</i> , the relevant currency exchange rates must be shown.
3	Details of any assets loaned or charged (a) A summary of those <i>investments</i> (if any) which were, at the closing date, loaned to any third party and those <i>investments</i> (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the <i>fund</i> ; and (b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during the period.
4	Transactions and changes in composition Except in the case of a portfolio which aims to track the performance of an external index:

General contents of periodic statements	
	(a) a statement that summarises the transactions entered into for the portfolio of the <i>fund</i> during the period; and
	(b) the aggregate of <i>money</i> and a summary of all investments transferred into and out of the portfolio of the <i>fund</i> during the period; and
	(c) the aggregate of any interest payments, dividends and other benefits received by the <i>firm</i> for the portfolio of the <i>fund</i> during that period.
5	Charges and remuneration If not previously advised in writing, a statement for the account period: (a) of the aggregate charges of the <i>firm</i> and its <i>associates</i> ; and (b) of any <i>remuneration</i> received by the <i>firm</i> or its <i>associates</i> or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio of the <i>fund</i> .
6	Movement in value of portfolio A statement of the difference between the value of the portfolio at the closing date and its value at the starting date of the account period, having regard at least, during the account period, to the following: (a) the aggregate of assets received from investors of the <i>fund</i> and added to the portfolio of the <i>fund</i> ; (b) the aggregate of the value of assets transferred, or of amounts paid, to the <i>fund</i> ; (c) the aggregate income received on behalf of the <i>fund</i> in respect of the portfolio; and (d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio of the <i>fund</i> .
Notes:	
For the purposes of Item 1, where the <i>fund</i> is a <i>property enterprise trust</i> , it will be sufficient for the <i>periodic statement</i> to disclose the number of properties held in successive valuation bands where this is appropriate to the size and composition of the <i>fund</i> , rather than the value of each asset in the portfolio. The valuation bands of over £10m, £5-£10m, £2.5-£5m, £1-£2.5m and under £1m would be appropriate, unless a <i>firm</i> could show that different bands were justifiable in the circumstances.	
The statement to be provided under Item 6 is not intended to be an indicator of the performance of the portfolio of the <i>fund</i> .	
A <i>firm</i> may wish to distinguish capital and income, and thereby provide more information than referred to in this table. If the statement includes some measure of performance, the basis of measurement should be stated.	

18.5.18

E

Table: Contents of a periodic statement in respect of contingent liability investments

This table belongs to ■ COBS 18.5.15 E.

Contents of a periodic statement in respect of contingent liability investments	
(1)	Changes in value The aggregate of <i>money transferred into and out of the portfolio of the fund</i> during the account period.
(2)	Open positions In relation to each open position in the portfolio of the <i>fund</i> at the end of the account period, the unrealised profit or loss to the portfolio of the <i>fund</i> (before deducting or adding any <i>commission</i> which would be payable on closing out).
(3)	Closed positions In relation to each transaction effected during the account period to close out a position of the <i>fund</i> , the resulting profit or loss to the portfolio of the <i>fund</i> after deducting or adding any <i>commission</i> . (Instead of the specific detail required by Items 2 or 3, the statement may show the net profit or loss in respect of the overall position of the <i>fund</i> in each contract)
(4)	Aggregate of contents The aggregate of each of the following in, or relating to, the portfolio of the <i>fund</i> at the close of business on the valuation date: (a) cash; (b) <i>collateral</i> value; (c) management fees; and (d) <i>commissions</i> attributable to transactions during the period or a statement that this information has been separately disclosed in writing on earlier statements or confirmations to the investor.
(5)	Option account valuations In respect of each open <i>option</i> comprising the portfolio of the <i>fund</i> on the valuation date: (a) the <i>share, future, index or other investment</i> or asset involved; (b) (unless the valuation statement follows the statement for the period in which the <i>option</i> was opened) the trade price and date for the opening transaction; (c) the market price of the contract; and (d) the exercise price of the contract. <i>Options</i> account valuations may show an average trade price and market price in respect of an <i>option</i> series where a number of contracts within the same series have been purchased on behalf of the <i>fund</i> .

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) [deleted]
 - (c) (c)a *non-UK AIF*.
- (2) [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) [deleted]
- (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
1 (Application)	Applies
2.1.4R (AIFMs best interest rule)	Applies
2.2B (SRD requirements)	Applies
2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies
5.2 (E-commerce)	Applies

		<p>11.2 (Best execution for AIFMs and residual CIS operators)</p> <p>18.5A (Full-scope AIFMs)</p> <p>18 Annex 1 (Research and inducements for collective portfolio managers)</p>	<p>Applies as modified by COBS 18.5A.8R</p> <p>Applies as modified by COBS 18.5A.2R</p> <p>Applies (subject to COBS 18.5A.7R)</p>
18.5A.4	G		<p>(1) For activities that are not <i>AIFM investment management functions</i>, the <i>COBS rules</i> apply under the general application rule, as modified in ■ COBS 1 Annex 1.</p> <p>(2) This may include, for example, activities relating to the administration of the <i>AIF</i>, <i>marketing</i> and activities related to the assets of the <i>AIF</i>.</p>
18.5A.5	R	General modifications	Where <i>COBS rules</i> specified in the table in ■ COBS 18.5A.3R apply to a <i>firm</i> carrying on <i>AIFM investment management functions</i> , references to <i>customer</i> or <i>client</i> are to be construed as references to any <i>AIF</i> for which the <i>firm</i> is acting or intends to act.
18.5A.6	R	Research and inducements	Subject to ■ COBS 18.5A.7R, a <i>firm</i> must comply with ■ COBS 18 Annex 1 (Research and inducements for collective portfolio managers) when executing orders, or placing orders with other entities for execution, that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i> .
18.5A.7	R	Modification of best execution	<p>■ COBS 18 Annex 1 does not apply in relation to an <i>AIF</i> which in accordance with its core investment policy:</p> <p>(1) does not generally invest in <i>financial instruments</i> that can be:</p> <ul style="list-style-type: none"> (a) registered in a <i>financial instruments</i> account opened in the books of a <i>depositary</i>; or (b) physically delivered to the <i>depositary</i>; or <p>(2) generally invests in <i>issuers</i> or <i>non-listed companies</i> to potentially acquire control over such companies either individually or jointly with other <i>funds</i>.</p>
18.5A.8	R		Only the following provisions in ■ COBS 11.2 apply:
			<p>(1) ■ COBS 11.2.5G;</p> <p>(2) ■ COBS 11.2.17G;</p> <p>(3) ■ COBS 11.2.23AR;</p> <p>(4) ■ COBS 11.2.24R;</p>

- (5) ■ COBS 11.2.25R(1) and ■ COBS 11.2.26R, but only where an AIF itself has a governing body which can provide prior consent; and
- (6) ■ COBS 11.2.27R, but only regarding the obligation on an AIFM to notify the AIF of any material changes to its order execution arrangements or execution policy.
- 18.5A.9 R** References to the service of *portfolio management* in ■ COBS 11.2 (Best execution for AIFMs and residual CIS operators) are to be read as references to the management by a *firm* of *financial instruments* held for or within the AIF.
- Distance marketing**
- 18.5A.10 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, ■ COBS 5.1 applies specific requirements for that activity.
- Adequate information**
- 18.5A.11 R** A *full-scope UK AIFM* that markets an *unauthorised AIF* to a *retail client* must, in addition to providing the information in ■ FUND 3.2 (Investor information), take reasonable steps to offer and, if requested, provide to that potential investor information about the following items:
- (1) regulator – the *firm's* statutory status in accordance with ■ GEN 4 Annex 1R (Statutory status disclosure);
 - (2) commencement – when and how the *firm* is appointed;
 - (3) accounting – the arrangements for accounting to the AIF or investors in the AIF for any transaction effected;
 - (4) termination method – how the appointment of the *firm* may be terminated;
 - (5) complaints procedure – how to complain to the *firm* and a statement that the investors in the AIF may subsequently complain directly to the *Financial Ombudsman Service*;
 - (6) compensation – whether or not compensation may be available from the *compensation scheme* should the *firm* be unable to meet its liabilities, and information about any other applicable compensation scheme; and for each applicable compensation scheme, the extent and level of cover and how further information can be obtained;
 - (7) exchange rates – if a liability of the AIF in one currency is to be matched by an asset in a different currency, or if the services to be provided to the *firm* for the AIF may relate to an *investment* denominated in a currency other than the currency in which the *investments* of the AIF are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the portfolio of the AIF;
 - (8) stabilised investments – if it is the case, that the *firm* will have the right under the *AIF documents* to effect transactions in *investments*, the prices of which may be the subject of stabilisation;

- (9) research and inducements – how the *firm* intends to pay for research. For example, whether the *firm* proposes to pay for *research* directly or to use a *research* payment account;
- (10) acting as principal – if it is the case, that the *firm* may act as *principal* in a transaction with the *AIF*;
- (11) underwriting commitments – if it is the case, that the *firm* may for the account of the portfolio of the *AIF* underwrite or sub-underwrite any issue or offer for sale of *securities*, and:
 - (a) whether there are any restrictions on the categories of *securities* which may be underwritten and, if so, what these restrictions are; and
 - (b) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;
- (12) investments in other funds – whether or not the *AIF* may invest in *funds* either managed or advised by the *firm* or by an *associate* of the *firm* or in a *fund* which is not a *regulated collective investment scheme*; and
- (13) investments in securities underwritten by the firm – whether or not the portfolio of the *AIF* may contain *securities* of which any issue or offer for sale was underwritten, managed or arranged by the *firm* or by an *associate* of the *firm* during the preceding 12 months.

18.5A.12 G

Where a *full-scope UK AIFM* is required to publish a *key information document*, only information that is additional to that contained in the *key information document* needs to be disclosed under ■ COBS 18.5A.11R.

Prohibition on issue of bearer units**18.5A.13** G

The effect of section 241A of the Act is that no *bearer units* in a *collective investment scheme* may be issued, converted or cancelled from 1 January 2021. However, the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346) contain transitional provisions for the conversion of *bearer units* to registered *units* and the cancellation of *bearer units* on or before 1 January 2022.

18.5B UCITS management companies

Application

18.5B.1

R

This section applies to a *UCITS management company*.

18.5B.2

R

Application or modification of general COBS rules

A *firm* when it is carrying on *scheme management activity*:

- (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	UCITS management company
1 (Application)	Applies
2.1.1 (The client's best interests rule)	Applies
2.2B (SRD requirements)	Applies
2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)	Applies, as modified by COBS 2.3.1AR and COBS 2.3.2AR
2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1
2.4 (Agent as client and reliance on others)	Applies
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies
5.2 (E-commerce)	Applies
11.2B (Best execution for UCITS management companies)	Applies
11.3 (Client order handling)	Applies
11.7 (Personal account dealing)	Applies
11 Annex 1EU (Regulatory technical standard 28)	Applies as <i>rules</i>
18.5B (UCITS management companies)	Applies
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies

18.5B.3	G	<ul style="list-style-type: none"> (1) For activities which are not <i>scheme management activity</i>, the COBS rules apply under the general application rule, as modified in ■ COBS 1 Annex 1. (2) This may include, for example, activities relating to the administration and <i>marketing</i> of the <i>scheme</i>.
18.5B.4	R	<p>General modifications</p> <p>Where COBS rules specified in the table in ■ COBS 18.5B.2R apply to a <i>firm</i> carrying on <i>scheme management activities</i>, the following modifications apply:</p> <ul style="list-style-type: none"> (1) subject to (2), references to <i>customer</i> or <i>client</i> are to be construed as references to any <i>scheme</i> in respect of which the <i>firm</i> is acting or intends to act; and (2) references to the service of <i>portfolio management</i> in ■ COBS 11.3 (Client order handling) are to be read as references to <i>collective portfolio management</i>.
18.5B.5	G	<ul style="list-style-type: none"> (1) ■ COBS 1.2 (Markets in Financial Instruments Directive) contains modifications to the text of the <i>MiFID Org Regulation</i> where this is applied as <i>rules to firms</i> that are not subject to those provisions directly. (2) These modifications apply to the following sections that are applied in the table in ■ COBS 18.5B.2R: <ul style="list-style-type: none"> (a) ■ COBS 11.3 (Client order handling); and (b) ■ COBS 11 Annex 1EU (Regulatory technical standard 28).
18.5B.6	R	<p>Research and inducements</p> <p>A <i>firm</i> must comply with ■ COBS 18 Annex 1 (Research and inducements for collective portfolio managers) when executing orders, or placing orders with other entities for execution, that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i>.</p>
18.5B.7	G	<p>Distance marketing</p> <p><i>Firms</i> should also be aware that if they are carrying on distance marketing activity from an establishment in the <i>UK</i>, with or for a <i>consumer</i> in the <i>UK</i>, ■ COBS 5.1 applies specific requirements for that activity.</p>

18.6 Lloyd's

Application

18.6.1 **R** This section applies to a *firm* when it carries on *Lloyd's market activities*.

COBS rules that apply to Lloyd's market activities

18.6.2 **R** Only **COBS 3** (Client categorisation) and the *financial promotion rules* apply when a *firm* is carrying out *Lloyd's market activities*.

18.6.3 **G** Firms are reminded that *syndicate business plans* may be used in ways that bring them within the definition of a *financial promotion*.

Definitions and modifications

18.6.4 **R** When a *firm* is carrying on *Lloyd's market activities*, any reference in COBS to the term:

- (1) *designated investment* is to be taken to include the following specified investments:
 - (a) the *underwriting capacity of a Lloyd's syndicate*;
 - (b) *membership of a Lloyd's syndicate*; and
 - (c) *rights to or interests in the specified investments* in (a) or (b);
- (2) *designated investment business* is to be taken to include the following *regulated activities*:
 - (a) *advising on syndicate participation at Lloyd's*;
 - (b) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*; and
 - (c) *agreeing to carry on the regulated activities* in (a) or (b).

The Principles and Lloyd's market activities

18.6.5 **G** Whilst COBS has limited application to *Lloyd's market activities*, firms conducting *Lloyd's market activities* are reminded that they are required to comply with the *Principles*.

18.6A Insurance Special Purpose Vehicles (ISPVs)

Application

18.6A.1 **R** This section applies to *UK ISPVs*.

COBS rules that apply to insurance risk transformation and activities directly arising from insurance risk transformation

18.6A.2 **R** ■ COBS 3 applies (subject to ■ COBS 18.6A.3R) when a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*.

Definitions and modifications

18.6A.3 **R** When a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*:

- (1) The general definition of *client* in ■ COBS 3.2.1R is modified as set out in ■ COBS 18.6A.3R(2) below.
- (2) Any reference to the term *client* is to be taken to include:
 - (a) a *person* to whom the *firm* provides, intends to provide or has provided a service in the course of carrying on activities directly arising from *insurance risk transformation* (including the offer of *investments* issued by the *firm*); or
 - (b) (in *DISP* only) a *person* who is holding or has held an *investment* issued by the *firm*.
- (3) ■ COBS 3.6.1R(2) does not apply. A *client* can be an *eligible counterparty* in relation to *insurance risk transformation* and activities directly arising from *insurance risk transformation*.

18.6A.4 **G** For the avoidance of doubt, the remainder of ■ COBS 3.2 and ■ COBS 3.6 applies.

Communications with clients

18.6A.5 **R** Before an *investment* issued by an *ISPV* is sold to a *client* (that is not an *eligible counterparty*), the *ISPV* must ensure that the *client* is informed that compensation will not be available from the *FSCS* if the *ISPV* cannot meet its liabilities.

-
- 18.6A.6** **R** A statement that compensation will not be available from the FSCS must be included in any brochure or other written communication by which an ISPV offers *investments* to *clients*.
- 18.6A.7** **G** For the avoidance of doubt, ■ COBS 18.6A.5R and ■ COBS 18.6A.6R do not exhaust or restrict the scope of *Principle 7*.

18.7 Depositaries

- 18.7.1 R** Only the COBS provisions in the table apply to a *depositary* when acting as such, when carrying on business which is not *MiFID or equivalent third country business*:

COBS	Description
2.1	Acting honestly, fairly and professionally
2.3	Inducements, except COBS 2.3.1 R (2)(b) and COBS 2.3.2 R
4	Communication to clients including financial promotions, but only in relation to <i>communicating or approving a financial promotion</i>
11.7	Personal account dealing

18.8A OPS firms

Application

18.8A.1

R

This section applies to an *OPS firm* when it carries on *OPS activity*:

- (1) from an establishment maintained by it in the *United Kingdom*; and
- (2) which is not *MiFID, equivalent third country or optional exemption business*.

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:

- (1) a reference to:
 - (a) "*client*" is to be construed as a reference to the *occupational pension scheme* or *welfare trust*, as the case may be, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of whom the relevant business is to be carried on; and
 - (b) "*investment firm*" is to be construed as a reference to an *OPS firm*;
- (2) if an *OPS firm* is required by a *COBS rule* specified in this section to provide information to, or obtain consent from, a *client*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *occupational pension scheme* or *welfare trust* for whom that *firm* is acting; and
- (3) subject to the modifications in ■ COBS 18.8A.6 R, ■ 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 "UK" applies to an *OPS firm*.

General rule

18.8A.3

R

Except as specified in this section, the provisions of *COBS* do not apply to an *OPS firm* in relation to its *OPS activity*.

18

Client categorisation

18.8A.4

R

■ COBS 3 (Client categorisation) applies to an *OPS firm* but only for the purpose of determining the *client categorisation* of an *occupational pension scheme* or *welfare trust*.

Inducements in relation to OPS activity that is advising on investments in relation to a financial instrument or providing portfolio management services

18.8A.5 R

The COBS provisions in Table 1 apply:

- (1) to an *OPS firm* when it carries on *OPS activity* which is:
 - (a) *advising on investments* in relation to a *financial instrument*; or
 - (b) providing *portfolio management services*; and
- (2) as modified by ■ COBS 18.8A.6R.

Table 1

COBS	Description
2.1.1R	The client's best interests rule.
2.3A.16R except (1)	Inducements relating to the provision of independent advice and portfolio management services to retail clients outside the United Kingdom or to professional clients.
2.3A.18G	Guidance relating to fees, commission, and non-monetary benefits paid or provided by a person on behalf of a client.
2.3A.19R	Acceptable minor non-monetary benefits.
2.3A.20G	Guidance about determining whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service provided to the client.
2.3A.21G	Guidance about when a non-monetary benefit might impair compliance with the duty to act in the client's best interest.
2.3A.22G	Guidance relating to acceptable minor non-monetary benefits.
2.3A.30G	Guidance on inducements.
2.3A.31G	Guidance on inducements.

Modification of inducement rules specified in Table 1

18.8A.6 R

Where a provision of COBS specified in Table 1 applies, a reference to "*investment service*" is to be construed as a reference to the relevant *OPS activity* falling within the scope of ■ COBS 18.8A.5R.

Inducements in relation to OPS activity not within the scope of COBS 18.8A.5R

18.8A.7 R

The COBS provisions in Table 2 apply:

- (1) to an *OPS firm* when it carries on any *OPS activity* other than that to which ■ COBS 18.8A.5R applies; and
- (2) as modified by ■ COBS 18.8A.8R.

Table 2

COBS	Description
2.1.1R	The client's best interests rule
2.3.1R, other than (2)(b)(i) to (iii)	Rule on inducements
2.3.2R	Disclosure obligation

Modification of inducement rules specified in Table 2

18.8A.8 R In ■ COBS 2.3.1R, a reference to "designated investment business" is to be construed as a reference to any *OPS activity* that does not fall within the scope of ■ COBS 18.8A.5R.

Inducements and research

18.8A.9 R The provisions in ■ COBS 2.3B (Inducements and research) apply to an *OPS firm* with the following modifications:

- (1) ■ COBS 2.3B.1R does not apply;
- (2) for the *guidance* in ■ COBS 2.3B.2G substitute the following *guidance*:
"(1) An *OPS firm* is prohibited from receiving inducements (other than acceptable minor non-monetary benefits) in relation to *OPS activity* falling within the scope of ■ COBS 18.8A.5R. Compliance with ■ COBS 2.3B (Inducements and research) allows such a *firm* to receive third party *research* (relating to *OPS activity* falling within the scope of ■ COBS 18.8A.5R) without breaching the prohibition in ■ COBS 2.3A.16R.
(2) An *OPS firm* may receive third party *research* in relation to *OPS activity* falling within the scope of ■ COBS 18.8A.7R without subjecting that *research* to an assessment under the *inducement rule* in ■ COBS 2.3.1R if the *research* is acquired in accordance with ■ COBS 2.3B as such *research* will not constitute an *inducement*.";
- (3) the reference in ■ COBS 2.3B.3R to "■ COBS 2.3A.5R" should be construed as a reference to ■ COBS 2.3.1R (Rule on inducements);
- (4) in relation to an *OPS firm* carrying out *OPS activity* falling within the scope of ■ COBS 18.8A.5R, for the *guidance* in ■ COBS 2.3B.22G substitute:
"An *OPS firm* should also consider whether the goods or services it is looking to receive are acceptable minor non-monetary benefits under ■ COBS 2.3A.19R or ■ COBS 2.3A.22G, which can be received without breaching the *inducement rule* in ■ COBS 2.3A.16R(2).";
- (5) ■ COBS 2.3B.22G does not apply to an *OPS firm* that is carrying on *OPS activity* falling within the scope of ■ COBS 18.8A.7R; and
- (6) a reference to "ancillary services" or "investment services" in ■ COBS 2.3B.3R, ■ COBS 2.3B.4R and ■ COBS 2.3B.5R is to be construed as a reference to, as applicable, either:
 - (a) *OPS activity* that falls within the scope of ■ COBS 18.8A.5R; or
 - (b) *OPS activity* that falls within the scope of ■ COBS 18.8A.7R.

18.8A.10 R**Suitability.....**

The COBS provisions in Table 3 apply:

- (1) to an *OPS firm* when it carries on *OPS activity* which is:
 - (a) making a *personal recommendation* in relation to a *designated investment*; or
 - (b) *managing investments*; and
- (2) as modified by ■ COBS 18.8A.11R.

Table 3

COBS	Description
2.1.1R	Client's best interests rule
9.2.1R	Assessing suitability: the obligations
9.2.2R	Assessing suitability: the obligations
9.2.3R	Assessing suitability: the obligations
9.2.4R	Assessing suitability: the obligations
9.2.5R	Reliance on information
9.2.6R	Insufficient information
9.2.7G	Insufficient information
9.3.1G	Guidance on assessing suitability
9.3.2G	Churning and switching
9.5.1G	Record keeping and retention periods for suitability records

18.8A.11 R**Modification of suitability rules.....**

In ■ COBS 9.2.7G for that part which states,

"...The *firm* should also bear in mind the *client's best interests rule* and any other obligation it may have under the *rules* relating to appropriateness when providing the different service (see ■ COBS 10, Appropriateness (for non-advised services)) and ■ COBS 10A, Appropriateness (for non-advised services) (MiFID provisions).",

substitute,

"The *firm* should bear in mind any other obligation it may have under the *rules* relating to the different service being requested by the *client*".

18.8A.12 R**Professional clients.....**

- (1) If an *OPS firm* makes a *personal recommendation* to a *per se professional client* the *firm* is entitled to assume that the *client* is able financially to bear any related investment risks consistent with the *client's* investment objectives for the purposes of ■ COBS 9.2.2R(1)(b).
- (2) If an *OPS firm* makes a *personal recommendation* or *manages investments* for a *professional client* it is entitled to assume that, in relation to the products, transactions and services for which the *professional client* is so classified, the *client* has the necessary level of experience and knowledge for the purposes of ■ COBS 9.2.2R(1)(c).

Best execution**18.8A.13 R**

The provisions in ■ COBS 11.2A (Best execution – MiFID provisions) apply:

- (1) to an *OPS firm* when it carries on *OPS activity* which is *executing an order* for a *client* in relation to a *financial instrument*; and
- (2) as modified by ■ COBS 18.8A.15R.

18.8A.14 R

The provisions in ■ COBS 11.2A (Best execution – MiFID provisions) marked "UK" and ■ COBS 11 Annex 1UK (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.15 R**

- (1) The reference to the inducement requirements in ■ COBS 11.2A.19R is to be construed as a reference to, as applicable, the inducement requirements applying to an *OPS firm* pursuant to either:
 - (a) ■ COBS 18.8A.5R; or
 - (b) ■ COBS 18.8A.7R.
- (2) The requirement in ■ COBS 11.2A.34UK (see article 65(6) of the *MiFID Org Regulation*) to make public for each class of *financial instruments*:
 - (a) the top five *investment firms* used by an *OPS firm* to execute *client orders*; and
 - (b) information on the quality of execution obtained, applies in accordance with (3).
- (3) The information to be made public under (2) must:
 - (a) be published for the first time no later than 30 April 2019 and then annually no later than 30 April of each subsequent year; and
 - (b) relate to the calendar year immediately preceding the year in which the information is being made public.
- (4) In ■ COBS 11.2A, a reference to:
 - (a) "*investment service*" is to be construed as a reference to any *OPS activity* falling within the scope of ■ COBS 18.8A.13R;
 - (b) "*portfolio management*" in ■ COBS 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
 - (c) "*reception and transmission of orders*" is to be construed as a reference to *OPS activity* falling within the scope of ■ COBS 18.8A.13R and which involves the transmission of *client orders* to other entities for execution.

18.8A.16 R**Client order handling**

- (1) The COBS provisions in ■ COBS 11.3 (Client order handling) apply to an OPS firm, as modified by this rule.
- (2) The provisions in ■ COBS 11.3 (Client order handling) marked "UK" apply to an OPS firm as if they were rules.
- (3) A rule in ■ COBS 11.3 which applies only to a UCITS management company or a management company does not apply to an OPS firm.
- (4) A reference to "financial instrument" is to be construed as a reference to a designated investment (other than a P2P agreement).

18.8A.17 R**Personal account dealing**

The provisions in ■ COBS 11.7 (Personal account dealing), other than ■ COBS 11.7.2R(1), apply to an OPS firm.

18.8A.18 R**Client reporting**

- (1) The provisions in ■ COBS 16.2 (Occasional reporting) and ■ COBS 16.3 (Periodic reporting) apply to an OPS firm, as modified by this rule.
- (2) In ■ COBS 16.2.6R (Special cases) add the following paragraph after ■ COBS 16.2.6R(3):

"(4) the firm is an OPS firm and carries on OPS activity for an occupational pension scheme trustee who is a professional client and who is habitually resident in the United Kingdom. In this case, the OPS firm may rely upon the exceptions in ■ COBS 16.2.1R(2) or ■ COBS 16.2.6R(1) only if it provides a periodic statement to the professional client containing the information required by ■ COBS 18.8A.18R(3)."
- (3) Where an OPS firm carries on OPS activity and is obliged to provide a periodic statement, the periodic statement must contain the information in the table below.

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

(a)	Investment objectives A statement of any investment objectives governing the mandate of the portfolio of the occupational pension scheme as at the closing and starting date of the periodic statement.
(b)	Details of any asset loaned or charged <ol style="list-style-type: none"> (i) a summary of any investments that were, at the closing date, lent to a third party and any investments that were at that date charged to secure borrowings made on behalf of the portfolio; and (ii) the aggregate of any interest payments made and income re

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

(c)

ceived during the account period in respect of loans or borrowings made during that period and a comparison with the previous period.

Transactions and changes in composition

- (i) a summary of the *transactions* entered into for the portfolio during the period and a comparison with the previous period;
- (ii) the aggregate of *money* and a summary of all *investments* transferred into and out of the portfolio during the period; and

- (iii) the aggregate of any interest payments, dividends and other benefits received by the *firm* for the portfolio during that period and a comparison with the previous period.

(d)

Charges and remuneration

If not previously advised in writing, a statement for the period of account:

- (i) of the aggregate *charges* of the *firm* and its *associates*; and
- (ii) of any *remuneration* received by the *firm* or its *associates* or both from a third party in respect of the *transactions* entered into, or any other services provided, for the portfolio.

(e)

Movement in value of portfolio

A statement of the difference between the value of the portfolio at the closing date of the period of account and its value at the starting date, having regard, during the period of account, to:

- (i) the aggregate of assets received from the *occupational pension scheme* and added to the portfolio;
- (ii) the aggregate of the value of assets transferred, or of amounts paid, to the *client*;
- (iii) the aggregate income received on behalf of the *client* in respect of the portfolio; and
- (iv) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio.

18.8A.19**Record keeping: general**

An *OPS firm* should ensure that it keeps a record of its compliance with the requirements in this section in accordance with ■ SYSC 9.1.1R (General requirements) which contains general record-keeping requirements that apply to an *OPS firm*.

18.8A.20**Record keeping: suitability**

- (1) An *OPS firm* must retain its records relating to suitability for a minimum period of three years.
- (2) The requirement in (1) does not apply if the *client* does not proceed with the recommendation.

18.8A.21**Record keeping: client orders and transactions**

The rules in ■ COBS 18 Annex 2 (Record keeping: client orders and transactions) apply to an *OPS firm*.



18.9 ICVCs

18.9.1**R**

- (1) The *financial promotion rules* in COBS apply to an *ICVC*, except that COBS 4.13 (UCITS) applies only to an *ICVC* that is a *UCITS scheme*.
- (2) ■ COBS 14.2 (Providing product information to clients) applies to an *ICVC* that is a *UCITS scheme*.
- (3) ■ COBS 2.2B (SRD requirements) applies to an *ICVC* that is a *UCITS scheme* without a separate *management company*.

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) ■ COBS 18.5.2R if the *operator* is a *small authorised UK AIFM*; or
- (2) ■ COBS 18.5A.3R if the *operator* is a *full-scope UK AIFM*; or
- (3) ■ COBS 18.5B.2R if the *operator* is a *UCITS management company*.



18.10 Service companies

18.10.1

R

The COBS provisions in the table apply to a *service company*:

COBS	Description
4	Communications to clients, but only in relation to <i>communicating or approving a financial promotion</i>
5.2	E-Commerce
12.4	Research recommendations: required disclosures

18.10.2

R

[deleted]

18.11 Authorised professional firms

- 18.11.1 R** COBS applies to an *authorised professional firm*, except that its application in relation to *non-mainstream regulated activities* and *financial promotion* is modified as set out below.
- 18.11.1A G** In certain respects, the application of COBS to an *authorised professional firm* will be determined by the *firm's status* as a *MiFID investment firm*, a *MiFID optional exemption firm* or a *firm* to which *MiFID* does not apply.
- 18.11.2 R** COBS does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:
- (1) the *fair, clear and not misleading rule* applies;
 - (2) the *financial promotion rules* apply as modified below;
 - (3) the *rules* in the following parts of COBS which implemented the *IDD* apply in relation to *insurance distribution activities*:
 - (a) ■ COBS 2.1.1R, ■ COBS 2.2A and ■ COBS 2.3A (Conduct of business obligations);
 - (b) ■ COBS 4 (Communicating with clients, including financial promotions);
 - (c) ■ COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions));
 - (d) ■ COBS 7 (Insurance distribution);
 - (e) ■ COBS 8 (Client agreements);
 - (f) ■ COBS 9 (Suitability (including basic advice) (other than MiFID and insurance-based investment products provisions)) and ■ COBS 9A (Suitability (MiFID and insurance-based investment products provisions));
 - (g) ■ COBS 10A (Appropriateness (for non-advised services));
 - (h) ■ COBS 14.2 (Providing product information to clients); and
 - (i) ■ COBS 16A.2 (General client reporting and record keeping requirements),
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 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*;
 - (4) ■ COBS 8.1.3 R (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and
 - (5) ■ COBS 5.2 (E-commerce) applies.

18.11.2A **G** For ■ COBS 18.11.2R(3) if a *rule* implemented a requirement of the *IDD*, a note ("Note:") follows the *rule* indicating which provision was being implemented.

18.11.3 **R** The *financial promotion rules* do not apply to an *authorised professional firm* in relation to the *communication* of a *financial promotion* if:

- (1) the *firm's* main business is the practice of its profession (see IPRU(INV) 2.1.2R(3));
- (2) the *financial promotion* is made for the purposes of and incidental to the promotion or provision by the *firm* of its professional services or its *non-mainstream regulated activities*; and
- (3) the *financial promotion* is not *communicated* on behalf of another person who would not be able lawfully to *communicate* the *financial promotion* if he were acting in the course of business;

however, a *firm* may use the exemptions for promoting *unregulated collective investment schemes* in ■ COBS 4 (Communicating with clients, including financial promotions) if it wishes.

18.11.4 **G** The *rules on approving financial promotions* continue to apply.

18.12 Operating an electronic system in relation to lending

Application

18.12.1

R

This section applies to *an operator of an electronic system in relation to lending*, but only in relation to a person becoming a lender under a *P2P agreement*.

18.12.2

R

This section does not apply in relation to a current account agreement where:

- (1) there is a possibility that the account holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and
- (2) if the account holder did so, this would be a *P2P agreement* (overrunning).

Purpose

18.12.3

G

The purpose of this chapter is to ensure that, where applicable, a *firm*:

- prices and values *P2P agreements* fairly and appropriately;
- will prevent lenders being exposed to risk outside of the parameters advertised at the time of investment;
- has a reasonable basis to conclude that a *target rate* can be reasonably achieved; and
- can support the statements made in its disclosures and financial promotions.

Interpretation

18.12.4

R

In the remainder of this section:

- (1) references to a *P2P agreement* include *non-P2P agreements* included in a *P2P portfolio*;
- (2) unless the context otherwise requires, references to "lender" also include a prospective lender;
- (3) a *firm* is treated as having determined the *price* of a *P2P agreement* in cases other than where the lender and the borrower have entered

		<p>into a genuine negotiation to determine the <i>price</i> of that <i>P2P agreement</i>; and</p> <p>(4) references to repayment refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a <i>P2P agreement</i>).</p>
		<p>Credit risk assessment</p>
18.12.5	R	<p>Where a <i>firm</i> determines the <i>price</i> of a <i>P2P agreement</i>, it must undertake a reasonable assessment of the credit risk of the borrower before the <i>P2P agreement</i> is made.</p>
18.12.6	R	<p>A <i>firm</i> must base its <i>credit risk assessment</i> on sufficient information:</p> <ul style="list-style-type: none">(1) of which it is aware at the time the <i>credit risk assessment</i> is carried out;(2) obtained, where appropriate, from the borrower, and, where necessary, any other relevant sources of information.
		<p>The subject matter of the credit risk assessment</p>
18.12.7	R	<p>The <i>firm</i> must consider the risk that the borrower will not make one or more repayments under the <i>P2P agreement</i> by the due date.</p>
		<p>Scope, extent and proportionality of the credit risk assessment</p>
18.12.8	R	<ul style="list-style-type: none">(1) The extent and scope of the <i>credit risk assessment</i>, and the steps that the <i>firm</i> must take to satisfy the requirement that the assessment is a reasonable one and based on sufficient information, is dependent upon, and proportionate to, the individual circumstances of each case.(2) The <i>firm</i> must consider:<ul style="list-style-type: none">(a) the types of information to use in the <i>credit risk assessment</i>;(b) the content and level of detail of the information to use;(c) whether the information in the <i>firm's</i> possession is sufficient;(d) whether and to what extent to obtain additional information from the borrower;(e) whether and to what extent to obtain information from any other sources;(f) whether and to what extent to verify the accuracy of the information that is used; and(g) the degree of evaluation and analysis of the information that is used,having regard to the factors listed in (3) where applicable to the agreement.(3) The factors to which the <i>firm</i> must have regard when complying with (2) and deciding what steps are needed to make the <i>credit risk assessment</i> a reasonable one include each of the following where applicable to the agreement:

- (a) the type of *credit*;
- (b) the amount of the *credit* or the *credit limit*;
- (c) the duration (or likely duration) of the *credit*;
- (d) the frequency of the repayments;
- (e) the amount of the repayments;
- (f) the annual percentage rate of charge; and
- (g) any other costs, including any charge for non-compliance with the agreement, which will or may be payable by or on behalf of the borrower in connection with the agreement.

18.12.9

G

The *firm* may have regard, where appropriate, to information obtained:

- (1) in the course of previous dealings with the borrower but should consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it;
- (2) as part of conducting a *credit-worthiness assessment* in relation to a *P2P agreement* in accordance with ■ CONC 5.5A; or
- (3) as part of assessing affordability in relation to a *P2P agreement* comprising a *home finance transaction*, in accordance with ■ MCOB 11 as modified by ■ MCOB 15.

Policies and procedures for credit risk assessment

18.12.10

R

A *firm* must:

- (1) establish, implement and maintain clear and effective policies and procedures:
 - (a) to enable it to carry out *credit risk assessments*; and
 - (b) setting out the principal factors it will take into account in carrying out *credit risk assessments*;
- (2) set out in writing the policies and procedures in (1), and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;
- (3) assess and periodically review:
 - (a) the effectiveness of the policies and procedures in (1); and
 - (b) the *firm's* compliance with those policies and procedures and with its obligations under ■ COBS 18.12.5R to ■ 18.12.8R;
- (4) following the review in (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;
- (5) maintain a record of each transaction where a *P2P agreement* is entered into sufficient to demonstrate that:
 - (a) a *credit risk assessment* was carried out where required; and
 - (b) the *credit risk assessment* was reasonable and was undertaken in accordance with ■ COBS 18.12.5R to ■ 18.12.8R,

		<p>and in each case to enable the <i>FCA</i> to monitor the <i>firm's</i> compliance with its obligations under ■ COBS 18.12.5R to ■ 18.12.8R; and</p> <p>(6) (other than in the case of a <i>sole trader</i>) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the <i>firm's</i> compliance with (1) to (5).</p>
		Pricing, allocation and portfolio composition
18.12.11	R	Where a <i>firm</i> determines the <i>price</i> of a <i>P2P agreement</i> it must ensure that the <i>price</i> is fair and appropriate.
18.12.12	R	To determine a fair and appropriate <i>price</i> for a <i>P2P agreement</i> the <i>firm</i> must at least ensure:
		<ul style="list-style-type: none"> (1) the <i>price</i> is reflective of the risk profile of the loan; and (2) the <i>firm</i> has taken into account: <ul style="list-style-type: none"> (a) the time value of money; and (b) the credit spread of the <i>P2P agreement</i>.
18.12.13	R	Where a <i>firm</i> selects which <i>P2P agreements</i> to facilitate for a lender, it must facilitate only those <i>P2P agreements</i> which are in line with the disclosures made pursuant to ■ COBS 18.12.27R.
18.12.14	R	Where a <i>firm</i> is assembling or managing a <i>P2P portfolio</i> , it must ensure that it includes in that <i>P2P portfolio</i> only those <i>P2P agreements</i> it has determined with reasonable certainty will enable the lender to achieve the <i>target rate</i> .
18.12.15	G	To be able to comply with ■ COBS 18.12.14R, a <i>firm</i> should use appropriate data and robust modelling. The data may be the <i>firm's</i> own or may be sourced from third parties. Modelling could include the <i>firm's</i> <i>credit risk assessment</i> of all borrowers under <i>P2P agreements</i> included in the <i>P2P portfolio</i> , taking into account the expected losses and the variability of losses through the cycle, and the <i>price</i> of such agreements as calculated in accordance with ■ COBS 18.12.12R.
18.12.16	R	Where a <i>firm</i> determines the <i>price</i> of a <i>P2P agreement</i> it must review the valuation of each <i>P2P agreement</i> in at least the following circumstances:
		<ul style="list-style-type: none"> (1) when the <i>P2P agreement</i> is originated; (2) where the <i>firm</i> considers that the borrower is unlikely to pay its obligations under the <i>P2P agreement</i> in full, without the <i>firm</i> enforcing any relevant security interest or taking other steps with analogous effect; (3) following a <i>default</i>; and (4) where the <i>firm</i> is facilitating an exit for a lender before the maturity date of the <i>P2P agreement</i>.

18.12.17 R Where a *firm* that determines the *price* of *P2P agreements* is facilitating an exit for a lender before the maturity date of a *P2P agreement*, the *firm* must ensure that the price offered for exiting the *P2P agreement* is fair and appropriate.

Risk management framework

- 18.12.18 R**
- (1) Where any of ■ COBS 18.12.11R to ■ 18.12.17R apply, a *firm* must have and use a *risk management framework* that is designed to achieve compliance with those *rules*.
 - (2) The *firm's risk management framework* must at least:
 - (a) be appropriate to the nature, scale and complexity of its business;
 - (b) take into account any *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability under *MCOB*;
 - (c) categorise *P2P agreements* by their risk, taking into account the probability of default and the loss given default; and
 - (d) set out the circumstances in which the *firm* will review the valuation of each *P2P agreement*.
 - (3) The *firm* must set out in writing the *risk management framework*, and have it approved by its *governing body* or *senior personnel*.

18.12.19 G Where ■ COBS 18.12.11R to ■ 18.12.17R do not apply to a *firm*, it would be good practice for the *firm* to consider whether, depending on its business model, it should apply the requirements in ■ COBS 18.12.18R(1) to ■ (3).

Monitoring of the risk management framework

18.12.20 R A *firm* with a *risk management framework* must:

- (1) assess, monitor and periodically review the adequacy and effectiveness of the *risk management framework*, including by assessing outcomes against expectations;
- (2) pursuant to (1), take appropriate measures to address any deficiencies in the *risk management framework*;
- (3) maintain a record of each transaction where it has used the *risk management framework* to facilitate a *P2P agreement* sufficient to demonstrate that:
 - (a) the *price* of the *P2P agreement* was fair and appropriate in line with the *risk management framework*;
 - (b) where the *firm* selected which *P2P agreements* to facilitate for a lender, that its selection was in line with the *risk management framework*;
 - (c) any inclusion in a *P2P portfolio* was in line with the *risk management framework*,

and in each case to enable the *FCA* to monitor the *firm's* compliance with its obligations regarding the *risk management framework*;
- (4) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (3); and

- (5) allocate to an *approved person* overall responsibility within the *firm* for the establishment and maintenance of an effective *risk management framework* and record that allocation.

Publication of an outcomes statement

18.12.21 R Where a *firm* determines the *price* of *P2P agreements* in any financial year of the *firm*, it must publish an *outcomes statement* within four *months* of the end of each financial year.

18.12.22 R A *firm* must ensure that each *outcomes statement* remains publicly available for at least 10 years from publication.

Content of an outcomes statement

18.12.23 R An *outcomes statement* must include, as applicable, for the financial year of the *firm*:

- (1) the expected and actual *default rate* of all *P2P agreements* the *firm* has facilitated by risk category, by reference to the risk categories set out in the *risk management framework*, in line with the requirements in ■ COBS 4.6 on past and future performance;
- (2) a summary of the assumptions used in determining expected future *default rates*; and
- (3) where the *firm* offered a *target rate*, the actual return achieved.

Information: role of an operator of an electronic system in relation to lending

18.12.24 R A *firm* must provide to a lender a description of its role in facilitating *P2P agreements*. That description must include:

- (1) the nature and extent of due diligence the *firm* undertakes in respect of borrowers;
- (2) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the *firm* considers the borrower eligible for a *P2P agreement*;
- (3) whether the *firm* will play a role in determining the *price* of a *P2P agreement* and, if so, what role;
- (4) where lenders do not have the choice to enter into specific *P2P agreements*, what role the *firm* will play in selecting *P2P agreements* for the lender;
- (5) where a *firm* offers a *P2P portfolio* to lenders, what role it will play in assembling or managing that *P2P portfolio*;
- (6) an explanation of the *firm's* procedure for dealing with a loan in late payment or default;
- (7) an explanation of how any tax liability for lenders arising from investment in *P2P agreements* will be calculated;

- (8) whether the *firm* will play a role in facilitating a secondary market in *P2P agreements* and, if so, what role, including:
- the procedure for a lender to access their money before the term of the *P2P agreement* has expired and the risk to their investment of doing so; and
 - whether the *firm* displays *P2P agreements* that lenders wish to exit and that other lenders may choose to enter into; or
 - whether the *firm* decides if the *P2P agreement* should be transferred to another lender without involving either lender in that decision.

Information: Financial Services Compensation Scheme

18.12.25 R

A *firm* must provide confirmation to a lender that there is no recourse to the Financial Services Compensation Scheme.

Information: P2P agreements where the lender selects the agreements

18.12.26 R

Where a lender has the choice to enter into specific *P2P agreements*, a *firm* must provide the lender with at least the following information about each *P2P agreement*:

- where the *firm* determines the *price* of *P2P agreements*, the *price* of the *P2P agreement*;
- where not provided under (1), the annual percentage rate that will be paid by the borrower in respect of that *P2P agreement*, where applicable to that agreement;
- when the *P2P agreement* is due to mature;
- the frequency of the repayments to be made by the borrower;
- the amounts of the repayments to be made by the borrower;
- the total amount payable by the borrower;
- a fair description of the likely actual return, taking into account fees, default rates and taxation;
- where the *firm* determines the *price* of *P2P agreements*, details of the credit risk assessment, credit-worthiness assessment or assessment of affordability under MCOB carried out;
- whether the *P2P agreement* is backed by an asset (for example, secured against property developments) and if so, details of that asset;
- fees to be paid by the borrower or the lender, including any deduction from the interest to be paid by the borrower;
- where the *firm* determines the *price* of *P2P agreements*, the risk categorisation of that *P2P agreement* and an explanation of that risk categorisation, by reference to the risk categories set out in the *risk management framework*; and

- (12) where any of the terms in respect of which information must be provided under sub-paragraphs (1) to (7) is set by auction, a description of the auction process and of how those terms will be determined.

Information: P2P agreements where the firm selects the agreements

18.12.27 R

Where a *firm* selects which *P2P agreements* to facilitate for a lender, including where a *firm* offers a *P2P portfolio* to a lender, the *firm* must provide the lender with the following information about the *P2P agreements* it may facilitate for the lender:

- (1) the minimum and maximum interest rate that will be payable under any *P2P agreement* that may be facilitated for the lender;
- (2) the minimum and maximum maturity date of any *P2P agreement* that may be facilitated for the lender;
- (3) a fair description of the likely actual return, taking into account fees, *default rates* and taxation;
- (4) fees to be paid by the borrower or the lender, including any deduction from the interest to be paid by the borrower; and
- (5) the range and distribution of risk categories that the *P2P agreements* may fall into and an explanation of those risk categories by reference to the risk categories set out in the *risk management framework*.

Information concerning platform failure

18.12.28 R

- (1) A *firm* must notify each lender of the *firm's* arrangements made under ■ SYSC 4.1.8AR to ensure that *P2P agreements* facilitated by it will continue to be managed and administered in accordance with the contract terms between the *firm* and the lender.
- (2) Where a *firm's* arrangements made under ■ SYSC 4.1.8AR include particular terms in its contracts with lenders, or include obtaining particular prior consents from lenders, the *firm* must clearly identify these arrangements and explain how they operate.
- (3) Where a *firm's* arrangements made under ■ SYSC 4.1.8AR involve another person taking over the management and administration of *P2P agreements* if the *firm* ceases to operate the electronic system in relation to lending, the notification must inform lenders of:
 - (a) the identity of the person with which the arrangements have been made;
 - (b) how that person will hold the lenders' money; and
 - (c) whether that person is authorised by the FCA and, if it is, which relevant Part 4A permissions it holds.
- (4) A *firm* must also explain to each lender the particular risks to the management and administration of *P2P agreements* in the event of its own failure, including:
 - the possibility that *P2P agreements* may cease to be managed and administered before they mature;

the possibility that any *person* involved in the continued management and administration of *P2P agreements* after the *firm* fails may not be subject to the same regulatory regime and requirements as the *firm*, and the resulting possibility that regulatory protections may be reduced or no longer available; and

the likelihood that the majority of balances due to the lender are those due from borrowers rather than from the *firm* itself, so if the *firm fails* a lender's entitlement to any *client money* held by the *firm* would not include those balances that the *firm* has not yet received from borrowers.

The timing rules

18.12.29 R

- (1) The information to be provided in accordance with ■ COBS 18.12.24R to ■ 18.12.25R and ■ 18.12.27R to ■ 18.12.28R must be provided in good time before a *firm* carries on the relevant business for a lender.
- (2) The information to be provided in accordance with ■ COBS 18.12.26R must be provided each time before a *firm* facilitates a person becoming a lender under a *P2P agreement*, and in good time before doing so.
- (3) Where any of the terms in respect of which information must be provided under ■ COBS 18.12.26R(1) to ■ (7) are set by auction, that information must be provided as soon as reasonably practicable after those terms have been set as a result of the auction.

Keeping the client up to date

18.12.30 R

- (1) A *firm* must notify a lender in good time about any material change to the information provided under the *rules* in ■ COBS 18.12.24R and ■ 18.12.28R.
- (2) The notification in (1) must be given in a *durable medium* if the information to which it relates was given in a *durable medium*.

Ongoing disclosures

18.12.31 R

A *firm* must ensure that, at any point in time, a lender is able to access details of each *P2P agreement* they have entered into which was facilitated by that *firm*, including:

- (1) the *price* of the *P2P agreement*;
- (2) where not provided under (1), the annual percentage rate that will be paid by the borrower in respect of that *P2P agreement*, where applicable to that agreement;
- (3) the outstanding capital and interest payments in respect of that *P2P agreement*;
- (4) when the *P2P agreement* is due to mature;
- (5) any fees paid in respect of that *P2P agreement* by the lender or the borrower;
- (6) if the *firm* has carried out a valuation of the *P2P agreement*.

- (a) the most recent valuation;
 - (b) the valuation date; and
 - (c) an explanation of why the *firm* conducted the valuation;
- (7) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;
- (8) where the *firm* determines the price of *P2P agreements*, details of the *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability carried out under *MCOB*;
- (9) whether the *P2P agreement* is backed by an asset (for example, secured against property developments) and if so, details of that asset;
- (10) where the *firm*:
- (a) determines the *price of P2P agreements*;
 - (b) selects which *P2P agreements* to facilitate for a lender; or
 - (b) offers a *target rate*,
- the risk categorisation of that *P2P agreement* and an explanation of that risk categorisation, by reference to the risk categories set out in the *risk management framework*;
- (11) whether the *firm* considers that the borrower is unlikely to pay its obligations under the *P2P agreement* in full without the *firm* enforcing any relevant security interest or taking other steps with analogous effect and, if so, information to that effect; and
- (12) whether a *default* by the borrower under a *P2P agreement* has occurred and, if so, information to that effect.

Information: form**18.12.32 R**

The *documents* and information provided in accordance with **■ COBS 18.12.24R** to **■ 18.12.28R** and **■ COBS 18.12.31R** must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

Contingency funds: standardised risk warning**18.12.33 R**

- (1) In addition to any other risk warnings that must be given by a *firm*, a *firm* must provide the following risk warning to a lender when it offers a *contingency fund*, modified as necessary to reflect the terminology used by the *firm* to refer to a *contingency fund*:

"The contingency fund we offer does not give you a right to a payment so you may not receive a pay-out even if you suffer loss. The fund has absolute discretion as to the amount that may be paid, including making no payment at all. Therefore, investors should not rely on possible pay-outs from the contingency fund when considering whether or how much to invest."

- (2) The *firm* must provide the risk warning in a prominent place on every page of each website and mobile application of the *firm* available to lenders containing any reference to a *contingency fund*.

- (3) Where the lender has not approached the *firm* through a website or mobile application, the risk warning must be provided in a *durable medium* in good time before the *firm* carries on any business for that lender.

18.12.34 R The standardised risk warning must be:

- (1) prominent; and
- (2) contained within its own border and with bold text as indicated.

Contingency funds: published policy

18.12.35 R

- (1) A *firm* which offers a *contingency fund* to lenders must have a *contingency fund policy*.
- (2) The *contingency fund policy* must contain the following information:
 - (a) an explanation of the source of the money paid into the fund;
 - (b) an explanation of how the fund is governed;
 - (c) an explanation of who the money belongs to;
 - (d) the considerations the fund operator takes into account when deciding whether or how to exercise its discretion to pay out from the fund, including examples. This should include:
 - (i) whether or not the fund has sufficient money to pay; and
 - (ii) that the fund operator has absolute discretion in any event not to pay or to decide the amount of the payment;
 - (e) an explanation of the process for considering whether to make a discretionary payment from the fund; and a description of how that money will be treated in the event of the *firm's* insolvency.
 - (f) The *contingency fund policy* must be provided on every page of each website and mobile application of the *firm* available to lenders and must be:
- (3) The *contingency fund policy* must be provided on each website and mobile application of the *firm* available to lenders and must be:
 - (a) prominent;
 - (b) in an unrestricted part of the website or mobile application; and
 - (c) accessible via a link contained in the standardised risk warning in **COBS 18.12.33R**.
- (4) Where the lender has not approached the *firm* through a website or mobile application this information must be provided in a *durable medium* in good time before the *firm* carries on any business for that lender.

18.12.36 G

When deciding whether to pay out from the *contingency fund*, a *firm* should take into account fairness to lenders and whether the lender made an active choice about whether or not to participate in the *contingency fund*.

18.12.37**R****Contingency funds: information when the fund is used**

- (1) A *firm* must notify a lender if they receive payment from a *contingency fund*.
- (2) This notification must state the amount paid to the lender from the *contingency fund*.
- (3) This notification must be provided either:
 - (a) at the time the payment is made; or
 - (b) on an aggregated basis at least once every three *months*.

Contingency funds: information about how the fund is performing**18.12.38****R**

A *firm* which offers a *contingency fund* must make public on a quarterly basis the following facts about how the fund is performing:

the size of the fund compared to total amounts outstanding on *P2P agreements* relevant to the *contingency fund*;

what proportion of outstanding borrowing under *P2P agreements* has been paid using the *contingency fund*; and

a *firm* must:

- (a) only include the actual amount of money held in the *contingency fund* at the relevant time, net of any liabilities or pay outs agreed but not yet paid; and
- (b) not include any amounts due to be paid into the *contingency fund* that have not yet been paid into it.

Past performance**18.12.39****R**

A *firm* must ensure that information that contains an indication of past performance only contains information that is reflective of the actual payments received by lenders from borrowers under *P2P agreements*.

18.12.40**G**

One of the consequences of ■ COBS 18.12.39R is that payments made to lenders from a *contingency fund* should not be reflected in any information that contains an indication of past performance. Firms should also take into account the effect of commissions, fees and other charges.

Research and inducements for collective portfolio managers

1		Application
1.1	G	<p>This section applies to:</p> <ul style="list-style-type: none"> (1) a <i>small authorised UK AIFM</i> and a <i>residual CIS operator</i>, in accordance with COBS 18.5.2R; (2) a <i>full-scope UK AIFM</i>, in accordance with COBS 18.5A.3R; (3) a <i>UCITS management company</i>, in accordance with COBS 18.5B.2R.
1.2	G	<p>In accordance with COBS 18.5.3CR and COBS 18.5A.7R, this section does not apply in relation to an <i>AIF</i> or <i>CIS</i> which in accordance with its core investment policy:</p> <ul style="list-style-type: none"> (1) does not generally invest in <i>financial instruments</i> that can be: <ul style="list-style-type: none"> (a) registered in a <i>financial instruments</i> account opened in the books of a <i>depositary</i>; or (b) physically delivered to the <i>depositary</i>; or (2) generally invests in <i>issuers</i> or <i>non-listed companies</i> to potentially acquire <i>control</i> over such companies either individually or jointly with other <i>funds</i>.
1.3	G	<p>Where a <i>rule</i> or <i>guidance</i> in COBS 2.3B contains a cross-reference to another provision in COBS 2.3B which is applied by virtue of this Annex, the cross-reference is to the provision as modified or amended, unless the contrary intention appears (see GEN 2.2.11R and GEN 2.2.12G (Application of the Interpretation Act 1978)).</p>
2		Rule on research and inducement
2.1	R	<p>When executing orders, or placing orders with other entities for execution, that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i>, a <i>firm</i> must not:</p> <ul style="list-style-type: none"> (1) accept and retain any fees, commissions or monetary benefits; or (2) accept any non-monetary benefits, <p>where these are paid or provided by any third party or a <i>person</i> acting on behalf of a third party.</p>
2.2	R	<p>A <i>firm</i> must:</p> <ul style="list-style-type: none"> (1) return to the <i>fund</i> as soon as reasonably possible after receipt any fees, commissions or any monetary benefits paid or provided by any third party or a <i>person</i> acting on behalf of a third party in relation to the services provided to that <i>fund</i>; and (2) inform the investors in the <i>fund</i> about the fees, commissions or any monetary benefits transferred to them (see paragraph 2.4G).
2.3	R	<p>Paragraph 2.1R does not apply to:</p> <ul style="list-style-type: none"> (1) minor non-monetary benefits that are:

			(a) capable of enhancing the quality of service provided to the <i>fund</i> (see paragraph 3.1R); and
			(b) of a scale and nature such that they could not be judged to impair the <i>firm's</i> compliance with its duty to act honestly, fairly and professionally in the best interests of the <i>fund</i> ; and
		(2) <i>research</i> if the requirements of COBS 2.3B (Inducements and research) as modified by paragraph 4 are met.	
2.4	G	A <i>firm</i> may inform investors in the <i>fund</i> about the fees, commissions or monetary benefits transferred to them through:	
		(1) the periodic reporting statements provided to <i>participants</i> in an <i>unregulated collective investment scheme</i> in accordance with COBS 18.5.11R for a <i>small authorised UK AIFM</i> or a <i>residual CIS operator</i> ; or	
		(2) the annual reports provided on request to investors, for a <i>small authorised UK AIFM</i> in relation to an <i>authorised AIF</i> , a <i>full-scope UK AIFM</i> , or a <i>UCITS management company</i> .	
3		Acceptable minor non-monetary benefits	
3.1	R	A <i>firm</i> must not accept a non-monetary benefit unless it is a minor non-monetary benefit which is reasonable, proportionate and of a scale that is unlikely to influence the <i>firm's</i> behaviour in any way that is detrimental to the interests of the <i>fund</i> , and which consists of:	
		(1) information or documentation relating to a <i>financial instrument</i> that is generic in nature; or	
		(2) written material from a third party that:	
		(a) is either:	
			(i) commissioned and paid for by a corporate <i>issuer</i> or potential <i>issuer</i> to promote a new issuance by the company; or
			(ii) produced on an ongoing basis, where the third party is contractually engaged and paid by the <i>issuer</i> ;
		(b) clearly discloses the relationship between the third party and the <i>issuer</i> ; and	
		(c) is made available at the same time to any <i>firm</i> wishing to receive it, or to the general public; or	
		(3) participation in conferences, seminars and other training events on the benefits and features of a specific <i>financial instrument</i> ; or	
		(4) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or another training event mentioned under (3); or	
		(5) research relating to an issue of <i>shares</i> , <i>debentures</i> , <i>warrants</i> or <i>certificates representing certain securities</i> by an <i>issuer</i> , which is:	
		(a) produced by a person that is providing underwriting or placing services to the <i>issuer</i> on that issue;	
		(b) made available to prospective investors in the issue; and	
		(c) disseminated before the issue is completed; or	

		<p>(6) free sample <i>research</i> provided for a limited trial period where:</p> <ul style="list-style-type: none"> (a) the trial period lasts no longer than three months; (b) the trial period is not commenced with a provider within 12 months from the termination of an arrangement for the provision of <i>research</i> (including a previous trial period) with that provider; (c) the research provider offering the free trial has no existing relationship with the recipient <i>firm</i> for the provision of <i>research</i> or <i>execution</i> services; and (d) the recipient <i>firm</i> keeps records of the dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in (a) to (c) above; or <p>(7) [deleted]</p> <p>(8) third party <i>research</i> that is received by a <i>firm</i> providing investment services or ancillary services to clients where it relates to fixed income, currency or commodity instruments; or</p> <p>(9) <i>research</i> received from a research provider where the research provider is not engaged in <i>execution</i> services and is not part of a financial services group that includes an <i>investment firm</i> that offers <i>execution</i> or brokerage services; or</p> <p>(10) written material that is made openly available from a third party to any <i>firm</i> wishing to receive it or to the general public. "Openly available" in this context means that there are no conditions or barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a <i>firm</i> or a member of the public in order to access that material; or</p> <p>(11) corporate access services which relate to listed or unlisted companies with a market capitalisation below £200m; or</p> <p>(12) short-term trading commentary that does not contain substantive analysis, and bespoke trade advisory services intrinsically linked to the execution of a transaction in <i>financial instruments</i>.</p>
3.2	G	An acceptable minor non-monetary benefit consisting of information or documentation relating to a <i>financial instrument</i> that is generic in nature may include material provided by a third party that:
		<p>(1) consists of:</p> <ul style="list-style-type: none"> (a) short term market commentary on the latest economic statistics; or (b) company results or information on upcoming releases or events; <p>(2) contains only a brief unsubstantiated summary of the third party's own opinion on such information; and</p> <p>(3) does not include any substantive analysis (for example, where the third party simply reiterates a view based on an existing recommendation or substantive research).</p>
3.3	G	A non-monetary benefit that involves a third party allocating valuable resources to the <i>firm</i> is not a minor non-monetary benefit.
3.4	G	In relation to paragraph 3.1R(8) above, since the particular features of the fixed income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account <i>research</i> services.

4		Inducements and research
4.1	R	A firm must comply with COBS 2.3B, as modified by this section, when executing orders, or placing orders with other entities for execution, that relate to financial instruments for, or on behalf of, the fund.
		General modifications
4.2	R	The application provision in COBS 2.3B.1R (Application) and associated guidance in COBS 2.3B.2G do not apply.
4.3	R	Where COBS 2.3B applies to a firm, the following modifications apply:
	(1)	in COBS 2.3B.3R:
	(a)	the reference to "providing investment services or ancillary services to clients" is to be construed as a reference to "executing orders, or placing orders with other entities for execution, that relate to financial instruments for, or on behalf of, the fund";
	(b)	the reference to "COBS 2.3A.5R, COBS 2.3A.15R or COBS 2.3A.16R" is to be construed as a reference to COBS 18 Annex 1 2.1R; and
	(c)	in COBS 2.3B.3R(3), after the reference to "COBS 2.3B.25R to COBS 2.3B.33G" insert "(as applied and modified by COBS 18 Annex 1) and the related rules in COLL";
	(2)	in COBS 2.3B.4R(1)(a), the reference to "third party research in respect of investment services rendered to its clients" is to be construed as a reference to "third party research in respect of scheme management activity or, for an AIFM, AIFM investment management functions";
	(3)	in COBS 2.3B.11R(3)(b)(ii), the reference to "the firm's policy for using third party research established under COBS 2.3B.12R" is to be construed as a reference to "the firm's written statement made in accordance with COBS 18 Annex 1 4.8R";
	(4)	in COBS 2.3B.22G:
	(a)	the reference to "COBS 2.3A.19R or COBS 2.3A.22G" is to be construed as a reference to "COBS 18 Annex 1 3.1R or COBS 18 Annex 1 3.2G"; and
	(b)	the reference to "COBS 2.3A.15R or COBS 2.3A.16R" is to be construed as a reference to "COBS 18 Annex 1 2.1R"; and
	(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 and residual CIS operators;
	(b)	COBS 11.2B for UCITS management companies; and
	(c)	articles 27 and 28 of the AIFMD level 2 regulation for full-scope UK AIFMs.
4.4	R	COBS 2.3B.8R(1) and the reference to "agreeing the research charge with its clients" in COBS 2.3B.4R(2)(a) only apply if the fund has its own governing body which is independent of the firm.
4.5	G	(1) An example of a fund that has its own governing body which is independent of the firm is a fund that is a body corporate where the firm is not a director of the fund.

		(2)	An example of a <i>fund</i> that does not have its own governing body which is independent of the <i>firm</i> is a <i>fund</i> that is a <i>body corporate</i> where the <i>firm</i> is the sole director of the <i>fund</i> .
4.6	G		In accordance with COBS 18.5.3R(1), COBS 18.5A.5R and COBS 18.5B.4R(1), references to <i>client</i> are to be construed as references to any <i>fund</i> in respect of which the <i>firm</i> is acting or intends to act.
			Disapplication of disclosure provisions
4.7	R		The following provisions do not apply and references to them in COBS 2.3B are to be ignored:
		(1)	COBS 2.3B.5R;
		(2)	COBS 2.3B.6G;
		(3)	COBS 2.3B.8R(2);
		(4)	COBS 2.3B.9G;
		(5)	COBS 2.3B.12R;
		(6)	COBS 2.3B.20R; and
		(7)	COBS 2.3B.31R (but see COBS 18 Annex 1 4.24G to COBS 18 Annex 1 4.28G).
4.7A	R		
			[deleted]
4.7B	R		[deleted]
			Prior disclosure of the research account to investors
4.8	R		A <i>firm</i> using a <i>research payment account</i> must set out in writing:
		(1)	how the <i>firm</i> will comply with the elements of COBS 2.3B.4R(4);
		(2)	how <i>research</i> purchased through the <i>research payment account</i> may benefit the <i>fund</i> , taking into account its investment objective, policy and strategy;
		(3)	the approach the <i>firm</i> will take to allocate the costs of research fairly among the <i>funds</i> it manages;
		(4)	the manner in which, and the frequency at which, the <i>research charge</i> will be deducted from the assets of the <i>fund</i> ; and
		(5)	a statement as to where up-to-date information on the matters covered in COBS 18 Annex 1 4.11R can be obtained.
4.9	R		[deleted]
4.10	G	(1)	A <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> may wish to publish the information in paragraph 4.8 with the information to be made available about <i>AIFs</i> in accordance with FUND 3.2.2R(9) (Prior disclosure of information to investors).
		(2)	A <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or a <i>residual CIS operator</i> may wish to publish the information in paragraph 4.8 with the information to be made available about <i>AIFs</i> in accordance with COBS 18.5.5R (Scheme documents for an unauthorised fund).
		(3)	The <i>authorised fund manager</i> of an <i>authorised fund</i> is required to publish the information in paragraph 4.8 in the <i>fund's prospectus</i> under the relevant <i>rules</i> in COLL.

4.11	R	(1)	A firm using a <i>research payment account</i> must publish: <ul style="list-style-type: none"> (a) the budgeted amount for <i>research</i>; and (b) the amount of the estimated <i>research charge</i> for each <i>fund</i>. <ul style="list-style-type: none"> (2) a firm must not increase its <i>research budget</i> or <i>research charge</i> unless it has provided clear information about the increase in good time before it is to take effect. (3) The information in (1) and (2) must be made available to investors and potential investors in the <i>fund</i>. <p>Periodic disclosure of the research payment account to investors</p>
4.12	R		A firm using a <i>research payment account</i> must, for each <i>fund</i> it manages, provide information to investors on the total costs the <i>fund</i> has incurred for third-party <i>research</i> in the most recent annual accounting period. [deleted]
4.13	G	(1)	A full-scope UK AIFM of an <i>unauthorised AIF</i> may wish to publish the information in paragraph 4.12 with the information to be made available about <i>AIFs</i> in accordance with FUND 3.3 (Annual report of an AIF).
		(2)	The <i>authorised fund manager</i> of an <i>authorised fund</i> is required to publish the information in paragraph 4.12 in the annual long report of the <i>authorised fund</i> under the <i>rules</i> in COLL.
4.14	R		A firm using a <i>research payment account</i> must, on request, make available a summary of the following information to investors for the most recent annual accounting period: <ul style="list-style-type: none"> (1) the providers paid from the account; (2) the total amount each provider was paid; (3) the benefits and services received by the <i>firm</i>; and (4) how the total amount spent from the account compares to the budget set by the <i>firm</i>, noting any rebate or carry-over if residual monies are held in the account.
			Additional modifications relating to joint payments for third-party research and execution services
4.15	R	(1)	The following modifications to the <i>rules</i> and <i>guidance</i> in COBS 2.3B apply where a <i>firm</i> falls within (2): <ul style="list-style-type: none"> (a) COBS 18 Annex 1 4.3R(1)(c); (b) COBS 18 Annex 1 4.7R(7); and (c) COBS 18 Annex 1 4.17R to COBS 18 Annex 1 4.28G. <ul style="list-style-type: none"> (2) A firm falls within this paragraph where it: <ul style="list-style-type: none"> (a) executes orders relating to <i>financial instruments</i>, or places orders relating to <i>financial instruments</i> with other entities for execution, where those orders are executed or placed for, or on behalf of, a <i>fund</i>; and (b) uses, or intends to use, joint payments for third-party <i>research</i> and execution services.
4.16	G	(1)	This Annex applies where a <i>firm</i> carries on <i>scheme management activity</i> or <i>AIFM management functions</i> in respect of a <i>fund</i> . A <i>firm</i> to which this Annex applies may also carry on <i>MiFID</i> , equivalent <i>third country</i> or optional exemption business for other clients and be subject to the provisions of COBS 2.3B in respect of such business.

	(2)	The intention of the <i>rules</i> in COBS 2.3B as amended by this Annex is to allow <i>firms</i> to set <i>research</i> budgets at an appropriate level of aggregation across relevant <i>funds</i> and the <i>clients</i> of their <i>MiFID, equivalent third country or optional exemption business</i> .
4.17	R	COBS 2.3B.25R is modified as follows:
	(1)	for COBS 2.3B.25R(1), substitute
	"(1)	the <i>firm</i> must have a written policy on joint payments for each <i>fund</i> (irrespective of whether the policy also applies with or without modifications to other <i>funds</i>) which:
	(a)	describes the <i>firm's</i> approach to joint payments, and how the <i>firm</i> will ensure compliance with the requirements in:
	(i)	COBS 2.3B.25R(2) to COBS 2.3B.33G, excluding COBS 2.3B.31R; and
	(ii)	COBS 18 Annex 1 4.24G to COBS 18 Annex 1 4.28G; and
	(b)	specifies the operation of the <i>firm's</i> governance, decision-making and controls in respect of third-party <i>research</i> purchased using joint payments, including how these are maintained separately from those for trade execution;";
	(2):	in COBS 2.3B.25R(4)(b), omit "under this chapter";
	(3)	for COBS 2.3B.25R(5), substitute
	"(5)	(a): at least annually, the <i>firm</i> must set a budget for the purchase of <i>research</i> using joint payments based on the expected amount of third-party <i>research</i> needed to manage.
	(i)	the <i>investments</i> of the <i>fund</i> ; or
	(ii)	the <i>investments</i> of more than one <i>fund</i> ; and
	(b)	the budget must:
	(i)	be set at a level of aggregation that is appropriate to the <i>firm's</i> processes for managing the <i>investments</i> of the <i>fund</i> or <i>funds</i> ;
	(ii)	not be linked to the expected volumes or values of transactions executed on behalf of the <i>fund</i> or <i>funds</i> ; and
	(iii)	not compromise the <i>firm's</i> ability to meet the requirements of COBS 2.3B.25R(6) and (8);";
	(4)	for COBS 2.3B.25R(6), substitute:
	"(6)	the <i>firm</i> must allocate fairly the costs of <i>research</i> purchased using joint payments to the relevant <i>fund</i> or <i>funds</i> ";
	(5)	for COBS 2.3B.25R(7), substitute:
	"(7)	(a) (in relation to an <i>unauthorised AIF</i> or an <i>unregulated collective investment scheme</i>) the <i>firm</i> must periodically, and at least annually:
	(i)	assess the value, quality and use of <i>research</i> purchased using joint payments and its contribution to the in-

			<p>vestment decision-making process; and</p> <p>(ii) ensure that the amount of <i>research</i> charges to <i>clients</i> is reasonable compared with those for comparable services; and</p> <p>(b) (in relation to an <i>authorised fund</i>) the <i>firm's</i> must assess, as part of an assessment of value under COLL 6.6.20R (Assessment of value), COLL 8.5.17R (Assessment of value), or COLL 15.7.17R (Assessment of value) the value, quality and use of <i>research</i> purchased using joint payments and its contribution to the investment decision-making process; and"; and</p>
(6)			<p>in COBS 2.3B.25R(8) the reference to "disclose to its <i>clients</i>" is to be read as a reference to:</p> <p>(a) (if the <i>fund</i> is a <i>collective investment scheme</i>) "disclose to <i>unitholders</i> in the <i>fund</i>"; and</p> <p>(b) (if the <i>fund</i> is not a <i>collective investment scheme</i>) "disclose to investors in the <i>fund</i>".</p>
4.18	R		<p>COBS 2.3B.26R is modified as follows:</p> <p>(1) in the opening words, for "If the amount of <i>research</i> charges to <i>clients</i> exceeds the budget" substitute "If the amount of <i>research</i> charges incurred exceeds a budget";</p> <p>(2) in COBS 2.3B.26R(1), the "relevant actions" to be included in the <i>firm's</i> policy must include at least:</p> <p>(a) in relation to the any <i>fund</i> to which the budget applies, a requirement to inform the <i>governing body</i> of such <i>fund</i> if the body is independent of the <i>firm</i> (see COBS 18 Annex 1 4.5G);</p> <p>(b) a requirement for the <i>firm</i> to consider whether the increase in <i>research</i> charges is in the best interests of any <i>fund</i> to which the budget applies and the <i>fund's unitholders</i> or investors;</p> <p>(c) a requirement that the additional charges for <i>research</i> are fairly and appropriately allocated between any <i>funds</i> to which the budget applies; and</p> <p>(d) a requirement to ensure that (where applicable) the increase in <i>research</i> charges is assessed as part of:</p> <p>(i) the assessment of value under COLL 6.6.20R (Assessment of value), COLL 8.5.17R (Assessment of value), or COLL 15.7.17R (Assessment of value); or</p> <p>(ii) the value assessment under PRIN 2A.4 (Consumer Duty: retail customer outcome on price and value);</p> <p>(3) in COBS 2.3B.26R(2), the reference to "disclosed to <i>clients</i>" is to be read as a reference to (as applicable):</p> <p>(a) where a <i>fund</i> to which the budget applies is a <i>collective investment scheme</i>, "disclosed to <i>unitholders</i> in the annual report for the <i>fund</i> (if there is one), a <i>periodic statement</i> or similar notification to <i>unitholders</i>"; or</p>

		(b) where a <i>fund</i> to which the budget applies is not a <i>collective investment scheme</i> , "disclosed to investors in the <i>fund</i> in the annual report for the <i>fund</i> (if there is one), a <i>periodic statement</i> or similar notification to investors"; and
	(4)	where a <i>fund</i> to which the budget applies is an <i>authorised fund</i> , the information to be disclosed to <i>unitholders</i> under COBS 2.3B.26R(2) includes the following in the annual report for the <i>fund</i> :
	(a)	if the amount of <i>research</i> charges exceeds the budget set under COBS 2.3B.25R(5), at least:
	(i)	the fact that the amount of <i>research</i> charges has exceeded the budget;
	(ii)	the proportion of the increase over the budgeted amount; and
	(iii)	the reason for the excess; and
	(b)	if the budget for <i>research</i> is increased, at least:
	(i)	the fact that the budget has been increased;
	(ii)	the proportion of the increase over the previous budget; and
	(iii)	the reasons for the increase.
4.19	G	For COBS 2.3B.27G substitute:
	"(1)	For the purposes of COBS 2.3B.25R(6), the <i>firm</i> should determine a cost allocation level appropriate to its business model. The specific cost of individual investment <i>research</i> items need not be discretely attributable.
	(2)	Where a budget applies to:
	(a)	more than one <i>fund</i> ; or
	(b)	one or more <i>funds</i> and other <i>clients</i> for which the <i>firm</i> carries on <i>MiFID</i> , equivalent third country or optional exemption business,
		the approach should be reasonable and its outcome fair such that relative costs incurred are commensurate with the relative benefits received by the <i>fund</i> , <i>funds</i> or <i>clients</i> .
	(3)	The approach to allocation levels in (2) includes across:
	(a)	<i>funds</i> with which the <i>firm</i> has different payment arrangements for the purchase of <i>research</i> ;
	(b)	<i>funds</i> that have similar investment strategies;
	(c)	different <i>funds</i> or groups of <i>funds</i> that benefit from the same <i>research</i> ; and
	(d)	other allocation levels that are appropriate to the <i>firm's</i> investment processes for the <i>fund</i> or <i>funds</i> and other <i>clients</i> for which the <i>firm</i> carries on <i>MiFID</i> , equivalent third country or optional exemption business".
4.20	R	In COBS 2.3B.28R, omit "under this chapter".
4.21	R	In COBS 2.3B.29R, the reference to "COBS 11.2A.2R" is to be read as a reference to:
	(1)	(for a small authorised UK AIFM and a residual CIS operator) "COBS 11.2.1R (Obligation to execute orders on terms most favourable to the client)";
	(2)	(for a UCITS management company) "COBS 11.2B.5R (Obligation to execute orders on terms most favourable to the scheme)"; and

			(3) (for a full-scope UK AIFM) "article 27(2) of the AIFMD level 2 regulation (Execution of decisions to deal on behalf of the managed AIF)".
4.22	R	COBS 2.3B.30R is modified as follows:	
		(1) in the opening words, the reference to "relevant clients" is to be read as a reference to (as applicable):	
		(a) (where the fund is a collective investment scheme), "unitholders in the fund"; or	
		(b) (where the fund is not a collective investment scheme), "investors in the fund";	
		(2) in COBS 2.3B.30R(1), after "the firm's use of joint payments for research" insert "in relation to the fund";	
		(3) in COBS 2.3B.30R(2):	
		(a) after "the firm's policy on joint payments", insert "in relation to the fund"; and	
		(b) the reference to "the information needs of its clients" is to be read as a reference to (as applicable):	
		(i) (where the fund is a collective investment scheme), "the information needs of unitholders in the fund"; or	
		(ii) (where the fund is not a collective investment scheme), "the information needs of investors in the fund";	
		(4) in COBS 2.3B.30R(3), in accordance with COBS 18.5.3R, COBS 18.5A.3R and COBS 18.5B.4R, the reference to "client" is a reference to the relevant fund;	
		(5) for COBS 2.3B.30R(4), substitute:	
		"(4) the most significant of:	
		(a) the benefits and services received from research providers (measured by total amounts paid); and	
		(b) the types of research providers from which such services are purchased,	
		at an appropriate level of aggregation"; and	
		(6) in COBS 2.3B.30R(5):	
		(a) in accordance with COBS 18.5.3R, COBS 18.5A.3R and COBS 18.5B.4R, the reference to "client" is a reference to the relevant fund; and	
		(b) omit ", and provided as part of the ex post reporting on costs and charges".	
4.23	R	In COBS 2.3B.33G, the reference to COBS 2.3B.25R(7)(b) is to be construed as a reference to COBS 2.3B.25R(7)(a)(ii).	
		Prior disclosures relating to joint payments for research	
4.24	G	In accordance with COBS 18 Annex 1 4.7R(7) (Disapplication of disclosure provisions), COBS 2.3B.31R does not apply to a firm that is subject to COBS 18 Annex 1. The specific prior disclosure and periodic disclosure provisions that apply where such a firm uses, or intends to use, joint payments for third-party research and execution services are set out in COBS 18 Annex 1 4.25R to COBS 18 Annex 1 4.28G.	
4.25	R	For the purpose of making the disclosures required by COBS 2.3B.25R(8), a firm must provide the information specified in COBS 2.3B.30R(1) to (3) before a person becomes a unitholder or investor in the fund.	

4.26	G	(1)	(a)	The <i>rules</i> in COLL require the <i>authorised fund manager</i> of an <i>authorised fund</i> to publish the information referred to in COBS 18 Annex 1 4.25R in the <i>fund's prospectus</i> .
			(b)	Where the <i>research budget</i> of an <i>authorised fund</i> is increased, the <i>firm</i> will need to consider such an increase in accordance with the requirements of the <i>Act</i> , the <i>OEIC Regulations</i> and the <i>rules</i> on changes to <i>schemes</i> in COLL 4.3 (<i>Approvals and notifications</i>), COLL 8.3 (<i>Investor relations</i>) and COLL 15.5 (<i>Annual report and investor relations</i>).
		(2)		A <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> may wish to publish the information in COBS 18 Annex 1 4.25R with the information to be made available in accordance with FUND 3.2.2R (<i>Prior disclosure of information to investors</i>).
		(3)		A <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or a <i>residual CIS operator</i> may wish to publish the information in COBS 18 Annex 1 4.25R along with the information to be made available about <i>AIFs</i> or <i>CISs</i> in accordance with COBS 18.5.5R (<i>Scheme documents for an unauthorised fund</i>).
Periodic disclosures relating to joint payments for research				
4.27	R	(1)		For the purpose of making the disclosures required by COBS 2.3B.25R(8) , a <i>firm</i> must provide:
		(a)		the disclosures in COBS 2.3B.30R(4) and (5); and
		(b)		in addition to (a), where the <i>fund</i> is an <i>authorised fund</i> and if relevant, the information in COBS 2.3B.30R(6) (see COBS 18 Annex 1 4.18R(4)(b)).
		(2)		The information in (1) must be provided:
		(a)		on request; and
		(b)		on a periodic basis.
4.28	G	(1)		The <i>rules</i> in COLL require the <i>authorised fund manager</i> of an <i>authorised fund</i> to provide the disclosures in COBS 18 Annex 1 4.27R in the annual long report of the <i>authorised fund</i> .
		(2)		A <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> may wish to publish the information in COBS 18 Annex 1 4.27R with the information to be made available about <i>AIFs</i> in accordance with FUND 3.3 (<i>Annual report of an AIF</i>).
		(3)		A <i>small authorised UK AIFM</i> or a <i>residual CIS operator</i> may wish to publish the information in COBS 18 Annex 1 4.27R in the <i>periodic statement</i> to <i>unitholders</i> or investors in the <i>fund</i> pursuant to COBS 18.5.11R (if applicable).

Record keeping: client orders and transactions

1		Application
1.1	R	<p>This section applies to:</p> <ul style="list-style-type: none"> (1) a <i>firm</i> in respect of non-<i>MiFID</i> business related to commodity derivative instruments; (2) a <i>small authorised UK AIFM</i> and a <i>residual CIS operator</i>; (3) an <i>OPS firm</i> when it carries on business which is not <i>MiFID</i> or equivalent third country business; and (4) an <i>authorised professional firm</i> with respect to activities other than <i>non-mainstream regulated activities</i>.
1.2	G	In accordance with COBS 18.5.3R(1), references to <i>client</i> in relation to a <i>small authorised UK AIFM</i> or a <i>residual CIS operator</i> are to be construed as references to any <i>fund</i> in respect of which the <i>firm</i> is acting or intends to act.
2		Record keeping of client orders and decisions to deal
2.1	R	<p>(1) A <i>firm</i> must immediately make a record of the details in (2), to the extent they are applicable to the order or decision to deal in question, in relation to:</p> <ul style="list-style-type: none"> (a) every order received from a <i>client</i>; (b) every decision to deal taken in providing the service of <i>portfolio management</i>; and (c) for a <i>small authorised UK AIFM</i> and <i>residual CIS operator</i>, every decision to deal taken in managing <i>financial instruments</i> held for or within a <i>fund</i>. <p>(2) The details referred to in (1) are:</p> <ul style="list-style-type: none"> (a) the name or other designation of the <i>client</i>; (b) the name or other designation of any relevant <i>person</i> acting on behalf of the <i>client</i>; (c) the details specified in points (3), (4), and in points (5) to (8), of the table in 4.1; (d) the nature of the order if other than buy or sell; (e) the type of the order; (f) any other details, conditions and particular instructions from the <i>client</i> that specify how the order must be carried out; and (g) the date and exact time of the receipt of the order, or of the decision to deal by the <i>firm</i>.
3		Record-keeping of transactions
3.1	R	<p>Immediately after executing a <i>client order</i>, or, in the case of <i>firms</i> that transmit orders to another <i>person</i> for execution, immediately after receiving confirmation that an order has been executed, <i>firms</i> must record the following details of the transaction in question:</p> <ul style="list-style-type: none"> (1) the name or other designation of the <i>client</i>; (2) the details specified in points (1) to (10) of the table in 4.1R;

		(3)	the total price, being the product of the unit price and the quantity;
		(4)	the nature of the transaction if other than buy or sell; and
		(5)	the natural person who executed the transaction or who is responsible for the execution.
3.2	R		If a <i>firm</i> transmits an order to another <i>person</i> for execution, the <i>firm</i> must immediately record the following details after making the transmission:
		(1)	the name or other designation of the <i>client</i> whose order has been transmitted;
		(2)	the name or other designation of the <i>person</i> to whom the order was transmitted;
		(3)	the terms of the order transmitted; and
		(4)	the date and exact time of transmission.
4			Details to be recorded
4.1	R	(1)	Trading day The trading day on which the transaction was executed.
		(2)	Trading time The time at which the transaction was executed, reported in the local time of the <i>competent authority</i> to which the transaction will be reported, and the basis in which the transaction is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
		(3)	Buy/sell indicator Identifies whether the transaction was a buy or sell from the perspective of the reporting <i>firm</i> or, in the case of a report to a <i>client</i> , of the <i>client</i> .
		(4)	Instrument identification This must consist of: a unique code to be decided by the <i>competent authority</i> (if any) to which the report is made identifying the <i>financial instrument</i> which is the subject of the transaction; and if the <i>financial instrument</i> in question does not have a unique identification code, the name of the instrument or, in the case of a <i>derivative</i> contract, the characteristics of the contract.
		(5)	Unit price The price per <i>security</i> or <i>derivative</i> contract excluding <i>commission</i> and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
		(6)	Price notation The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt the price is expressed as a percentage, that percentage must be included.
		(7)	Quantity The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of <i>derivative</i> contracts included in the transaction.
		(8)	Quantity notation An indication as to whether the quantity is the number of units of <i>financial instruments</i> , the nominal value of bonds or the number of <i>derivative</i> contracts.
		(9)	Counterparty Identification of the counterparty to the transaction. (a) Where the counterparty is an <i>investment firm</i> , that identification must consist of a unique code for that

		<p><i>firm</i>, to be determined by the <i>competent authority</i> (if any) to which the report is made; where the counterparty is a <i>regulated market</i>, an <i>MTF</i> or an entity acting as its central counterparty, the unique harmonised identification code for that market, <i>MTF</i> or entity acting as central counterparty, as specified in the list published by the <i>competent authority</i> of the home Member State of that entity.</p>
	(b)	<p>Where the counterparty is not an <i>investment firm</i>, a <i>regulated market</i>, an <i>MTF</i> or an entity acting as central counterparty, it should be identified as 'customer/client' of the <i>investment firm</i> which executed the transaction.</p>
(10)	Venue identification	<p>Identification of the venue where the transaction was executed.</p> <p>That identification must consist of: where the venue is a <i>trading venue</i>, its unique harmonised identification code; otherwise, the code 'OTC'.</p>

Chapter 19

Pensions supplementary provisions

19.1 Pension transfers, conversions, and opt-outs

[Note: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fq21-3.pdf>]

Application

- 19.1.-1 **R** [deleted]
- 19.1.-1A **R** Except where a *firm* is providing *abridged advice* (see ■ COBS 19.1A), this section applies to a *firm* which:
- (1) gives *advice on pension transfers, pension conversions and pension opt-outs* to a *retail client*; or
 - (2) *arranges pension transfers, pension conversions or pension opt-outs*, in relation to:
 - (3) a *pension transfer*;
 - (4) a *pension conversion*; or
 - (5) a *pension opt-out* from a scheme with *safeguarded benefits* or potential *safeguarded benefits*.
- 19.1.-1B **G** A *firm* should comply with this section in order to give appropriate independent advice for the purposes of **section 48** of the Pension Schemes Act 2015.
- 19.1.1-A **R** [deleted]
- 19.1.1 **R** [deleted]

19.1.1A

Requirement for pension transfer specialist

R

- (1) A firm must ensure that *advice on pension transfers, pension conversions and pension opt-outs* is given or checked by a *pension transfer specialist*.
- (2) The requirement in (1) does not apply where the only *safeguarded benefit* involved is a *guaranteed annuity rate*.

19.1.1B

Role of the pension transfer specialist when checking

G

When a *firm* uses a *pension transfer specialist* to check its proposed *advice on pension transfers, pension conversions and pension opt-outs*, it should ensure that the *pension transfer specialist* takes the following steps:

- (1) checks the entirety and completeness of the advice;
- (2) confirms that any *personal recommendation* is suitable for the *retail client* in accordance with the obligations in ■ COBS 9.2.1R to ■ 9.2.3R and including those matters set out at ■ COBS 19.1.6G; and
- (3) confirms in writing that they agree with the proposed advice before it is provided to the *retail client*, including any *personal recommendation*.

Personal recommendation for pension transfers and conversions

19.1.1C

R

- (1) A firm must make a *personal recommendation* when it provides *advice on conversion or transfer of pension benefits*.
- (2) Before making the *personal recommendation* the *firm* must:
 - (a) determine the *proposed arrangement* with *flexible benefits* to which the *retail client* would move; and
 - (b) carry out the *appropriate pension transfer analysis* and produce the *transfer value comparator*.
- (3) The requirement in (2)(b) does not apply if the only *safeguarded benefit* involved is a *guaranteed annuity rate*.
- (4) The *firm* must take reasonable steps to ensure that the *retail client* understands how the key outcomes from the *appropriate pension transfer analysis* and the *transfer value comparator* contribute towards the *personal recommendation*.
- (5) Prior to making a *personal recommendation* to effect a *pension transfer* or *pension conversion*, a *firm* must obtain evidence that the *client* can demonstrate that they understand the risks to them of proceeding with the *pension transfer* or *pension conversion*.

19.1.1D

G

- (1) ■ COBS 9 contains suitability requirements which apply if a *firm* makes a *personal recommendation* in relation to *advice on conversion or transfer of pension benefits*.
- (2) (a) ■ COBS 9 requires a *firm* to obtain from the *client* necessary information for the *firm* to be able to make a recommendation.

The necessary information includes ensuring that the *client* has the necessary experience and knowledge to understand the risks involved in the transaction. If a *client* does not understand the risks and/or the *firm* does not have evidence that the *client* can demonstrate their understanding, then it is likely not to be appropriate, under the ■ COBS 9 requirements, to make a recommendation to transfer or convert.

- (b) The *firm* should make a clear record of the steps it has taken to satisfy itself on reasonable grounds that it has adequate evidence of the *client's* demonstration of their understanding of the risks.
- (3) When a *firm* is obtaining evidence as to whether the *client* can demonstrate that they understand the risks involved in the *pension transfer* or *pension conversion*, it should tailor its approach according to the experience, financial sophistication and/or vulnerability of each individual *client*.

Appropriate pension transfer analysis

19.1.2 **R**

[deleted]

19.1.2A **R**

[deleted]

19.1.2B **R**

To prepare an appropriate transfer analysis a *firm* must:

- (1) assess the benefits likely to be paid and options available under the *ceding arrangement*;
- (2) compare (1) with those benefits and options available under the *proposed arrangement*;
- (3) where the *proposed arrangement* is a *personal pension scheme*, *stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme*, and a *qualifying scheme* is available to the *retail client*, compare the benefits and options available under the *proposed arrangement* with the benefits and options available under the *default arrangement* of the *qualifying scheme*; and
- (4) undertake the analysis in (1), (2) and (3) in accordance with ■ COBS 19 Annex 4A and ■ COBS 19 Annex 4C.

19.1.2C **R**

■ COBS 19.1.1-AR and ■ COBS 19.1.2BR do not preclude a *firm* from preparing other forms of the analysis (for example, stochastic cashflow modelling) which are relevant to making a *personal recommendation* to the *retail client*, as long as projected outcomes at the 50th percentile are no less conservative than if the analysis had been prepared in accordance with ■ COBS 19 Annex 4A and ■ COBS 19 Annex 4C.

19.1.2D **G**

- (1) This *guidance* applies if a *firm* presents information in the *appropriate pension transfer analysis* which considers the impact of:
 - (a) the Pension Protection Fund and the FSCS; or
 - scheme funding or employer covenants.

		<p>(2) If a <i>firm</i> presents the information in (1) it should, in accordance with <i>Principle 7</i> and the <i>fair, clear and not misleading rule</i>, do so in a way that is balanced and objective.</p> <p>(3) If a <i>firm</i> does not have specialist knowledge in assessing the impact of (1)(a) or 1(b), it should consider not including the information.</p>
19.1.2E	G	<p>(1) This <i>guidance</i> applies if a <i>firm</i> presents information in the <i>appropriate pension transfer analysis</i>:</p> <ul style="list-style-type: none"> (a) that contains an indication of future performance; and (b) is produced by a financial planning tool or cash flow model that uses different assumptions to those shown in the <i>key features illustration</i> for the <i>proposed arrangement</i>. <p>(2) A <i>firm</i> presenting the information in (1) should explain to the <i>retail client</i> why different assumptions produce different illustrative financial outcomes.</p>
19.1.3	G	[deleted]
		Transfer value comparator
19.1.3A	R	<p>(1) To prepare a <i>transfer value comparator</i>, a <i>firm</i> must compare the transfer value offered by the <i>ceding arrangement</i> with the estimated value needed today to purchase the <i>future income benefits</i> available under the <i>ceding arrangement</i> using a <i>pension annuity</i> (calculated in accordance with ■ COBS 19 Annex 4B and ■ COBS 19 Annex 4C).</p> <p>(2) The <i>firm</i> must provide the <i>transfer value comparator</i> to the <i>retail client</i> in a durable medium using the format and wording in ■ COBS 19 Annex 5 and using the notes set out in ■ COBS 19 Annex 5 1.2R.</p> <p>(3) When the <i>retail client</i> has passed the normal retirement age of the <i>ceding arrangement</i>, the <i>firm</i> must provide a <i>transfer value comparator</i> applying the retirement age assumed in the calculation of the transfer value.</p> <p>(4) Where the <i>ceding arrangement</i> allows the <i>retail client</i> to take their benefits at an age below the scheme's normal retirement age, with no reduction for early payment and where no consent is required, then the <i>firm</i> must provide a <i>transfer value comparator</i> assuming that the <i>retail client</i> will retire at this age.</p>
		Guidance on estimated transfer value
19.1.3B	G	<p>If a <i>firm</i> gives <i>advice on conversion or transfer of pension benefits</i> to a <i>retail client</i> under circumstances where the <i>ceding arrangement</i> is expected to be changed, or replaced by another scheme, the <i>firm</i> should:</p> <ul style="list-style-type: none"> (1) prepare a <i>provisional appropriate pension transfer analysis</i> and <i>transfer value comparator</i> based on the information related to the changed or replacement scheme; (2) make reasonable assumptions about the changed or replacement scheme where the benefits are uncertain; and

		(3) set out in a provisional <i>suitability report</i> any assumptions and uncertainties to the <i>retail client</i> , which should clearly set out that the <i>personal recommendation</i> can only be finalised once the transfer value and changed or replacement arrangements are certain.
19.1.4	R	[deleted]
19.1.4A	E	[deleted]
19.1.4B	R	[deleted]
19.1.5	R	[deleted]
19.1.6	G	<p>Guidance on assessing suitability</p> <p>(1) The <i>guidance</i> in this section relates to the obligations to assess suitability in ■ COBS 9.2.1R to ■ 9.2.3R.</p> <p>(2) When a <i>firm</i> is making a <i>personal recommendation</i> for a <i>retail client</i> who is, or is eligible to be, a member of a <i>pension scheme</i> with <i>safeguarded benefits</i> and who is considering whether to transfer, convert or opt-out, a <i>firm</i> should start by assuming that a transfer, conversion or opt-out will not be suitable.</p> <p>(3) A <i>firm</i> should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the <i>retail client's</i> best interests.</p> <p>(4) To demonstrate (3), the factors a <i>firm</i> should take into account include:</p> <ul style="list-style-type: none"> (a) the <i>retail client's</i> intentions for accessing pension benefits; (b) the <i>retail client's</i> attitude to, and understanding of the risk of giving up <i>safeguarded benefits</i> (or potential <i>safeguarded benefits</i>) for <i>flexible benefits</i>, taking into account the following factors: <ul style="list-style-type: none"> (i) the risks and benefits of staying in the ceding arrangement; (ii) the risks and benefits of transferring into an arrangement with <i>flexible benefits</i>; (iii) the <i>retail client's</i> attitude to certainty of income in retirement; (iv) whether the <i>retail client</i> would be likely to access funds in an arrangement with <i>flexible benefits</i> in an unplanned way; (v) the likely impact of (iv) on the sustainability of the funds over time; (vi) the <i>retail client's</i> attitude to and experience of managing investments or paying for <i>advice on investments</i> so long as the funds last; and (vii) the <i>retail client's</i> attitude to any restrictions on their ability to access funds in the <i>ceding arrangement</i>;

- (c) the *retail client's* attitude to, and understanding of investment risk;
- (d) the *retail client's* realistic retirement income needs including:
- (i) how they can be achieved;
 - (ii) the role played by *safeguarded benefits* (or potential *safeguarded benefits*) in achieving them; and
 - (iii) the consequent impact on those needs of a transfer, conversion or opt-out, including any trade-offs; and
- (e) alternative ways to achieve the *retail client's* objectives instead of the transfer, conversion or opt-out.
- (5) If a *firm* uses a risk profiling tool or software to assess a *retail client's* attitude to the risk in (4)(b) it should:
- (a) check whether the tool or software is capable of taking into account at least those factors listed in (4)(b)(i) to (vii); and
 - (b) ensure that those factors which are not included are factored into the *firm's* assessment of the *client's* attitude to risk.
- (6) When a *firm* asks questions about a *retail client's* attitude to the risk in 4(b) it should consider the *rules* on communicating with *clients* (■ COBS 4), which require a *firm* to ensure that a communication is fair, clear and not misleading.
- (7) Where a *qualifying scheme* is available to the *retail client*, a *firm* considering making a *personal recommendation* to effect a *pension transfer* to a *personal pension scheme*, *stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme*:
- (a) should start by assuming that it will not be as suitable as a transfer to the *default arrangement* of an available *qualifying scheme*; and
 - (b) will need to be able to demonstrate clearly that, as at the time of the *personal recommendation*, it is more suitable than a transfer to the *default arrangement* of an available *qualifying scheme*.
- (8) For the purposes of (7):
- (a) a *qualifying scheme* is available to the *retail client* where it accepts transfers from other schemes into its *default arrangement*; and
 - (b) where more than one *qualifying scheme* is available to the *retail client*, the *firm* should consider the available *qualifying scheme* that the *retail client* most recently joined, but may, in addition, also consider any of the other *qualifying schemes* available to the *retail client*.
- (9) To demonstrate (7)(b) the *firm* may, subject to (10), take into account one or more of the following considerations:
- (a) the *retail client* provides evidence of experience at making active investment choices as a self-investor or as an advised investor (except in relation to investments in the *default arrangement* of a *qualifying scheme* or in a mortgage endowment policy or similar product);
 - (b) where the *retail client* wishes to access the funds within 12 months of entering into pension decumulation and the *qualifying*

scheme does not offer the retail client a decumulation option that would enable the retail client to achieve their desired outcome.

- (10) In taking into account the considerations in (9), as well as any other considerations that the firm may decide to take into account when demonstrating 7(b), the firm should also consider:
 - (a) whether those considerations are so important to the client as to outweigh other considerations in favour of the default arrangement of the available qualifying scheme; and
 - (b) why the outcome sought by transferring to a personal pension scheme, stakeholder pension scheme or defined contribution occupational pension scheme that is not a qualifying scheme cannot be achieved by transferring to the qualifying scheme.
- (11) The presence of one or more of the following circumstances should not be taken as sufficient to demonstrate that the personal recommendation in (7) is suitable:
 - (a) one of the retail client's objectives is to have access to a wider range of investment options than available under the default arrangement of the qualifying scheme;
 - (b) the transfer is to take place more than 12 months before the retail client enters into pension decumulation; and/or
 - (c) the retail client will enter into pension decumulation within the next 12 months, but the retail client has not yet decided whether or how they will access their funds.

Working with another adviser

19.1.6A

G

- (1) This guidance relates to the obligations to assess suitability in ■ COBS 9.2.1R to ■ 9.2.3R.
- (2) Paragraphs (3) and (4) apply in the following situations:
 - (a) where two or more firms are involved in providing both advice on pension transfers, pension conversions and pension opt-outs and advice on investments in relation to the same transaction; and
 - (b) where two or more employees within the same firm are involved in providing both advice on pension transfers, pension conversions and pension opt-outs and advice on investments in relation to the same transaction.
- (3) In such situations, firms should work together (or ensure their employees work together) to:
 - (a) obtain information from the retail client under ■ COBS 9.2.2R(1) that is sufficient to inform both the advice on pension transfers, pension conversions and pension opt-outs and the advice on investments; and
 - (b) obtain information from the retail client under ■ COBS 9.2.2R(2) about the client's preferences regarding risk taking and their risk profile that covers both the risk in ■ COBS 19.1.6R(4)(b) and the risk in ■ COBS 19.1.6R(4)(c).
- (4) In such situations, the firm(s) providing the advice on investments in relation to the proposed transaction should ensure that (where

		relevant) the advice takes into account the impact of any loss of <i>safeguarded benefits</i> (or potentially <i>safeguarded benefits</i>) on the <i>retail client's</i> ability to take on investment risk.
19.1.7	G	[deleted]
19.1.7A	G	[deleted]
19.1.7B	G	[deleted]
19.1.7C	R	<p>Arranging without making a personal recommendation</p> <p>If a <i>firm</i> arranges a <i>pension transfer</i>, <i>pension conversion</i> or <i>pension opt-out</i> for a <i>retail client</i> without making a <i>personal recommendation</i> in relation to the <i>pension transfer</i>, <i>pension conversion</i> or <i>pension opt-out</i> it must:</p> <ul style="list-style-type: none"> (1) make a clear record of the fact that the <i>firm</i> has not given that <i>personal recommendation</i> to the <i>client</i>; (1A) where the <i>pension transfer</i> or <i>pension conversion</i> is within the scope of the requirement in Section 48 of the Pension Schemes Act 2015: <ul style="list-style-type: none"> (a) not proceed with the arrangements until it has received confirmation, from the <i>firm</i> that gave the advice to the <i>retail client</i>, that the <i>retail client</i> has received a <i>personal recommendation</i> in accordance with the requirements of ■ COBS 19.1 (and that it was not <i>abridged advice</i>); and (b) if the <i>client</i> has received a <i>personal recommendation</i>, ask whether or not the recommendation was to transfer or convert; and (c) retain clear records showing evidence of (a) and (b); (1B) where the recommendation in (1A) was not to transfer or convert the <i>retail client's</i> subsisting rights in respect of <i>safeguarded benefits</i>, the <i>firm arranging the pension transfer or pension conversion</i> must: <ul style="list-style-type: none"> (a) warn the <i>retail client</i> that they are acting against advice not to transfer or convert; (b) ask the <i>retail client</i> whether they understand the consequences of acting against advice; (c) where the <i>retail client</i> does not understand the consequences of acting against advice, refuse to arrange the <i>pension transfer</i> or conversion and instead refer the <i>retail client</i> back to the <i>firm</i> that advised them not to transfer or convert for an explanation of that advice; and (d) retain a record of the communications with the <i>retail client</i> that evidence compliance with the requirements in (a) to (c); (2) retain the records in (1), (1A) and (1B) indefinitely.
19.1.7D	G	Where the advice referred to in ■ COBS 19.1.7CR(1A) was <i>abridged advice</i> , the <i>firm</i> being asked to arrange the transfer or conversion should not ask the <i>advising firm</i> for confirmation of the <i>abridged advice</i> given. The <i>firm</i> is not

19.1.7E**R**

permitted to arrange the relevant *pension transfer or pension conversion* where the advice given was *abridged advice*.

19.1.8**G**

If a *firm* provides a *suitability report* to a *retail client* in accordance with **■ COBS 9.4.2AR** it should include:

- (1) a summary of the advantages and disadvantages of its *personal recommendation*;
- (2) an analysis of the financial implications (if the recommendation is to opt-out);
- (2A) a summary of the key outcomes from the *appropriate pension transfer analysis* (if the recommendation is to transfer or convert); and
- (3) a summary of any other material information.

19.1.9**G**

If a *firm* proposes to advise a *retail client* not to proceed with a *pension opt-out*, it should give that advice in writing.

19.1.9A**R**

Prior to finalising the *firm's personal recommendation*, a *firm* seeking evidence that the *client* can demonstrate their understanding of the risks in accordance with **■ COBS 19.1.1CR(5)** must:

- (1) make a clear record of either:
 - (a) the evidence showing that the *client* demonstrated that they understood the risks involved in effecting a *pension transfer or pension conversion* and the steps taken by the *firm* to obtain that; or
 - (b) if the *firm* could not obtain evidence that the *client* could demonstrate that understanding and the *firm* did not change to a recommendation not to transfer, the steps taken by the *firm* to obtain the evidence and clear evidence and explanation of how the *firm* satisfied itself on reasonable grounds that it was still suitable to continue to make the same *personal recommendation*; and
- (2) retain the records in (1) indefinitely.

19.1.10

The statutory advice requirement**G**

- (1) Where a *firm* has advised a *retail client* in relation to a *pension transfer* or *pension conversion* and the *firm* is asked to confirm this for the purposes of **Section 48** of the Pension Schemes Act 2015, then the *firm* should provide such confirmation as soon as reasonably practicable.
- (2) The *firm* should provide the confirmation regardless of whether it advised the *client* to proceed with a *pension transfer* or *pension conversion* or not.

19.1.11

Triage services**G**

The table in ■ PERG 12 Annex 1G includes examples of when a *firm* is and is not *advising on conversion or transfer of pension benefits* when it has an initial "triage" conversation with a potential customer. The purpose of triage is to give the customer sufficient information about *safeguarded benefits* and *flexible benefits* to enable them to make a decision about whether to take *advice on conversion or transfer of pension benefits*.

19.1A Abridged advice on pension transfers and pension conversions

[Note: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fq21-3.pdf>]

Application

19.1A.1 **R** This section applies to a *firm* which gives *abridged advice* in relation to a *pension transfer* or *pension conversion* to a *retail client*.

19.1A.2 **R** A *firm* may not give *abridged advice* to the extent that the *safeguarded benefits* involved are *guaranteed annuity rates*.

Options when providing abridged advice

19.1A.3 **R** A *firm* giving a *retail client* *abridged advice* must either:

- (1) make a *personal recommendation* that the *client* remains in their *ceding arrangement*; or
- (2) do all of the following:
 - (a) inform the *client* that they are unable to take a view on whether it is in the *client's best interests* to transfer or convert without undertaking *full pension transfer or conversion advice*, even when the firm considers that it may be in the *client's best interests*;
 - (b) check if the *client* wants the *firm* to provide *full pension transfer or conversion advice* and check that the *client* understands the associated cost; and
 - (c) (if the *firm* has reason to believe that the *client* is suffering from *serious ill-health* or experiencing *serious financial difficulty*) make the *client* aware of the implications for the level of *adviser charges* if the *client* proceeded to *full pension transfer or conversion advice*.

Guidance about proceeding from abridged advice to full pension transfer or conversion advice

19.1A.4 **G** This *guidance* applies where a *firm* has given *abridged advice* to a *retail client* and the *client* wishes to proceed to *full pension transfer or conversion advice*.

- (1) Where the outcome of the *abridged advice* was a *personal recommendation* that the *client* remains in their *ceding arrangement*, the *FCA's expectation* is that in most cases the outcome of *full*

		<i>pension transfer or conversion advice will be a personal recommendation that the client remains in their ceding arrangement.</i>
	(2)	Where the outcome was a statement that the <i>firm</i> was unable to take a view on whether it would be in the <i>client's</i> best interests to transfer or convert without undertaking <i>full pension transfer or conversion advice</i> , the <i>FCA's</i> expectation is that the outcome of <i>full pension transfer or conversion advice</i> could still be a <i>personal recommendation</i> that the <i>client</i> remains in their <i>ceding arrangement</i> .
		Inability to provide confirmation for the purposes of section 48 of the Pension Schemes Act 2015
19.1A.5	R	A <i>firm</i> must not provide a confirmation for the purposes of section 48 of the Pension Schemes Act 2015 unless it has provided <i>full pension transfer or conversion advice</i> .
		Prohibition
19.1A.6	R	A <i>firm</i> must not carry out <i>appropriate pension transfer analysis</i> and/or prepare a <i>transfer value comparator</i> and/or consider the <i>proposed arrangement</i> when providing <i>abridged advice</i> to a <i>retail client</i> .
		Requirement to use a pension transfer specialist
19.1A.7	R	A <i>firm</i> must ensure that <i>abridged advice</i> is given or checked by a <i>pension transfer specialist</i> .
19.1A.8	G	Where a <i>firm</i> uses a <i>pension transfer specialist</i> to check its proposed <i>abridged advice</i> it should have regard to the <i>guidance</i> in ■ COBS 19.1.1BG.
		Relevant guidance about assessing suitability
19.1A.9	G	If a <i>firm</i> provides a <i>suitability report</i> to a <i>retail client</i> in accordance with ■ COBS 9.4.2AR it should include (in addition to the requirements in ■ COBS 9.4):
		(1) a summary of the advantages and disadvantages of its <i>personal recommendation</i> ; and
		(2) a summary of any other material information that would assist the <i>client</i> in understanding the basis of the advice.
19.1A.10	R	A <i>firm</i> must not arrange a transaction for a <i>client</i> where only <i>abridged advice</i> has been given.
19.1A.11	G	(1) This <i>guidance</i> relates to a <i>firm's</i> obligations to assess suitability in accordance with ■ COBS 9.2.1R to ■ 9.2.3R. (2) A <i>firm</i> should start by assuming that a <i>pension transfer</i> or <i>pension conversion</i> will not be suitable. (3) For the purposes of the provision of <i>abridged advice</i> , the factors a <i>firm</i> should take into account include:

- (a) the *retail client's* intentions for accessing pension benefits;
 - (b) the *retail client's* attitude to, and understanding of the risk of, giving up *safeguarded benefits* for *flexible benefits*, taking into account the following factors:
 - (i) the risks and benefits of staying in the *ceding arrangement*;
 - (ii) the risks and benefits of transferring from the *ceding arrangement* into an arrangement with *flexible benefits*;
 - (iii) the *retail client's* attitude to certainty of income in retirement;
 - (iv) whether the *retail client* would be likely to access funds in an arrangement with *flexible benefits* in an unplanned way;
 - (v) the likely impact of (iv) on the sustainability of the funds over time;
 - (vi) the *retail client's* attitude to, and experience of, managing *investments* or paying for *advice on investments* so long as the funds last; and
 - (vii) the *retail client's* attitude to any restrictions on their ability to access funds in the *ceding arrangement*;
 - (c) the *retail client's* realistic retirement income needs including:
 - (i) how they can be achieved;
 - (ii) the role played by *safeguarded benefits* in achieving them; and
 - (iii) the consequent impact on those needs of a *pension transfer* or *pension conversion*, including any trade-offs in broad terms;
 - (d) alternative ways to achieve the *retail client's* objectives instead of the *pension transfer* or *pension conversion*;
 - (e) the *retail client's* attitude to, and understanding of, investment risk;
- (4) If a *firm* uses a risk profiling tool or software to assess a *retail client's* attitude to the risk in (3)(b) it should:
- (a) check whether the tool or software is capable of taking into account at least those factors listed in (3)(b)(i) to (vii); and
 - (b) ensure that those factors which are not included are factored into the *firm's* assessment of the *client's* attitude to risk.
- (5) When a *firm* asks questions about a *retail client's* attitude to the risk in 3(b) it should ensure they are fair, clear and not misleading in accordance with ■ COBS 4.

Guidance about charging for abridged advice

19.1A.12 ■ G

- (1) A *firm* may provide *abridged advice* to a *retail client* free of charge. However, if they do, and the conclusion is that they are unable to give a *personal recommendation* without carrying out *full advice on pension transfers or conversions*, a *firm* will need to ensure it is able to demonstrate how it still complies with *Principle 8* (Conflicts of interest), and the rules on contingent charging (■ COBS 19.1B).
- (2) A *firm* that charges a *client* twice for what is, in essence, the same service is likely to be acting inconsistently with *Principle 2*, *Principle 6*

and *Principle 8*. As a result, a *firm* will be expected to offset the *adviser charges* paid by a *retail client* for the provision of *abridged advice* from the amount it would have otherwise charged that *retail client* for the provision of *full pension transfer or conversion advice*.

19.1B Ban on contingent charging for pension transfers and conversions

[Note: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fq21-3.pdf>]

Application

- 19.1B.1 R** This section applies to a *firm* in relation to the provision of:
- (1) *advice on conversion or transfer of pension benefits* except where:
 - (a) the only *safeguarded benefit* involved is a *guaranteed annuity rate*; or
 - (b) it is *abridged advice*;
 - (2) *investment advice* or other services in connection with a *pension transfer* or *pension conversion* (including, but not limited to, implementing and arranging a *pension transfer* or *pension conversion*);
 - (3) ongoing advice or other services in relation to rights or interests in a *non-DB pension scheme* derived in whole or part from a *pension transfer* or *pension conversion*; or
 - (4) any related services.

Purpose

- 19.1B.2 G** The purpose of this section is to ensure that *firms' charging structures*, either individually or taken together with other *associates*, do not create any potential for a conflict of interest relating to, or an incentive to recommend or effect, a *pension transfer* or a *pension conversion* to a *retail client*.

Ban on contingent charging

- 19.1B.3 R** Except as specified in ■ COBS 19.1B.9(1) or ■ (2), a *firm* must ensure that both the methodology for calculating any part of, and the total value of, the *firm's adviser charges, employer or trustee funded pension advice charge or remuneration* do not vary depending on whether or not:
- (1) the *firm* makes a *personal recommendation* to a *retail client* to effect a *pension transfer* or a *pension conversion*; and/or
 - (2) the *retail client* effects a *pension transfer* or a *pension conversion*; and/or
 - (3) (in relation to ongoing advice or other services in relation to the *retail client's rights or interests in a non-DB pension scheme*) the

rights or interests in the *non-DB pension scheme* include sums derived from a *pension transfer* or a *pension conversion*.

19.1B.4

R

Where:

- (1) one *firm* carries out multiple services for a particular *retail client*; and/or
- (2) a *firm* and one or more *firms* that are its *associates* (including any other *firm* providing *investment advice* in relation to a *proposed arrangement*) are involved then,
 - COBS 19.1B.3R applies to the *firm* in relation to both the methodology for calculating any part of, and the total value of, the *adviser charges, employer or trustee funded pension advice charge and/or remuneration* of the *firm* and, where applicable, any of those *associates*.

19.1B.5

R

- (1) A *firm* must not allow itself to be part of any charging structure or arrangement (operated by the *firm* or any *associate*) which could create a potential incentive to any *firm* or any *firm* that is its *associate* to recommend or arrange a *pension transfer* or a *pension conversion* to or for a *retail client* or otherwise could circumvent the *rules* in this section.
- (2) This includes charging structures in relation to the pricing of other goods or services provided to the *client* or a connected *person* at any time by any *firm* involved in the *pension transfer* or *pension conversion* arrangements, or by any *associate* of the *firm*.

Examples of unacceptable practices

19.1B.6

G

The following *evidential provisions* provide examples of charging arrangements the *FCA* considers will breach the *rules* in this section.

19.1B.7

E

- (1) A *firm* should not charge and/or receive *adviser charges, employer or trustee funded pension advice charges and/or remuneration*, that are higher, when taken together, if the recommendation is to effect a transfer or conversion than if the recommendation is not to do so.
- (2) A *firm* and/or any of its *associates* that are *firms* should not charge and/or receive *remuneration* of a higher amount for their ongoing advice or services in relation to the funds in a *non-DB pension scheme* than they charge or receive where the funds are not derived from a *pension transfer* or a *pension conversion*.
- (3) A *firm* should not purport to charge a *retail client* the same for advice that recommends a *pension transfer* or a *pension conversion* as it would for advice that does not recommend a transfer or conversion, but not take reasonable steps to enforce payment of the full amount of the charge by the *retail client* where the advice is not to transfer or convert.
- (4) A *firm* should not charge a lower amount for any other services provided, or to be provided, by the *firm* or an *associate* to the *retail client* or, anyone connected to the *retail client*, if the *client* is advised not to transfer or convert.

- (5) A firm should not subsequently vary its adviser charges, employer or trustee funded pension advice charge and/or remuneration for advice and/or related services so that in practice they become dependent on the outcome of a personal recommendation or whether the retail client effects a pension transfer or a pension conversion.
- (6) A firm should not charge less in relation to full pension transfer or conversion advice (including charges for abridged advice) than it would do if it provided investment advice on the investment of the same size of pension funds but which did not include funds from a pension transfer or a pension conversion. This does not apply in relation to full pension transfer or conversion advice where part of the charge is payable by an employer or trustee funded advice charge.
- (7) A firm should not undertake some services related to full pension transfer or conversion advice, such as parts of appropriate pension transfer analysis or transfer value comparator, then decline to advise further and not charge for the work undertaken.
- (8) Contravention of:
- either of (1) or (2) may be relied upon as tending to establish contravention of ■ COBS 19.1B.3R; and
 - any of (3) to (7) may be relied upon as tending to establish contravention of ■ COBS 19.1B.5R.

Guidance about charging for full pension transfer or conversion advice

19.1B.8

G

- (1) A firm may provide full pension transfer or conversion advice to a retail client free of charge in exceptional cases, even if they do not fall within the exceptions in ■ COBS 19.1B.9R(1) or ■ (2). This may be, for example, where the firm is acting entirely pro-bono on humanitarian grounds, or is helping a close family friend, where the firm can demonstrate that the rules on contingent charging in this chapter are not being breached. For example, where all of the related services provided (by the firm or any associate) are also free of charge. The firm will also need to show that the advice was free of charge irrespective of whether or not the advice results in a recommendation to transfer or convert.
- (2) Where a firm has provided a retail client with abridged advice and with full pension transfer or conversion advice, it should charge the retail client taking into account the guidance in ■ COBS 19.1A.12G(2).

Exceptions to the ban on contingent charging

19.1B.9

R

A firm need not comply with ■ COBS 19.1B.3R or ■ COBS 19.1B.5R in relation to full pension transfer or conversion advice if it has satisfied itself, on reasonable grounds and based on adequate supporting evidence, that the retail client is unable to pay for full pension transfer or conversion advice without using funds that are not reasonably available, and is either:

- suffering from serious ill-health; or
- (a) experiencing serious financial difficulty or likely would be if they had to pay for full pension transfer or conversion advice on a non-contingent basis; and

- (b) would be able to access their pension fund immediately after a *pension transfer* or a *pension conversion* has taken effect.

19.1B.10 **R**

A firm that charges a *retail client* in relation to *full pension transfer or conversion advice* on a contingent basis in reliance on ■ COBS 19.1B.9R(1) or ■ (2), must ensure that the methodology for calculating, and the total value of, the *firm's* and any associate's *adviser charges, employer or trustee funded pension advice charge or remuneration* for that advice, any related service, and any ongoing advice or other services in relation to the *retail client's* rights or interests in a *non-DB pension scheme*, is not higher than if they had charged the *retail client* in relation to *full pension transfer or conversion advice* on a non-contingent basis.

19.1B.11 **G**

A *client* is likely to meet the requirements for *serious ill-health* where:

- (1) the *retail client* has a particular medical condition, as shown by reliable medical reports or records; and
- (2) there are reputable sources of medical information to evidence that the medical condition in question results, in the majority of cases, in a life expectancy below age 75.

19.1B.12 **G**

A *client* is likely to meet the requirement that they are unable to pay for *full pension transfer or conversion advice* without using funds that are not reasonably available where the amount of their reasonably available savings and investments is below the cost of *full pension transfer or conversion advice*.

19.1B.13 **G**

The types of circumstances in which a *client* is likely to be able to show they are experiencing *serious financial difficulty* include where continuing to pay domestic bills and credit commitments is a heavy burden on the *client* and the *client* has missed payments for any credit commitments and/or any domestic bills in any three or more of the last six *calendar months*.

Examples of unacceptable reasons for relying on an exception to the ban on contingent charging

19.1B.14 **G**

The following *evidential provisions* provide examples of what the *FCA* considers to be unacceptable reasons for relying on the *serious financial difficulty* and *serious ill health* exceptions and which, if relied on by a *firm*, the *FCA* considers will breach the *rules* in this section.

19.1B.15 **E**

- (1) A *firm* should not be satisfied that a *client* meets the requirements for *serious ill-health* where a *client* is only able to demonstrate an expected reduced life expectancy due to lifestyle factors (for example smoking or drinking alcohol) and not a medical condition.
- (2) A *firm* should not be satisfied that a *client* meets the requirements for *serious financial difficulty* where a *client* is experiencing *serious financial difficulties* because of incurring non-essential expenditure.
- (3) A *firm* should not be satisfied that a *client* will be able to access their pension fund immediately after a *pension transfer* or *pension*

conversion (relevant to *serious financial difficulty*) unless the *client* has been able to demonstrate to the satisfaction of the *firm* the basis on which they would be able to access their pension fund immediately after a *pension transfer* or *pension conversion*.

- (4) A *firm* should not be satisfied that a *client* is unable to pay for *full pension transfer or conversion advice* where a *client* is able to access reasonably available savings or investments to pay for *full pension transfer or conversion advice* but does not wish to access these to pay for advice.

19.1B.16 R

Contravention of any of ■ COBS 19.1B.15E (1) to ■ (4) may be relied upon as tending to establish contravention of ■ COBS 19.1B.9R and therefore ■ COBS 19.1B.3R or ■ COBS 19.1B.5R.

Additional record-keeping requirements for a firm relying on an exception in COBS 19.1B.9R(1) or (2)**19.1B.17 R**

In addition to any other record-keeping requirements to which the *firm* is subject, a *firm* charging a *retail client* on a contingent basis in reliance on one of the exceptions in ■ COBS 19.1B.9R(1) or ■ (2) must make and retain indefinitely a record of the evidence it relied upon to satisfy itself that all the relevant requirements in ■ COBS 19.1B.9R were met in relation to the *retail client*.

19.2 Personal pensions, FSAVCs and AVCs

Financial promotions

19.2.1

G

A *financial promotion* for a *FSAVC* should contain a prominent warning that, as an alternative an *AVC* arrangement exists, and that details can be obtained from the scheme administrator (if that is the case).

Suitability

19.2.2

R

When a *firm* prepares a *suitability report* it must:

- (1) (in the case of a *personal pension scheme*), explain why it considers the *personal pension scheme* to be at least as suitable as a *stakeholder pension scheme*;
- (2) (in the case of a *personal pension scheme, stakeholder pension scheme* or *FSAVC*) explain why it considers the *personal pension scheme, stakeholder pension scheme* or *FSAVC* to be at least as suitable as any facility to make additional contributions to an *occupational pension scheme, group personal pension scheme* or *group stakeholder pension scheme* which is available to the *retail client*; and
- (3) (in the case of a *pension transfer*, other than where the only *safeguarded benefit* involved is a *guaranteed annuity rate*, where the *proposed arrangement* is a *personal pension scheme, stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme*) explain why, at the time of the *personal recommendation*, it considers the *proposed arrangement* to be more suitable than the *default arrangement* of an available *qualifying scheme*.

19.2.3

R

When a *firm* promotes a *personal pension scheme*, including a *group personal pension scheme*, to a group of *employees* it must:

- (1) be satisfied on reasonable grounds that the scheme is likely to be at least as suitable for the majority of the *employees* as a *stakeholder pension scheme*; and
- (2) record why it thinks the promotion is justified.

19.2.4**G****Attachment (or earmarking) orders**

A firm should take into account the existence of any attachment (or earmarking) orders in respect of a *client's personal pension scheme or stakeholder pension scheme*.

19.2.5**G**

- (1) An operator should ensure that it is aware of, and acts fully in accordance with, any attachment or earmarking orders made in respect of any members of that scheme by a court.
- (2) In particular, an operator should be mindful of its obligations under an attachment order to give notices to other parties, including transferee operators and relevant former spouses, where relevant events occur, such as transfers and significant reductions in benefits.
- (3) A firm, when advising a client in relation to a *personal pension scheme or stakeholder pension scheme*, or in relation to a *pension transfer or pension conversion*, should enquire as to whether an attachment order exists and take it into account accordingly.



19.3 Product disclosure to members of occupational pension schemes

19.3.1

R

- (1) When a *firm sells, personally recommends or arranges the payment of an AVC contribution by a member of an occupational pension scheme to be secured by a packaged product purchased by the scheme trustees, it must give the trustees sufficient information to pass to the relevant member for that member to be able to make informed comparisons between the AVC and any alternative personal pension schemes and stakeholder pension schemes available.*
- (2) This *rule applies to an AVC where members' benefits are linked to the earmarked segments of a life policy or scheme, but it does not apply to an AVC where the trustees make pooled investments and have their own arrangements for allocating investment returns to determine members' AVC benefits.*

19.4 Open market options

Definitions

19.4.1

R

In this section:

- (1) 'fact sheet' means the *MoneyHelper* fact sheet or a statement provided by a *firm* that gives materially the same information;
- (1A) '*MoneyHelper* fact sheet' means the guide "Your pension: it's time to choose", available on <https://www.moneyhelper.org.uk>;
- (2) 'intended retirement date' means:
 - (a) the date (according to the most recent recorded information available to the provider) when the scheme member intends to retire, or to bring the benefits in the scheme into payment, whichever is the earlier; or
 - (b) if there is no such date, the scheme member's state pension age;
- (3) 'open market options' means the options available to a scheme member to access their pension savings on the open market;
- (4) 'open market options statement' means the information specified in ■ COBS 19.4.6AR, provided in a *durable medium*, to assist the *retail client* to make an informed decision about their open market options;
- (5) 'pension decumulation product' is a product used to access pension savings and includes:
 - (a) a facility to enable a *retail client* to make an *uncrystallised funds pension lump sum payment*;
 - (b) an option to take a *small lump sum payment*;
 - (c) a *drawdown pension*; and
 - (d) a *pension annuity*;
- (6) 'pension savings' is the proceeds of the *retail client's personal pension scheme, stakeholder pension scheme, FSAVC, retirement annuity contract or pension buy-out contract*;
- (7) 'reminder' is the requirement in ■ COBS 19.4.9R to remind the *retail client* about the open market options statement and the availability of *pensions guidance*;
- (7A) 'retirement risk warnings' are the warnings required to be given to a *retail client* in accordance with ■ COBS 19.4.8ER(2);
- (8) 'signpost' is the requirement in ■ COBS 19.4.16R to provide a written or oral statement encouraging a *retail client* to use *pensions guidance* or

		<p>to take regulated advice to understand their options at retirement; and</p> <p>(9) 'single page summary document' is a <i>document</i> produced by a <i>firm</i> that contains the information specified in ■ COBS 19.4.6CR.</p>
		Application
19.4.2	R	This section applies to a <i>firm</i> which operates a <i>retail client's personal pension scheme, stakeholder pension scheme, FSAVC, retirement annuity contract or pension buy-out contract</i> .
19.4.3	G	<p>This section specifies the circumstances where a <i>firm</i> must:</p> <ul style="list-style-type: none"> (1) provide a <i>retail client</i> with an open market options statement; (2) signpost <i>pensions guidance</i>; (3) provide information to enable a <i>retail client</i> to make an informed decision about how to access their pension savings; (4) remind a <i>retail client</i> about their open market options; and (5) provide appropriate warnings about the risks generally associated with the <i>retail client's</i> options for accessing their pension savings.
		Purpose
19.4.4	G	<p>The purpose of this section is to ensure that <i>firms</i> provide <i>retail clients</i> with timely, relevant and adequate information:</p> <ul style="list-style-type: none"> (1) to enable them to make an informed decision about their options for accessing pension savings; and (2) to encourage them to shop around.
		Open market options statementWhen?
19.4.5	R	[deleted]
19.4.5A	R	<p>(1) A <i>firm</i> must give a <i>retail client</i> an open market options statement:</p> <ul style="list-style-type: none"> (a) within two <i>months</i> after the <i>client</i> reaches 50 years of age; and (b) between four to ten weeks before the <i>client</i> reaches each birthday that is at five year intervals after the <i>client's</i> 50th birthday. (c) [deleted] <p>(1A) The requirement in (1) does not apply if:</p> <ul style="list-style-type: none"> (a) the <i>firm</i> has given the <i>client</i> such a statement in the last 12 <i>months</i>; or (b) the <i>client's</i> pension fund is fully crystallised; or (c) the <i>firm</i> has received a request from the <i>client</i> for their pension fund to be paid by way of a <i>serious ill-health lump sum</i> and that request has not been rejected.

- (2) A *firm* must also give a *retail client* an open market options statement:
- if the *client* asks a *firm* for a retirement quotation more than four *months* before the *client's* intended retirement date; or
 - if a *firm* does not receive such a request for a retirement quotation, between four and six *months* before the *client's* intended retirement date; or
 - if a *retail client* with open market options tells a *firm* that they are considering, or have decided:
 - to discontinue an *income withdrawal* arrangement; or
 - to take a further sum of money from their pension savings to exercise open market options; or
 - if the *retail client* requests to access their pension savings for the first time, except where the *retail client* requests that their pension fund is paid to them by way of a *serious ill-health lump sum*;
- (2A) The requirement in (2) does not apply if:
- the *firm* has given the *client* such a statement in the last 12 *months*; or
 - the *firm* has received a request from the *client* for their pension fund to be paid by way of a *serious ill-health lump sum* and that request has not been rejected.

If after taking reasonable steps to comply with the requirements in (1) or (2) a *firm* has been unable to provide a *retail client* with an open market options statement, the *firm* must provide the statement in good time before it *sells* a pension decumulation product to the *client*.

- (4) Where a *firm's* obligation to send an open market options statement is only dis-applied because of a *client's* request that their pension fund is paid to them by way of a *serious ill-health lump sum* (see ■ COBS 19.4.5AR(1A)(c) or ■ COBS 19.4.5AR(2A)(b)), but that request is subsequently rejected, a *firm* must send to the *client* an open market options statement within two *months* of the decision to reject.

Contents.....

19.4.6

R

[deleted]

19.4.6A

R

- An open market options statement given in accordance with ■ COBS 19.4.5AR(1)(a) must include:
 - a single page summary document; and
 - appropriate retirement risk warnings.
- All other open market options statements must include:
 - a single page summary document;
 - a fact sheet;
 - appropriate retirement risk warnings;
 - a statement about whether any guarantees apply and, if so, how they work; and

- (e) any other information to enable the *retail client* to be able to make an informed decision about whether to exercise, or to decline to exercise, open market options.

Single page summary document

19.4.6B R

- (1) The single page summary document must not exceed a single side of A4-sized paper when printed.
- (2) The requirement in (1) does not apply if a *retail client* asks for the information to be provided in an accessible format and the fulfilment of that request will necessitate the use of more than a single side of A4-sized paper.

19.4.6C R

The single page summary document must include the following information:

- (1) the *retail client's* name;
- (2) the *retail client's* intended retirement date;
- (3) the *firm's* name;
- (4) if the *retail client* makes or receives employment-related contributions:
 - (a) the employer's name; and
 - (b) the amount that the employer and employee have contributed to the *retail client's* pension savings in the last year (if applicable);
- (5) the current value of the *retail client's* pension savings;
- (6) if relevant, a statement warning the *retail client* that the current value of their pension savings may be subject to early exit charges or other withdrawal charges when accessed;
- (7) a statement about whether any guarantees apply and, if so, where to find out further information;
- (8) any other relevant special features, restrictions, or conditions that apply, such as (for *with-profits funds*) any market value reduction conditions in place, and how to find out further information;
- (9) if the document is required to be provided up to six *months* before the *retail client's* intended retirement date, a statement asking the *retail client* to consider whether they are saving enough to meet their needs at retirement;
- (10) a clear and prominent statement about the availability of *pensions guidance* including:
 - (a) how to access the *pensions guidance* and its contact details;
 - (b) that *pensions guidance* can be accessed on the internet, telephone, or face to face;
 - (c) that *pensions guidance* is a free impartial service to help consumers to understand their options at retirement;
 - (d) a recommendation that the *client* seeks appropriate guidance or advice to understand their options at retirement; and

		(e) the government logo and <i>pensions guidance</i> logo next to or above the statement.
19.4.6	G	
19.4.7	G	<p>For the purpose of ■ COBS 19.4.6AR(2)(b) where a <i>firm</i> provides its own statement as the fact sheet, it should include materially the same information in the <i>MoneyHelper</i> fact sheet about:</p> <ul style="list-style-type: none"> (1) the following options for accessing pensions savings, even if they are not offered by the <i>firm</i>: <ul style="list-style-type: none"> (a) <i>pension annuity</i>; (b) <i>drawdown pension</i>; and (c) <i>uncrystallised funds pension lump sum payments</i>; (2) the main features, benefits and risk factors relevant to the options for accessing pensions savings, such as: <ul style="list-style-type: none"> (a) tax implications; (b) what happens in the event of the <i>client's</i> death; (c) the loss of any guarantees; (d) the <i>client's</i> state of health; (e) the <i>client's</i> lifestyle choices; (f) whether the <i>client</i> is married or has dependants; and (g) sustainability of income over time; (3) how to access financial advice and information about the different ways in which the <i>client</i> might be able to access their pension savings; (4) the availability of free, impartial guidance from the <i>pensions guidance</i>; and (5) the <i>client's</i> option to shop around, with an explanation of how they may do so.
19.4.8	R	An open market options statement must not include <i>financial promotions</i> for a pension decumulation product.
19.4.8A	G	Retirement risk warnings This section sets out the steps a <i>firm</i> must take to prepare and identify appropriate retirement risk warnings.
19.4.8B	R	Step 1: prepare retirement risk warnings A <i>firm</i> must prepare the retirement risk warnings before providing the appropriate retirement risk warnings required by ■ COBS 19.4.6AR for the first time, and must also keep the warnings up to date.

- 19.4.8C** **R** To prepare retirement risk warnings a *firm* must:
- (1) identify the main risk factors relevant to *retail clients'* exercise of open market options; and
 - (2) prepare appropriate retirement risk warnings in relation to each of those risk factors.
- 19.4.8D** **G**
- (1) Examples of the risk factors relevant to *retail clients'* exercise of open market options include:
 - (a) the *client's* age and intended retirement date;
 - (b) the amount of the *client's* pension savings;
 - (c) if there are ongoing employer contributions;
 - (d) the existence of means-tested benefits;
 - (e) protection under the *compensation scheme*; and
 - (f) the *client's* need to review, make further decisions about, or take further actions in relation to their pension savings depending on their intended investment objectives.
 - (2) *Firms* should also have regard to the examples of risk factors which relate to pension decumulation products at ■ COBS 19.7.12G.

Step 2: identify which warnings to give a retail client

- 19.4.8E** **R** To provide appropriate retirement risk warnings a *firm* must:
- (1) using information held about the *retail client* and their open market options, identify what risk factors are most likely to be present; and
 - (2) provide appropriate retirement risk warnings to the *retail client* in relation to the risk factors identified in (1).
- 19.4.8F** **G** If it is unclear whether a risk factor is present, a *firm* should assume that the risk factor is present and give the *client* the appropriate retirement risk warning.
- 19.4.8G** **G** ■ COBS 19.4.8J requires a *firm* to use only one A4-sized page for a *client's* retirement risk warnings. A *firm* should prioritise those risk warnings it considers to be the most relevant to the *retail client's* exercise of open market options.
- 19.4.8H** **R** Retirement risk warnings which are provided between:
- (1) four to ten weeks before the client reaches 55 years of age; and
 - (2) seven months before the *retail client's* intended retirement date,
- must include a clear and prominent statement that accessing pension savings at this point in time may not be the best option.

- 19.4.8I** **R** The *firm* must provide the *retail client* with the following information separately to the retirement risk warnings:
- (1) the key assumptions that were used to prepare the retirement risk warnings; and
 - (2) the personal data it relied on to provide the retirement risk warnings.
- Presentation of retirement risk warnings**
- 19.4.8J** **R**
- (1) The retirement risk warnings must not exceed a single side of A4-sized paper when printed.
 - (2) The requirement in (1) does not apply if a *retail client* asks for the retirement risk warnings to be provided in an accessible format and the fulfilment of that request will necessitate the use of more than a single side of A4-sized paper.
- Reminder**
- 19.4.9** **R** At least six weeks before the *retail client's* intended retirement date the *firm* must:
- (1) remind the *client* about the open market options statement;
 - (2) tell the *client* what sum of money will be available to exercise open market options;
 - (3) provide the *client* with a clear and prominent statement recommending that the *client* uses the *pensions guidance* and that appointments are available; and
 - (4) recommend that the *client* seeks appropriate guidance or advice to understand their options at retirement.
- 19.4.10** **R** The reminder must not include *financial promotions* for a pension decumulation product.
- Key features illustrations**
- 19.4.11** **R** A *firm* must not provide a *key features illustration* to a *retail client* for a pension decumulation product, excluding a *small lump sum payment*, unless:
- (1) it is required to provide the *client* with the *key features illustration* in accordance with the *rules* on providing product information to clients (■ COBS 14.2.1R);
 - (2) without prompting by the *firm*, the *client* requests the *key features illustration*;
 - (3) it includes a *key features illustration* for each of the pension decumulation product options that it offers; or
 - (4) it includes multiple *key features illustrations* as indicative representations of each of the pension decumulation product options that it offers.

Communications about annuity options	
19.4.12	R When a <i>firm</i> communicates with a <i>retail client</i> about their <i>pension annuity</i> options the <i>firm</i> must provide the <i>client</i> with information about how their circumstances can affect retirement income calculations and payments for <i>pension annuities</i> offered by the <i>firm</i> and on the open market.
19.4.13	G For the purpose of ■ COBS 19.4.12R, examples of the circumstances which can affect retirement income calculations and payments include: (1) the <i>client's</i> marital status; (2) whether the <i>client</i> has dependants; (3) whether the <i>pension annuity</i> provides a fixed, increasing or decreasing income; the certainty of income associated with an annuity; (5) the <i>client's</i> state of health; and (6) the <i>client's</i> lifestyle choices.
Communications about drawdown and uncrystallised funds pension lump sum options	
19.4.14	R When a <i>firm</i> communicates with a <i>retail client</i> about their <i>drawdown pension</i> and <i>uncrystallised funds pension lump sum</i> options, the <i>firm</i> must provide the <i>client</i> with such information as is necessary for the <i>client</i> to make an informed decision including, where relevant, information about: (1) how the remaining fund is invested; (2) sustainability of income over time including: (a) the extent to which any income is guaranteed; and (b) implications of full encashment on the <i>client's</i> retirement income; (3) the need to review, make further decisions about, or take further actions during the life of the pension decumulation product; (4) impact on means-tested benefits; (5) the effect of costs and charges on the <i>client's</i> income; and (6) tax implications.
Communications about options to access pension savings	
19.4.15	G A <i>firm</i> should ensure that when it makes any communication with a <i>retail client</i> concerned with the <i>client's</i> options to access their pension savings it has regard to the <i>fair, clear and not misleading rule</i> , the <i>client's best interests rule</i> and <i>Principles 6 and 7</i> . In particular a <i>firm</i> should: (1) refer to the contents of the <i>MoneyHelper</i> fact sheet to identify what information might assist the <i>client</i> to understand their options; (2) consider whether it needs to include or refer to any information contained in the <i>MoneyHelper</i> fact sheet;

- (3) ensure that the content, presentation or layout of any:
- (a) pension decumulation product information; or
 - (b) information provided in accordance with ■ COBS 19.4.6AR(2)(e), including information accessed via hypertext links or online calculators,
- does not disguise, diminish or obscure important information or messages contained in the fact sheet or the single page summary document;
- (4) prominently highlight the ability to shop around and state clearly that other providers might offer pension decumulation products that are more appropriate for the *client's* needs and circumstances and may offer a higher level of retirement income;
- (5) present information in a logical order, using clear and descriptive headings and where appropriate cross-references and sub-headings to aid navigation; and
- (6) where possible, use plain language and avoid the use of jargon, unfamiliar or technical language or, where this is not possible, provide easily accessible accompanying explanations in plain language.

Signposting pensions guidance

19.4.16

R

- (1) When a *firm* communicates with a *retail client* about the *retail client's personal pension scheme, stakeholder pension scheme, FSAVC, retirement annuity contract or pension buy-out contract* which is provided by the *firm*, unless the circumstances in (2) apply, the *firm* must:
- (a) refer to the availability of the *pensions guidance*;
 - (b) offer to provide the *client* with information about how to access the *pensions guidance*; and
 - (c) include a recommendation that the *client* seeks appropriate guidance or advice to understand their options at retirement.
- (2) A *firm* is not required to provide the *client* with the statement required in (1) where:
- (a) the *firm* communicates with the *client* for a purpose other than:
 - (i) encouraging the *client* to think about their open market options; or
 - (ii) facilitating access to the *client's* pension savings; or
 - (b) the *client* has already accessed the *pensions guidance*; or
 - (c) the *client* has already received advice from a *firm* on their open market options, for example from an independent financial adviser; or
 - (d) the *firm* is providing the *client* with an open market options statement or six-week reminder in accordance with ■ COBS 19.4.5AR or ■ COBS 19.4.9R.

19.4.17 G An example of behaviour by or on behalf of a *firm* that is likely to contravene the *client's best interests rule* or *Principle 6* and may contravene other *Principles* is for a *firm* to actively discourage a *retail client* from using the *pensions guidance*, for example by:

- (1) leading the *client* to believe that using the *pensions guidance* is unnecessary or would not be beneficial; or
- (2) obscuring the statement about the availability of the *pensions guidance* or any other information relevant to the exercise of open market options.

Tax implications

19.4.18 R If a *firm* receives an application from a *retail client* to access some or all of their pension savings, the *firm* must provide the *client* with a description of the tax implications before the *client* accesses their pension savings.

19.4.19 R A *firm* is not required to provide the information in ■ COBS 19.4.18R where it is provided in accordance with ■ COBS 14.2.1R.



19.5 Independent governance committees (IGCs) and publication and disclosure of costs and charges

Application.....

19.5.1 R This section applies to:

- (1) a *firm* which operates a *relevant scheme* in which there are at least two *relevant policyholders*; or
- (2) a *firm* which offers or has decided to offer a *pathway investment*.

Definitions.....

19.5.1A R In this section:

- (1A) "employer pension arrangements" means an arrangement where eligibility for membership of that arrangement or section is limited to the employees of a specified employer or employers;
- (1AA) "investment performance" means the investment performance of the:
 - (a) pension savings of *relevant policyholders*; or
 - (b) the drawdown fund of pathway investors;
- (1) "drawdown fund" means either a *capped drawdown pension fund* or a *flexi-access drawdown pension fund*;
- (2) "offer" means where a *firm* (F1) makes a *pathway investment* available for *investment* in the drawdown fund which F1 operates, where the *pathway investment* is either:
 - (a) *manufactured* by F1; or
 - (b) *manufactured* by another firm (F2);
- (3A) "pathway investment comparators" means other *pathway investments* (that are not provided by the *firm*) selected by an *IGC* under ■ COBS 19.5.5R(2A)(e)(i) to ■ (iii) and which:
 - (a) are individual *pathway investments*; or
 - (b) are cohorts of similar *pathway investments*;
- (3) "pathway firm" means a *firm* which offers a *pathway investment*;
- (4) "pathway investor" means a *retail client* investing in a *firm's pathway investment*;

- (5A) "scheme comparators" means other pension arrangements (that are not provided by the *firm*) selected by an *IGC* under ■ COBS 19.5.5R(2)(e)(i) to ■ (iii) and which:
- are individual employer pension arrangements; or
 - are cohorts of similar employer pension arrangements;
- (5AA) "services" refers to the services provided by a *firm* to *relevant policyholders* or pathway investors and includes:
- the communications issued to *relevant policyholders* or pathway investors; and
 - the administration of the *relevant scheme* or *pathway investment*;
- (5) "referring" means a *firm* which arranges for a *retail client* to invest in a *pathway investment* available through a transfer to the drawdown fund operated by another *firm* (F2), where F2 offers its own *manufactured pathway investment*;
- (6) "stewardship" relates to a *firm's* exercise of rights or engagement activities in relation to the *investments* attributable to the *firm's relevant policyholders* or pathway investors, and may include:
- the exercise of a *firm's* voting rights in those *investments*; and
 - monitoring and engaging on matters such as strategy, performance, risk, culture and governance of the *investments*;
- (7) "*IGC's remit of review*" means the remit of the *IGC* as described in ■ COBS 19.5.5R(2), ■ COBS 19.5.5R(2A), ■ COBS 19.5.5R(2B), ■ COBS 19.5.5R(2C), and, where applicable ■ COBS 19.5.5R(2D) and ■ COBS 19.5.5R(2E).

19.5.1B R [deleted]

Purpose.....

19.5.1B G The purpose of this section is:

- to ensure that *relevant policyholders* and pathway investors benefit from independent review of the *investments* they invest in through the establishment of an *IGC* or (where appropriate) a *governance advisory arrangement*.

The specific objectives of the *IGC* or *governance advisory arrangement* are to:

- assess whether a *firm* provides value for money for *relevant policyholders* or pathway investors;
- provide an independent consideration of a *firm's* policies on:
 - ESG financial considerations*;
 - non-financial matters*;
 - stewardship; and
 - where applicable, *other financial considerations* to the extent that they pose a particular and significant risk of financial harm to the *relevant policyholders* or pathway investors.

19.5.2

R**Requirement to establish an IGC***A firm* (Firm A) must establish an *IGC*, unless:

- (1) Firm A has established a *governance advisory arrangement* in accordance with ■ COBS 19.5.3R; or
- (2) another *firm* in Firm A's group has already established an *IGC* under this section, and Firm A has made arrangements with that *IGC* to cover a *relevant scheme* operated by Firm A or a *pathway investment* offered by Firm A.

19.5.3

R**Governance advisory arrangements**

- (1) If a *firm* considers it appropriate, it may establish a *governance advisory arrangement* instead of an *IGC*, having regard to:
 - (a) for a *relevant scheme* operator, the size, complexity and nature of the *relevant scheme* it operates; or
 - (b) for a pathway firm, the size of the take up, or expected size of the take up, complexity and nature of the *pathway investment*.
- (2) If a *firm* has decided to establish a *governance advisory arrangement* rather than an *IGC*, this section (other than ■ COBS 19.5.9R (2), ■ COBS 19.5.9R (3), ■ COBS 19.5.10 G, ■ COBS 19.5.11 R and ■ COBS 19.5.12 G) apply to the *firm* by reading references to the *IGC* as references to the *governance advisory arrangement*.
- (3) A *firm* must establish a *governance advisory arrangement* on terms that secure the independence of the *governance advisory arrangement* and its Chair from the *firm*.

19.5.4

G

- (1) *Firms* with large or complex *relevant schemes* should establish an *IGC*. For the purposes of this section, a *firm* may determine whether it has large *relevant schemes* by reference to:
 - (a) the number of *relevant policyholders* in *relevant schemes*;
 - (b) the funds under management in *relevant schemes*; and
 - (c) the number of employers contributing to *relevant schemes*.
- (2) Examples of features that might indicate complex schemes include:
 - (a) schemes that are operated on multiple information technology systems;
 - (b) schemes that have multiple charging structures;
 - (c) schemes that offer a *with-profits fund*; and
 - (d) the *firm* offers *relevant policyholders* access to investment funds it operates or which are operated by an entity with the same ownership.
- (3) A pathway firm that has, or expects to have, a large take up of a *pathway investment* should establish an *IGC*.
- (4) A *firm* may determine whether it has, or expects to have, a large take up of a *pathway investment* by reference to:
 - (a) the number of *retail clients* invested, or expected to invest, in a *pathway investment* offered by the *firm*; or

- (b) the amount of the *firm's pathway investors' funds under, or expected to be under management in a pathway investment offered by the firm.*
- (5) Examples of features that might indicate a complex *pathway investment* include:
 - (a) a *pathway investment* that has multiple charging structures; or
 - (b) a *pathway investment* that uses a sophisticated or complex *investment strategy*, which may include *investments* in a *with-profits fund*.
- (6) Having regard to the nature of the *pathway investment*, a *firm* may consider that it is more appropriate to use a *governance advisory arrangement* where the *pathway investment* it offers is *manufactured* by another *firm*.
- (7) If a *firm manufactures* its own *pathway investment*, it may be more appropriate for the *firm* to establish an *IGC*.
- (8) A *firm* should consider establishing an *IGC* instead of a *governance advisory arrangement* if the *firm* both operates a *relevant scheme* and also *manufactures* its own *pathway investment*.

Terms of reference for an IGC

19.5.5

R

A *firm* must include, as a minimum, the following requirements in its terms of reference for an *IGC*:

- (1) the *IGC* will act solely in the interests of:
 - (a) *relevant policyholders* and any other members or *clients* a *firm* asks the *IGC* to consider; or
 - (b) *pathway investors*;
- (2) the *IGC* will assess the ongoing value for money for *relevant policyholders* delivered by a *relevant scheme* particularly, though not exclusively, through assessing the three factors in (a) to (c) below, taking into account the specific points in (d) to (g):
 - (a) the level of charges and costs, in particular:
 - (i) *administration charges* and any *transactions costs* borne by *relevant policyholders*; and
 - (ii) any other charges borne by *relevant policyholders* and any other costs incurred as a result of managing and investing, and activities in connection with the managing and investing of, the pension savings of *relevant policyholders*;
 - (b) investment performance; and
 - (c) the quality of services including whether:
 - (i) the communications are fit for purpose and properly take into account the characteristics, needs and objectives of the *relevant policyholders*; and
 - (ii) core financial transactions are processed promptly and accurately, such as processing contributions, transfers or death benefits;
 - (d) as part of the ongoing value for money assessment in (2), the *IGC* will need to consider whether to assess the *relevant scheme* by

- reference to employer pension arrangements on an individual basis or on an aggregated basis using cohorts of sufficiently similar employer pension arrangements, or a combination of both, to enable the *IGC* to produce a value for money assessment that is the most useful for the members of the *relevant scheme*, but which is also appropriate and proportionate in the circumstances;
- (e) as part of the ongoing value for money assessment in (2)(a)(i), (b) and (c), the *IGC* will need to:
 - (i) consider whether individual employer pension arrangements or cohorts of employer pension arrangements, or a combination of both, would be most appropriate to be part of its scheme comparators taking into account the proportionality and usefulness of each;
 - (ii) (where it selects cohorts of employer pension arrangements as part of its scheme comparators) select sufficiently similar employer pension arrangements that enable the *IGC* to produce an assessment that is the most useful for the members of the *relevant scheme*;
 - (iii) select a small number of reasonably comparable scheme comparators (including those which could potentially offer better value for money in respect of factors (2)(a)(i), (b) and (c));
 - (iv) use reasonable endeavours to obtain and compare the relevant data that it needs to carry out useful assessments in respect of the factors set out in (2)(a)(i), (b) and (c), in a manner which is proportionate to the likely member benefits that will result from the *IGC* assessing the data;
 - (v) assess the *relevant scheme* by reference to the scheme comparators based on factors (2)(a)(i), (b) and (c) (to the extent that there is publicly, or readily, available information about the scheme comparators in respect of those factors); and
 - (vi) consider whether any of the scheme comparators offer better value for money for *relevant policyholders* based on factors (2)(a)(i), (b) and (c) (to the extent that there is publicly, or readily, available information about the scheme comparators in respect of those factors);
 - (f) as part of the assessment of quality of services in 2(c), the *IGC* will need to assess whether default investment strategies within those schemes:
 - (i) are designed and executed in the interests of *relevant policyholders*; and
 - (ii) have clear statements of aims and objectives;
 - (g) as part of the assessment of quality of services in 2(c), the *IGC* will need to assess whether the characteristics and net performance of investment strategies are regularly reviewed by the *firm* to ensure alignment with the interests of *relevant policyholders* and that the *firm* takes action to make any necessary changes;
- (2A) the *IGC* will assess the ongoing value for money for pathway investors delivered by a *pathway investment* particularly, though not exclusively, through assessing the three factors in (a) to (c) below, taking into account the specific points in (d) to (g):

the level of charges and costs in particular:

- (i) *administration charges* and any *transactions costs* borne by pathway investors; and
- (ii) any other charges borne by pathway investors and any other costs incurred as a result of managing and investing, and activities in connection with the managing and investing of, the drawdown fund of pathway investors;

investment performance; and

the quality of services including whether:

- (i) the communications are fit for purpose and properly take into account the characteristics, needs and objectives of the pathway investors; and
- (ii) core financial transactions are processed promptly and accurately, such as processing contributions, transfers or death benefits;

as part of the ongoing value for money assessment in (2A), the IGC will need to consider whether to assess the *pathway investment* on an individual basis or on an aggregated basis using cohorts of sufficiently similar *pathway investments*, or a combination of both, to enable the IGC to produce a value for money assessment that is the most useful for the pathway investors, but which is also appropriate and proportionate in the circumstances;

as part of the ongoing value for money assessment in (2A)(a)(i), (b) and (c), the IGC will need to:

- (i) consider whether individual *pathway investments* or cohorts of *pathway investments*, or a combination of both, would be most appropriate to be part of pathway investment comparators taking into account the proportionality and usefulness of each;
- (ii) (where it selects cohorts of *pathway investments* as part of its pathway investment comparators) select sufficiently similar *pathway investments* that enable the IGC to produce an assessment that is the most useful for the pathway investors;
- (iii) select a small number of reasonably comparable pathway investment comparators (including those which could potentially offer better value for money in respect of factors (2A)(a)(i), (b) and (c));
- (iv) use reasonable endeavours to obtain and compare the relevant data that it needs to carry out useful assessments in respect of the factors set out in (2A)(a)(i), (b) and (c), in a manner which is proportionate to the likely pathway investor benefits that will result from the IGC assessing the data;
- (v) assess the *pathway investment* by reference to the pathway investment comparators based on factors (2A)(a)(i), (b) and (c) (to the extent that there is publicly, or readily, available information about the pathway investment comparators in respect of those factors); and
- (vi) consider whether any of the pathway investment comparators offer better value for money for pathway investors based on factors (2A)(a)(i), (b) and (c) (to the extent that there is publicly, or readily, available information about

- the pathway investment comparators in respect of those factors);
- (f) as part of the assessment of quality of services in (2A)(c), the *IGC* will need to assess whether the *pathway investment* offered by the *firm*:
- (i) is designed and managed in the interests of pathway investors; and
 - (ii) has a clear statement of aims and objectives;
- (g) as part of the assessment of quality of services in (2A)(c), the *IGC* will need to assess whether the characteristics and net performance of the *pathway investment* are regularly reviewed by the *firm* to ensure alignment with the interests of pathway investors and that the *firm* takes action to make any necessary changes;
- (2B) where a *firm* has an *investment strategy* or makes *investment decisions* which could have a material impact on the *relevant policyholders'* or pathway investors' *investment returns*, the *IGC* will consider and report on:
- (a) the adequacy and quality of the *firm's* policy (if any) in relation to *ESG financial considerations*;
 - (b) the adequacy and quality of the *firm's* policy (if any) in relation to *non-financial matters*; and
 - (c) how the considerations or matters in (a) and (b) are taken into account in the *firm's* *investment strategy* or *investment decision making*; and
 - (d) the adequacy and quality of the *firm's* policy (if any) in relation to stewardship;
- (2C) where the *firm* does not have a policy in relation to *ESG financial considerations*, *non-financial matters* or stewardship, the *IGC* will in each case consider and report on the *firm's* reasons for not having a policy;
- (2D) where the *firm* has not already adequately taken into account, in its *investment strategy* or *investment decision making*, *other financial considerations* that pose a particular and significant risk of financial harm to the *relevant policyholders* or pathway investors, the *IGC* will also:
- (a) consider and report on the adequacy and quality of the *firm's* policy (if any) in relation to those *other financial considerations*, and whether and how those considerations are taken into account in the *firm's* *investment strategy* or *investment decision*; or
 - (b) consider and report on the *firm's* reasons for not having a policy in relation to those considerations;
- (2E) the *IGC* will consider and report on the extent to which the *firm* has implemented its stated policies in relation to the considerations and matters in (2B), (2C), and, where applicable (2D);
- (3) in relation to the *IGC's* remit of review, the *IGC* will raise with the *firm's governing body* any concerns it may have:
- (a) in relation to any of the matters it has assessed or considered; or

- (b) where the *IGC* is unable to obtain or has difficulties obtaining from the *firm* the information it requires;
- (3A) once a decision has been made by a *firm* to offer a *pathway investment*, the *IGC* must raise any concerns under (3):
 - (a) in good time to give the *firm's governing body* a proper opportunity to consider and address the *IGC's* concerns, before the *pathway investment* is offered to *retail clients*; and
 - (b) on an ongoing basis in relation to the *pathway investment* it offers;
- (4) the *IGC* will escalate concerns as appropriate where the *firm* has not, in the *IGC's* opinion, addressed those concerns satisfactorily or at all;
- (5) the *IGC* will meet, or otherwise make decisions to discharge its duties, using a quorum of at least three members, with the majority of the quorum being independent;
- (6) the Chair of the *IGC* will be responsible for the production of an annual report setting out the following, in sufficient detail, taking into account the information needs of *consumers*:
 - (a) the *IGC's* opinion on:
 - (i) the value for money delivered by a *relevant scheme* or a *pathway investment*, particularly against the matters listed under (2) or (2A) and a statement setting out their overall assessment of whether the *relevant scheme* or *pathway investment* provides value for money; and
 - (ii) the adequacy and quality of the *firm's* policies, or reasons for not having policies, in relation to the considerations and matters listed under (2B), (2C) and (if applicable) (2D);
 - (aa) the extent to which the *firm* has implemented its stated policies in relation to the consideration and matters in (2B), (2C) and (if applicable) (2D);
 - (ab) an explanation of how the *IGC* carried out their assessment of ongoing value for money. This must include demonstrating how the factors set out in (2)(a) to (c) or (2A)(a) to (c) have been fully and properly considered;
 - (ac) the reasons:
 - (i) for the *IGC's* overall assessment of whether the *relevant scheme* or *pathway investment* provides value for money as required under (6)(a)(i);
 - (ii) (in relation to a *relevant scheme* only), where the *IGC* assessed the *relevant scheme* using cohorts of employer pension arrangements for the purposes of its general assessment in (2)(d) or used cohorts as part of the scheme comparators in (2)(e), why the *IGC* considers it is appropriate and proportionate to use cohorts and the *IGC's* reasons for using the characteristics that it used to select the cohorts;
 - (iii) (in relation to a *relevant scheme* only), why the *IGC* considers that the scheme comparators it selected for the purposes of its assessment under (2)(e) provided a reasonable comparison against the *relevant scheme*;
 - (iv) (in relation to a *pathway investment* only), where the *IGC* assessed the *pathway investment* using cohorts of *pathway*

investments for the purposes of its general assessment in (2A)(d) or used cohorts as part of the *pathway investment* comparators in (2A)(e), why the *IGC* considers it is appropriate and proportionate to use cohorts of *pathway investments* and the *IGC*'s reasons for using the characteristics that it used to select the cohorts; and

- (v) (in relation to a *pathway investment* only) why the *IGC* considers that the pathway investment comparators it selected for the purposes of its assessment under (2A)(e) provided a reasonable comparison against the *pathway investment*;
 - (b) how the *IGC* has considered *relevant policyholders'* or pathway investors' interests;
 - (c) any concerns raised by the *IGC* with the *firm's governing body* and the response received to those concerns;
 - (d) how the *IGC* has sufficient expertise, experience and independence to act in *relevant policyholders'* or pathway investors' interests;
 - (e) how each independent member of the *IGC*, together with confirmation that the *IGC* considers these members to be independent, has taken into account ■ COBS 19.5.12 G;
 - (f) the arrangements put in place by the *firm* to ensure that the views of *relevant policyholders* or pathway investors' are directly represented to the *IGC*; and
 - (g) administration charges and transaction costs information complying with the requirements in ■ COBS 19.5.16R;
- (7) the Chair of the *IGC* will ensure the annual report is produced by 30 September each year, in respect of the previous calendar year;
 - (8) the *IGC* will ensure the publication of administration charges and transaction costs information complying with the requirements in ■ COBS 19.5.13R;
 - (9) the *IGC* will ensure that all members of each *relevant scheme* are provided with an annual communication complying with the requirements in ■ COBS 19.5.17R;
 - (10) the *IGC* will make available the annual communication referred to in (9), on request, to:
 - (a) *relevant scheme* members' spouses or civil partners; and
 - (b) persons within the application of the *relevant scheme* and qualifying or prospectively qualifying for benefits under the *relevant scheme*;
 - (11) the *IGC* will ensure that information is communicated under this *rule* in a manner that pays due regard to the purposes for which *relevant policyholders* might reasonably use the information; and
 - (12) the *IGC* will retain copies of any evidence used in their assessment of ongoing value for money for a minimum of six years.

19.5.5A

G**Value for money assessment**

- (1) In the context of the *IGC's* assessment of ongoing value for money for *relevant policyholders* or pathway investors under ■ COBS 19.5.5R(2) or ■ COBS 19.5.5R(2A):
 - (a) the *administration charges* and *transaction costs* borne by *relevant policyholders* or pathway investors are likely to represent value for money when the combination of the charges and costs, and the investment performance and services are appropriate:
 - (i) for the *relevant policyholders* or pathway investors, and
 - (ii) when compared to other reasonably comparable options on the market.
 - (b) As part of the *IGC's* assessment under (1)(a)(i) regarding what is appropriate for *relevant policyholders*, the *IGC* should consider the size of the employer and the size and demographic of the membership of the *relevant scheme*.
 - (c) The *IGC* should not use a *firm's* compliance with the limits on *administration charges* (■ COBS 19.6.6R), of itself, as evidence of value for money.
 - (d) Where the limits on *administration charges* in ■ COBS 19.6.6R do not apply, the *IGC* should not use the fact that a *firm* keeps its *administration charges* at or below 1%, of itself, as evidence of value for money.
- (2) The *IGC* should take into account the considerations in (3), as part of the *IGC's*:
 - (a) decision referred to in ■ COBS 19.5.5R(2)(d) about whether to carry out its ongoing value for money assessment of the *relevant scheme* by assessing the employer pension arrangements on an individual or cohort basis; or
 - (b) selection of scheme comparators under ■ COBS 19.5.5R(2)(e)(i) to ■ (iii).
- (3) The considerations referred to in (2) are:
 - (a) the size and demographic of the membership of the individual employer pension arrangements and/or any proposed cohorts;
 - (b) (where cohorts are proposed), any other characteristics that it would be appropriate and proportionate for the *IGC* to use, in the particular circumstances of the *relevant scheme*, as part of its cohort selection criteria; and
 - (c) (if the *IGC* has used cohorts of employer pension arrangements in any part of its ongoing value for money assessment under ■ COBS 19.5.5R(2)) whether it would be appropriate and proportionate also to assess any particular employer pension arrangements within the cohorts on an individual basis in order to be able to carry out the most useful assessment under ■ COBS 19.5.5R(2).
- (4) The *IGC* should take into account the considerations in (5), as part of the *IGC's*:
 - (a) decision referred to in ■ COBS 19.5.5R(2A)(d) about whether to carry out its ongoing value for money assessment of the *pathway investment* by assessing the *pathway investment* on an individual or cohort basis; or

- (b) selection of pathway investment comparators under ■ COBS 19.5.5R(2A)(e)(i) to ■ (iii).
- (5) The considerations referred to in (4) are:
- (a) (where cohorts are proposed), any characteristics that it would be appropriate and proportionate for the *IGC* to use, in the particular circumstances of the *pathway investment*, as part of its cohort selection criteria; and
 - (b) (if the *IGC* has used cohorts of *pathway investments* in any part of its ongoing value for money assessment under ■ COBS 19.5.5R(2A)) whether it would be appropriate and proportionate to also assess any particular *pathway investments* within the cohorts on an individual basis in order to be able to carry out the most useful assessment under ■ COBS 19.5.5R(2A).
- (6) As part of the *IGC*'s selection of scheme comparators or investment pathways comparators under ■ COBS 19.5.5R(2)(e)(i) to ■ (iii) or ■ COBS 19.5.5R(2A)(e)(i) to ■ (iii), the *IGC* will need to include scheme comparators or pathway investment comparators that potentially offer better value for money in respect of the factors set out in ■ COBS 19.5.5R(2)(a)(i), ■ (b) and ■ (c) or ■ COBS 19.5.5R(2A)(a)(i), ■ (b) and ■ (c) (based on whatever information is publicly, or readily, available and is relevant to those factors).
- (7) There is no expectation by the FCA that the *IGC* would carry out a comparison of all the comparable employer pension arrangements or all of the comparable *pathway investments* for the purposes of ■ COBS 19.5.5R(2)(e) or ■ COBS 19.5.5R(2A)(e).

Interests of relevant policyholders or pathway investors and consideration of adequacy and quality of a policy

19.5.6

G

- (1) An *IGC* is expected to act in the interests of *relevant policyholders* or pathway investors both individually and collectively. Where there is the potential for conflict between individual and collective interests, the *IGC* should manage this conflict effectively. An *IGC* is not expected to deal directly with complaints from individual policyholders or pathway investors.
- (2) The primary focus of an *IGC* should be the interests of *relevant policyholders* or pathway investors in accordance with ■ COBS 19.5.5R(1). If a *firm* asks an *IGC* also to consider the interests of other members or *clients*, the *firm* should provide additional resources and support to the *IGC* such that the *IGC*'s ability to act in the interests of *relevant policyholders* or pathway investors is not compromised.
- (3) An *IGC* should assess whether all the investment choices available to *relevant policyholders* or pathway investors, including default options, are regularly reviewed to ensure alignment with the interests of *relevant policyholders* or pathway investors.
- (4) Where an *IGC* is unable to obtain from a *firm*, and ultimately from any other person providing relevant services, the information it requires to assess or to consider and report on the matters in the *IGC*'s remit of review, the *IGC* should explain in the annual report why

it has been unable to obtain the information and how it will take steps to be granted access to that information in the future.

- (5A) In addition to the ability of the *IGC* to escalate a concern about value for money under (5), if the *IGC* finds that:
 - (a) any of the scheme comparators offer better value for money for *relevant policyholders* than the *relevant scheme* based on the factors set out in ■ COBS 19.5.5R(2)(a)(i), ■ (b) and ■ (c); or
 - (b) any of the investment pathway comparators offer value for money for pathway investors than the *pathway investment* based on the factors set out in ■ COBS 19.5.5R(2A) (a)(i), ■ (b) and ■ (c),
 the *IGC* should bring this matter, together with an explanation and relevant evidence, to the attention of the *firm's governing body*.
- (5AA) If the *IGC* is not satisfied with the response of the *firm's governing body* to the concerns it has raised under (5A) and the *IGC* considers that informing the relevant employer or employers could be of material utility to the employers or the members regarding the *IGC's* concern about value for money under (5), the *IGC* should inform the relevant employer or employers directly.
- (5AAA) In (5AA), an example of circumstances where an *IGC* may consider that informing the employer would be unlikely to be of material utility is where there are solely deferred members in any affected employer pension arrangement and the employer does not have the ability to effect a transfer of the deferred benefits from the employer pension arrangement to a new arrangement.
- (5) If, having raised concerns with the *firm's governing body* about the matters in the *IGC's* remit of review, the *IGC* is not satisfied with the response of the *firm's governing body*, the *IGC* Chair may escalate concerns to the *FCA* if the *IGC* thinks that would be appropriate. The *IGC* may also alert *relevant policyholders* or pathway investors and employers and make its concerns public.
- (6) The *IGC* Chair should raise with the *firm's governing body* any concerns that the *IGC* has about the information or resources that the *firm* provides, or arrangements that the *firm* puts in place to ensure that the views of *relevant policyholders* or pathway investors are directly represented to the *IGC*. If the *IGC* is not satisfied with the response of the *firm's governing body*, the *IGC* Chair may escalate its concerns to the *FCA*, if appropriate. The *IGC* may also make its concerns public.
- (7) The *IGC* should make public the names of those members of the *IGC* who are *employees* of the provider *firm*, unless there are compelling reasons not to do so. The *IGC* should consult *employee* members as to whether there are such reasons.

The *IGC* need not consider and report on *ESG financial considerations* or *non-financial matters* or stewardship or *other financial considerations* as set out in ■ COBS 19.5.5R(2B) and ■ COBS 19.5.5R(2D) if the *firm* does not have an *investment strategy* or make *investment decisions* which could have a material impact on the *relevant policyholders'* or pathway investors' *investment returns*.

The *IGC* should only consider and report on *other financial considerations* as set out in ■ COBS 19.5.5R(2D) where it considers that:

they are likely to pose a particular and significant risk of financial harm to the *relevant policyholders* or pathway investors; and

the *firm* has not already adequately taken those *other financial considerations* into account in its *investment* strategy or *investment* decision making.

- (10) When an *IGC* is considering the adequacy and quality of a *firm's* policies regarding *ESG financial considerations, non-financial matters, stewardship or other financial considerations*, the *IGC* should form a view as to whether:
 - (a) a policy sufficiently characterises the relevant risks or opportunities;
 - (b) it considers that a policy seeks to appropriately mitigate those risks and take advantage of those opportunities;
 - (c) a *firm's* processes have been designed to properly take into account those risks or opportunities;
 - (d) a policy is appropriate in the context of the expected duration of the *investment*; and
 - (e) a policy is appropriate in the context of the main characteristics of the actual or expected *relevant policyholders* or pathway investors.
- (11) Where an *IGC* is considering whether a *firm* has adequately taken *other financial considerations* into account for the purposes of
 - COBS 19.5.5R(2D), it should also take into account the factors in
 - COBS 19.5.6(10)G, whether or not contained in a policy.

Duties of firms in relation to an IGC

19.5.7

R

A *firm* must:

- (1) take reasonable steps to ensure that the *IGC* acts and continues to act in accordance with its terms of reference;
- (2) take reasonable steps to provide the *IGC* with all information reasonably requested by the *IGC* in good time for the purposes of carrying out its role;
- (3) provide the *IGC* with sufficient resources as are reasonably necessary to allow it to carry out its role independently;
- (4) have arrangements to ensure that the views of *relevant policyholders* or pathway investors can be directly represented to the *IGC*;
- (5) take reasonable steps to address any concerns raised by the *IGC* under its terms of reference;
- (5A) for any *pathway investment*, take reasonable steps to address any concerns raised by the *IGC* about the matters in ■ COBS 19.5.5R(3) and ■ (3A):
 - (a) before the *firm* offers the *pathway investment*, and
 - (b) promptly, for any *pathway investment* it already offers.
- (6) provide written reasons to the *IGC* as to why it has decided to depart in any material way from any advice or recommendations made by the *IGC* to address any concerns it has raised;

- (7) take all necessary steps to facilitate the escalation of concerns by the *IGC* under ■ COBS 19.5.5R (4) and ■ COBS 19.5.6G (5);
- (8) make available the *IGC*'s terms of reference and the three most recent annual reports, in a way appearing to the *firm* to be best calculated to bring them to the attention of *relevant policyholders* and their employers or to the attention of pathway investors; and
- (9) provide each *relevant scheme*'s *IGC* with administration charges and transaction costs information, setting out the costs and charges for each default arrangement and each alternative fund option that the member is able to select.

19.5.8

G

- (1) A *firm* should consider allocating responsibility for the management of the relationship between the *firm* and its *IGC* to a person at the *firm* holding an *FCA significant-influence function* or *designated senior management function*.
- (2) A *firm* should fund independent advice for the *IGC* if this is necessary and proportionate.
- (3) A *firm* should not unreasonably withhold from the *IGC* information that would enable the *IGC* to carry out its duties in the *IGC*'s remit of review.
- (3A) A *firm* should provide the *IGC* with sufficient support and resources so that the *IGC* is properly able to carry out its duties in the *IGC*'s remit of review.
- (4) A *firm* should have arrangements for sharing confidential and commercially sensitive information with the *IGC*.
- (5) A *firm* should use best endeavours to obtain, and should provide the *IGC* with, information on the costs incurred as a result of managing and investing, and activities in connection with the managing and investing of, the assets of a *relevant scheme* or which could impact a *pathway investment*, including transaction costs. Information about costs and charges more broadly should also be provided, so that the *IGC* can properly assess the value for money of a *relevant scheme* or a *pathway investment* and the funds held within these.
- (6) If a *firm* asks an *IGC* to take on responsibilities in addition to those in ■ COBS 19.5.5 R, the *firm* should provide additional resources and support to the *IGC* such that its ability to act within its terms of reference in ■ COBS 19.5.5 R is not compromised.
- (7) A *firm* should provide secretarial and other administrative support to the *IGC*. The nature of the support, including how it is provided and by whom, should not conflict with the *IGC*'s ability to act independently of the *firm*.
- (8) A *firm* can make the *IGC*'s terms of reference and the *IGC*'s three most recent annual reports available in a way designed to bring them to *relevant policyholders'* and their employers' attention or to the attention of pathway investors by placing them in an appropriately prominent and relevant position on its website, and by providing them on request to relevant policyholders and their employers or to pathway investors.

19.5.9

R**Appointment of IGC members**

- (1) A *firm* must take reasonable steps to ensure that the *IGC* has sufficient collective expertise and experience to be able to make judgements on the matters in the *IGC*'s remit of review.
- (2) A *firm* must recruit independent *IGC* members through an open and transparent recruitment process.
- (3) A *firm* must appoint members to the *IGC* so that:
 - (a) the *IGC* consists of at least five members, including an independent Chair and a majority of independent members;
 - (b) *IGC* members are bound by appropriate contracts which reflect the terms of reference in ■ COBS 19.5.5 R, and on such terms as to secure the independence of independent members;
 - (c) independent *IGC* members who are individuals are appointed for fixed terms of no longer than five years, with a cumulative maximum duration of ten years;
 - (d) individuals acting as the representative of an independent corporate member are appointed to the *IGC* for a maximum duration of ten years;
 - (e) independent *IGC* members who are individuals, including those representing independent corporate members, are not eligible for reappointment to the *IGC* until five years have elapsed, after having served on the *firm*'s *IGC* for the maximum duration of ten years;
 - (f) appointments to the *IGC* are managed to maintain continuity in terms of expertise and experience of the *IGC*.

19.5.10

G

- (1) The effect of ■ COBS 19.5.9R (3)(b) is that *employees* of the *firm* who serve on an *IGC* should be subject to appropriate contractual terms so that, when acting in the capacity of an *IGC* member, they are free to act within the terms of reference of the *IGC* without conflict with other terms of their employment. In particular, when acting as an *IGC* member, an *employee* will be expected to act solely in the interests of *relevant policyholders* or pathway investors and should be able to do so without breaching any terms of their employment contract.
- (2) An individual may serve on more than one *IGC*.
- (3) A *firm* should replace any vacancies that arise within *IGCs* as soon as possible and, in any event, within six months.
- (4) A *firm* should involve the *IGC* Chair in the appointment and removal of other members, both independent members and *employees* of the *firm*.
- (5) A *firm* should consider indemnifying *IGC* members against any liabilities incurred while fulfilling their duties as *IGC* members.

IGC members who are independent

19.5.11

R

The *firm*, in appointing independent *IGC* members, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.

- 19.5.12 G**
- (1) An *IGC* member is unlikely to be considered independent if any of the following circumstances exist:
 - (a) the individual is an *employee* of the *firm* or of a company within the *firm's group* or paid by them for any role other than as an *IGC* member, including participating in the *firm's* share option or performance-related pay scheme;
 - (b) the individual has been an *employee* of the *firm* or of another company within the *firm's group* within the five years preceding his appointment to the *IGC*;
 - (c) the individual has, or had within the three years preceding his appointment, a material business relationship of any description with the *firm* or with another company within the *firm's group*, either directly or indirectly.
 - (2) A *firm* may appoint a *body corporate* to an *IGC*, including as Chair. The corporate member should notify the *firm* of the individual who will act as the member's representative on the *IGC*. A *firm* should consider the circumstances of a corporate *IGC* member and any representative of the corporate member with the objective of ensuring that any potential conflicts of interest are managed effectively so that they do not affect the corporate *IGC* member's ability to represent the interests of *relevant policyholders* or pathway investors.
 - (3) Should the *firm*, or another company within the *firm's group*, operate a mastertrust, there may be benefits in a trustee of such a mastertrust also being an *IGC* member. If such circumstances exist, an individual or a corporate trustee may be suitable to be an independent *IGC* member, notwithstanding the relationship with the *firm*.
 - (4) A *firm* should review on a regular basis whether its independent *IGC* members continue to be independent and take appropriate action if it considers that they are not.

Publication and disclosure of costs and charges by IGCs

- 19.5.13 R**
- The administration charges and transactions costs information referred to in ■ COBS 19.5.5R(8) must, in relation to each *relevant scheme*:
- (1) be published by 30 September each year, in respect of the previous calendar year;
 - (2) be available for free on a publicly accessible website;
 - (3) include the costs and charges for each default arrangement and each alternative fund option that a member is able to select; and
 - (4) include an illustration of the compounding effect of the administration charges and transaction costs, based on either the assumptions contained in ■ COBS 13 Annex 2 or those in Version 4.2 of the Actuarial Standard Technical Memorandum (AS TM1) produced by the Financial Reporting Council, for a representative range of fund options that a member is able to select.

- 19.5.14 R** Regarding transaction costs:

- (1) the requirements in ■ COBS 19.5.13R(3) and ■ COBS 19.5.16R(1) apply to the extent that such information is available to the *IGC*; and

- (2) the published information should include a warning giving brief details of any unavailable information that the *IGC* is aware of.

19.5.15

G

An example of the type of illustration referred to in ■ COBS 19.5.13R(4) is shown below. The assumptions in the notes should reflect the actual assumptions used.

Projected pension pot in today's money

Fund choice

Years	Default Ar- rangement		Fund A		Fund B		Fund C	
	Before charges	After all + costs deducted costs deducted	Before charges	After all + costs deducted costs deducted	Before charges	After all + costs deducted costs deducted	Before charges	After all + costs deducted costs deducted
1								
3								
5								
10								
15								
20								
25								
30								
35								
40								

Example notes:

- Projected pension pot values are shown in today's terms, and do not need to be reduced further for the effect of future inflation.
- The starting pot size is assumed to be £10,000.
- Inflation is assumed to be 2.5% each year.
- Contributions are assumed from age 22 to 68 and increase in line with assumed earnings inflation of 2.5% to 4% each year.
- Values shown are estimates and are not guaranteed.
- The projected growth rate for each fund are as follows:

Default fund: 2.5% above inflation

Fund A: 2% above inflation

Fund B: 1% above inflation

Fund C: 1% below inflation

19.5.16

R

The administration charges and transaction costs information in the *IGC*'s annual report referred to in ■ COBS 19.5.5R(6)(g) must, in relation to each relevant scheme:

- at a minimum, include the costs and charges for each default arrangement;

- (2) explain how a *relevant scheme* member can access the costs and charges information for each default arrangement and each alternative fund option that a member is able to select, including providing a link to the website required by ■ COBS 19.5.13R(2); and
- (3) be published alongside any information in the *IGC*'s annual report relating to the *relevant scheme*'s default investment strategy and value for members.
- 19.5.17** **R** The annual communication referred to in ■ COBS 19.5.5R(9) must:
- (1) include a brief description of the most recent transaction costs and administration charges information that has been published in accordance with ■ COBS 19.5.13R, and an explanation of how that information is relevant to the *relevant scheme* member; and
 - (2) explain how a *relevant scheme* member can access the information referred to in (1), including providing a link to the website required by ■ COBS 19.5.13R(2).
- 19.5.18** **G** The annual communication may be included with any other annual communication from the *operator* to the member of the *relevant scheme*.
- 19.5.19** **G** The annual communication provided to a *relevant scheme* member may also include the particular transaction costs and administration charges that have been incurred by that member.
- 19.5.20** **G** In communicating information in compliance with ■ COBS 19.5.5R(11), the *IGC* should ensure, for example, that it is straightforward for a *relevant scheme* member to compare the transaction costs and administration charges between fund options that are available for them to select.

19.6 Restriction on charges in qualifying schemes

Application

- 19.6.1** **R** This section applies to an *operator* of a *qualifying scheme*.
- 19.6.2** **R** The restrictions on *administration charges* in ■ COBS 19.6.4 R do not apply in relation to a *default arrangement* under which, at any time before benefits come into payment, those benefits accruing to the member involve, or involve an option to have, a promise by or to be obtained from a third party about the rate or amount of those benefits.

Express agreement

- 19.6.3** **G**
- (1) In this section, where express agreement is required by a *rule*, the FCA would expect *firms* to take active steps to obtain the informed, active consent of the affected member(s) of the *qualifying scheme*, and to have that consent in writing in a *durable medium*, capable of being produced or reproduced when requested by the FCA.
 - (2) The FCA does not consider the following to amount to express agreement (this list is not exhaustive):
 - (a) a member receiving a communication stating that by becoming or continuing to be a member of the scheme, the member has agreed to a particular service;
 - (b) a member being invited to click on a box to opt-out through a website link.

Default arrangements: charging structures and restrictions

- 19.6.4** **R** A *firm*, for a *default arrangement* within a *qualifying scheme*, may only make, impose or otherwise facilitate payment of an *administration charge* by way of an *accrued rights charge* or a *combination charge structure* where:
- (1) the limits in ■ COBS 19.6.6 R are not exceeded; or
 - (2) the *firm* has obtained appropriate express agreement to exceed the limits and the following conditions are satisfied:
 - (a) the express agreement contains an acknowledgement by the member that the *administration charge* for the service is likely to exceed the limits;
 - (b) giving such express agreement is not a condition of becoming or remaining a member of the *qualifying scheme*;

- (c) express agreement has not been given for services which the operator must provide under the *regulatory system* or the general law, or which are core services.

19.6.5

G

The effect of ■ COBS 19.6.4R (2)(c) is that a *firm* may not seek express agreement from a member to charges in excess of the limits for services which are obligatory under law, or form part of the core operation of the scheme. Such core services include, for example, designing and implementing an investment strategy, investing contributions to the scheme (to the extent that this would incur *administration charges*), holding investments relating to scheme members and transferring a member's accrued rights into or out of a *default arrangement*.

19.6.6

R

The limits on *administration charges* are as follows:

- (1) for a *qualifying scheme* which uses only an *accrued rights charge*, 0.75% of the value of those accrued rights;
- (2) for a *qualifying scheme* which uses a combination charge scheme:
 - (a) for the *flat-fee charge* element, £25 annually;
 - (b) for the *contribution percentage charge* element, 2.5% of the contributions annually;
 - (c) for the associated *accrued rights charge*, the limits as set out in column 2 of the table in ■ COBS 19.6.7 R.

19.6.7

R

This is the table referred to in ■ COBS 19.6.6 R.

<i>Contribution percentage charge rate (%)</i>	<i>Accrued rights charge rate (%)</i>
1 or lower	0.6
Higher than 1 but no higher than 2	0.5
Higher than 2 but no higher than 2.5	0.4
<i>Flat-fee charge (£)</i>	<i>Accrued rights charge rate (%)</i>
10 or less	0.6
More than 10 but no more than 20	0.5
More than 20 but no more than 25	0.4

Compliance with the restrictions on charges

19.6.8

E

- (1) To ensure that *administration charges* are within the limits set out in ■ COBS 19.6.6 R:
 - (a) a *firm* should calculate the value of accrued rights in an *accrued rights charge* as the arithmetic mean over a 12-month period of membership of the *qualifying scheme*, using at least four evenly-distributed reference points over that period;
 - (b) a *firm* should calculate the value of contributions in a *contribution percentage charge* over a 12-month period of membership of the *qualifying scheme* of a member's *workplace pension contributions*;

		<p>(c) for members who have been members of the <i>qualifying scheme</i> for a period of less than 12 months, a <i>firm</i> should calculate administrative charges on a pro rata basis;</p> <p>(d) the total <i>administration charges</i> imposed should not exceed the relevant restriction when measured over a 12-month period. However, where the <i>qualifying scheme</i> has been in operation for less than 12 months, and the <i>firm's</i> internal processes would involve assessment of <i>administration charges</i> before 12 months has elapsed, then for its initial assessment, the <i>firm</i> may use a period of up to 18 months.</p>
		<p>(2) Contravention of (1) may be relied on as tending to establish contravention of ■ COBS 19.6.4R (1) .</p>
		<p>Prohibition of payments to third parties from qualifying schemes</p>
19.6.9	R	<p>(1) A <i>firm</i> must not make any <i>administration charge</i>, or otherwise make or facilitate any payment or provide any non-monetary benefit, in respect of any service provided by a third party in connection with a <i>qualifying scheme</i> which would have the effect of decreasing the value of the accrued rights of any member of that scheme.</p> <p>(2) The restriction in (1) does not apply where the <i>firm</i> has obtained express agreement from the relevant member to such a payment.</p>
19.6.10	G	[deleted]
		<p>Differential charges</p>
19.6.11	R	<p>A <i>firm</i> must not impose greater <i>administration charges</i> on a member of a <i>qualifying scheme</i> whose <i>workplace pension contributions</i> ceased on or after 6 April 2016 than those imposed on a member for whom such contributions are still being made.</p>
19.6.12	G	<p>The effect of ■ COBS 19.6.11 R is to prohibit active member discounts within automatic enrolment schemes.</p>

19.6A **Restrictions on early exit charges in personal pension schemes and stakeholder pension schemes**

Application

19.6A.1 R This section applies to an *operator* of a *personal pension scheme* or a *stakeholder pension scheme*.

Purpose

19.6A.2 G The purpose of this section is to make *rules* prohibiting the imposition of, and provision for, certain *early exit charges* on members of *personal pension schemes* and *stakeholder pension schemes*. Section 137FBB of the *Act* requires the *FCA* to make such *rules*.

Exclusion

19.6A.3 R This section does not apply to any charge which is excluded from the scope of section 137FBB of the *Act* by the Financial Services and Markets Act 2000 (Early Exit Pensions Charges) Regulations 2016 (SI 2016/1079).

Prohibition on early exit charges on a member joining or incrementing benefits under a scheme on or after 31 March 2017

- 19.6A.4 R**
- (1) A *firm* must not:
 - (a) impose; or
 - (b) include in the arrangements relating to a *personal pension scheme* or *stakeholder pension scheme* any provision for the imposition of:
an *early exit charge* on a member of the scheme.
 - (2) This *rule* applies in relation to a member who entered into a contract or other arrangement on or after 31 March 2017 providing for:
 - (a) a right to benefits resulting from contributions to the scheme; or
 - (b) an increment to benefits resulting from contributions to the scheme, but only in respect of the member's benefits under that contract or other arrangement.

19.6A.5

R**Restriction on early exit charges on a member who joined or incremented a scheme before 31 March 2017**

- (1) A *firm* must not impose an *early exit charge* on a member of a *personal pension scheme* or *stakeholder pension scheme* that exceeds the lower of:
 - (a) 1% of the value of the member's benefits being taken, converted or transferred; or
 - (b) such lower amount as was provided for under the scheme arrangements as at 31 March 2017; or
 - (c) where no such provision was made, no charge.
- (2) A *firm* must not:
 - (a) include provision in such a scheme for an *early exit charge*, where such provision did not exist on 31 March 2017; or
 - (b) vary provision for an *early exit charge* in such a scheme to increase or potentially increase the charge.
- (3) The value of the member's benefits in (1)(a):
 - (a) is calculated at the point when the *firm* receives confirmation from the member of the instruction to take the action giving rise to the *early exit charge*;
 - (b) excludes an increment to member's benefits resulting from contributions to a scheme under a contract or other arrangement entered into by the member on or after 31 March 2017;
 - (c) excludes adjustments referred to, and satisfying the conditions in Regulation 3 of the Financial Services and Markets Act 2000 (Early Exit Pensions Charges) Regulations 2016 (SI 2016/1079); and
 - (d) does not exclude adjustments referred to in Regulation 4 of the Financial Services and Markets Act 2000 (Early Exit Pensions Charges) Regulations 2016 (SI 2016/1079).
- (4) This *rule* applies in relation to a member who entered into a contract or other arrangement (providing for a right to benefits resulting from contributions to the scheme) before 31 March 2017.

19.7 Pensions nudge and retirement risk warnings

Definitions

19.7.1

R

In this section:

- (1) [deleted]
- (2) "pension decumulation product" is a product used to access pension savings and includes:
 - (a) a facility to enable a *retail client* to make an *uncrystallised funds pension lump sum payment*;
 - (b) an option to take a *small lump sum payment*;
 - (c) a *drawdown pension*; and
 - (d) a *pension annuity*;
- (3) "pension savings" is the proceeds of the *client's personal pension scheme* or *occupational pension scheme*;
- (4) "retirement risk warnings" are the warnings required to be given to a *retail client* at step 3 of the process specified in this section;
- (5) "risk factors" are the attributes, characteristics, external factors or other variables that increase the risk associated with a *retail client's* decision to access their pension savings using a pension decumulation product;
- (6) "signpost" is the written or oral statement encouraging a *retail client* to use *pensions guidance* or to take regulated advice to understand their options at retirement which is at step 1 of the process specified in this section;
- (7) "opt out" is the *retail client's* confirmation that they do not want to receive *pensions guidance*; and
- (8) a reference to a "personal pension scheme" includes a *stakeholder pension scheme*, and for the avoidance of doubt, an *FSAVC*, *retirement annuity contract* or a *pension buy-out contract*.

Application

19.7.2

R

This section applies to a *firm* communicating with a *retail client* in relation to:

- (1) accessing their pension savings using a pension decumulation product; or

		(2) transferring rights pursuant to ■ COBS 19.7.7R(6) for the purpose of accessing their pension savings using a decumulation product.
19.7.3	R	<p>This section does not apply:</p> <ul style="list-style-type: none"> (1) to a <i>firm</i> giving regulated advice to a <i>retail client</i> on options to access their pension savings; (2) if the <i>firm</i> has already provided the retirement risk warnings to the <i>retail client</i> in relation to their decision to access their pension savings and the <i>firm</i> has reasonable grounds to believe that the retirement risk warnings are still appropriate for the <i>client</i>.
19.7.4	G	<p>Purpose</p> <ul style="list-style-type: none"> (1) The purpose of this section is to ensure that a <i>firm</i>, which is communicating with a <i>retail client</i> about a pension decumulation product: <ul style="list-style-type: none"> (a) explains the nature and purpose of <i>pensions guidance</i> to the <i>retail client</i>; (b) encourages the <i>retail client</i> to receive <i>pensions guidance</i>; and (c) gives appropriate retirement risk warnings, at the point when the <i>retail client</i> has decided how to access their pension savings. (2) If the <i>retail client</i> has not yet decided what to do, the <i>firm</i> should consider whether it is required to signpost the <i>pensions guidance</i> under ■ COBS 19.4.16R (signposting pensions guidance) and whether it may be appropriate to provide information about the risks associated with the <i>client's</i> options to access their pension savings generally.
19.7.5	G	<ul style="list-style-type: none"> (1) This section amplifies <i>Principles 6 and 7</i>, but does not exhaust or restrict what they require. A <i>firm</i> will, in any event, need to ensure that its sales processes are consistent with the <i>Principles</i> and other <i>rules</i>. (2) An example of a behaviour by a <i>firm</i> that is likely to contravene <i>Principle 6</i> and may contravene other <i>Principles</i> is for a <i>firm</i> to actively discourage a <i>retail client</i> from receiving <i>pensions guidance</i>, for example by: <ul style="list-style-type: none"> (a) indicating in any way that receiving <i>pensions guidance</i> is unnecessary, would not be beneficial, or might result in unnecessary delays in accessing their pension savings; or (b) obscuring, de-emphasising or underplaying in any way the explanation about the benefits of <i>pensions guidance</i> or any other information relevant to assisting the <i>retail client</i> to decide how best to access their pension savings.
19.7.6	G	An illustration of the steps a <i>firm</i> is required to take is set out in ■ COBS 19 Annex 1G.

19.7.7

R**Trigger: when does a firm have to follow the steps?**

A firm must follow the steps specified in this section at the point when the *retail client* has decided (in principle) to take one of the following actions (and before the action is concluded):

- (1) buy a pension decumulation product; or
- (2) vary their *personal pension scheme* to enable the *client* to:
 - (a) access pension savings using a *drawdown pension*; or
 - (b) elect to make one-off, regular or ad-hoc *uncrystallised funds pension lump sum* payments; or
- (3) receive a one-off, regular or ad-hoc *uncrystallised funds pension lump sum* payment; or
- (4) access their pension savings using a *drawdown pension*;
- (5) withdraw funds wholly or partly derived from *flexible benefits* in full from a product or scheme in their pension savings, reducing the value of all of their rights in that product or scheme (including rights in respect of any *non-flexible benefits*) to zero; or
- (6) transfer rights (other than rights in respect of *non-flexible benefits*):
 - (a) accrued under their existing *personal pension scheme*; or
 - (b) accrued under their existing arrangement to a *personal pension scheme*,
 for the purpose of taking one of the actions in (1) to (5).

19.7.7A

G

A firm may assume that a *retail client* who is 50 years of age or over who decides to transfer rights pursuant to ■ COBS 19.7.7R(6) is doing so for the purpose of taking one of the actions in ■ COBS 19.7.7R(1) to ■ (5).

19.7.7AA

G

The effect of ■ COBS 19.7.7R(6) is to include any transfers of rights (other than rights in respect of *non-flexible benefits*) accrued so long as either the transferring arrangement or the receiving arrangement is a *personal pension scheme*. This would, for example, include a *retail client* consolidating some or all of their pension arrangements where the consolidation involves a transfer from or to a *personal pension scheme*.

Pension transfer to access pension savings

19.7.7B

R

Where a *retail client* contacts a *firm* to communicate its decision (in principle) to transfer rights pursuant to ■ COBS 19.7.7R(6), that *firm* (whether the *retail client's* existing provider or the *firm* to whom they intend to transfer their rights) must take the actions in step 1.

19.7.8

R

[deleted]

19.7.8A**R****First part of step 1: explain pensions guidance and offer to book the appointment**

The first part of step 1 is as follows:

- (1) the *firm* must:
 - (a) explain to the *retail client* the nature and purpose of *pensions guidance*, and that they can access the guidance for free;
 - (b) explain to the *retail client* that they can take regulated advice at their own cost; and
 - (c) offer to book an appointment for them to receive *pensions guidance*;
- (2) if the *retail client* accepts the *firm's* offer to book an appointment for them, the *firm* must take reasonable steps to book an appointment at a suitable time for the *retail client*;
- (3) if the *firm* is unable to book an appointment at a suitable time despite taking reasonable steps, or the *retail client* prefers to book the appointment themselves, the *firm* must provide the *retail client* with sufficient information about how to book the appointment themselves;
- (4) if the *firm* books the appointment for the *retail client*, it must provide a confirmation of all the relevant details necessary to enable the *retail client* to attend the appointment;
- (5) if the *retail client* agrees to take the guidance or elects to take regulated advice, the *firm* must not proceed to step 2 until the *retail client* confirms they subsequently received the guidance or advice;
- (6) the *firm* must proceed to step 2 at any point during the process in (1) to (5) if the *retail client*:
 - (a) confirms that they have already received regulated advice and opts out; or
 - (b) opts out, and confirms they do not want to take regulated advice;
- (7) if the *retail client* states that the reason for opting out in (6)(b) is because they already received *pensions guidance* prior to approaching the *firm*, the *firm* must explain to the *retail client* that they may still benefit from receiving the guidance again if their personal circumstances, or the value of their pensions savings, have significantly changed such that the different options described to the *retail client* in the guidance may be of different significance and relevance to them than when they previously received the guidance.

19.7.8B**G**

For the purpose of ■ COBS 19.7.8AR(1)(a), where a *firm* explains the nature and purpose of *pensions guidance*, the explanation should include that:

- (1) the purpose of the guidance is to help the *retail client* make an informed decision about what to do with their pension savings, including the different options available to the *retail client* to access their pension savings; and
- (2) the guidance is delivered at an appointment with an independent pensions specialist.

19.7.8C G Taking reasonable steps to finding a time that is suitable (in ■ COBS 19.7.8AR(2)) may include the *retail client* being given adequate opportunity to revert back to the *firm* with dates and times that are suitable for them to attend an appointment.

Second part of Step 1: confirming whether the retail client received pensions guidance or regulated advice

- 19.7.8D** R
- (1) (Where the *firm* has completed the appropriate actions in ■ COBS 19.7.8AR, and either booked an appointment for the *retail client* or the *retail client* booked it themselves) the second part of step 1 is for the *firm* to check whether the *retail client* subsequently received *pensions guidance* by:
 - (a) if the appointment was booked by the *firm*, checking that the scheduled appointment date has passed; and only if so, asking the *retail client* to confirm that they attended the appointment and received the guidance; or
 - (b) if the *retail client* had to or elected to book the appointment themselves, asking the *retail client* to confirm that they subsequently booked the appointment and received the guidance.
 - (2) If the *firm* booked the appointment and the date of the scheduled appointment has not passed, the *firm* must explain the nature and purpose of *pensions guidance* again in ■ COBS 19.7.8AR(1)(a) and remind the *retail client* of their scheduled appointment.
 - (3) If the *retail client* failed to attend the appointment (booked by the *firm* or themselves), or failed to book their own appointment, the *firm* must repeat the process in ■ COBS 19.7.8AR, and explain to the *retail client* at this point that the *firm* cannot proceed unless the *retail client* confirms that they have received the guidance or taken regulated advice, or opts out.
 - (4) If the *retail client* confirms that they attended the appointment and received *pensions guidance*, the *firm* must proceed to step 2, unless the *firm* is aware or is made aware that the *retail client's* circumstances have, or may have, changed significantly, and it appears to the *firm* on reasonable grounds that the *retail client* may benefit from a repeat of the guidance in order to consider the different options available to them in the context of their current circumstances. In that case, the *firm* must repeat the process in ■ COBS 19.7.8AR.
 - (5) (Where the *firm* has completed the appropriate actions in ■ COBS 19.7.8AR and the *retail client* elected to take regulated advice), the *firm* must proceed to step 2 if the *retail client* confirms that they subsequently received the advice.

19.7.8E G Circumstances where the *retail client* may benefit from a repeat of *pensions guidance*, for the purposes of ■ COBS 19.7.8DR(4)), include where, since the date of the appointment:

- (1) the *firm* is made aware that the *retail client's* personal circumstances have changed; or
- (2) significant changes in market conditions mean that the *firm* is aware that, or the *firm* is made aware for other reasons that, the value of the *retail client's* pension savings may have significantly changed,

		such that the different options described to the <i>retail client</i> in the guidance may be of different significance and relevance to them than when they previously received the guidance, in light of the change in circumstances.
		Step 2: identify risk factors
19.7.9	R	Based on how the <i>retail client</i> wants to access their pension savings, at step 2 the <i>firm</i> must ask the <i>client</i> questions to identify whether any risk factors are present, except where ■ COBS 19.7.9AR applies.
19.7.9A	R	If the value of the <i>retail client's</i> pension savings is £10,000 or less and there are no <i>safeguarded benefits</i> , the <i>firm</i> :
		(1) is not required to ask questions to identify whether any risk factors are present; and
		(2) must prepare appropriate retirement risk warnings based on the risk factors relevant to each pension decumulation product it offers to enable <i>retail clients</i> to access their pension savings.
19.7.9B	R	A firm may ask the <i>client</i> the questions required by ■ COBS 19.7.9R before the <i>client</i> has decided (in principle) to take one of the actions specified in ■ COBS 19.7.7R to access their pension savings.
19.7.9C	R	If, to complete step 2, a <i>firm</i> relies on information gathered prior to the <i>client's</i> decision to access their pension savings, the <i>firm</i> must be satisfied that this information is relevant, accurate and up-to-date before giving the risk warnings at step 3.
19.7.10	R	A <i>firm</i> must prepare the questions required by ■ COBS 19.7.9 R before taking the steps for the first time, and must keep the questions up to date.
19.7.11	G	To prepare for step 2, the <i>firm</i> should:
		(1) identify the main risk factors relevant to each pension decumulation product it offers to enable <i>retail clients</i> to access their pension savings; and
		(2) prepare questions to enable it to identify the presence of those risk factors for different <i>retail clients</i> .
19.7.12	G	Examples of the sorts of risk factors which relate to pension decumulation products are:
		(1) the <i>client's</i> state of health;
		(2) loss of any guarantees;
		(3) whether the <i>client</i> has a partner or dependants;
		(4) inflation;
		(5) whether the <i>client</i> has shopped around;

- (6) sustainability of income in retirement;
- (7) tax implications;
- (8) charges (if a *client* intends to invest their pension savings);
- (9) impact on means-tested benefits;
- (10) debt; and
- (11) investment scams.

Step 3: provide appropriate retirement risk warnings.....

19.7.13

R

At step 3:

- (1) if the value of the *retail client's* pension savings is £10,000 or less and there are no *safeguarded benefits*, based on how the *retail client* wants to access their pension savings, a *firm* must give the *client* the appropriate retirement risk warnings prepared under ■ COBS 19.7.9AR(2); and
- (2) in all other cases, a firm must give the *retail client* appropriate retirement risk warnings in response to the client's answers to the *firm's* questions.

19.7.14

R

A *firm* must prepare the retirement risk warnings required by ■ COBS 19.7.13 R in good time before taking the steps for the first time, and must keep them up to date.

19.7.15

G

If after considering the *retail client's* answers it is unclear whether a risk factor is present, a *firm* should give the *client* the appropriate retirement risk warning.

Communicating the signpost and retirement risk warning.....

19.7.16

R

When communicating the signpost and retirement risk warnings, the *firm* must do so clearly and prominently.

19.7.17

R

Whatever the means of communication, the *firm* must ensure that the *retail client* cannot progress to the next stage of the sale unless the relevant signpost or retirement risk warning has been communicated to the *client*.

19.7.18

G

For an internet sale, a *firm* should display the required information on a screen which the *retail client* must access and acknowledge as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *client* the option to click on a link or download a document.

Record keeping.....

19.7.19

R

Firms must record whether the *retail client* has:

- (1) received the retirement risk warnings at step 3 of the process specified in this section;

- (2) received regulated advice;
- (3) received *pensions guidance*; or
- (4) opted out (and did not receive regulated advice).

19.7.20

G

If the *firm* was told by the *retail client* that they already received *pensions guidance* or regulated advice prior to approaching the *firm*, and therefore did not need to receive it again, the *firm* should not record this as an opt out. Instead, they should record this as the *retail client* having received *pensions guidance* under ■ COBS 19.7.19R(3), or under ■ (2) for regulated advice.

19.8 Disclosure of transaction costs and administration charges in connection with workplace pension schemes

Interpretation

19.8.1

R

In this section:

- (1) [deleted]
- (2) 'anti-dilution mechanism' is any method used to the benefit of an *investment* to offset the impact of inflows or outflows from that *investment*, whether by way of:
 - (a) a levy; or
 - (b) any adjustment enabling further investment into, or redemption of investments from, the *investment*.
- (3) 'arrangement', in connection with a *relevant scheme*, is any *investment* available to scheme members for the investment of their pension contributions.
- (4) [deleted]

Application

19.8.2

R

This section applies to:

- (1) an *operator* of a *relevant scheme*; and
- (2) a *firm* which holds information needed for the calculation of transaction costs or administration charges in the course of providing services in connection with:
 - (a) a *relevant scheme*;
 - (b) an arrangement; or
 - (c) an *investment* in which an arrangement is directly or indirectly invested.

Purpose

19.8.3

G

- (1) The purpose of the *rules* in this section is to enable governance bodies of workplace pension schemes to meet their obligations as set out in (2) and (3) by obliging *firms* which hold the relevant information to calculate transaction costs to a common standard and

provide that information, and information on administration charges, to governance bodies.

- (2) An operator of a workplace *personal pension scheme* or *stakeholder pension scheme* is obliged under ■ COBS 19.5.7R(2) to take reasonable steps to provide its *IGC* (or *governance advisory arrangement*) with all information reasonably requested by it for the purpose of carrying out its role. The role of an *IGC*, under ■ COBS 19.5.5R(2), must include the assessment of value for money delivered by relevant schemes through the assessment of transaction costs (among other things).
- (3) The trustees or managers of an occupational pension scheme are obliged to calculate, insofar as they are able to do so, the transaction costs borne by scheme members, and to assess the extent to which those costs represent good value for members. (See regulation 25 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715) as amended by the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879)).

Obligation to disclose transaction costs and administration charges

19.8.4

R

A firm must respond in a reasonable time and in a reasonably acceptable format to a request for information relating to transaction costs and administration charges relating to a particular arrangement (or any *investment* in which the arrangement is directly or indirectly invested) over a period of time from or on behalf of:

- (1) an operator, trustee or manager of a *relevant scheme*; or another firm seeking to comply with its obligations under this section.

19.8.5

R

In responding to the request referred to in ■ COBS 19.8.4R, the firm must:

- (1) calculate the transaction costs incurred in relation to the arrangement or *investment* to which the request relates (including transaction costs incurred in any *investment* in which the arrangement or *investment* is directly or indirectly invested) in accordance with this section;
- (2) disclose the results of the aggregation of those transaction costs to the requesting person, along with a breakdown of the identifiable elements of those costs;
- (3) disclose the administration charges incurred in that arrangement or any *investment* to which the request relates (including administration charges incurred in any *investment* in which the arrangement or *investment* is directly or indirectly invested); and
- (4) provide other relevant information which would or may assist in making comparisons between the costs or charges in (1) to (3) and the equivalent costs or charges of other pension schemes where available.

- 19.8.6** G
- (1) The breakdown of identifiable transaction costs should include at least taxes, explicit fees and charges, costs in connection with securities lending and borrowing, and the benefit from anti-dilution mechanisms.
 - (2) Other relevant information regarding transaction costs or administration charges might include, in relation to each arrangement (or *investment* in which the arrangement is directly or indirectly invested): the investment return, measures of risk, portfolio turnover rate, proportion of securities loaned or borrowed, costs other than transaction costs, and typical and maximum levels of entry, exit and switching costs. This is not an exhaustive list, and *firms* should use discretion based on the composition of each particular arrangement (or *investment* in which the arrangement is directly or indirectly invested).
 - (3) Where it is not possible to calculate the amount of transaction costs or administration charges attributable to an arrangement (or *investment* in which the arrangement is directly or indirectly invested), a pro rata approach may be used, which assumes that transaction costs and administration charges are incurred evenly over time. A pro rata approach may also be used where information is not available for a full period or in other situations where the provision of information would otherwise be subject to unreasonable delay.
 - (4) When calculating administration charges for a default arrangement, *firms* should have regard to ■ COBS 19.6 (Restriction on charges in qualifying schemes) and the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879).

Taking reasonable steps to obtain necessary information

- 19.8.7** R
- If a *firm* does not have the information necessary to comply with ■ COBS 19.8.4R and ■ COBS 19.8.5R, then it must:
- (1) take reasonable steps to obtain that information; or
 - (2) where, despite having taken such reasonable steps, it remains unable to comply with ■ COBS 19.8.4R and ■ COBS 19.8.5R, provide a written explanation to the requesting party explaining why, including the percentage of *investments* in the arrangement (or *investment* in which the arrangement is directly or indirectly invested) for which information cannot be obtained, and indicating the categories of *investments* involved.
- 19.8.8** G
- (1) In taking reasonable steps to obtain information about transaction costs or administration charges, a *firm* should request the information from other *firms* involved in providing services in connection with the *relevant scheme*, arrangement, or *investment* in which the arrangement is directly or indirectly invested.
 - (2) A *firm*, when seeking information about transaction costs or administration charges, should consider the materiality of that information to the calculation of costs and charges overall for each arrangement, in particular the degree to which it is necessary to look through to transactions in underlying *investments* in order to arrive at a fair assessment of the costs or charges of each arrangement.

19.8.9

R**Calculation of transaction costs for buying and selling transactions**

A firm must calculate the transaction cost of buying or selling an *investment* as the difference between arrival price (AP) and execution price (EP) of that *investment*, multiplied by the number of units of, or in, the *investment* transacted, as follows:

(1) AP and EP are determined in accordance with this section;

(2) where an *investment* is purchased:

$$\text{transaction cost} = (\text{EP}-\text{AP}) \times (\text{units}); \text{ and}$$

(3) where an *investment* is sold:

$$\text{transaction cost} = (\text{AP}-\text{EP}) \times (\text{units}).$$

19.8.10

R**Arrival Price (AP)**

A firm must determine the arrival price as follows:

(1) for a *transferable security*, or other *investment* which there are frequent opportunities to dispose of, redeem, or otherwise realise at a price publicly available to market participants that is either a market price or a price made available or validated by valuation systems independent of the *issuer*:

(a) the market mid-price at the time the order was transmitted to another *person* for execution or was executed, whichever is earlier

(b) if no such price is available, then the last available mid-price on the day the order was executed, or, if this is not available, the closing mid-price on the day before; or

(c) if the order to transact was executed on a day other than the day it was transmitted to another *person* for execution, the market opening mid-price on the day of execution, or, if this is not available, the closing mid-price the day before; or

(d) if the order was executed during an auction, the most recently available mid-price of the asset prior to the auction; or

(e) if an order is transmitted to another *person* for execution outside trading hours, the subsequent market opening mid-price.

(2) for an investment fund or other vehicle priced on a periodic basis:

(a) for a dual-priced vehicle, the fair value mid-price of the vehicle at the pricing point when the transaction took place; or

(b) for a single-priced vehicle, the fair value price of the vehicle at the pricing point when the transaction took place, prior to any dilution adjustment.

(3) for physical (in other words, real or tangible) assets, the price paid for that physical asset, excluding all charges, commissions, taxes and other payments associated with the transaction.

for any other *investment* which does not fall into (1), (2) or (3):

(a) the most recent independent valuation prior to the order to transact being executed, or, if earlier, transmitted to another

		<p>person for execution, adjusted appropriately for market movements using an appropriate benchmark index; or</p> <p>(b) if no such valuation is available, then an estimate based on a reasonable appraisal of the fair value of the asset prior to the order to transact being executed.</p>
19.8.11	R	<p>Arrival Price (AP): supplemental provision for multiple orders on the same day</p> <p>Where an order is split into multiple orders ('child orders') in the same <i>investment</i> and transmitted on the same day, the arrival price of the first child order must be used as the arrival price of all subsequent child orders on that day.</p>
19.8.12	R	<p>Arrival Price (AP): supplemental provision for initial public offerings, placings and other issuance of securities</p> <p>For orders in initial public offerings, placings and other issuance of securities, the transaction price must be used as the arrival price.</p>
19.8.13	R	<p>Arrival Price (AP): supplemental provisions for derivatives</p> <p>When determining the arrival price for a <i>derivative</i> where there is no publicly available price, a firm must determine the fair value price of the <i>derivative</i>.</p>
19.8.14	G	<p>(1) When considering the basis for determining transaction costs relating to <i>derivatives</i>, a <i>firm</i> should take into account:</p> <ul style="list-style-type: none">(a) the existence of any multiplier or scalar in arriving at the correct number of units;(b) the nature of the <i>derivative</i>;(c) the availability and transparency of prices of the <i>derivative</i> itself;(d) where applicable, the nature and value of the assets underlying the <i>derivative</i>, including their price transparency and relative proportions within that <i>derivative</i>; and(e) any other costs associated with the <i>derivative</i>. <p>(2) When determining the fair value price, a firm should adopt a fair value approach in line with prevailing market conventions.</p>
19.8.15	R	<p>Arrival Price (AP): supplemental provision for foreign exchange</p> <p>A <i>firm</i> must, in relation to a transaction involving foreign exchange, determine the arrival price using a reasonable estimate of the consolidated price rather than the price available from a single counterparty or foreign exchange platform, even if an agreement exists to undertake all foreign exchange transactions with a single counterparty.</p>

	Arrival Price (AP): supplemental provision for over the counter bond transactions
19.8.15A R	<p>Where a bond transaction is <i>executed</i> on an <i>over the counter</i> basis after <i>bid prices</i> and <i>offer prices</i> have been obtained from more than one potential counterparty, the arrival price must be taken to be:</p> <ul style="list-style-type: none"> (1) if the best <i>bid price</i> is below the best <i>offer price</i>, the mid-point between the best <i>bid price</i> and the best <i>offer price</i>; (2) if the best <i>bid price</i> is higher than the best <i>offer price</i>, the best <i>bid price</i> in the case of a sale or the best <i>offer price</i> in the case of a purchase; or (3) if the best <i>bid price</i> is equal to the best <i>offer price</i>, that price.
19.8.15B R	<p>Where a bond transaction is <i>executed</i> on an <i>over the counter</i> basis after either a <i>bid price</i> or an <i>offer price</i> has been obtained, the arrival price must be estimated as follows:</p> <ul style="list-style-type: none"> (1) by reference to the bid/offer spread on transactions in bonds with similar characteristics to the bond in question; or (2) by reference to a composite of indicative bid and offer quotes; or (3) by any other reasonable method.
	Execution Price (EP)
19.8.16 R	<p>A <i>firm</i> must determine the execution price as the price at which a transaction is executed including all charges, commissions, taxes and other payments associated with the transaction, directly or indirectly, where those payments are made from the assets of the arrangement or of any <i>investment</i> in which the arrangement is directly or indirectly invested.</p>
	Calculation of transaction costs for lending and borrowing transactions
19.8.17 R	<p>A <i>firm</i> must calculate the transaction cost of a loan transaction as the difference between the charge paid by the ultimate borrower in relation to that loan and the amount received by the arrangement (or underlying <i>investment</i>).</p>
19.8.18 G	<p>The amounts used to calculate the transaction cost of a loan transaction should include all fees, commissions, charges and other costs levied by intermediaries involved in the transaction regardless of the legal structures involved.</p>
19.8.19 R	<p>To determine the transaction cost of a borrowing transaction, a <i>firm</i> must use the amount paid for the loan.</p>
	Aggregation
19.8.20 R	<p>The <i>firm</i> must aggregate and disclose, separately, the following transaction costs for each arrangement or <i>investment</i> and period to which the request relates:</p>

- (1) the sum of the transaction costs for buy and sell transactions factoring in anti-dilution mechanisms (see ■ COBS 19.8.21R); and
- (2) the sum of the transaction costs for lending and borrowing transactions.

Treatment of anti-dilution mechanisms**19.8.21****R**

Subject to ■ COBS 19.8.22R, a *firm* using an anti-dilution mechanism in connection with an arrangement or *investment* may factor this into the aggregate transaction costs calculation as follows:

- (1) where a levy is used, the monetary value of that levy may be subtracted from the aggregate transaction costs; and
- (2) where an adjustment is made by enabling further investment into or redemption from an *investment*, the value of the benefit accruing to the *investment* may be subtracted from the aggregate transaction costs.

19.8.22**R**

When aggregating transaction costs, a *firm* must not subtract any portion of a benefit derived from an anti-dilution mechanism that would reduce the aggregate transaction cost below zero.

19.8.23**G**

A *firm* may provide information about the total benefit derived from an anti-dilution mechanism as part of or alongside the breakdown of identifiable transaction costs.

19.9 Pension annuity comparison information

Definitions

19.9.1

R

In this section:

- (-1) an "enhanced annuity" refers to a *pension annuity* that pays a higher level of income due to a *retail client's* health or lifestyle;
- (1) "guaranteed minimum pension" has the meaning in section 8(2) of the Pension Schemes Act 1993;
- (2) a "guaranteed quote" is a quote that:
 - (a) is provided by a *firm* to a *retail client* for the purchase of a *pension annuity*; and
 - (b) is based on sufficient information to successfully underwrite the proposed *pension annuity*;
- (2A) an "income quote" is a guaranteed quote that offers at least the level of annual income requested by a *retail client*;
- (3) a "market-leading *pension annuity* quote" is a quote for a *pension annuity* that:
 - (a) is generated by a *firm* by searching for, obtaining and comparing, *pension annuities* that are available to the *retail client* from across all of the *pension annuity* market using:
 - (i) the same information as the *firm* has used to generate a guaranteed quote; or
 - (ii) answers obtained from the *retail client* which allow the *firm* to determine whether the *client* may be eligible for an enhanced annuity, where the *firm* itself cannot generate an enhanced annuity quote using those answers; and
 - (b) provides the *retail client* with either:
 - (i) the highest annual income from amongst all of the quotes generated under (a); or
 - (ii) (in the case of an income quote) at least the amount of annual income requested by the *retail client* at the lowest purchase price from amongst all of the quotes generated under (a).
- (4) "pension-related benefit" means one or more of the following:
 - (a) an existing or future entitlement to a *guaranteed annuity rate*;
 - (b) an entitlement to a *pension commencement lump sum* that exceeds 25% of the value of the *retail client's* benefit under the

occupational pension scheme, personal pension scheme or stakeholder pension scheme in which the retail client has an interest;

(c) an existing or future entitlement to a guaranteed minimum pension; or

(d) section 9(2B) rights;

(5) "pension annuity comparator information" means the information that a firm must provide under this section; and

(6) [deleted]

(7) "section 9(2B) rights" has the same meaning as in regulation 2(1) of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015.

Application

19.9.2

R

This section applies to a firm that:

- (1) provides a *retail client* with a guaranteed quote for a *pension annuity*; or
- (2) is asked by another firm ("F") for a quote for a *pension annuity* where F is seeking a quote for the purposes of generating a market-leading *pension annuity* quote.

Purpose

19.9.3

G

This section specifies:

- (1) when a firm must provide:
 - (a) a *retail client* with *pension annuity* comparator information, including whether the *pension annuity* it is offering will provide:
 - (i) more or less annual income than the market-leading *pension annuity* quote; or
 - (ii) (in the case of an income quote) at least the amount of annual income requested by the *retail client* at the lowest purchase price; and
 - (b) a quote to another firm seeking a quote for the purposes of the other firm generating a market-leading *pension annuity* quote;
- (2) how a firm must compare a guaranteed quote and a market-leading *pension annuity* quote and how any applicable pension-related benefits should be factored into the comparison; and
- (3) the content and format of the *pension annuity* comparator information that must be provided in different circumstances; and
- (4) when a firm must ask questions about the *retail client's* eligibility for an enhanced annuity.

19.9.4

R

Content of pension annuity comparator information.....

- When providing a guaranteed quote to a *retail client* a *firm* must use the relevant template in ■ COBS 19 Annex 3R to provide:
- (1) the following information about the features of the *pension annuity* that is being offered:
 - (a) the cost of the *pension annuity* where the cost is expressed as a single sum in pounds sterling net of any *adviser charges*;
 - (b) if applicable, the amount and details of any *adviser charges* that the *firm* will be paying;
 - (c) if applicable, the amount of any *commission* that will be paid and to whom any such *commission* will be paid;
 - (d) the annual income the *pension annuity* will provide to the *retail client* expressed as a single sum in pounds sterling;
 - (e) whether the annual income referred to in ■ COBS 19.9.4R(1)(d) is guaranteed for any period of time and, if so, the duration of that period;
 - (f) the frequency of payments that will be made to the *retail client* and if such payments will be paid in advance or in arrears;
 - (g) whether the *pension annuity* will provide an annuity to only the *retail client* or to the *retail client* and another beneficiary; and
 - (h) whether the annual income offered by the *pension annuity* will increase in value over time and, if so, the basis upon which it will increase;
 - (2) if applicable, information about:
 - (a) the *guaranteed annuity rate* that a *retail client* is already entitled to or will be entitled to in the future;
 - (b) the date from when the *guaranteed annuity rate* is payable; and
 - (c) the annual income that a *retail client* can reasonably expect to receive pursuant to the *guaranteed annuity rate*;
 - (3) if applicable, information about:
 - (a) the annual income that a *retail client* is already, or in the future will be, entitled to pursuant to either or both a right to a guaranteed minimum pension or section 9(2B) rights; and
 - (b) the date from when that annual income is payable;
 - (4) if applicable, information about the maximum *pension commencement lump sum* that the *retail client* is entitled to and whether that lump sum would represent more than 25% of the value of the *retail client's* benefit under the *occupational pension scheme*, *personal pension scheme* or *stakeholder pension scheme* in which the *retail client* has an interest;
 - (5) the helpline phone number and the website address for *MoneyHelper* and an explanation that the phone number and website can be used to obtain *pension annuity* quotes from other *pension annuity* providers;
 - (6) if applicable, information about how a *retail client's* health or lifestyle may entitle the *retail client* to a *pension annuity* that pays a higher income (an enhanced annuity); and
 - (7) the comparison information required under ■ COBS 19.9.7R.

- 19.9.5** **G** A firm should consider ■ COBS 19.9.12R in cases where it is not clear whether a *retail client* is entitled to a pension-related benefit.

Exceptions from the requirement to provide the information required by COBS 19.9.4R

- 19.9.6** **R**
- (1) The requirement to provide the information required by ■ COBS 19.9.4R and the related requirement in ■ COBS 19.9.7R does not apply to a *firm*:
 - (a) if that *firm* ("F1") is reasonably satisfied that:
 - (i) the *retail client* has already received the information required by ■ COBS 19.9.4R from another *firm* ("F2"); and
 - (ii) the information provided by F2 to the *retail client* relates to the same guaranteed quote that F1 would otherwise use as the basis for providing the information required by ■ COBS 19.9.4R; or
 - (b) in any case where a *firm*, during the same telephone conversation, provides a *retail client* with more than one guaranteed quote.
 - (2) Where (1)(b) applies, a *firm* must comply with ■ COBS 19.9.4R if:
 - (a) the *retail client*, during the same telephone conversation, selects one of the guaranteed quotes to explore further; or
 - (b) the *retail client* subsequently contacts the *firm* to explore further one of the guaranteed quotes ("Q1") that the *firm* has previously provided where Q1 was not, at the time it was provided, accompanied by the information required by ■ COBS 19.9.4R.

Eligibility for enhanced annuities

- 19.9.6A** **R**
- (1) When a *firm* generates a market-leading *pension annuity* quote it must take reasonable steps to obtain from the *retail client* answers to the questions that are required to determine whether the *client* is eligible for an enhanced annuity.
 - (2) If the *retail client* is eligible for an enhanced annuity the *firm* must generate a market-leading quote for an enhanced annuity.
 - (3) *Firms* may only use the information gathered in (1) for the purposes of:
 - (a) generating a guaranteed quote and a market-leading *pension annuity* quote;
 - (b) assisting another *firm*, on request, to generate a market-leading quote (■ COBS 19.9.9R); and
 - (c) underwriting, administering, and entering into a contract for an enhanced annuity;
 unless the *retail client* consents to it being used for other purposes.
 - (4) If the *retail client* refuses to answer a *firm*'s questions that are required to determine whether the *retail client* is eligible for an enhanced annuity, a *firm* must:
 - (a) generate a market-leading *pension annuity* quote using the same information that it used to generate its guaranteed quote; and

19.9.6B**G**

- (b) compare the market-leading *pension annuity* quote referred to in (a) with its guaranteed quote.

19.9.6C**G**

- (1) The *guidance* in this section relates to a *firm's* obligations to provide a market-leading *pension annuity* quote in **COBS 19.9.6AR(4)**.
- (2) A *firm* may consider it appropriate to include in the quote provided to the *retail client* a statement that the *client* may have health or lifestyle factors that could mean that they are eligible for a higher income. For example, the wording in the "Did you know?" box in the template in Part 3 of **COBS 19 Annex 3R** could be adapted to reflect the fact that a *client* has refused to answer questions about their health or lifestyle.

Information comparing a guaranteed quote and a market-leading pension annuity quote

19.9.7**R**

A *firm* must:

- (1) generate a market-leading *pension annuity* quote before providing a guaranteed quote to a *retail client*;
- (2) unless (2A) applies, determine which of the following will, or is most likely to, offer a *retail client* the highest annual income:
 - (a) the *pension annuity* offered by the guaranteed quote ("A");
 - (b) the *pension annuity* offered by the market-leading *pension annuity* quote ("B");
 - (c) if applicable, the pension that a *retail client* is entitled to, or will be entitled to, pursuant to the *retail client's* entitlement to a *guaranteed annuity rate* ("C"); or
 - (d) if applicable, the minimum pension that a *retail client* is entitled to, or will be entitled to, pursuant to the *retail client's* entitlement to either or both a *guaranteed minimum pension* or section 9(2B) rights ("D");

in cases where a *retail client* has requested an income quote, determine which of the following will, or is most likely to, offer a *retail client* with at least the annual income that the *retail client* has requested at the lowest purchase price:

- (a) the *pension annuity* offered by the guaranteed quote ("A1");
- (b) the *pension annuity* offered by the market-leading pension annuity quote ("B1"); or
- (c) if applicable, the pension that the *retail client* is entitled to, or will be entitled to, pursuant to their entitlement to a *guaranteed annuity rate* ("C1");
- (3) use the template in:
- (a) Part 1 of ■ COBS 19 Annex 3R where (2) applies and B offers a *retail client* the highest annual income;
 - (b) Part 2 of ■ COBS 19 Annex 3R where (2) applies and A, C or D offers a *retail client* the highest annual income;
 - (c) Part 4 of ■ COBS 19 Annex 3R where (2A) applies and B1 offers a *retail client* at least the annual income that the *retail client* has requested at the lowest purchase price; or
 - (d) Part 5 of ■ COBS 19 Annex 3R where (2A) applies and A1 or C1 offers a *retail client* at least the annual income that the *retail client* has requested at the lowest purchase price;
- (4) where (2) applies and B offers the highest annual income:
- (a) calculate as a single sum in pounds sterling the amount by which B provides a higher annual income than A;
 - (b) include that amount in the relevant place in the template; and
 - (c) include a statement making it clear that a *retail client* could obtain a higher annual income by searching the open market for a *pension annuity*;
- (4A) where (2A) applies and B1 offers at least the requested annual income at the lowest purchase price:
- (a) calculate as a single sum in pounds sterling the difference in purchase price between A1 and B1;
 - (b) include that amount in the relevant place in the template; and
 - (c) include a statement making it clear that the *retail client* could obtain at least the requested annual income at a lower purchase price by searching the open market for a *pension annuity*;
- (5) where (2) applies and A offers the highest annual income, include a statement that A will provide the *retail client* with the highest annual income; and
- (5A) where (2A) applies and A1 offers at least the requested annual income at the lowest purchase price, include a statement that A1 will provide the *retail client* with at least the requested annual income at the lowest purchase price;
- (6) if applicable, where (2) applies and C or D will, or is likely to, provide the highest annual income:
- (a) calculate as a single sum in pounds sterling the amount by which C or D, as applicable, will, or is likely to, provide a higher annual income than A;
 - (b) include that amount in the relevant place in the template; and
 - (c) warn the *retail client* that:

- (i) the entitlement to, as applicable, C or D, will be extinguished if the *retail client* accepts A; and
 - (ii) accepting A will result in the *retail client* receiving a lower annual income than the *retail client* is entitled to pursuant to, as applicable, C or D.
- (7) where (2A) applies and C1 will, or is likely to, provide at least the requested annual income at the lowest purchase price:
- (a) calculate as a single sum in pounds sterling the difference in purchase price between A1 and C1;
 - (b) include the amount in (a) in the relevant place in the template; and
 - (c) warn the *retail client* that:
 - (i) the entitlement to C1 will be extinguished if the *retail client* accepts A1; and
 - (ii) accepting A1 will result in the *retail client* paying a higher purchase price than that payable if the *retail client* exercises their entitlement to C1;
- (8) where (2A) applies and either A1 or B1 offers the *retail client* at least the requested annual income at the lowest purchase price, a *firm* must determine whether the *retail client's* entitlement to a *guaranteed annuity rate* can be applied to offer a better value annuity compared to the lowest purchase price annuity on offer and, if so, warn the *retail client* accordingly.

19.9.7A**G**

An example of where a *firm* may need to provide a warning of the kind referred to in ■ COBS 19.9.7R(8) is where a *retail client* ('R') is seeking an annuity of £5,000 and the lowest purchase price for such an annuity is £100,000. If R's entitlement to a *guaranteed annuity rate* can be used to provide R with an annuity of £15,000, albeit at a cost of £200,000, the *firm* should warn R of this possibility. Where applicable, such a warning should be included in the relevant template and may also be given orally.

19.9.8**G**

When a *firm* is required to generate a market-leading *pension annuity* quote it may use:

- (1) the facility on the *MoneyHelper* website available on <https://www.moneyhelper.org.uk/guaranteed-income>; or
- (2) software, or any other means, that will enable the *firm* to search for, obtain and compare *pension annuities* available to the *retail client* from across all of the *pension annuity* market.

Requirement to provide another firm with information pursuant to COBS 19.9.4R(7) and COBS 19.9.7R

19.9.9**R**

A *firm* ("F1") must take reasonable steps to provide any information requested of it by another *firm* ("F2") where such information is requested in order for F2 to comply with its obligations under ■ COBS 19.9.4R(7) and the related requirement in ■ COBS 19.9.7R.

- 19.9.10 G** A firm is reminded that when complying with the requirement in ■ COBS 19.9.9R it should do so in a way that is consistent with its obligations under competition law.
- Pension commencement lump sum**
- 19.9.11 R**
- (1) This rule applies if a *retail client* is entitled to a *pension commencement lump sum* that would amount to more than 25% of the value of the *retail client's* benefit under the *occupational pension scheme, personal pension scheme or stakeholder pension scheme* in which the *retail client* has an interest.
 - (2) A firm must warn the *retail client* if the *pension annuity* offered by:
 - (a) the guaranteed quote; or
 - (b) the market-leading *pension annuity* quote,
 will, if accepted, reduce the *pension commencement lump sum* that a *retail client* would otherwise be entitled to receive.
- Information about pension-related benefits**
- 19.9.12 R**
- (1) This rule applies where a *retail client* is unable to confirm an entitlement to a pension-related benefit.
 - (2) This rule does not apply if a firm is the *retail client's* current provider of a pension-related benefit.
 - (3) A firm must take reasonable steps to assist a *retail client* ascertain whether the *retail client* is entitled to a pension-related benefit.
 - (4) If, despite having taken reasonable steps under (3), it remains unclear whether a *retail client*:
 - (a) is entitled to a *guaranteed annuity rate*, a firm must proceed as if the requirement in ■ COBS 19.9.4R(2) is not applicable;
 - (b) is entitled to a guaranteed minimum pension, a firm must proceed as if the requirement in ■ COBS 19.9.4R(3) relating to information about a guaranteed minimum pension is not applicable;
 - (c) has section 9(2B) rights, a firm must proceed as if the requirement in ■ COBS 19.9.4R(3) relating to information about section 9(2B) rights is not applicable; or
 - (d) is entitled to a *pension commencement lump sum*, a firm must proceed as if the requirement in ■ COBS 19.4.4R(4) is not applicable.
- 19.9.13 G**
- (1) ■ COBS 19.9.12R is likely to apply where a *retail client* does not know, or cannot recall, if the *retail client* is entitled to a pension-related benefit.
 - (2) A firm may wish to consider doing any of the following as part of taking reasonable steps to assist a *retail client* ascertain whether the *retail client* is entitled to a pension-related benefit:
 - (a) suggesting the *retail client* locate any documentation which may contain relevant information about a pension-related benefit; and

		<p>(b) encouraging the <i>retail client</i> to contact their existing pension provider for relevant information relating to a pension-related benefit.</p> <p>(3) ■ COBS 19.9.12R does not apply to a <i>firm</i> that is a <i>retail client's</i> current pension-related benefit provider because that <i>firm</i> will be in possession of information relevant to determining whether a <i>retail client</i> is entitled to a pension-related benefit.</p>
		Retail client's consent to generate a market-leading pension annuity quote
19.9.14	G	<p>Before generating a market-leading <i>pension annuity</i> quote a <i>firm</i> should consider whether it needs the consent of the <i>retail client</i> to use any personal data for the purposes of generating the quote.</p>
19.9.15	R	<p>(1) This <i>rule</i> applies to a <i>firm</i> where the <i>firm</i> requires the <i>retail client's</i> consent to the <i>firm</i> generating, on behalf of the <i>retail client</i>, a market-leading <i>pension annuity</i> quote and that consent is not obtained.</p> <p>(2) A <i>firm</i> must take reasonable steps to obtain a <i>retail client's</i> consent referred to in paragraph (1).</p> <p>(3) Where a <i>firm</i>, having complied with (2), has been unable to obtain the <i>client's</i> consent, this <i>rule</i> applies with the effect that:</p> <p>(a) ■ COBS 19.9.4R(7), ■ COBS 19.9.7R and ■ COBS 19.9.6AR(4) do not apply;</p> <p>(b) a <i>firm</i> must include information, as applicable, warning the <i>retail client</i> that:</p> <p>(i) a higher annual income might be obtained; or</p> <p>(ii) at least the requested annual income might be obtained for a lower purchase price;</p> <p>by searching the open market for a <i>pension annuity</i>; and</p> <p>(c) a <i>firm</i> must, as applicable, use the template in:</p> <p>(i) unless (ii) applies, Part 3 of ■ COBS 19 Annex 3R; or</p> <p>(ii) Part 6 of ■ COBS 19 Annex 3R where the <i>retail client</i> has requested an income quote,</p> <p>to provide the applicable <i>pension annuity</i> comparator information.</p>
		Medium of disclosure
19.9.16	R	<p>(1) A <i>firm</i> must provide the <i>pension annuity</i> comparator information in a <i>durable medium</i> or make the information available on a website (where that does not constitute a <i>durable medium</i>) that meets the <i>website conditions</i>.</p> <p>(2) If the requirement to provide the <i>pension annuity</i> comparator information arises during a telephone conversation with a <i>retail client</i>, a <i>firm</i> must:</p> <p>(a) orally provide the <i>pension annuity</i> comparator information over the telephone;</p> <p>(b) provide the <i>pension annuity</i> comparator information in a <i>durable medium</i> or make the information available on a website (where</p>

- that does not constitute a *durable medium*) that meets the *website conditions*; and
- (c) conclude a sale of a *pension annuity* only if the *retail client* agrees to receiving the *pension annuity* comparator information referred to in (b) after the sale has been concluded.
 - (3) If a *firm* provides the *pension annuity* comparator information on paper, it must use a single sheet of A4 paper.
 - (4) The requirement in (3) to use a single sheet of paper does not apply if a *retail client* asks for the *pension annuity* comparator information to be provided in an accessible format and the fulfilment of that request will necessitate the use of more than a single sheet of A4 paper.



19.10 Drawdown, investment pathways and cash warnings

19.10.1

R

Definitions

In ■ COBS 19.10:

- (1) [deleted]
- (2) "cash warning" is the warning in ■ COBS 19.10.38R;
- (3) "drawdown fund" means either a *capped drawdown pension fund* or *flexi-access drawdown pension fund*;
- (4) a *retail client* is a "non-advised *retail client*" if a *firm* has not determined, on reasonable grounds, that the client has received a *personal recommendation* in relation to how to invest the sums or assets in their drawdown fund, in accordance with ■ COBS 19.10.10R(4);
- (5) "pathway investments exempt firm" is a *firm* which:
 - (a) has elected not to offer *pathway investments*; and
 - (b) is satisfied on reasonable grounds that it is more likely than not to have fewer than 500 of its non-advised *retail clients* designate funds to a drawdown fund in the 12 months following the date of the election in (a), taking into account:
 - (i) the number of non-advised *retail clients* who designated funds to a drawdown fund in the preceding 12 months;
 - (ii) the potential impact of any change in the *firm's* business plans over the next 12 months; and
 - (iii) any other relevant factors;
- (6) references to a *firm* "offering" the *retail client* a *pathway investment* mean that the investments are either:
 - (a) *manufactured* by the *firm* (F1); or
 - (b) *manufactured* by another *firm* (F2);and are available for investment in the drawdown fund operated by F1.
- (7) references to a *firm* (F1) "referring" the *retail client* to a *firm* (F2) offering a *pathway investment* mean that F1 arranges for F2 to give

		the <i>retail client</i> the opportunity to invest in a <i>pathway investment</i> available through transfer to the drawdown fund operated by F2, where F2 offers <i>pathway investments</i> in accordance with (6)(a) above.
		Who?
19.10.2	R	This section applies to an <i>operator of a retail client's personal pension scheme or stakeholder pension scheme</i> .
19.10.3	G	The application of this section is modified for a pathway investments exempt firm.
19.10.4	R	<p>(1) A pathway investments exempt firm must review its status at least once every 12 months.</p> <p>(2) Any change to a <i>firm's</i> status as a pathway investments exempt firm must take effect within 12 months of the review date.</p>
		Purpose
19.10.5	G	The purpose of this section is to help non-advised <i>retail clients</i> designating some or all of the funds in their <i>pension schemes</i> into a drawdown fund to make an active decision about how to invest those drawdown funds to achieve their retirement objectives.
19.10.6	G	<p>This section specifies the circumstances where a <i>firm</i> dealing with a non-advised <i>retail client</i> in relation to the investment of the sums or assets in their drawdown fund must:</p> <p>give the <i>retail client</i> the opportunity to use the <i>investment pathways</i>;</p> <p>offer the <i>retail client</i> a <i>pathway investment</i> or refer the <i>retail client</i> to a <i>firm</i> that offers <i>pathway investments</i>;</p> <p>ensure that <i>retail clients</i> investing wholly or predominantly in <i>cash-like investments</i> make an active decision to do so;</p> <p>provide warnings to <i>retail clients</i> investing wholly or predominantly in <i>cash-like investments</i>;</p> <p>remind <i>clients</i> about their option to shop around and use <i>pensions guidance</i>.</p>
19.10.7	G	This section does not absolve <i>firms</i> of their obligation, when communicating with <i>retail clients</i> about their drawdown fund options, to provide such information as is necessary for the <i>retail client</i> to make an informed decision, including (where relevant) the information listed in ■ COBS 19.4.14R.
		When?
19.10.8	R	<p>Subject to ■ COBS 19.10.10R, a <i>firm</i> must take the steps in this section when a <i>retail client</i> requests to:</p> <p>(1) designate some, or all, of the sums or assets in their <i>pension scheme</i> to a drawdown fund; or</p>

		(2) transfer sums or assets already in drawdown into a drawdown arrangement provided by the <i>firm</i> .
19.10.9	G	<p>■ COBS 19.10.8R(2) applies to a drawdown provider when a <i>retail client</i> requests to transfer sums to the drawdown provider from another provider. It also applies, for example, when a <i>retail client</i> requests to transfer sums into a new drawdown arrangement at the end of a fixed-term arrangement with the same drawdown provider.</p>
19.10.10	R	<p>The requirements in this section do not apply to a <i>firm</i>:</p> <p>in relation to sums or assets in a <i>retail client's pension scheme</i> that the <i>retail client</i> requests to use to purchase a fixed-term product that:</p> <ul style="list-style-type: none"> (a) provides a guaranteed income, a guaranteed capital return or both, to the <i>retail client</i> or the <i>retail client's beneficiary</i>; and (b) does not involve any investment risk to the <i>retail client</i> if the <i>retail client</i> remains in the product for the fixed term; <p>when the <i>firm</i> carries out the <i>retail client's</i> previous instructions to designate their funds on a regular basis into a drawdown fund;</p> <p>when the <i>retail client</i> has been taken through the <i>investment pathways</i> by another <i>firm</i> (F1) and has been referred to the <i>firm's</i> (F2's) drawdown fund to invest in one of the <i>pathway investments</i> that the <i>firm</i> (F2) offers (see ■ COBS 19.10.1R(7)); or</p> <p>when the <i>firm</i> has determined, on reasonable grounds, that the <i>retail client</i> has received a <i>personal recommendation</i> in relation to the action referred to in ■ COBS 19.10.8R(1) or ■ (2).</p>
19.10.11	G	<p>■ COBS 19.10.10R(1) applies where a <i>retail client</i> requests to purchase a fixed-term product, in which the only income or return is intended to be regular income, a capital return or both (payable to the client or the client's beneficiary), with amounts guaranteed and specified at the time the product is purchased. <i>Firms</i> may nonetheless agree terms permitting ad hoc withdrawals or early exit, which may or may not be subject to guarantees, with <i>retail clients</i> purchasing these products.</p>
19.10.12	G	<p>A <i>firm</i> will not have reasonable grounds for the purpose of ■ COBS 19.10.10R(4) if the determination is based solely on information that:</p> <ul style="list-style-type: none"> (1) is over 12 months old; (2) the <i>retail client</i> is in, or transferring from, an advised product; or (3) the <i>retail client</i> continues to provide <i>remuneration</i> to an <i>adviser</i> in relation to their <i>pension scheme</i> or drawdown fund.
19.10.13	G	<p>However, a <i>firm</i> could have reasonable grounds for the purpose of ■ COBS 19.10.10R(4) if the <i>retail client</i> continues to provide <i>remuneration</i> to an <i>adviser</i> in relation to their <i>pension scheme</i> or drawdown fund and the <i>firm</i> has reminded the <i>retail client</i> of this:</p>

- (1) including an explanation of what this means in the context of the *retail client's* request referred to in ■ COBS 19.10.8R;
- (2) in a *durable medium*; and
- (3) within a reasonable time before the *firm* carries out the *retail client's* request referred to in ■ COBS 19.10.8R.

Step 1: offer use of investment pathways

19.10.14

R

The first step is to ask the *retail client* how they want to select the *investment* for their drawdown fund from the following options:

- (1) use the *investment pathways* (option 1);
- (2) select investments without using the *investment pathways* (option 2); or
- (3) (where applicable) remain invested in their current investments (option 3).

19.10.15

R

The option to use *investment pathways* must be presented with equal prominence to options 2 and 3.

19.10.16

R

If a *retail client* selects option 1, or the *retail client* is unsure about the option to select, or the *firm* is unsure about which option the *retail client* has selected, the *firm* must proceed to step 2.

Step 2: present investment pathway options

19.10.17

R

The second step is to:

- (1) present the *retail client* with the following *investment pathway* options:
 - (a) Option 1: I have no plans to touch my money in the next 5 years;
 - (b) Option 2: I plan to use my money to set up a guaranteed income (annuity) within the next 5 years;
 - (c) Option 3: I plan to start taking my money as a long-term income within the next 5 years;
 - (d) Option 4: I plan to take out all my money within the next 5 years; and
- (2) ask the *retail client* to select an *investment pathway* option that corresponds most closely to their current intentions.

19.10.18

R

A *firm* must not present any other investment options to the *retail client* during step 2 of *investment pathways*.

19.10.19

R

If a *retail client* selects an *investment pathway* option, the *firm* must proceed to step 3.

- 19.10.20 G** If, after the *firm* completes step 2, the *retail client* does not select an *investment pathway* option the *firm* should:
- (1) consider providing the *retail client* with the opportunity to view the *investment pathways* options again or ask if the *retail client* requires further information to make a decision;
 - (2) provide a clear and prominent statement about the availability of advice and *pensions guidance*; and
 - (3) provide the *retail client* with the information in ■ COBS 19.10.30R, if applicable.
- Step 3: offer pathway investments**
- 19.10.21 R**
- (1) The third step is for the *firm* to:
 - (a) offer the *retail client* a *pathway investment* that corresponds to the *investment pathway* option selected in step 2; or
 - (a) refer the *retail client* to a *firm* that offers a *pathway investment* that corresponds to the *investment pathway* option selected in step 2; or
 - (a) (for pathway investments exempt firms only) refer the *retail client* to the *MoneyHelper investment pathways* comparison tool, available on <https://www.moneyhelper.org.uk/pathways>;
 - (b) describe to the *retail client*, using plain language, the level of riskiness of each *pathway investment* (whether offered by that *firm* or by a *firm* to which they refer *retail clients*); and
 - (c) provide the *retail client* with a clear and prominent statement:
 - (i) that other *firms* offer *pathway investments* for the *investment pathway* option selected by the *retail client* and that the *retail client* may benefit from shopping around, with an explanation of how they may do so; and
 - (ii) that *MoneyHelper* is available to assist the *retail client* with shopping around for *pathway investments* with an explanation of how they may access *MoneyHelper* and the *MoneyHelper investment pathways* comparison tool, available on <https://www.moneyhelper.org.uk/pathways>.
 - (2) A pathway investment exempt firm need only do (1)(a)(ii) or (iii) and (1)(b) and (c).
- 19.10.22 G** If after the *firm* completes step 3 the *retail client* does not select a *pathway investment* the *firm* should:
- (1) consider providing the *retail client* with the opportunity to view the *investment pathways* options again or ask if the *retail client* requires further information to make their decision;
 - (2) remind the *retail client* that they can shop around and explain how they can do that;
 - (3) provide a clear and prominent statement about the availability of advice and *pensions guidance*; and

- (4) provide the *retail client* with the information in ■ COBS 19.10.30R, if applicable.
- 19.10.23 G** If after the *firm* completes step 3 the *retail client* does not select a *pathway investment* the *firm* may offer other investments and tools the client may use when deciding how to invest their drawdown fund.
- 19.10.24 R** To prepare for step 3:
- (1) a *firm* (excluding pathway investments exempt firms) must be in a position to:
 - (a) offer, or refer to other *firms* offering, a *pathway investment* for each of the *investment pathway* options (see ■ COBS 19.10.1R(7) on referring); and
 - (b) offer *pathway investments* for at least two *investment pathway* options;
 - (2) *firms* may offer, or refer to other *firms* offering, the same *pathway investment* for more than one *investment pathway* option, but must not offer, or refer the *retail client* to other *firms* that offer, the same *pathway investment* for all *investment pathway* options;
 - (3) *firms* must be in a position to describe the level of riskiness of each *pathway investment*, whether offered by them or by a *firm* to which they refer *retail clients*; and
 - (4) pathway investments exempt firms must be in a position to either:
 - (a) refer clients to *pathway investments* offered at other *firms*; or
 - (b) refer clients to the *MoneyHelper investment pathways* comparison tool, available on <https://www.moneyhelper.org.uk/pathways>.
- 19.10.25 R** Firms must not offer a *retail client* more than one *pathway investment*, nor refer a *retail client* to more than one *firm* offering a *pathway investment*, for any *investment pathway* option.
- 19.10.26 G** Firms do not have to offer the same *pathway investment* to all *retail clients* who select the same *investment pathway* option. Example F(33) in ■ PERG 8 Annex 1 sets out some considerations for *firms* that offer different *pathway investments* in relation to the same *investment pathway* option.
- 19.10.27 G**
- (1) Where a *firm* decides to change the *pathway investment* it offers in relation to a particular *investment pathway* option, the *firm* may need to consider whether it would be appropriate to transfer existing clients to that new investment.
 - (2) This may be the case, for example, if the transfer is required to prevent consumer harm and avoid risking a breach of our *rules*, for example Principle 6. This could be the case where the *firm* has determined that the *pathway investment* is no longer an appropriate

investment for the *investment pathway* option and the client is likely to suffer harm as a result.

- (3) If *firms* decide to transfer existing clients to a new *pathway investment*, *firms* will need to consider the information needs of their clients, and communicate to them appropriately and in good time, in a manner that is clear, fair and not misleading.
- (4) *Firms* are required to have appropriate arrangements in place (including contractual powers that are fair and transparent and comply with the CRA) to enable them to comply with their obligations under the *regulatory system*.

19.10.28 R

- (1) *Firms* must label *pathway investments* clearly using the corresponding option listed in ■ COBS 19.10.17R(1).
- (2) *Firms* must not label any other investments as *pathway investments* or mislead a *retail client* into thinking that another investment is a *pathway investment*.

Information, including cash warnings, for clients who have not decided to invest at least 50% of their drawdown fund in pathway investments**19.10.29 R**

■ COBS 19.10.30R applies if a *retail client* has:

- (1) been taken through the *investment pathway* (whether or not they proceeded to steps 2 or 3); and
- (2) not decided to invest at least 50% of their drawdown fund in one or more *pathway investments*.

19.10.30 R

Before carrying out the *retail client's* request referred to in ■ COBS 19.10.8R, the *firm* must:

- (1) if the *retail client* has chosen to remain in their current investments, remind the *retail client*:
 - (a) of their current investment strategy (where this is known to the *firm*); and
 - (b) to check that their current investment strategy meets their current investment objectives;
- (2) subject to ■ COBS 19.10.32R, if carrying out the *retail client's* request referred to in ■ COBS 19.10.8R would result in more than 50% of the *retail client's* drawdown fund being invested in *cash-like investments*:
 - (a) ensure that the *retail client* has made an active decision to invest in *cash-like investments*; and
 - (b) provide the *retail client* with a cash warning;
- (3) remind the *retail client* that they can shop around and how to do that, including the option of using the *MoneyHelper investment pathways comparison tool*, available on <https://www.moneyhelper.org.uk/pathways>; and
- (4) provide a clear and prominent statement about the availability of advice and *pensions guidance*.

19.10.31 **G** A *retail client's* signature on a pre-populated form, whether in paper or electronic format, is not, by itself, sufficient evidence of an active decision to invest in *cash-like investments*.

- 19.10.32** **R**
- (1) ■ COBS 19.10.30R(2) does not apply where a *retail client* has given a *discretionary investment manager* or a financial adviser permission to execute investment decisions, and the sums or assets covered by this permission comprise more than 50% of the *retail client's* drawdown fund.
 - (2) When ascertaining whether more than 50% of the *retail client's* drawdown fund is invested in *cash-like investments*, a *firm* may ignore sums or assets in relation to which a *discretionary investment manager* or a financial advisor has permission to execute investment decisions. A *firm* exercising this option must take the steps in ■ COBS 19.10.30R(2) if the client's decision would result in more than 50% of the remainder of the drawdown fund being invested in *cash-like investments*.
 - (3) If it is not possible for the *firm* to identify the assets in a *retail client's* drawdown fund, despite making all reasonable efforts, a *firm* may take into account all investments in the *retail client's personal pension scheme* or *stakeholder pension scheme*. In such a case, a *firm* must take the steps in ■ COBS 19.10.30R(2) if the client's decision would result in more than 50% of the value of the client's *personal pension scheme* or *stakeholder pension scheme* being invested in *cash-like investments*.

19.10.33 **G** To ascertain whether more than 50% of a *retail client's* drawdown fund is invested in *cash-like investments*, a *firm* should take reasonable steps to obtain up-to-date information, and should use the most recent information it has access to.

Ongoing cash warnings

19.10.34 **R** When a *firm* has given a *retail client* a cash warning pursuant to ■ COBS 19.10.30R(2)(b) or ■ TP 2.8GR, the *firm* must give the client a cash warning at least annually thereafter, while the client remains so invested and remains a non-advised client.

19.10.35 **G** When considering whether to send an annual cash warning, a *firm* may, but is not obligated to, reassess whether a *retail client* has received a *personal recommendation* in relation to how to invest the sums or assets in their drawdown fund, in accordance with ■ COBS 19.10.10R(4).

Product governance

19.10.36 **G** A *firm* should ensure that it complies with the product governance requirements in PROD in relation to the *pathway investments* they offer.

Cash warnings

19.10.37 **G** This section defines a cash warning and how it must be provided. ■ COBS 19.10.30R(2)(b), ■ TP 2.8GR and ■ COBS 19.10.34R set out when a cash warning must be provided.

- 19.10.38 R** The cash warning must:
- (1) be provided in a *durable medium*;
 - (2) using plain language, warn the *retail client* that:
 - (a) more than half of their eligible drawdown fund is invested in *cash-like investments*; and
 - (b) the value of their drawdown fund is at risk of being eroded by inflation; and
 - (3) include a generic example (provided as an explanation, an illustration or both) of how inflation erosion would affect a £10,000 pot over 5 years, assuming 0% interest and using a measure of inflation generally accepted in the *United Kingdom*; and
 - (4) inform the *retail client* that if they plan to invest for the longer-term, they should consider whether their current investments are likely to grow sufficiently to meet their objectives.
- 19.10.39 G** The *firm* should also:
- (1) (if appropriate) inform the *retail client* that:
 - (a) this warning is not advice or a substitute for it;
 - (b) the value of any investment can fall as well as rise;
 - (2) explain to and/or illustrate for the *retail client* that different types of investment have a different balance of risk to potential gain;
 - (3) provide the *retail client* with a statement to the effect that (to the extent applicable) the *firm* offers *pathway investments* and other investments; and
 - (4) remind the *retail client* (in line with the requirements in ■ COBS 19.4) that the *retail client* can:
 - (a) shop around (with an explanation of how to do that);
 - (b) seek advice from a FCA-regulated financial adviser; and
 - (c) review information on the *MoneyHelper* website, available on <https://www.moneyhelper.org.uk>.
- 19.10.40 G** In the FCA's view, the Consumer Prices Index is a national index of retail prices and so may be used as a measure of the current inflation rate for the purposes of ■ COBS 19.10.38R(3).
- Warning on expiry of a fixed-term product**
- 19.10.41 G** This section sets out when and how warnings must be given to *retail clients* who have purchased certain fixed-term products, and what the warnings should include.
- 19.10.42 R** ■ COBS 19.10.43R applies where:
- (1) a non-advised *retail client* has purchased a fixed-term product within a *personal pension scheme* or *stakeholder pension scheme*;

- (2) at the end of the fixed term, that product has a fixed cash value payable to the *retail client* or the *retail client's* beneficiary; and
- (3) the *retail client* has not given the *firm* instructions to transfer the full value out of the product.

19.10.43**R**

The *firm* must provide the *retail client* with a warning, which must:

- (1) be provided:
 - (a) in a *durable medium*;
 - (b) within 28 days of the end of the fixed term; and
 - (c) at least annually thereafter for so long as the value remains in the product; and
- (2) in plain language, warn the client that:
 - (a) the fixed term of the product has expired;
 - (b) if applicable, no interest will accrue on the value remaining in the product; and
 - (c) the value remaining in the product is at risk of being eroded by inflation; and
- (3) include a generic example (provided as an explanation, an illustration or both) of how inflation erosion would affect a £10,000 pot over 5 years, assuming 0% interest and using a measure of inflation generally accepted in the *United Kingdom*.

19.10.44**G**

The *firm* should also:

- (1) if appropriate, inform the *retail client* that this warning is not advice or a substitute for it;
- (2) remind the *retail client* (in line with the requirements in ■ COBS 19.4) that they can:
 - (a) shop around (with an explanation of how to do that);
 - (b) seek advice from a FCA-regulated financial adviser; and
 - (c) review information on the *MoneyHelper* website available on <https://www.moneyhelper.org.uk>.

19.10.45**G**

In the FCA's view, the Consumer Prices Index is a national index of retail prices and so may be used as a measure of the current inflation rate for the purposes of ■ COBS 19.10.43R(3).

Record keeping**19.10.46****R**

A pathway investments exempt firm must maintain a record of:

- (1) the dates its exemption applies; and
- (2) how the *firm* assessed that it meets the requirements for the exemption with reference to the criteria in ■ COBS 19.10.1R(5)(b).

19.10.47

G

A *firm* to which the record-keeping rules in ■ **SYSC 3** (Systems and controls) or ■ **SYSC 9** (Record-keeping) apply should maintain a record of its compliance with the requirements in this section including:

- (1) the number of advised and non-advised *retail clients* entering into drawdown arrangements with the *firm*;
- (2) a record of how the *firm* determined, on reasonable grounds, that a *retail client* had received a *personal recommendation*, in accordance with ■ **COBS 19.10.10R(4)** (where relevant);
- (3) the number of *retail clients* who chose each of the 3 options at step 1 of *investment pathways*;
- (4) the number of *retail clients* who selected each *investment pathway* option at step 2;
- (5) the total number of *retail clients* who did not select an *investment pathway* option after step 2;
- (6) in relation to *retail clients* who did not select an *investment pathway* option after step 2, the number who:
 - (a) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;
 - (b) moved sums or assets into drawdown but remained invested in their previous investments;
 - (c) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected another investment offered by the *firm*.
- (7) the number of *retail clients* offered each *pathway investment* at step 3;
- (8) the number of *retail clients* who selected each *pathway investment* at step 3;
- (9) the total number of *retail clients* who did not select the *pathway investment* offered;
- (10) in relation to *retail clients* who did not select the *pathway investment* offered, the number who:
 - (a) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;
 - (b) moved sums or assets into drawdown but remained invested in their previous investments;
 - (c) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected another investment offered by the *firm*;
 - (c) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a *pathway investment* different to that offered by the *firm* in step 3;
- (11) where a *firm* refers *retail clients* to another *firm's pathway investment* at step 3:
 - (a) the number of *retail clients* referred to another *firm's pathway investment*, broken down by *pathway investment* if more than one;

- (b) the number who transferred to that *firm*;
- (c) the number who did not transfer to that *firm*;
- (d) in relation to *retail clients* who did not transfer, the number who:
- (i) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;
 - (ii) moved sums or assets into drawdown but remained invested in their previous investments;
 - (iii) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a non-pathway *investment* offered by the *firm*;
 - (iv) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a pathway *investment* that did not require transferring to another *firm*;
- (12) where a pathway investment exempt *firm* refers *retail clients* to the *MoneyHelper investment pathways* comparison tool at step 3:
- (a) the number of *retail clients* directed to the *MoneyHelper investment pathways* comparison tool;
 - (b) the numbers of those *retail clients* who then transferred to another *firm*;
 - (c) the number of *retail clients* who did not transfer to another *firm*;
 - (d) in relation to *retail clients* who did not transfer, the number who:
 - (i) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;
 - (ii) moved sums or assets into drawdown but remained invested in their previous investments;
 - (iii) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a non-pathway *investment* offered by the *firm*;
- (13) the number of *retail clients* who received a cash warning pursuant to
- COBS 19.10.30R(2)(b) (initial cash warning);
- (14) the number of *retail clients* who received a cash warning pursuant to
- COBS 19.10.34R (ongoing cash warning);
- (15) in relation to *retail clients* who received an initial cash warning, the number of clients who did not receive an ongoing cash warning because:
- (a) they were no longer holding more than 50% of their drawdown fund in *cash-like investments*;
 - (b) they closed their drawdown fund or transferred to another *firm*;
 - (c) the *firm* assessed that the *retail client* was no longer non-advised;
- (16) evidence of how each *retail client* who received an initial cash warning made an active choice, in accordance with
- COBS 19.10.30R(2)(a), to invest more than 50% of their drawdown fund in *cash-like investments*;
- (17) the number of *retail clients* who received a warning pursuant to
- COBS 19.10.43R(1)(b) (initial warning on expiry of fixed-term fixed-income product); and

19.10.48**G**

- (18) the number of *retail clients* who received a warning pursuant to
■ COBS 19.10.43R(1)(c) (ongoing warning on expiry of fixed-term fixed-income product).

■ PROD 6.2.2G and ■ 6.3.4G contain further *guidance* on record-keeping for firms manufacturing or distributing pathway investments.

19.11 Pensions dashboards

Who?

19.11.1

R

This section applies to an *operator* of a *relevant pension scheme*. For the avoidance of doubt, in this section, a *personal pension scheme* includes a *personal pension product* and therefore the provider of a *personal pension product* is within the scope of the *rules* in this section.

Purpose

19.11.2

G

The purpose of this section is to ensure that an *operator* of a *relevant pension scheme* provides and facilitates the provision of sufficient *pensions dashboard view data* to a *pensions dashboard service*.

19.11.3

G

This section specifies the requirements placed on an *operator* of a *relevant pension scheme* to:

- (1) register with the *Money and Pensions Service*;
- (2) connect with the *MaPS dashboards digital architecture*;
- (3) provide and facilitate the provision of sufficient information in response to *pensions dashboard find requests* and *pensions dashboard view requests*; and
- (4) comply with *pensions dashboard standards* and have regard to *pensions dashboard guidance* as appropriate.

19.11.4

G

Where a *firm* is required by the *rules* in this section to have regard to *pensions dashboard guidance*, the *firm* will need to do so with due skill, care and diligence (in line with *Principle 2*). *Firms* will need to be able to demonstrate that they have taken into account the relevant guidance and the intended outcomes when considering whether their own systems are in line with that guidance and comply with the *rules* in this section.

Co-operation with, and notifications to, the Money and Pensions Service

19.11.5

R

A *firm* must:

- (1) cooperate with the *Money and Pensions Service* as far as is reasonably necessary to assist with the exercise of the *Money and Pensions Service's* functions in relation to *pensions dashboard services*; and
- (2) comply with the *service and operational pensions dashboard standards*.

- 19.11.6 R** In compliance with the service and operational *pensions dashboard standards*, a *firm* must notify the *Money and Pensions Service* as soon as possible once it becomes aware of any of the following issues:
- (1) connection state changes, such as scheduled downtime or maintenance;
 - (2) systemic issues, such as cyber-attacks that could affect the security of the *MaPS pensions dashboards ecosystem*; and
 - (3) changes in connection arrangements.
- 19.11.7 R** A *firm* must immediately notify the *Money and Pensions Service* if it is disconnected from the *MaPS dashboards digital architecture*.
- Registration and connection to the Money and Pensions Service**
- 19.11.8 R** A *firm* must:
- (1) register with the *Money and Pensions Service* having regard to *pensions dashboard guidance* relating to connection;
 - (2) ensure that it is, and remains, connected to the *MaPS dashboards digital architecture*:
 - (a) in compliance with the *pensions dashboard standards* relating to:
 - (i) connection and security standards;
 - (ii) technical standards; and
 - (b) having carried out the steps in the *pensions dashboard guidance* relating to connection or any alternative steps the *firm* has taken to achieve the same result; and
 - (3) make and maintain a record of how it has complied with (2)(b) for at least 6 years from the end of the calendar year to which the information relates.
- Responding to find requests and the matching process**
- 19.11.9 R** A *firm* must determine the *pensions dashboard matching criteria* to use for the *pensions dashboard matching process*:
- (1) having regard to *pensions dashboard guidance* on matching; and
 - (2) taking into account:
 - (a) the nature and quality of the *pensions dashboard find data* held by the *firm*; and
 - (b) the *firm's* preferred approach to preventing data breaches.
- 19.11.10 R** A *firm* must make and maintain a record of the *pensions dashboard matching criteria* determined by the *firm* in ■ COBS 19.11.9 for at least 6 years from the end of the calendar year to which the information relates.

- 19.11.11 R** On receipt of a *pensions dashboard find request*, a *firm* must immediately follow the *pensions dashboard matching process* having regard to *pensions dashboard guidance* on matching.
- 19.11.12 R** Where there is a *positive match* relating to a *pensions dashboard user* who is or could be a *relevant pension scheme member*, a *firm* must:
- (1) immediately create a *pension identifier*;
 - (2) register the *pension identifier* with the *Money and Pensions Service* in accordance with technical *pensions dashboard standards*; and
 - (3) store information that indicates whether the *pension identifier* relates to a *match made* or a *possible match*.
- 19.11.13 R** Where there is a *possible match*, a *firm* must:
- (1) check with the *Money and Pensions Service* that the *pensions dashboard user* to whom the *pensions dashboard find request* relates has consented to their *pensions dashboards view data* being provided to the *pensions dashboard service* that issued the *pensions dashboard view request*;
 - (2) if the *Money and Pensions Service* confirms the information in (1), immediately provide the *limited form of administrative data* to the *pensions dashboard service* that issued the *pensions dashboard view request*:
 - (a) in the format and manner set out in the *pensions dashboard standards* on data; and
 - (b) having regard to *pensions dashboard guidance* on data;
 - (3) immediately send a message, in accordance with the *pensions dashboard standards* on data, to the *pensions dashboard service* that issued the *pensions dashboard view request*, indicating that:
 - (a) further information is required in order to determine if the *pensions dashboard user* is a *relevant pension scheme member*; and
 - (b) the *pensions dashboard user* to whom the *pensions dashboard find request* relates must contact the *operator* of the *relevant pension scheme* to which the *possible match* relates, within 30 days of receiving the *limited form of administrative data*, to provide further information so that the *relevant pension scheme* can determine whether the *pensions dashboard user* is a *relevant pension scheme member*;
 - (4) if the *pensions dashboard user* to whom the *pensions dashboard find request* relates contacts them, immediately seek to resolve the *possible match* having regard to the *pensions dashboard guidance* on matching;
 - (5) where the *pensions dashboard user* to whom the *pensions dashboard find request* relates:
 - (a) does not make contact with the *operator* of the *relevant pension scheme* regarding the *possible match* within 30 days of receiving the *limited form of administrative data*; or

- (b) does make contact, but the *relevant pension scheme*, having regard to *pensions dashboard guidance* on matching, is unable to resolve the *possible match* as a *match made* within such time as may be reasonably allowed by the *relevant pension scheme*, the *firm* must delete the *pensions dashboard find request* and de-register the *pension identifier* from the *Money and Pensions Service* as soon as possible; and
- (6) notify the *Money and Pensions Service* if the *relevant pension scheme* determines subsequently that the *pensions dashboard user* is a *relevant pension scheme member*.

19.11.14 R

Where a *positive match* or a *possible match* is made but the *relevant pension scheme member* subsequently ceases to be a *relevant pension scheme member*, the *firm* must de-register the *pension identifier* from the *Money and Pensions Service* as soon as possible.

Responding to view requests and requirement to provide view data**19.11.15 R**

Where there is a *match made* (including where a *possible match* subsequently results in a *match made*) and the *firm* receives a *pension dashboard view request*, a *firm* must:

- (1) check with the *Money and Pensions Service* that the *relevant pension scheme member* to whom the *pension dashboard find request* relates has consented to their *pensions dashboard view data* being provided to the *pensions dashboard service* that issued the *pension dashboard view request*;
- (2) if the *Money and Pensions Service* confirms the information in (1), provide the *relevant pension scheme member's pensions dashboard view data* to the *pensions dashboard service* that issued the *pensions dashboard view request*; and
- (3) ensure the *pensions dashboard view data*:
 - (a) is in the format and manner set out in the *pensions dashboard standards* on data; and
 - (b) is provided having regard to the *pensions dashboard guidance* on data.

Administrative data – timescales**19.11.16 R**

A *firm* must provide the *administrative data* element of *pensions dashboard view data* required to be provided in ■ COBS 19.11.15R(2), in accordance with the following timescales:

- (a) if the *pensions dashboard view request* relates to a *relevant pension scheme member* who has joined the *relevant pension scheme* less than 3 *months* ago:
 - (i) as soon as practicable; and
 - (ii) in any event, no later than 3 *months* after the *relevant pension scheme member's joining date*.
- (b) in any other case, immediately after the request is received by the *firm*.

Administrative data – content**19.11.17 R**

The *administrative data* element of *pensions dashboard view data* required to be given in ■ COBS 19.11.15R(2) must be provided:

- (1) in accordance with the *pensions dashboard standards* on data; and
- (2) having regard to *pensions dashboard guidance* on data.

19.11.18 R

The *administrative data* is comprised of the following:

- (1) the date of birth of the *relevant pension scheme member* concerned;
- (2) information about the *relevant pension scheme*;
- (3) information about the *administrator* of the *relevant pension scheme*; and
- (4) where applicable and to the extent available, information about the employment that gave rise to the accrual of the pension saving.

19.11.19 R

The information about the *relevant pension scheme* referred to in ■ COBS 19.11.18R(2) must include:

- (1) the name of the *relevant pension scheme*;
- (2) a description of the types of benefit provided under the *relevant pension scheme* to the *relevant pension scheme member*;
- (3) whether the *relevant pension scheme member* is an *active pension scheme member* or a *deferred pension scheme member* or a *pension credit member*; and
- (4) the date when the *relevant pension scheme member* became a member of the *relevant pension scheme*.

19.11.20 R

The information referred to in ■ COBS 19.11.18R(3) about the *administrator* of the *relevant pension scheme* must include:

- (1) the name of the *administrator* having regard to *pensions dashboard standards* on data;
- (2) information to enable the *relevant pension scheme member* to get in touch with the *administrator*, which complies with *pensions dashboard standards* on data and which includes at least one of the following:
 - (a) the *administrator's* website address;
 - (b) the *administrator's* email address;
 - (c) the *administrator's* telephone number and telephone number type, including whether the number is the primary telephone number, is appropriate for Welsh language speakers, or is for text message service only; and
 - (d) the name and full postal address of the *administrator*.

- 19.11.21 R** The information referred to in ■ COBS 19.11.18R(4) about the employment to which the pension saving in the *relevant pension scheme* relates must (where applicable and to the extent available) include:
- (1) the start date of the earliest period of employment which generated the accrual of the pension saving;
 - (2) in relation to a deferred member, the end date of the latest period of employment which generated the accrual of the pension saving;
 - (3) in a case where the employment which generated the accrual of the pension saving relates to a single employer, the name of the employer;
 - (4) in a case where the employment which generated the accrual of the pension saving relates to more than one employer, whichever of the following is most appropriate:
 - (a) the name of the most recent employer; or
 - (b) confirmation that there have been multiple employers.
- Signpost data – timescales and location**
- 19.11.22 R** To the extent that *signpost data* is applicable to the nature of the *relevant pension scheme* or the type of benefit in question, where a *firm* has to provide *pensions dashboard view data* under ■ COBS 19.11.15R(2), a *firm* must provide the *signpost data* element (or where relevant, the data in (3)):
- (1) immediately; and
 - (2) by providing a website address for locations where *signpost data* can be accessed by the *relevant pension scheme member* to whom the *pensions dashboard view request* relates.
 - (3) Where a *firm* does not already have information on member-borne costs and charges available on a website, the *firm* must instead provide clear information to the *relevant pension scheme member* on the website referred in (2) about how they can obtain details about their member-borne costs and charges.
- Requirement to provide value data**
- 19.11.23 R** A *firm* must provide the *value data* element of the *pension dashboard view data* in accordance with ■ COBS 19 Annex 6 in respect of a *relevant pension scheme member*, unless an exemption set out below applies.
- 19.11.24 R** A *firm* is not required to provide the *projected pension pot value* or the *annualised projected pension value* under ■ COBS 19 Annex 6 1R in respect of a *relevant pension scheme member*:
- (1) with *money purchase benefits*; or
 - (2) with *hybrid benefits* where the benefit is calculated with reference to both *money purchase benefits* and benefits other than *money purchase benefits* (if any),
- where all of the following criteria are met in relation to the *relevant pension scheme member*:

- (3) the value of the *relevant pension scheme member's accrued rights to money-purchase benefits under the relevant pension scheme*, determined in accordance with the *relevant pension guidance*, was less than £5,000 on the last *illustration date*;
- (4) since the previous *illustration date*, no contributions (including transfers of pension rights and pension credits) have been made to the *relevant pension scheme* by, or on behalf of, the *relevant pension scheme member* in respect of their *money-purchase benefits*; and
- (5) the *firm* has previously given notice to the *relevant pension scheme member* that a *pension illustration* will not be given to them again unless further contributions referred to in (4) have been made.

19.11.25 R

A firm is not required to provide a *projected pension pot value* or an *annualised projected pension value* under ■ COBS 19 Annex 6 1R in respect of a *relevant pension scheme member*:

- (1) with *money purchase benefits*; or
- (2) with *hybrid benefits* where the benefit is calculated with reference to both *money purchase benefits* and benefits other than *money purchase benefits*; and

who is within 2 years of their *retirement date*.

19.11.26 G

A firm may provide the *projected pension pot value* or the *annualised projected pension value* in respect of a *relevant pension scheme member* where, under ■ COBS 19.11.24R, or ■ COBS 19.11.25R the *firm* is not required to do so.

19.11.27 R

A firm is not required to provide an *annualised projected pension value* or an *annualised accrued pension value* under ■ COBS 19 Annex 6 3R if the *cash balance benefit* was established in such a way that it was designed to provide a lump sum on retirement.

Value data – timescales**19.11.28 R**

Where a *firm* is required to provide *pension dashboard view data* under ■ COBS 19.11.15R(2), it must provide the *value data* immediately after the *pensions dashboard view request* is received, unless the situations set out in ■ COBS 19.11.29R or ■ COBS 19.11.30R apply, in which case the timescales set out in those *rules* apply.

19.11.29 R

Where the *value data* has not been generated for a *pension benefits statement* provided to the *relevant pension scheme member* within the past 13 *months*, or is not based on a calculation that was made using the same methodology as would have been used for such a *pension benefits statement* made within the past 12 *months*, the following timescales apply:

- (1) where all of the benefits provided to a *relevant pension scheme member* are *money purchase benefits*, the *value data* must be provided within 3 *working days* from the day after the date on which:

- (a) a pension identifier is registered for a match made; or
 - (b) (if relevant) the Money and Pensions Service is notified that a possible match is a match made;
- (2) in all other cases (including where the benefits provided to a member are hybrid benefits which depend on anything other than a money purchase benefits calculation), the value data must be provided within 10 working days from the day after the date on which:
- (a) a pension identifier is registered for a match made; or
 - (b) (if relevant) the Money and Pensions Service is notified that a possible match is a match made.

19.11.30 R

Where a pensions dashboard view request is issued by a pensions dashboard service in respect of a relevant pension scheme member within 12 months of the end of that member's first full calendar year, the firm must meet the requirements of COBS 19.11.23R, COBS 19.11.29R, COBS 19.11.32R and COBS 19.11.33R as soon as practicable, and no later than the sooner of:

- (1) the point at which the first pension benefits statement has been produced for the relevant pension scheme member; or
- (2) 12 months after the end of the relevant pension scheme member's first full calendar year.

19.11.31 R

Where an element of value data that a firm is required to provide is not returned on time:

- (1) the firm must provide a reason for the delay (in particular if there is a system error or a delay in calculation), in accordance with pensions dashboard standards relating to data; and
- (2) the giving of a reason under (1) does not excuse the firm from the requirement to provide the element of value data.

Value data – illustration date and contextual information**19.11.32 R**

The value data must:

- (1) be from:
 - (a) a pension benefits statement provided to the relevant pension scheme member within the last 13 months, even if the values in that pension benefits statement were calculated more than 13 months ago, and whether or not such a calculation was done in response to an earlier pensions dashboard view request; or
 - (b) a calculation performed for the relevant pension scheme member within the last 12 months, whether or not such a calculation was done in response to an earlier pensions dashboard view request; and
- (2) have the same illustration date.

19.11.33 R

Contextual information

A firm must provide the following *contextual information* to the extent relevant in the circumstances:

- (1) the *illustration date*, having regard to *pensions dashboard guidance* relating to value data;
- (2) whether the value is expressed as an annual income, lump sum or as a pot value;
- (3) whether the value displayed contains any *safeguarded benefits*;
- (4) whether the value displayed includes any spouse's or civil partner's or dependant's benefits; and
- (5) whether the benefits, once in payment, could be subject to change;
- (6) the type of illustration provided, as referred to in the *pensions dashboard standards* on data;
- (7) the date from when a benefit is to be payable or, where benefits are to be paid in *tranches*, the date from when each *tranche* of benefit is to be payable;
- (8) if a pension benefit is payable for a fixed term, the date that the benefit is payable to (although benefits payable until death should leave the 'to' date blank);
- (9) additional information to help the *relevant pension scheme member* better understand their *value data*, including whether:
 - (a) the benefits are *hybrid pension benefits*;
 - (b) the pension may increase or decrease in payment;
 - (c) the pension may stop paying out or reduce at a certain age;
 - (d) if there are multiple *tranches* of benefits, more than one *retirement date* has been used to calculate the value;
 - (e) the *relevant pension scheme member* should get in touch with the *operator* of the *relevant pension scheme* regarding the value displayed, together with the reason for getting in touch; and
 - (f) a calculation method has been used as referred to in
■ COBS 19 Annex 6 2.2(2).
- (10) For (2), (3), (4), (5), (8) and (9), the data element in each case should be selected from a fixed list, as set in the *pensions dashboard standards* on data.

Operational information and reporting

19.11.34 R

A firm must be in a position to provide *operational information*:

- (a) to the FCA when requested to do so by the FCA; or
- (b) to the Money and Pensions Service when requested to do so by the Money and Pensions Service, in accordance with *pensions dashboard standards* relating to reporting.

- 19.11.35 R** The *operational information* which may be requested by the *FCA* includes, but is not limited to, information on the following:
- (1) the number of *pensions dashboard find requests* received by the *firm*;
 - (2) the *pensions dashboard matching process* used by the *firm*;
 - (3) in relation to *positive matches*:
 - (a) the number of matches made that are notified to the *Money and Pensions Service*; and
 - (b) how quickly any uncertainties in relation to *possible matches* were resolved;
 - (4) in relation to *possible matches*:
 - (a) the number of *possible matches* that are notified to the *Money and Pensions Service*; and
 - (b) how many of these resulted in a *match made*, resulted in no match being made, or remained unresolved;
 - (5) the number of *pensions dashboard view requests* received by the *firm* and the time taken to respond to each one;
 - (6) contacts received from users, including details of:
 - (a) queries about pensions information provided;
 - (b) pensions not found following a search; and
 - (c) complaints; and
 - (7) any aspect of the *data processing* of a *pensions dashboard user's* request for pensions information.
- 19.11.36 G** The *operational information* which may be requested by the *Money and Pensions Service* includes, but is not limited to, information set out in
- COBS 19.11.35R. Failure to comply with a request by the *FCA* or *Money and Pensions Service* is likely to be considered a breach of *FCA Principle 11* or
 - COBS 19.11.5R and in significant cases might be considered a breach of the *threshold conditions*.
- 19.11.37 R** A *firm* must make, and maintain for 6 years from the end of the calendar year to which it relates, a record of the *operational information* specified in
- COBS 19.11.35R.
- Record keeping**
- 19.11.38 G** The *rules* in this section regarding record keeping are in addition to any other record-keeping requirements to which the *firm* is subject.

19.12 Non-workplace pensions: default options and cash warnings

Definitions

19.12.1

R

In ■ COBS 19.12:

- (1) 'cash warning' is the warning in ■ COBS 19.12.31R;
- (2) 'distributes' includes having an arrangement with a third party to arrange an *investment*, or to promote *platform services* that distribute *investments*;
- (3) 'filtering tool' means a tool whereby a *firm* makes the list of the *investments* it sells easier to search by allowing the *customer* to filter products based on factors presented by the *firm* and selected by the *customer*, and showing to the *customer* the *investments* that meet the factors selected by the *customer*; and
- (4) 'pre-purchase questioning tool' means a tool which involves putting a sequence of questions in order to extract information from a *person* to help them best select an *investment* that meets their needs. A decision tree is an example of a pre-purchase questioning tool. The process of going through the questions will usually narrow down the range of options that are available.

Application of default option rules

19.12.2

R■ COBS 19.12.10R to ■ COBS 19.12.22G apply to an operator of a *non-workplace pension scheme* that:

- (1) offers, distributes or promotes *investments*, or promotes *platform services* that distribute *investments*, in relation to their inclusion in a *non-workplace pension* of the operator; or
- (2) accepts, for inclusion in a *non-workplace pension*, *investments* which are offered, distributed or promoted by another *person* where that other *person*, or another *person* connected to it, also arranges for the *retail client* to enter into the *non-workplace pension* with the operator.

19.12.3

G

The effect of ■ COBS 19.12.2R is that ■ COBS 19.12.10R to ■ COBS 19.12.22G:

- (1) do not apply where an *operator* only arranges an *investment* for inclusion in, or the provision of *platform services* in respect of, a *retail client's non-workplace pension*, at the request of the *retail client*. In these circumstances, therefore, the *operator* does not offer, distribute

or promote any *investments*, nor does it promote *platform services* that distribute *investments*.

- (2) apply where an *operator* accepts, for inclusion in a *retail client's non-workplace pension*, an *investment* offered, distributed or promoted by a third party, including a *platform services provider* or an *introducer*, where that third party or someone connected to that third party also arranges for the *retail client* to enter into the *non-workplace pension* with the *operator* unless the *retail client* has received or will receive, either as part of transactional or ongoing advice, a *personal recommendation* in relation to the *investment* of their contributions to, or assets in, the *non-workplace pension* (see ■ COBS 19.12.5R).

19.12.4 R ■ COBS 19.12.10R to ■ COBS 19.12.22G do not apply where an *operator* starts treating a *retail client's workplace pension arrangements* as a *non-workplace pension* after the *retail client* has become a deferred member of the relevant *qualifying scheme*, so long as the *firm* does not offer, distribute or promote to the *retail client* any *investments* or *platform services* other than those available in connection with the former workplace pension arrangements, including the *default arrangement* and any *investments* available on a self-select basis.

Exclusion from default option rules in relation to advised clients

19.12.5 R ■ COBS 19.12.10R to ■ COBS 19.12.22G do not apply in relation to a *non-workplace pension* where the *firm* has determined, on reasonable grounds, that the *retail client*:

- (1) has received or will receive, either as part of transactional or ongoing advice, a *personal recommendation* in relation to the *investment* of their contributions to, or assets in, the *non-workplace pension*; or
- (2) has appointed an *investment manager* in relation to the *investment* of the *retail client's contributions* to, or assets in, the *non-workplace pension*.

19.12.6 G A *firm* will not have reasonable grounds to determine that a *retail client* has received, or will receive, a *personal recommendation* for the purpose of ■ COBS 19.12.5R(1) if the determination is based solely on information that:

- (1) is over 12 months old;
- (2) the *retail client* is in, or transferring from, an advised product; or

- (3) the *retail client* provides remuneration to an *adviser* in relation to other *investments*.

Application of cash warning rules

19.12.7 **R** ■ COBS 19.12.23R to ■ COBS 19.12.33G apply to an operator of a *non-workplace pension scheme*.

19.12.8 **R** ■ COBS 19.12.23R to ■ COBS 19.12.33G do not apply in relation to a *non-workplace pension* where the *firm* has determined, on reasonable grounds, that the *retail client* has appointed an *investment manager* in relation to the investment of their contributions to, or assets in, the *non-workplace pension*.

Purpose

19.12.9 **G** (1) The purpose of this section is to specify the circumstances where a *firm* must:

- (a) offer a *default option* to a *non-advised client* in connection with their *non-workplace pension*; and
- (b) provide warnings to a *retail client* who has invested, for a sustained period of time, over a certain percentage of their *non-workplace pension* in *cash-like investments*.

(2) The *default option* rules in ■ COBS 19.12 are designed to help *non-advised clients* who are generally unable or unwilling to engage with *investment decisions*, or find it difficult to identify appropriate *investments* for inclusion in their *non-workplace pensions*, including where questionnaires or filtering tools are used. The purpose of the rules in ■ COBS 19.12 is to help these *non-advised clients* to choose an appropriate *investment option*.

Requirement to offer a default option

19.12.10 **R** A *firm* must offer its *retail clients* a *default option* for inclusion in the *non-workplace pensions* it operates for those clients.

19.12.11 **R** A *firm* must not:

- (1) offer more than one *default option* to each *retail client*; or
- (2) make the decision as to which *default option* to offer to each *retail client* by depending on the *retail client's* answers to questions set out in a pre-purchase questioning tool or a filtering tool.

19.12.12 **G** A *firm* may, as a single *default option*, offer a series of different *target date funds* that depend on *retail clients'* target retirement dates.

When and where to offer a default option

19.12.13 **R** A *firm* must offer the *default option*:

- (1) at the time the *retail client* enters into the *non-workplace pension* operated by the *firm* (regardless of whether an initial cash contribution is made at this stage); and

- (2) again at the time the *retail client* makes their initial cash contribution (if one has not already been made on entry) into the *non-workplace pension*,

unless the *retail client* is, at the point of entry into the *non-workplace pension* with the *firm*, only transferring in *investments* they already hold elsewhere and will continue to use the investment strategy associated with those *investments* when making requests of the *firm*.

19.12.14 G

Where a *retail client*:

- (1) makes their initial cash contribution at the point of entry into the *non-workplace pension* with the *firm*, the *firm* will need to bring the existence of the *default option* to the attention of the *retail client* at that stage; and
- (2) makes their initial cash contribution after the point of entry into the *non-workplace pension* with the *firm*, the *firm* will need to comply with ■ COBS 19.12.13R by offering the *default option* both at the stage at which the *client* enters the *non-workplace pension* and again at the point they make their initial cash contribution.

19.12.15 R

Additionally, where a *firm*, or any other person involved in the offer, distribution or promotion of *investments* for inclusion in a *non-workplace pension* of the *firm*:

- (1) sets out, in menus or otherwise, the other *investments* available to the *retail client* for inclusion in their *non-workplace pension*, the *firm* must set out the *default option* in a location most likely to bring it to the attention of that *retail client*;
- (2) makes available pre-purchase questioning tools or filtering tools that enable a *retail client* to select *investments* for inclusion in their *non-workplace pension*, the *firm* must set out the *default option* alongside those tools.

19.12.16 G

It is unlikely that complying with ■ COBS 19.12.15R(1) would require a *firm* to set out the *default option* in every menu, or in every level of a menu, where other *investments* are set out.

How to present the default option19.12.17 R

A *firm* must present a *default option*:

- (1) when complying with ■ COBS 19.12.13R, prominently and on a standalone basis; and
- (2) when complying with ■ COBS 19.12.15R, with at least equal prominence to any other *investment*, pre-purchase questioning tool or filtering tool made available to *retail clients* alongside the *default option*.

19.12.18 R

When complying with ■ COBS 19.12.13R and ■ COBS 19.12.15R, a *firm* must ensure that it:

- (1) labels a *default option* in a sufficiently clear way to give an indication of the nature of it and also to distinguish it from the *firm's* other offerings;
- (2) sets out, in a clear and prominent way, the aims of the *default option*, explains that the *default option* has been designed to meet the needs, objectives and characteristics of a typical *non-advised client* in the target market for the *default option*, and sets out what the *manufacturer* considers those needs, objectives and characteristics to be; and
- (3) makes it clear that the *default option* is not tailored to the specific needs, objectives or characteristics of each *retail client*, and that if the *retail client*:
 - (a) considers that their needs, objectives and characteristics may fall outside those of the typical *non-advised client* in the target market as described by the *firm*, they may wish to consider other investment options;
 - (b) wishes to ensure that the *non-workplace pension* and any *investments* included in it (including the *default option*) are suitable for them, the *retail client* should consider seeking *investment advice*.

Preparing to offer a default option

19.12.19 R

A *firm* must be in a position to offer a *default option* in good time before it has to offer the *default option* pursuant to ■ COBS 19.12.10R, in order to allow for sufficient internal product governance.

19.12.20 G

The *default option* may be *manufactured* by either the *operator* alone, by another *firm*, or by both, and *distributed* by either the *operator* alone, or by the *operator* and another *firm*.

19.12.21 G

Manufacturers and *distributors* of *default options* must comply with the applicable product governance requirements in PROD. Where the manufacturing is done by another *firm* (either alone or with the *operator*), the *operator* is still responsible for the obligations under ■ COBS 19.12.10R to ■ COBS 19.12.18R.

19.12.22 G

- (1) Where *firms* decide to replace a *default option*, they may need to consider whether it would be appropriate to transfer existing clients to the new *default option*.
- (2) This may be the case, for example, if the transfer is required to prevent consumer harm and avoid risking non-compliance with our *rules*, for example *Principle 6*. This could be the case where *firms* determine that the *default option* no longer meets the applicable product governance requirements in PROD and existing clients are likely to suffer harm as a result.
- (3) If *firms* decide to transfer existing clients to a new *default option*, they will need to consider the information needs of their clients, and communicate to them appropriately and in good time, in a manner that is clear, fair and not misleading.

- (4) *Firms* are required to have appropriate contractual arrangements in place (including contractual powers that are fair and transparent and comply with the CRA) to enable them to transfer existing *clients* to a new *default option* and to comply with their obligations under the regulatory system.

Cash warnings: conditions

19.12.23 **R**

At least once during every 3-month period, for each of the *non-workplace pensions* that *retail clients* have entered into with the *firm*, the *firm* must assess whether the following conditions are met at the time of the assessment:

- (1) more than 25% of the *non-workplace pension* is invested in *cash-like investments*, excluding any *cash-like investments* held in connection with *lifestyling* or within a *target date fund*;
- (2) the amount of the cash holding in (1) is greater than £1,000;
- (3) the conditions in (1) and (2) were also met in all the other assessments carried out during the 6-month period preceding the day of the assessment; and
- (4) the *retail client* is more than 5 years away from:
 - (a) normal minimum pension age, as defined in primary legislation from time to time; or
 - (b) if lower, a protected pension age.

19.12.24 **R**

For the purposes of ■ COBS 19.12.23R, the start of the 3-month period is

- (1) initially determined by reference to the date members enter into their *non-workplace pensions* with the *firm*; and
- (2) after the initial 3-month period, by reference to the date when, for each *retail client*, the *firm* last carried out, or should have carried out, the assessment under the rule.

Cash warnings: timing

19.12.25 **R**

If all the conditions in ■ COBS 19.12.23R are met, the *firm* must provide the *retail client* with a cash warning within an appropriate timeframe after the date when the assessment in that rule was carried out.

19.12.26 **G**

For the purposes of ■ COBS 19.12.25R, an 'appropriate timeframe' is likely to be within 3 months of carrying out the assessment in ■ COBS 19.12.23R, unless the current market conditions would make it inappropriate to warn the *retail client* about their cash holdings within that timeframe, although providing the cash warning later than 6 months after the date of the assessment is unlikely to be appropriate.

19.12.27 **R**

If a *firm* has provided a cash warning pursuant to ■ COBS 19.12.25R, the requirement in ■ COBS 19.12.25R does not apply again until after 1 year of the *firm* providing the previous cash warning.

19.12.28 **G** Notwithstanding **COBS 19.12.27R**, a *firm* can choose to provide a new cash warning during the year following the previous cash warning, in which case **COBS 19.12.27R** would apply from the date when the new cash warning is provided.

19.12.29 **G** Where the condition in **COBS 19.12.23R(4)** is no longer met, a *firm* should consider whether it would be appropriate to keep providing the cash warning up until the time a *retail client* accesses their pension.

19.12.30 **G** A *firm* may send the cash warning with other client communications, provided that the cash warning is included in a document separate to those other client communications.

Cash warning: form and content

19.12.31 **R** The cash warning at **COBS 19.12.25R** must:

- (1) be provided in a *durable medium*;
- (2) using plain language, warn the *retail client* that:
 - more than 25% of their *non-workplace pension* is invested in *cash-like investments*; and
 - the value of their *non-workplace pension* is at risk of being eroded by inflation;
- (3) include a generic example (provided as an explanation, an illustration or both) of how inflation erosion would affect a £10,000 cash pot over 10 years, assuming 0% interest and using a measure of inflation generally accepted in the *United Kingdom*; and
- (4) inform the *retail client* that they should consider whether their current investments are likely to grow sufficiently to meet their objectives.

19.12.32 **G** The *firm* should also:

- (1) inform the *retail client* that:
 - (a) the cash warning is not advice or a substitute for it; and
 - (b) the value of any *investment* can fall as well as rise;
- (2) explain to and/or illustrate for the *retail client* that different types of *investment* have a different balance of risk to potential gain; and
- (3) include in the cash warning a statement to the effect that, where applicable, the *firm* makes available *investments* for inclusion in *non-workplace pensions*, including the *default option*.

19.12.33 **G** In the FCA's view, the Consumer Prices Index is a national index of retail prices and so may be used as a measure of the current inflation rate for the purposes of **COBS 19.12.31R(3)**.

19.12.34

G**Record keeping**

A firm to which the record-keeping rules in ■ SYSC 3 (Systems and controls) or ■ SYSC 9 (Record-keeping) apply will need to maintain a record of its compliance with the requirements in this ■ COBS 19.12 section including, where relevant, how it has determined on reasonable grounds (including records of the evidence it has relied upon) that, in accordance with ■ COBS 19.12.5R, a *retail client* is not a *non-advised client*.

19.12.35

R

A firm must also maintain a record of:

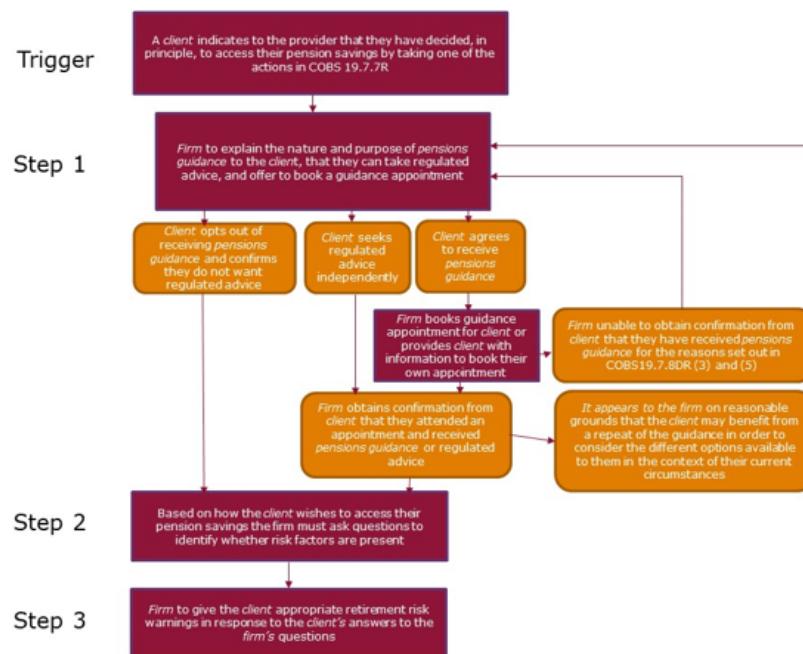
- (1) the number of *non-advised clients* entering into a *non-workplace pension* with the *firm* each year;
- (2) the number of those *retail clients* in (1) who chose the *default option*;
- (3) the number of *retail clients* not included in (1) that choose the *default option* each year, distinguishing between *retail clients* who were *clients* of the *firm* before ■ COBS 19.12.10R to ■ COBS 19.12.22G came into force and those who became *clients* later;
- (4) the volume of contributions made by *retail clients* to the *default option* each year;
- (5) the volume of assets under management attributable to the *default option*;
- (6) a description of the product approval process for the *default option* and of any reviews undertaken in compliance with ■ PROD 6;
- (7) in relation to cash warnings, differentiating between advised clients and *non-advised clients*, as well as between those *retail clients* who were *clients* of the *firm* before ■ COBS 19.12.23R to ■ COBS 19.12.33G came into force and those who became *clients* later:
 - (a) the dates when assessments were carried out, alongside the number of *retail clients* assessed on those dates;
 - (b) of the *retail clients* in 7(a), the number who met the conditions at ■ COBS 19.12.23R; and
 - (c) of the *retail clients* in 7(b), the number who continue to meet the conditions at ■ COBS 19.12.23R in subsequent assessments.

Pensions nudge and retirement risk warnings - steps to take

This annex belongs to COBS 19.7.

COBS 19 Annex 1G

Retirement risk warnings-steps to take



Step 2: identify risk factors
COBS 19.7.9R

Based on how the retail client wants to access their pension savings, at step 2 the firm must ask the client questions to identify whether any risk factors are present, except where COBS 19.7.9AR applies.

Communications about options to access pension savings

This annex belongs to ■ COBS 19.4.

The definitions in ■ COBS 19.4.1R are applied to these tables.

Table 1: Communications required to be made by the firm at specified times

Handbook reference	Matters to be communicated	Contents of communication	When
19.4.5AR	Open market option statement	A statement satisfying the requirements of COBS 19.4.6AR, COBS 19.4.8R and COBS 19.4.10R	Trigger events specified at COBS 19.4.5AR
19.4.9R	Reminder	A statement satisfying the requirements of COBS 19.4.6R, COBS 19.4.8R and COBS 19.4.10R	At least six weeks before the <i>client's</i> intended retirement date

Table 2: Requirements for other communications

Handbook reference	Subject of communication	Contents of communication	Trigger
19.4.12R	<i>Pension annuity</i> options	Information about how the <i>client's</i> circumstances can affect <i>pension annuity</i> retirement income calculations and payments. <i>Firms</i> may also be required to provide a <i>key features illustration</i> (COBS 14.2.1R) or sign-post <i>pensions guidance</i> (COBS 19.4.16R).	Any communication with a <i>client</i> about their <i>pension annuity</i> options
19.4.14R	<i>Drawdown pension</i>	Relevant information about <i>drawdown pension</i> option. <i>A firm</i> may also be required to provide a <i>key features illustration</i> (COBS 14.2.1R) or sign-post <i>pensions guidance</i> (COBS 19.4.16R).	Any communication with a <i>client</i> about their <i>drawdown pension</i> options
19.4.14R	<i>Uncrystallised funds pension lump sum</i>	Relevant information about <i>uncrystallised funds pension lump sum</i> option. <i>Firms</i> may also be required to provide a <i>key</i>	Any communication with a <i>client</i> about their <i>uncrystallised funds pension lump sum</i> options

Handbook reference	Subject of communication	Contents of communication	Trigger
19.4.15G	Communications about options to access pension savings	<p><i>features illustration</i> (COBS 14.2.1R) or signpost pensions guidance (COBS 19.4.16R).</p> <p>A firm should refer to the guidance in COBS 19.4.15G when communicating with a client about their options to access pension savings.</p> <p>Firms may also be required to signpost pensions guidance (COBS 19.4.16R) and in some circumstances provide an open market options statement (COBS 19.4.5AR(2)(d)).</p>	Any communication with a client about their options to access their pension savings
19.4.18R	<i>Client</i> applies to access pension savings	<p>A firm must provide a description of the tax implications unless it is provided in accordance with COBS 14.2.1R.</p> <p>Firms may be required to provide retirement risk warnings (COBS 19.7.7R).</p> <p>Firms may also be required to signpost pensions guidance (COBS 19.4.16R).</p> <p>If the client asks to access their pension savings for the first time the firm must provide an open market options statement (COBS 19.4.5AR(2)(d)).</p>	<i>Firm</i> receives an application from a client to access pension savings

Format for annuity information

This annex belongs to ■ COBS 19.9.7R(3) and ■ COBS 19.9.15R(3)(c).

- 1 Format of bar graph in the Part 1 template
- 1.1 Format of bar graph (where annual income is depicted)
- 1.1.1 When a *firm* is creating the two bar graphs as set out in Part 1, the *firm* must ensure:
 - (1) the annual income offered by the *pension annuity* in the guaranteed quote is presented on the left hand side of the two bar graphs;
 - (2) the y-axis must:
 - (a) start with a monetary value which is £20 below the annual income of the *pension annuity* being offered by the *firm* in the guaranteed quote;
 - (b) use a scale which clearly and fairly depicts the difference in annual income that a *retail client* will obtain if a market-leading *pension annuity* quote is accepted; and
 - (c) not include any numbers or details which are not required by the *rules* in COBS 19.9 or the provisions of this annex.
- 1.2 Format of bar graph in Part 4 (where the purchase price of the pension annuity is depicted)
- 1.2.1 When a *firm* is creating the two bar graphs as set out in Part 4, it must ensure:
 - (1) the lowest purchase price of the *pension annuity* offered by the market-leading quote is presented on the left-hand side of the two bar graphs with the higher purchase price in the *firm's* guaranteed quote appearing on the right-hand side;
 - (2) the y-axis must:
 - (a) start with a monetary value which is £20 below the purchase price of the lowest *pension annuity* quote;
 - (b) use a scale which clearly and fairly depicts the difference in the purchase price of the *pension annuity* offered by the market-leading quote and the *firm's* guaranteed quote; and
 - (c) only include numbers or details which are required by the *rules* in COBS 19.9 or the provisions of this annex.

Part 1: Template for cases where the guaranteed quote does not provide highest annual income

Where the guaranteed quote does not provide the highest annual income

Firm Logo	key facts ®						
<p>Annuity features</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Purchase price £XX,XXX</td> <td style="width: 50%;">No guarantee period</td> </tr> <tr> <td>Paid quarterly in advance</td> <td>Payments increase by 2% per year</td> </tr> <tr> <td>Dependents income</td> <td>[Other key features of annuity]</td> </tr> </table> <p>If relevant, include key information here such as:</p> <p>You are entitled to a [guaranteed annuity rate][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX.</p> <p>You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.</p> <p>For arranging this policy, your intermediary will receive £ZZZ commission from your provider.</p> <p>You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].</p>		Purchase price £XX,XXX	No guarantee period	Paid quarterly in advance	Payments increase by 2% per year	Dependents income	[Other key features of annuity]
Purchase price £XX,XXX	No guarantee period						
Paid quarterly in advance	Payments increase by 2% per year						
Dependents income	[Other key features of annuity]						
<p>Our quote</p> <p>This annuity will provide you with an annual income of:</p> <p>£A,AAA</p> <p>Can you get a better income from your annuity?</p> <p>Based on your key information, there are quotes available from other providers offering higher rates. If you select our product, you would be <u>losing out on £BB per year</u>.</p> <p>And, if applicable: You are entitled to a [guaranteed annuity rate] from your current pension provider][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX. If you select our product, you could be <u>losing out on £DD per year</u>.</p>							
<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Quote Type</th> <th>Income (£)</th> </tr> </thead> <tbody> <tr> <td>Our quote</td> <td>£A,AAA</td> </tr> <tr> <td>Highest quote</td> <td>£C,CCC</td> </tr> </tbody> </table>		Quote Type	Income (£)	Our quote	£A,AAA	Highest quote	£C,CCC
Quote Type	Income (£)						
Our quote	£A,AAA						
Highest quote	£C,CCC						

The Financial Conduct Authority is a financial services regulator. It requires us to inform you that you can shop around if you want to. If you want to see what other options are available from other providers please visit moneyhelper.org.uk/guaranteed-income or call 0800138 7777.

Company contact details and other key information

Part 2: Template for cases where the guaranteed quote, the guaranteed annuity rate, a guaranteed minimum pension or section 9(2B) rights offer the highest annual income

Where a guaranteed quote, a guaranteed annuity rate, a guaranteed minimum pension or section 9(2B) rights offers the highest annual income

<i>Firm Logo</i>	keyfacts [®]						
Annuity features <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Purchase price £XX,XXX</td> <td style="width: 50%;">No guarantee period</td> </tr> <tr> <td>Paid quarterly in advance</td> <td>Payments increase by 2% per year</td> </tr> <tr> <td>Dependents income</td> <td>[Other key features of annuity]</td> </tr> </table>		Purchase price £XX,XXX	No guarantee period	Paid quarterly in advance	Payments increase by 2% per year	Dependents income	[Other key features of annuity]
Purchase price £XX,XXX	No guarantee period						
Paid quarterly in advance	Payments increase by 2% per year						
Dependents income	[Other key features of annuity]						
<p>If relevant, include key information here such as:</p> <p>You are entitled to a [guaranteed annuity rate][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX.</p> <p>You are entitled to tax free cash greater than 25 % of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.</p> <p>For arranging this policy, your intermediary will receive £ZZZ commission.</p> <p>You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].</p>							
<p>Our quote</p> <p>This annuity would provide you with an annual income of:</p> <p>£A.AAA</p> <p>Can you get a better income from your annuity?</p> <div style="background-color: #f0f0f0; padding: 5px;"> <p>Based on your key information, our quote is the highest available to you.</p> <p>Or in the event that the consumer is entitled to a guaranteed annuity rate or minimum level of guaranteed pension which is higher:</p> <p>You are entitled to a [guaranteed annuity rate from your current pension provider] [minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX. If you select our product, you could be <u>losing out on EDD per year</u>.</p> </div> <p>The Financial Conduct Authority is a financial services regulator. It requires us to inform you that you can shop around if you want to. If you want to see what other options are available from other providers please visit moneyhelper.org.uk/guaranteed-income or call 0800138 7777.</p> <p style="text-align: center;"><i>Company contact details and other key information</i></p>							

Part 3: Template for cases where the retail client's consent is required to allow a firm to generate a market-leading pension annuity quote and that consent has not been given

Where the retail client's consent is required to allow a firm to generate a market-leading pension annuity quote and that consent has not been given

<i>Firm Logo</i>	keyfacts [®]
Annuity features	
Purchase price £XX,XXX	No guarantee period
Paid quarterly in advance	Payments increase by 2% per year
Dependants income	<i>[Other key features of annuity]</i>
<p>If relevant, include key information here such as:</p> <p>You are entitled to a [guaranteed annuity rate][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX.</p> <p>You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.</p> <p>For arranging this policy, your intermediary will receive £ZZZ commission from your provider. You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].</p>	
<p>Our quote</p> <p>This annuity would provide you with an annual income of:</p> <p>£A,AAA</p> <p>Can you get a better income from your annuity?</p> <p>You may be able to get a higher Income by shopping around.</p> <p>If you want to see what other options are available from other providers please visit moneyhelper.org.uk/guaranteed-income or call 0800 138 7777.</p> <p>Did you know?</p> <p>If you've not already been asked questions about your health or lifestyle, answering these could get you even more income.</p> <p>For example - if you've smoked tobacco, been advised by a medical professional to adjust your lifestyle to improve your health or had a medical condition requiring prescribed medication or hospital treatment- you may be entitled to more income than is quoted above.</p> <p>Visit moneyhelper.org.uk/guaranteed-income or call 0800 1387777 to find out more.</p> <p><i>Company contact details and other key information</i></p>	

Part 4: Template for cases where the market-leading quote offers the lowest purchase price pension annuity

Where the market-leading quote offers the lowest purchase price

Firm Logo


Annuity features

Annual income £XX,XXX

No guarantee period

Paid quarterly in advance

Payments increase by 2% per year

Dependents income

[Other key features of annuity]

If relevant, include key information here such as:

You are entitled to a guaranteed annuity rate from [date/customer's age] paying an [estimated] annual income of £X,XXX [when applied to the total value of your pension pot (£X,XXX)].

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission from your provider.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

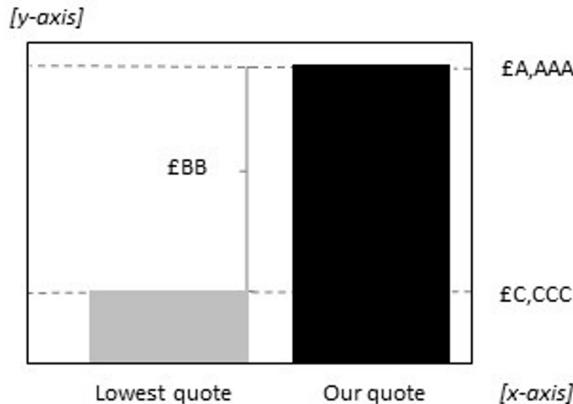
Buying this annuity from us will cost you:

£A,AAA**Can you pay less for your annuity?**

Based on your key information, there are quotes available from other providers offering a lower purchase price. If you select our product, you would be paying £BB too much to purchase your annuity.

[if applicable] Based on your key information, the lowest quote offers you the lowest purchase price for the requested income of £xx,xxx. However, you are entitled to a guaranteed annuity rate from your current provider paying an [estimated] annual income of £X,XXX on your pension pot of £XX,XXX, offering a better value annuity than the lowest purchase price quote. You also risk losing your entitlement to the guaranteed annuity rate if you proceed with the lowest purchase price quote.

[if applicable] You are entitled to a guaranteed annuity rate from your current pension provider from [date/customer's age] paying an [estimated] annual income of £X,XXX. [when applied to the total value of your pension pot (£X,XXX)].



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Company contact details and other key information

Part 5: Template for cases where the income quote or the application of a retail client's guaranteed annuity rate offers the lowest purchase price pension annuity

Where the income quote or a guaranteed annuity rate offers the lowest price pension annuity

Firm Logo

keyfacts®

Annuity features

Annual income £XX,XXX

No guarantee period

Paid quarterly in advance

Payments increase by 2% per year

Dependents income

[Other key features of annuity]

If relevant, include key information here such as:

You are entitled to a guaranteed annuity rate from [date/customer's age] paying an [estimated] annual income of £X,XXX [when applied to the total value of your pension pot (£X,XXX)].

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

Buying this annuity from us will cost you:

£A,AAA

Can you pay less for your annuity?

Based on your key information, our quote offers you the lowest purchase price.

OR

Based on your key information, our quote offers you the lowest purchase price for the requested income of £xx,xxx. However, you are entitled to a guaranteed annuity rate from your current provider paying an [estimated] annual income of £X,XXX on your pension pot of £XX,XXX, offering a better value annuity than our quote. You also risk losing your entitlement to the guaranteed annuity rate if you proceed with our quote.

OR

Based on your key information, you are entitled to a guaranteed annuity rate from your current provider that would pay the annual income requested of £X,XXX for a [an estimated] purchase price of £XX,XXX. If you select our product you would be paying £BB too much to purchase your annuity. You also risk losing your entitlement to the guaranteed annuity rate if you proceed with our quote.

The Financial Conduct Authority is a financial services regulator. It requires us to inform you that you can shop around if you want to. If you want to see what other options are available from other providers please visit moneyhelper.org.uk/guaranteed-income or call 0800 138 7777.

Company contact details and other key information

consent is required to allow a firm to generate a market-leading pension annuity quote and that consent has not been given

Where the retail client has requested an income quote and the retail client's consent is required to allow a firm to generate a market-leading pension annuity quote and that consent has not been given

Firm Logo

keyfacts[®]**Annuity features**

Annual income £XX,XXX

No guarantee periodPaid **quarterly** in advancePayments **increase** by 2% per year**Dependants income***[Other key features of annuity]*

If relevant, include key information here such as:

You are entitled to a guaranteed annuity rate from [date/customer's age] paying an [estimated] annual income of £X,XXX [when applied to the total value of your pension pot (£X,XXX)].

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission from your provider.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

Buying this annuity from us will cost you:

£A,AAA**Can you pay less for your annuity?**

You may be able to pay less for an annuity providing £XX,XXX a year by shopping around.

If you want to see what other options are available from other providers please visit moneyhelper.org.uk/guaranteed-income or call 0800 138 7777.

Did you know?

If you've not already been asked questions about your health or lifestyle, answering these could get you even more income.

For example – if you've smoked tobacco, been advised by a medical professional to adjust your lifestyle to improve your health or had a medical condition requiring prescribed medication or hospital treatment – you may be entitled to more income than is quoted above.

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Company contact details and other key information

Appropriate pension transfer analysis

This annex belongs to ■ COBS 19.1.2BR.

[**Note:** The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fq21-3.pdf>]

appropriate pension transfer analysis

R

- 1 In preparing an *appropriate pension transfer analysis*, a firm must:
 - (1) use rates of return which reflect the investment potential of the assets in which the *retail client's* funds would be invested under the *proposed arrangement*;
 - (2) where the *proposed arrangement* includes a UK lifetime *pension annuity* that is being purchased on normal terms, use the assumptions in COBS 19 Annex 4C 1R(2) to assess the benefits likely to be paid under the *proposed arrangement*;
 - (3) use the assumptions in COBS 19 Annex 4C 1R(4) to project the level of income likely to be paid under the *ceding arrangement* at the point of retirement;
 - (4) take into account:
 - (a) the impact of the proposed transfer on the tax position of the *retail client*, particularly where there would be a financial impact from crossing a tax threshold or entering a new tax band;
 - (b) the impact (if any) on the *retail client's* access to state benefits;
 - (5) have regard to the likely pattern of benefits that might be taken from both the *ceding arrangement* and the *proposed arrangement*;
 - (6) undertake any comparisons of benefits and options consistently;
 - (7) plan for a reasonable period beyond average life expectancy particularly where a longer period would better demonstrate the risk of funds not lasting throughout retirement;
 - (8) consider how each of the arrangements would play a role in:
 - (a) meeting the *retail client's* income needs throughout retirement (relative to other means available to meet those needs);
 - (b) the provision of death benefits, where relevant (including by providing comparisons on a fair and consistent basis between the *ceding* and *proposed arrangement* both at present and at various future points in time);
 - (9) consider the trade-offs that may occur by prioritising differing *client* objectives (e.g. prioritising income needs throughout retirement over the provision of death benefits and vice-versa); and
 - (10) use more cautious assumptions where appropriate.

G

- 2 (1) When making assumptions about the rate of return under COBS 19 Annex 4A 1R(1), a firm should consider consistency with other assumptions (such as inflation and exchange rates).
(2) COBS 19 Annex 4A 1R(1), 1R(2) and 1R(3) do not prevent a firm from preparing the *appropriate pension transfer analysis* on additional assumptions (such as to demonstrate variability of returns) as long as such analyses are not given more prominence than an analysis prepared in accordance with this Annex.

- (3) When providing an indication of life expectancy or mortality which is not linked to an annuity, *firms* should use appropriate published population statistics which allow for future cohort mortality improvements, such as those published by the Office for National Statistics.
- (4) When the *proposed arrangement* includes a *pension annuity*, the assumptions in COBS 19 Annex 4C 1R(2) may not always be relevant (for example, if the *retail client* is considering a transfer to access an impaired life annuity or an overseas annuity). In such circumstances the *firm* should assess the benefits likely to be paid under the *proposed arrangement* in an alternative way (for example by obtaining quotations).

Charges used for the *appropriate pension transfer analysis*

R

- 3 An *appropriate pension transfer analysis* must take account of all charges that may be incurred by the *retail client* as a result of a *pension transfer* or *pension conversion* and subsequent access to funds following such a transaction, other than:
 - (1) *adviser charges* paid by a third party (e.g. an employer); and
 - (2) *adviser charges* that would be payable whether the *pension transfer* or *pension conversion* happened or not.

G

- 4 The charges in COBS 19 Annex 4A 3R include, but are not limited to, any of the following:
 - (1) product charges, including those on any investments within the product;
 - (2) *platform charges*;
 - (3) *adviser charges* in relation to the *personal recommendation* and subsequently during the pre-retirement period as well as at benefit crystallisation and beyond, where likely to be relevant; and
 - (4) any other charges that may be incurred if amounts are subsequently withdrawn.

Cashflow model

R

- 5 Where a *firm* prepares a cashflow model, it must:
 - (1) produce the model in real terms in line with the CPI inflation rate in COBS 19 Annex 4C1R (4)(d);
 - (2) (if the net income is being modelled) ensure that the tax bands and tax limits applied are based on reasonable assumptions;
 - (3) take into account all relevant tax charges that may apply in both the *ceding arrangement* and the *proposed arrangement*; and
 - (4) include stress-testing scenarios to enable the *retail client* to assess more than one potential outcome.

Transfer value comparator

This annex belongs to ■ COBS 19.1.3AR.

[**Note:** The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fq21-3.pdf>]

Transfer value comparator

R

1 The firm must:

- (1) revalue the future income benefits in COBS 19.1.3AR(1) by projecting them to the date they would normally be paid in accordance with the assumptions in COBS 19 Annex 4C 1R(4);
- (2) determine the estimated future cost of the *pension annuity* in accordance with the assumptions in COBS 19 Annex 4C 1R(2); and
- (3) apply the rate of return and charges in COBS 19 Annex 4C 2R to the amount determined in (2) to determine the estimated value needed at the calculation date.

R

2 [deleted]

G

3 [deleted]

Assumptions

This annex belongs to ■ COBS 19.1.2BR and ■ COBS 19.1.3AR.

[Note: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fq21-3.pdf>]

Assumptions

R

- 1 (1) A firm must use the assumptions in (2) when:
 - (a) the *proposed arrangement* includes a *pension annuity* and COBS 19 Annex 4A 1R(2) applies; or
 - (b) it determines the estimated cost of future income benefits as a *pension annuity* under COBS 19 Annex 4B 1R(2) or COBS 19 Annex 4B 2R(2).
- (2) The assumptions are:
 - (a) the index-linked annuity interest rate for pension benefits linked to the *RPI* is the average of the previous 3 months' intermediate rate of return in COBS 13 Annex 2 3.1R(6) for annuities linked to the *RPI* (using the 6th day of any month as the starting point for calculation purposes), but determined as if the annual provision applies on the 15th of each month;
 - (b) the index-linked annuity interest rate for pension benefits linked to the *CPI* is the annuity rate in (a) plus 1.0%;
 - (c) the annuity interest rate is the average of the previous 3 months' intermediate rate of return in COBS 13 Annex 2 3.1R(6) for annuities with a level or fixed rate of increase (using the 6th day of any month as the starting point for calculation purposes), but determined as if the annual provision applies on the 15th of each month;
 - (d) the annuity interest rate for post-retirement *limited price indexation* based on the *RPI* with maximum pension increases less than or equal to 3.5%, or with minimum pension increases more than or equal to 3.5%, is the rate in (c) allowing for increases at the maximum or minimum rate of pension increase respectively; otherwise it is the rate in (a);
 - (e) the annuity interest rate for post-retirement *limited price indexation* based on the *CPI* with maximum pension increases less than or equal to 2.5% or with minimum pension increases more than or equal to 3.0%, is the rate in (c) above allowing for increases at the maximum or minimum rate of pension increase respectively; otherwise it is the rate in (b) above;
 - (f) the mortality rate used to determine the annuity is based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables PMA16 and PFA16 and including mortality improvements derived from each of the male and female annual mortality projections models, in equal parts;
 - (g) the annuity expense allowance is: 4.0%
 - (h) the *transfer value comparator* should be calculated on the basis that:
 - (i)a female member of the scheme has a male spouse or partner who is 3 years older; or
 - (ii)a male scheme member has a female spouse or partner who is 3 years younger.

- (3) A firm must use the assumptions in (4) when it:
- (a) projects the level of income likely to be paid under the *ceding arrangement* at the point of retirement under COBS 19 Annex 4A 1R(3); or
 - (b) revalues the future income benefits in COBS 19.1.3AR(1) by projecting them to the date they would normally be paid under COBS 19 Annex 4B 1R(1).
- (4) The assumptions are:
- (a) the *RPI* is: 3.0%
 - (b) the average earnings index and the rate for section 148 orders is: 3.5%
 - (c) for benefits linked to the *RPI*, the pre-retirement *limited price indexation* revaluation is: 3.0%
 - (d) for benefits linked to the *CPI*, the pre-retirement *limited price indexation* revaluation is: 2.0%

[**Note:** section 148 orders are orders made by the Secretary of State under **section 148** of the Social Security Administration Act 1992. Section 148(7) of this Act provides that orders made previously under section 21 of the Social Security Pensions Act 1975 will be treated as orders made under section 148.]

Rate of return and charges

R

- 2 (1) This rule applies for the purposes of COBS 19 Annex 4B 1R(3).
- (2) The rates of return for valuing future income benefits between the date of calculation and the date when the future income benefits would normally come into payment must be based on the fixed coupon yield on the UK FTSE Actuaries Indices for the appropriate term.
- (2A) The fixed coupon yields in (2) are derived using the appropriate term from one of the following indices:
- (a) up to 5 years;
 - (b) up to 5-10 years;
 - (c) up to 10-15 years; or
 - (d) over 15 years.
- (3) The product charges prior to *future income benefits* coming into payment 0.4% must be assumed to be:
- (4) The fixed coupon yields in (2) are updated on the 6th day of each month based on the yield that applied on the 15th day of the previous month.

Mortality rate

E

- 3 (1) This rule applies for the purposes of COBS 19 Annex 4C 1R(2)(f).
- (2) For any year commencing 6 April, the male and female annual CMI Mortality Projections Models in the series CMI (20YY-2)_M_[1.25%] and CMI (20YY-2)_F_[1.25%], where YY-2 is the year of the Model, should be used.
- (3) Contravention of (2) may be relied on as tending to establish contravention of the rule referred to in (1).

Format for provision of transfer value comparator

This annex belongs to COBS 19.1.3AR.

[Note: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fq21-3.pdf>

1

1.1 The first page of the *transfer value comparator* must follow the format and wording shown in Table 1, except that alternative colours may be used in the chart and the scale of the charts may be changed (as long as the y-axis starts at £0). Note that the figures in Table 1 are used for illustration only. The second page of the *transfer value comparator* must contain the notes set out in Table 2.

1.2 [deleted]

1.3 [deleted]

Table 1

This table belongs to COBS 19 Annex 5 1.1R.

You have been offered a cash equivalent transfer value of £120,000 in exchange for you giving up any future claims to a pension from the scheme.

Will I be better or worse off by transferring?

- We are required by the Financial Conduct Authority to provide an indication of what it might cost to replace your scheme benefits.
- We have done this by looking at the amount you might need to buy the same benefits from an insurer.

It could cost you £140,000 to obtain a comparable level of income from an insurer.

This means the same retirement income could cost you £20,000 more by transferring.



See 'Notes' on the next page for a detailed explanation of this information.

Table 2

This table belongs to COBS 19 Annex 5 1.2R.

Notes

1. *The estimated replacement cost of your pension income is based on assumptions about the level of your scheme income at normal retirement age (or the retirement age assumed in the calculation of the transfer value if you have passed the normal retirement age or the earliest age at which you can take unreduced benefits without consent being required) and the cost of replacing that income (including spouse's benefits) for an average healthy person using today's costs.*
2. *The estimated replacement value takes into account risk free investment returns after any product charges that you might be expected to pay.*
3. *No allowance has been made for taxation or adviser charges prior to benefits commencing.*

Table 3 [deleted]

Value data requirements

This annex belongs to ■ COBS 19.11.23R

Money purchase benefits

R

1 This section sets out the *value data* required in relation to a *relevant pension scheme member* with *money-purchase benefits*.

1.1 Subject to 1.2, the *value data* to be provided is:

- (1) an *accrued pension pot value*;
- (2) an *annualised accrued pension value*, prepared using the methodology set out in the *relevant pension guidance*, less the elements regarding future contributions and growth and calculated as if the *relevant pension scheme member* has reached their *retirement date* on the *illustration date*;
- (3) if held, a *projected pension pot value*, prepared using the methodology set out in the *relevant pension guidance*; and
- (4) an *annualised projected pension value*, prepared using the methodology set out in the *relevant pension guidance*.

1.2 The *value data* in 1.1(2) to 1.1(4) need only be provided once a *pension illustration* has been given after 1 October 2023.

1.3 Before 1 October 2023, and between 1 October 2023 and a *firm* producing a *pension illustration*, a *firm* may provide the *value data* referred to in COBS 19 Annex 6 1.1R(2) to 1.1R(4) on a voluntary basis, but if it does, it must use the version of the *relevant guidance* available at the *illustration date*.

Non-money purchase benefits (other than cash balance benefits)

R

2 This section sets out the *value data* required in relation to a *relevant pension scheme member* with *non-money purchase benefits*, other than *cash balance benefits*.

2.1 In respect of an *active pension scheme member*, *value data* required is:

- (1) an *accrued pension value* calculated in accordance with the *relevant pension scheme's rules*, valued to the *illustration date* as if the *relevant pension scheme member* has reached their *retirement date* on the *illustration date* and without regard to possible increases in earnings;
- (2) a *projected value* calculated in accordance with the *relevant pension scheme's rules* and without regard to possible increases in earnings, that would be payable from the date benefits are payable if the *relevant pension scheme member* was to cease to accrue benefits in the *relevant pension scheme* on reaching their *retirement date*.

2.2 In respect of a *deferred pension scheme member* or a *pension credit member*:

- (1) a *firm* must provide an *accrued pension value* calculated in accordance with the *relevant pension scheme rules* and valued to the *illustration date*, as if the *relevant pension scheme member* has reached their *retirement date* on the *illustration date*; or
- (2) a simplified *accrued pension value* calculated using a method of adjustment which the *firm* considers to be appropriate and valued to the *illustration date* and as if the *relevant pension scheme member* has reached

		their <i>retirement date</i> on the <i>illustration date</i> , where each of the following conditions applies:
	(a)	no more than 2 years has passed since the <i>firm</i> has connected to the <i>MaPS dashboards digital architecture</i> ;
	(b)	a value in accordance with (1) above could not be provided within the timescales required under COBS 19.11.29R(2) without disproportionate cost and within a reasonable time; and
	(c)	the <i>firm</i> is content that the simplified accrued pension value in (2) is an appropriate representation of the value of the benefits.
2.3	(3)	A <i>firm</i> in 2.2(2) may consider it to be appropriate to use rates of inflation as part of the method of adjustment.
	(1)	The <i>value data</i> described within this section may be provided as an income or a fixed lump sum or both, where a fixed lump sum is the actuarial value of a benefit which is designed to be taken as a lump sum.
	(2)	Where the <i>value data</i> set out in 2.1 and 2.2 is comprised of <i>tranches</i> , a <i>firm</i> must provide:
	(a)	whichever of the following it considers would provide the best representation of the benefit:
	(i)	a combined value covering all the <i>tranches</i> of benefit, along with a single common <i>retirement date</i> ; or
	(ii)	a separate set of values for different combinations of <i>tranches</i> of benefits, along with a <i>retirement date</i> in relation to each; and
	(b)	in accordance with the <i>pensions dashboard standards</i> on data, an explanation of the circumstances in which a benefit referred to may cease or reduce from a certain age.

Cash balance benefits

R

3 This section sets out the *value data* required in relation to a *relevant pension scheme member* with *cash balance benefits*.

3.1 In respect of an *active pension scheme member*, the *value data* required is:

- (1) an *accrued pension fund value* calculated in accordance with the *relevant pension scheme's rules* valued to the *illustration date* and without regard to possible increases in earnings;
- (2) a *projected pension fund value* calculated in accordance with the *relevant pension scheme's rules* and without regard to possible increases in earnings, that would be payable from the date benefits are payable if the *relevant pension scheme member* was to cease to accrue benefits in the *relevant pension scheme* on reaching their *retirement date*;
- (3) an *annualised accrued pension value*, which is:
 - (a) based on the *accrued pension fund value* referred to in (1) above; and
 - (b) prepared using the methodology set out in the *relevant pension guidance*, less the elements regarding future contributions and growth and calculated as if the *relevant pension scheme member* has reached their *retirement date* on the *illustration date*; and
- (4) an *annualised projected pension value* which is:

	(a)	based on the <i>projected pension fund value</i> referred to in (2) above; and
	(b)	calculated in accordance with the <i>relevant pension guidance</i> , less the elements regarding future contributions and growth.
3.2	In respect of a <i>deferred pension scheme member</i> or a <i>pension credit member</i> , the <i>value data</i> required is:	
	(1)	an <i>accrued fund value</i> which is calculated in accordance with the <i>relevant pension scheme's rules</i> and is valued to the <i>illustration date</i> ; and
	(2)	an <i>annualised accrued pension value</i> based on the <i>relevant pension scheme rules</i> and calculated as if the <i>relevant pension scheme member</i> has reached their <i>retirement date</i> on the <i>illustration date</i> .
Hybrid benefits		
R		
4	This section sets out the <i>value data</i> required in relation to a <i>relevant pension scheme member</i> with <i>hybrid benefits</i> .	
4.1	In respect of a <i>relevant pension scheme member</i> with <i>hybrid benefits</i> , the <i>value data</i> required is that which the <i>firm</i> considers best represents the value of the <i>relevant pension scheme member's benefits</i> under the scheme, calculated in accordance with what the <i>firm</i> considers to be the appropriate methodology from COBS 19 Annex 6 1R to COBS 19 Annex 6 3R above and indicating which methodology it has applied to the calculation for each benefit.	

Chapter 20

With-profits

20.1 Application

- 20.1.1** **R** This chapter applies to a *firm* carrying on *with-profits business*, except to the extent modified in the following *rules*.
- 20.1.2** **R**
- (1) The section on the process for *reattrIBUTION* (**■ COBS 20.2.42 R to ■ COBS 20.2.52 G**):
 - (a) applies to a *firm* that is proposing to make a *reattrIBUTION* of its *inherited estate*;
 - (b) but not if, and to the extent that, it would require the *firm* to breach, or would prevent the *firm* from complying with, an order made by a court of competent jurisdiction.
 - (2) If a *firm* proposes to seek an order from a court of competent jurisdiction that would allow or require it to act in a way that is contrary to the *rules* on *reattrIBUTION* (**■ COBS 20.2.42 R to ■ COBS 20.2.52 G**) (through, or because of, the exception in (1)(b)), the *firm* must:
 - (a) tell the *appropriate regulator* that that is what it proposes to do;
 - (b) seek the order at the earliest opportunity; and
 - (c) if it wishes to take a step that would be contrary to those *rules* in anticipation of such an order, secure a *waiver* before it does so.
- 20.1.3** **R** [deleted]
- 20.1.3A** **R**
- 20.1.4** **R** The following do not apply to a *non-directive friendly society*:
- (1) **■ COBS 20.3** (Principles and Practices of Financial Management);
 - (2) **■ COBS 20.4** (Communications with with-profits policyholders); and
 - (3) **■ COBS 20.5** (With-profits governance).
- 20.1.5** **R** This chapter does not apply to *with-profits business* that consists of effecting or carrying out *Holloway sickness policies*.

20.1A The with-profits fund

'Other liabilities' in the with-profits fund

20.1A.1

R

For the purposes of calculating any *with-profits funds surplus* and the *rules and guidance* in ■ COBS 20, including ■ COBS 20.1A.5 R, ■ COBS 20.1A.6 R and ■ COBS 20.2.17CR, a *firm* must include the following non-exhaustive list as 'other liabilities':

- (1) liabilities arising from its regulatory duty to treat *customers* fairly (where not already included in *technical provisions*); and
- (2) the value of any prospective future transfers out of the *with-profits fund* properly attributable to shareholders in accordance with ■ COBS 20.

Sub-funds

20.1A.2

R

- (1) Where the *firm*:
 - (a) identifies particular assets as forming a distinct part of its *with-profits fund*; and
 - (b) restricts participation in the profits or other experience of that distinct part of the fund to a particular category of *with-profits policies*;then, provided that:
 - (c) such identification and restriction is consistent with the considerations in (3), and
 - (d) the *firm* treats each affected category of *with-profits policyholder* fairly, having regard to those considerations;
each such part constitutes a separate *with-profits fund*.
- (2) Notwithstanding (1), each different part of its *with-profits fund* constitutes a separate *with-profits fund* if that is necessary in order to treat each affected category of *with-profits policyholder* fairly, having regard to the considerations in (3).
- (3) The considerations referred to in (1) and (2) are the terms of the relevant *with-profits policies*; the *firm's* established practice; its PPFM and/or other relevant communications to affected *with-profits policyholders*, and the terms of any arrangement formally approved by a court of competent jurisdiction, *appropriate regulator* or *previous regulator*.

- 20.1A.3 R**
- (1) For a *Solvency II firm* operating a with-profits fund prior to 1 January 2016:
 - (a) assets in the with-profits fund held in accordance with **INSPRU** on 31 December 2015 are deemed to be items in a *with-profits fund* for the purposes of **COBS 20** from 1 January 2016, provided that any transfers out of, and any outgoings from, the fund up to 31 December 2015 were made in accordance with, and/or do not as at 31 December 2015, constitute, or continue to constitute, a breach of **INSPRU 1.5.21 R** and **INSPRU 1.5.27 R**;
 - (b) any assets transferred out of the fund in breach of **INSPRU 1.5.21 R** and **INSPRU 1.5.27 R** are deemed not to have been transferred out of the fund and remain part of the *with-profits fund*;
 - (c) to the extent that the assets in (b) have also been transferred out of the *firm* then, before (a) can apply to the *firm*, the *firm* must transfer into the *with-profits fund* assets equal to the value of the assets referred to in (b), and of a similar quality, having regard to the PRA Rulebook: Solvency II Firms: Investments.
 - (2) *Firms* to which (1)(a) applies must, in any event, comply with **COBS 20.1A.2 R**. Paragraph (1)(a) does not apply to the extent that it would be inconsistent with the operation of **COBS 20.1A.2 R** where the effect is to require a *firm* to create or make changes to sub-funds amounting to separate *with-profits funds*.
- Governance arrangements for the with-profits fund**
- 20.1A.4 R**
- A *Solvency II firm* effecting or carrying out *with-profits insurance business* must identify the assets relating to all the business written in, or transferred into, each *with-profits fund* which it is required to hold under **COBS 20.1A.5 R** or PRA Rulebook: Solvency II firms: With Profits rule 2.1.
- 20.1A.5 R**
- A *Solvency II firm* must ensure that it holds assets in each of its *with-profits funds* of a value at least sufficient to cover the "with-profits policy liabilities" defined in the PRA Rulebook: Glossary and as required by PRA Rulebook: Solvency II firms: With Profits rule 2.1, and any other liabilities in respect of all of the business written in, or transferred into, that *with-profits fund*.
- 20.1A.6 R**
- A *Solvency II firm* must maintain separate accounting records for each of its *with-profits funds*. The accounting records must identify:
- (1) all of the assets of that *with-profits fund*;
 - (2) the best estimate component of *technical provisions* for the *with-profits policies* written in, or transferred into, that *with-profits fund*;
 - (3) the best estimate component of *technical provisions* for the *non-profit insurance contracts* written in, or transferred into, that *with-profits fund*;
 - (4) any other liabilities of the *with-profits fund* not covered by (2) or (3), and their value calculated in accordance with PRA Rulebook: Solvency II Firms: Valuation and applicable parts of the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014.

- 20.1A.7** **G** A *Solvency II firm* must ensure that the assets in its *with-profits funds* are separately identified and allocated to the relevant *with-profits fund* at all times. Assets in external accounts (e.g. with banks, custodians, or brokers) should be segregated in the *firm's* books and records into separate accounts for *with-profits insurance business* and other business. Where a *firm* has more than one *with-profits fund*, separate accounting records must be maintained for each fund. Accounting records should clearly document the allocation.
- 20.1A.8** **R** A *Solvency II firm* must not transfer assets out of a *with-profits fund* unless:
- (1) the assets represent any part of a *with-profits fund surplus*, or represent assets held in accordance with ■ COBS 20.1A.5 R in relation to the part of a distribution that has been made which is properly attributable to shareholders, in accordance with ■ COBS 20; and
 - (2) no more than three months have passed since the *actuarial investigation* determining that surplus.
- 20.1A.9** **G** For the purposes of ■ COBS 20.1A.8 R, an *actuarial investigation* is required to determine any *with-profits fund surplus* for the requirements in ■ COBS 20 and remains in-date for three months from the date when the determination of the surplus was made. However, even where the investigation is still in-date, the *firm* should not make the transfer unless there is sufficient surplus at the time of the transfer to cover the value of the assets being transferred. The *actuarial investigation* carried out may rely, in part, on any relevant and sufficiently up-to-date valuation exercise carried out for the purposes of calculating *technical provisions* under the PRA Rulebook: Solvency II Firms: Technical Provisions and applicable parts of the *Solvency II Regulation (EU) 2015/35* of 10 October 2014, provided that the person carrying out the *actuarial investigation* considers it appropriate to do so.
- 20.1A.10** **R**
- (1) A *Solvency II firm* must use or apply an asset in a *with-profits fund* only for the purpose of the business in the *with-profits fund*.
 - (2) For the purpose of (1), applying or using an asset includes any obligation (even if only contingent) to apply or use that asset.
- 20.1A.11** **R** A *Solvency II firm* must not agree to, or allow, any mortgage or charge on the assets in any of its *with-profits funds*, other than in respect of, and for the purposes of, the business in the *with-profits fund*.
- 20.1A.12** **G** References in ■ COBS 20.1A.10 R and ■ COBS 20.1A.11 R to 'the purposes of the business' in the *with-profits fund* include the payment of claims, expenses and liabilities arising from that business, the acquisition of lawful access to fixed assets to be used in that business and the investment of assets. The payment of liabilities may include repaying a loan but only where that loan was incurred for the purpose of the business written into the *with-profits fund*. The purchase or investment of assets may include an exchange at fair market value of assets (including cash) between the *with-profits fund* and other assets of the *firm*. A *Solvency II firm* may also lend securities held in a *with-profits fund* under a stock lending transaction, or transfer assets as collateral for a stock lending transaction, where the *firm* is the borrower and where such lending or transfer is for the benefit of the business written into the *with-profits fund*.

20.1A.13 R

Management of the with-profits fund

A firm, other than a *non-directive friendly society*, which is subject to contractual terms providing for payments under a capital instrument included in that *insurer's* own funds, must:

- (1) manage any *with-profits fund* so that discretionary benefits under a *with-profits policy* are calculated and paid, disregarding, insofar as is necessary for its *customers* to be treated fairly, any requirements in such contractual terms whether or not they are absolute, contingent or at the discretion of the *firm*; and
- (2) disclose its intention to manage the *with-profits fund* on the basis set out in (1) in the *firm's PPFM*.

20.1A.14 G

- (1) A firm, other than a *non-directive friendly society*, is expected to manage its *with-profits fund* so that amounts (whether interest, principal, or other outgoings) payable by the *firm* under a capital instrument included in that *insurer's* own funds (as determined in accordance with the PRA Rulebook: Solvency II Firms: Own Funds or Non-Solvency II firms: Insurance Company – Capital Resources) do not impact on the *with-profits fund's* assets or on the *firm's* ability to declare and pay under a *with-profits policy* discretionary benefits that are consistent with the *firm's* obligations under Principle 6 (Customers' interests).
- (2) A firm, other than a *mutual*, should not regard any asset held in the *with-profits fund* as necessarily available to cover payments or other obligations arising under a subordinated loan.

20.1A.15 R

A *Solvency II firm* must ensure that it has adequate arrangements in place for ensuring that transactions affecting the assets of the *firm* operate fairly between *with-profits policyholders* and other persons interested in the other assets of the *insurer* and, where the *firm* has more than one *with-profits fund*, those transactions operate fairly between the *with-profits policyholders* in each of those funds.

20.2 Treating with-profits policyholders fairly

Introduction

20.2.1

G

- (1) *With-profits business*, by virtue of its nature and the extent of discretion applied by *firms* in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of *policyholders*. Potential conflicts of interest may arise between shareholders and *with-profits policyholders*, between *with-profits policyholders* and non-profit *policyholders* within the same fund, between *with-profits policyholders* and the members of mutually-owned *firms*, between *with-profits policyholders* and management, and between different classes of *with-profits policyholders*, for example those with and without guarantees. The *rules* in this section address specific situations where the risk may be particularly acute.
- (2) *With-profits policyholders* have an interest in the whole and in every part of the *with-profits fund* into which their *policies* are written and from which the amounts payable in connection with their *policies* are to be paid. Those amounts include those required to satisfy their contractual rights and such other amounts as the *firm* is required to pay in order to treat them fairly (including but not limited to the amounts required to satisfy their reasonable expectations).
- (3) The fair treatment of *with-profits policyholders* requires the *firm's* pay-outs on individual *with-profits policies* to be fair (see ■ COBS 20.2.3 R et seq.) and, if the *firm* makes a distribution from the *with-profits fund* into which their *policies* are written, the receipt by the *with-profits policyholders* of at least the *required percentage* (see ■ COBS 20.2.17 R).

20.2.1A

R

A *firm* must take reasonable care to ensure that all aspects of its operating practice are fair to the interests of its *with-profits policyholders* and do not lead to an undisclosed, or otherwise unfair, benefit to shareholders or to other persons with an interest in the *with-profits fund*.

20.2.1B

G

- (1) Notwithstanding that there may not be a *rule* in the remainder of this section addressing a particular aspect of a *firm's* operating practices, *firms* will need to ensure that they take reasonable care to ensure that all aspects of their operating practice comply with ■ COBS 20.2.1A R.
- (2) For the avoidance of doubt ■ COBS 20.2.1A R does not exhaust or restrict the scope of *Principle 6*. *Firms* will in any event need to ensure that their operating practices are consistent with *Principle 6*.

	20.2.1C	G	When considering the provisions in this chapter a <i>firm</i> will need to ensure that, if applicable, it complies with the with-profits governance requirements in ■ COBS 20.5.
	20.2.1D	G	For the purposes of ■ COBS 20.2.1A R the FCA expects a <i>firm</i> to be able to demonstrate that it has taken reasonable care to ensure its operating practices are fair, including being able to produce appropriate evidence to show that it has followed relevant governance procedures.
	20.2.2	R	Neither <i>Principle 6</i> (Customers' interests) nor the <i>rules</i> on treating <i>with-profits policyholders</i> fairly (■ COBS 20.2) relieve a <i>firm</i> of its obligation to deliver each <i>policyholder's</i> contractual entitlement.
	20.2.3	R	Amounts payable under with-profits policies A <i>firm</i> must have good reason to believe that its pay-outs on individual <i>with-profits policies</i> are fair.
	20.2.4	G	Amounts payable under with-profits policies: Maturity payments In this section, maturity payments include payments made when a <i>with-profits policy</i> provides for a minimum guaranteed amount to be paid.
	20.2.5	R	<ol style="list-style-type: none">(1) Unless a <i>firm</i> cannot reasonably compare a maturity payment with a calculated asset share, it must:<ol style="list-style-type: none">(a) set a target range for the maturity payments that it will make on:<ol style="list-style-type: none">(i) all of its <i>with-profits policies</i>; or(ii) each group of its <i>with-profits policies</i>;(b) ensure that each target range:<ol style="list-style-type: none">(i) is expressed as a percentage of unsmoothed asset share; and(ii) includes 100% of unsmoothed asset share; and(c) manage its <i>with-profits business</i>, and the business of each <i>with-profit fund</i>, with the aim of making on each <i>with-profit policy</i> a maturity payment that falls within the relevant target range.(2) Unsmoothed asset share means:<ol style="list-style-type: none">(a) the unsmoothed asset share of the relevant <i>with-profits policy</i>; or(b) an estimate of the unsmoothed asset share of the relevant <i>with-profits policy</i> derived from the unsmoothed asset share of one or more specimen <i>with-profits policies</i>, which a <i>firm</i> has selected to represent a group, or all, of the <i>with-profits policies</i> effected in the same <i>with-profits fund</i>.(3) A <i>firm</i> must calculate unsmoothed asset share by:<ol style="list-style-type: none">(a) (i) for a <i>firm</i> which is not a <i>Solvency II firm</i>, applying the methods in ■ INSPRU 1.3.119 R to ■ INSPRU 1.3.123 R;(ii) for a <i>firm</i> which is a <i>Solvency II firm</i>, applying the methods in PRA Rulebook: Solvency II Firms Valuation, Technical

Provisions and Surplus Funds and applicable parts of the *Solvency II Regulation (EU) 2015/35 of 10 October 2014*;

- (b) including any amounts that have been added to the *policy* as the result of a distribution from an *inherited estate*; and
- (c) subject to (d), and where the terms of the *policy* so provide, adding or subtracting an amount that reflects the experience of the *insurance business* in the relevant *with-profits fund*; but
- (d) if a *with-profits fund* has suffered adverse experience, which results from a *firm's* failure to comply with the *rules* and *guidance* on treating *with-profits policyholders* fairly (■ COBS 20.2.1 G to ■ COBS 20.2.41 G and ■ COBS 20.2.53 R to ■ COBS 20.2.60 G), that adverse experience may only be taken into account if, and to the extent that, in the reasonable opinion of the *firm's governing body*, the amount referred to in (c) cannot be met from:
 - (i) the *firm's inherited estate* (if any); or
 - (ii) any assets attributable to shareholders, whether or not they are held in the relevant *with-profits fund*.

- 20.2.6** R Notwithstanding that a *firm* must aim to make maturity payments that fall within the relevant target range, a *firm* may make a maturity payment that falls outside the target range if it has a good reason to believe that at least 90% of maturity payments on *with-profits policies* in that group have fallen, or will fall, within the relevant target range.
- 20.2.7** G If it is not fair or reasonable to calculate or assess a maturity payment using the *prescribed asset share methodology*, a *firm* may use another methodology to set bonus rates, if that methodology properly reflects its representations to *with-profits policyholders* and it applies that methodology consistently.
- 20.2.8** R A *firm* may make deductions from asset share to meet the cost of guarantees, or the cost of capital, only under a plan approved by its *governing body* and described in its *PPFM*. A *firm* must ensure that any deductions are proportionate to the costs they are intended to offset.
- 20.2.9** R If a *firm* has approved a plan to make deductions from asset share, it must ensure that its planned deductions do not change unless justified by changes in the business or economic environment, or changes in the nature of the *firm's* liabilities as a result of *policyholders* exercising options in their *policies*.
- 20.2.10** R If a *firm* calculates maturity payments using the *prescribed asset share methodology*, it must manage its *with-profits business*, and each *with-profits fund*, with the longer term aim that it will make aggregate maturity payments of 100% of unsmoothed asset share.
- Amounts payable under with-profits policies: Surrender payments**
- 20.2.11** G A *firm* may use its own methodology to calculate surrender payments, but it should have good reason to believe that its methodology produces a result

which, in aggregate across all similar policies, is not less than the result of the *prescribed asset share methodology*. A *firm* might, for example, test the surrender payments on a suitable range of specimen *with-profits policies*.

- 20.2.12 R** If a *firm* calculates surrender payments using the *prescribed asset share methodology*, it must first calculate what the surrender payment would be if it was a maturity payment calculated by that methodology.
- 20.2.13 R** A *firm* may then make a deduction from unsmoothed asset share if necessary, in the reasonable opinion of the *firm's governing body*, to protect the interests of the *firm's remaining with-profits policyholders*.
- 20.2.14 G** Amounts that might be deducted include:
- (1) the *firm's* unrecovered costs, including any financing costs incurred in effecting or carrying out the surrendered *with-profits policy* to the date of surrender, including the costs that might have been recovered if the *policy* had remained in force;
 - (2) costs that would fall on the *with-profits fund*, if the surrender value is calculated by reference to an assumed *market value* of assets which exceeds the true *market value* of those assets;
 - (3) the *firm's* costs incurred in administering the surrender; and
 - (4) a fair contribution towards the cost of any contractual benefits due on the whole, or an appropriate part, of the continuing policies in the *with-profits fund* which would otherwise result in higher costs falling on the continuing *with-profits policies*.
- 20.2.15 G** The provisions dealing with the calculation of surrender payments (■ COBS 20.2.11 G to ■ COBS 20.2.12 R) do not prevent a *firm* from setting a target range for surrender payments where the top-end of the range is lower than the top-end of the relevant range for maturity payments.
- 20.2.16 R** A *firm* must not, in so far as is reasonably practicable, make a market value reduction to the face value of the units of an accumulating *with-profits policy* unless:
- (1) the *market value* of the *with-profits assets* in the relevant *with-profits fund* is, or is expected to be, less than the assumed value of the assets on which the face value of the units of the *policy* has been based; and
 - (2) the market value reduction is no greater than is necessary to reflect the impact of the difference in value referred to in (1) on the relevant payment out to the *policyholder*.
- 20.2.16A G** If a *firm* is able to satisfy ■ COBS 20.2.16R (1), then the volume of surrenders, transfers, or other exits from the *with-profits fund* that there has been, or is expected to be, is a factor that a *firm* may take into account when it is considering whether to make a market value reduction, and if so, its amount, subject to the limit in ■ COBS 20.2.16R (2).

Conditions relevant to distributions**20.2.16B** **G**

References to distributions in ■ COBS 20 includes distributions of distributable profits arising, namely any permanent addition to *policy* benefits made at the *firm's* discretion based on the investment or other experience in the fund or more generally. Distributions include those relating to expected payments for which allowance has been made in the *technical provisions* or to a *firm's* other liabilities arising from its regulatory duty to treat *customers* fairly, and not just distributions of any *with-profits fund surplus*.

20.2.16C **G**

Examples of distributions include any payment of a cash bonus (including a final bonus on exit or a reduction in *premium*), or a declaration of a reversionary bonus in the form of a permanent addition to the benefits guaranteed to be payable at death or on maturity. In ■ COBS 20.2.21 R and ■ COBS 20.2.22 E (distributions from excess surplus) distributions also include any other amounts that are added to asset shares or to any other measure that is used to determine pay-outs under *policies*.

20.2.17 **R**

A firm must ensure that the amount distributed to *policyholders* from a *with-profits fund*, taking into account any adjustments required by ■ COBS 20.2.17A R, is not less than the *required percentage* of the total amount distributed.

20.2.17A **R**

- (1) Where a *firm* adjusts the amounts distributed to *policyholders*, either by market value reduction or otherwise, in a way that would result in a distribution to *policyholders* of less than the *required percentage*, taking both the relevant distributions and the adjustment into account, then the *firm* must apply a proportionate adjustment to amounts distributed to shareholders so that the distribution to *policyholders* will not be less than the *required percentage*.
- (2) The adjustments referred to in (1) include but are not limited to a situation where such an adjustment has the effect of retrospectively reducing past *policyholder* distributions.

20.2.17B **G**

An example of the application of ■ COBS 20.2.17A R, without limitation to its scope generally, is where a *firm* reduces, for any reason, the amounts of a bonus or of bonus units added to *policies* in force. The *firm* should treat this as effectively a 'negative distribution', calculated by making the same assumptions regarding discount rates and other relevant factors as would be used for positive bonus additions. The amount so calculated should then be taken into account in ensuring that the amount distributed to *policyholders* from a *with-profits fund* is not less than the *required percentage* for the purposes of ■ COBS 20.2.17 R.

20.2.17C **R**

A *firm* must not make a distribution from a *with-profits fund*, unless:

- (1) if it is not a *Solvency II firm*, the whole of the cost of that distribution can be met without eliminating the *regulatory surplus* in that *with-profits fund*; and
- (2) if it is a *Solvency II firm*:
 - (a) the whole of the cost of that distribution can be met without eliminating the *with-profits fund surplus* in that *with-profits fund*; and

- (b) following any distribution that is made to meet a liability for which allowance has been made in *technical provisions* or other liabilities the *firm* is able to demonstrate that it reasonably expects to be able to continue to comply with the requirements in ■ COBS 20.1A.5 R (Governance arrangements for the with-profits fund).

- 20.2.18** **R** A *firm* which is not a *Solvency II firm* must not make a distribution from a *with-profits fund* to any *person* who is not a *with-profits policyholder*, unless the whole of the cost of that distribution (including the cost of any obligations that will or may arise from the decision to make a distribution) can be met from the excess, if any, of the assets over the liabilities in that *with-profits fund*.
- 20.2.19** **R** A distribution to a *person* who is not a *with-profits policyholder* includes a transfer of assets out of a *with-profits fund* that is not made to satisfy a liability of that fund.

Notification and other requirements in relation to certain distributions

- 20.2.19A** **R** If a *firm* which is a *Solvency II firm* proposes to make a distribution from a *with-profits fund* to any *person* who is not a *with-profits policyholder*, where:
- (1) the distribution to *with-profits policyholders* is smaller than the 'pre-notification to *policyholder minimum*' calculated in accordance with ■ COBS 20.2.19BR (1) then the *firm* must:
 - (a) provide the *FCA* with written details of the proposed distribution at least two months prior to the proposed distribution, together with copies of draft notifications it proposes to send to *with-profits policyholders* to satisfy (b); and
 - (b) give affected *with-profits policyholders* in the fund at least one months prior written notice stating:
 - (i) that it proposes to make no distribution to them; or
 - (ii) that it proposes to make a distribution of an amount which is smaller than the 'pre-notification to *policyholder minimum*', and setting out the amount and how the distribution is calculated; andthe reasons for (i) or (ii) as relevant; or
 - (2) the distribution to *with-profits policyholders* does not meet the test in (1) but is smaller than the 'after the event notification to *policyholder minimum*' calculated in accordance with ■ COBS 20.2.19BR (2) then the *firm* must:
 - (a) provide the *FCA* with written details of the proposed distribution at least one month prior to the proposed distribution together with copies of draft notifications it proposes to send to *with-profits policyholders* to satisfy (b); and
 - (b) give affected *with-profits policyholders* in the fund, notice of the distribution within a reasonable period from the date of the distribution, setting out the amount of the distribution, how it was calculated and the reasons for the change compared to the last previous distribution.

20.2.19B R

- (1) The 'pre-notification to *policyholder minimum*' referred to in ■ COBS 20.2.19A R is as follows:

$$\frac{b \times c}{a} - \frac{c}{50}$$

where

a is the total amount available for with-profits distribution in the *with-profits fund* in question at the time of the most recent previous distribution;

b is the amount of the most recent previous distribution to *with-profits policyholders*; and

c is the total amount available for with-profits distribution in relation to the proposed distribution.

- (2) The 'after the event notification to *policyholder minimum*' referred to in ■ COBS 20.2.19A R is as follows:

$$\frac{b \times c}{a} - \frac{c}{200}$$

where *a*, *b* and *c* have the same meaning as in (1).

- (3) The calculations in (1) and (2) must be determined by *actuarial investigation*.

20.2.19C G

- (1) If the circumstances in ■ COBS 20.2.19AR (1) or ■ (2) arise, the *firm* should also consider whether any reduction(s) in the proposed distribution and any previous distributions to *with-profits policyholders* over a period of at least the last five years are consistent with treating *with-profits policyholders* fairly and any other obligations of the *firm* under ■ COBS 20.
- (2) When calculating the amounts distributed in ■ COBS 20.2.19A R and ■ COBS 20.2.19B R:
- (a) any amount allocated to *with-profits policyholders* in anticipation of a distribution is treated as included in the next distribution;
 - (b) the amount of any available distributable profits is treated as reduced by any part of it which the *firm* has decided to carry forward unappropriated; and
 - (c) risk margin associated with *technical provisions* should be excluded.
- (3) A *firm* which is not a *Solvency II firm* is required to comply with IPRU(INS) 3.3.

20.2.20 R

If, on a distribution, a *firm* incurs a tax liability on a transfer to shareholders, it must not attribute that tax liability to a *with-profits fund*, unless:

- (1) the *firm* can show that attributing the tax liability to that *with-profits fund* is consistent with its established practice;
- (2) that established practice is explained in the *firm's PPFM*; and
- (3) that liability is not charged to asset shares.

Requirement relating to distribution of an excess surplus		
20.2.21	R	At least once a year (or, in the case of a <i>non-directive friendly society</i> , at least once in every three years) and whenever a <i>firm</i> is seeking to make a <i>retribution</i> of its <i>inherited estate</i> , a <i>firm's governing body</i> must determine whether the <i>firm's with-profits fund</i> , or any of the <i>firm's with-profits fund</i> , has an <i>excess surplus</i> .
20.2.22	E	<ol style="list-style-type: none">(1) If a <i>with-profits fund</i> has an <i>excess surplus</i>, and to retain that surplus would be a breach of <i>Principle 6 (Customers' interests)</i>, the <i>firm</i> should make a distribution from that <i>with-profits fund</i>.(2) Compliance with (1) may be relied on as tending to establish compliance with <i>Principle 6 (Customers' interests)</i>.(3) Contravention of (1) may be relied on as tending to establish a contravention of <i>Principle 6 (Customers' interests)</i>.
Charges to a with-profits fund		
20.2.23	R	A <i>firm</i> must only charge costs to a <i>with-profits fund</i> which have been, or will be, incurred in operating the <i>with-profits fund</i> . This may include a fair proportion of overheads.
20.2.24	R	Subject to ■ COBS 20.2.25 R, ■ COBS 20.2.25A R and ■ COBS 20.2.25B R, a <i>firm</i> must not pay compensation or redress from a <i>with-profits fund</i> .
20.2.25	R	A proprietary <i>firm</i> may pay compensation or redress due to a <i>policyholder</i> , or former <i>policyholder</i> , from assets attributable to shareholders, whether or not they are held within a <i>long-term insurance fund</i> or <i>with-profits fund</i> , as relevant.
20.2.25A	R	A <i>mutual</i> may pay compensation or redress due to a <i>policyholder</i> , or former <i>policyholder</i> , from a <i>with-profits fund</i> , but may only pay from assets that would otherwise be attributable to asset shares if, in the reasonable opinion of the <i>firm's governing body</i> , the compensation or redress cannot be paid from any other assets in the <i>with-profits fund</i> .
20.2.25B	R	A payment or transfer of liabilities made to correct an error and which has the effect of restoring a <i>policyholder</i> , or former <i>policyholder</i> , and the <i>with-profits fund</i> to the position they would have been in if the error had not occurred (a "rectification payment"), is not a payment of compensation or redress for the purposes of ■ COBS 20.2.24 R.

- 20.2.25C** **G** Rectification payments may include, for example, a payment to a *policyholder* or former *policyholder* to correct an erroneous underpayment of policy proceeds, or a reimbursement of premiums overpaid. The effect of **■ COBS 20.2.25B R** is that a *firm* may make rectification payments using assets in a *with-profits fund*.
- 20.2.25D** **G** **■ COBS TP 2.14 R** has the effect that payments of compensation and redress arising out of events which took place before 31 July 2009 are subject to **■ COBS 20.2.23 R** to **■ COBS 20.2.25 R** as in force at 30 July 2009.
- 20.2.26** **R** A proprietary *firm* must not charge to a *with-profits fund* any amounts paid or payable to a skilled person in connection with a report under **section 166** of the Act (Reports by skilled persons) if the report indicates that the *firm* has, or may have, materially failed to satisfy its obligations under the *regulatory system*.
- 20.2.26A** **R** A proprietary *firm* must not charge to a *with-profits fund* any financial penalty imposed on the *firm* by the *appropriate regulator*.
- Tax charge to a with-profits fund**
- 20.2.27** **R** A *firm* must not charge a contribution to corporation tax to a *with-profits fund*, if that contribution exceeds the notional corporation tax liability that would be charged to that *with-profits fund* if it were assessed to tax as a separate *body corporate*.
- New business**
- 20.2.28** **R** A *firm* must not effect new *contracts of insurance* in an existing *with-profits fund* unless:
- (1) the *firm's governing body* is satisfied, so far as it reasonably can be, and can demonstrate, having regard to the analysis in (2), that the terms on which each type of contract is to be effected are likely to have no adverse effect on the interests of the *with-profits policyholders* whose *policies* are written into that fund; and
 - (2) the *firm* has:
 - (a) carried out or obtained appropriate analysis, based on relevant evidence and proportionate to the risks involved, as to the likely impact on *with-profits policyholders*, having regard to relevant factors including:
 - (i) the volumes of each type of contract that the *firm* expects to be effected; and
 - (ii) the periods over which the contracts are expected to remain in force; and
 - (b) provided the analysis referred to in (a) to its *with-profits committee* or, if applicable, its *with-profits advisory arrangement* and to its *governing body* for the purposes of (1).
- 20.2.28A** **G** (1) Writing new *insurance business* into a *with-profits fund* is not, of itself, automatically adverse to the interests of *with-profits*

policyholders. For example, new *insurance business* which defers the emergence or distribution of surplus to a limited extent for a number of *policyholders*, or which leads to a marginal change in the equity backing ratio, may, subject to satisfying the guidance in ■ COBS 20.2.60 G and ■ COBS 20.2.29 G, reasonably be considered not to have an adverse effect on the *with-profits policyholders* in a *with-profits fund*, if the *firm's governing body* is satisfied (and can demonstrate based on appropriate analysis) that each new line of *insurance business* is likely to be financially self-supporting over the periods during which the contracts are expected to remain in force and is likely to add sufficient value to the *with-profits fund* to offset the cost of acquiring the business.

- (2) Conversely, if the particular line of new *insurance business* is priced on loss-making terms or the terms are such that the new *insurance business* is not likely to generate sufficient value after covering all the costs associated with it (in either case when considered in aggregate over the periods over which the contracts are expected to remain in force), then in the FCA's view, the terms of that *insurance business* are likely to have an adverse impact on *with-profits policyholders* interests in the relevant fund.
- (3) *Firms* will need to ensure that they comply with ■ COBS 20.2.28 R at all times, but in practice *firms* will be expected to pay particular attention when they are designing and pricing or re-pricing products, when they are preparing their financial plans that take into account their expected costs and levels of new business, and, in particular, when reviewing their financial performance, if that reveals that costs or levels of new business have varied significantly from those expected previously.
- (4) New business for the purposes of ■ COBS 20.2.28 R will not, in general, include increments on existing *policies* or business written as a result of the exercise of options by an existing *policyholder*.

20.2.29**G**

In some circumstances, it may be difficult or impossible for a *firm* to mitigate the risk of an adverse effect on its existing, or new, *with-profits policyholders*, unless it establishes a new bonus series or *with-profits fund*. Circumstances that might cause a *firm* to establish a new bonus series or *with-profits fund* include:

- (1) where the *firm* has a high level of guarantees or options in its existing *with-profits policies*, which might place an excessive burden on new *with-profits policies*, or vice versa; and
- (2) where the potential risks are likely to be so great that a single *with-profits fund* cannot provide adequately for the interests of new and existing *policyholders*, even after allowing for any beneficial effects of diversification. Such potential risks are likely to arise from significant differences in the terms and conditions of the new and existing *with-profits policies*, including the basis on which charges are levied and reviewed.

20.2.30**G**

- (1) When a *firm* prices the new *insurance business* that it proposes to effect in an existing *with-profits fund*, it should estimate the volume of new *insurance business* that it is likely to effect and then build in adequate margins that will allow it to recover any acquisition costs to be charged to the *with-profits fund*.

- (2) ■ COBS 20.2.28 R requires firms to obtain appropriate analysis and evidence and this should include at least a profitability analysis on a marginal cost basis.

20.2.31

G

When a firm sets a target volume for new insurance business in an existing with-profits fund, it should pay particular attention to the risk of disadvantage to existing with-profits policyholders. Those policyholders might be disadvantaged, for example, by the need to retain additional capital to support a rapid growth in new business, when that capital might have been distributed in the ordinary course of the firm's existing business.

Relationship of a with-profits fund with the firm and any connected persons

20.2.32

R

Unless ■ COBS 20.2.32A R applies, a firm carrying on with-profits business must not:

- (1) make a loan to a connected person using assets in a with-profits fund; or
 - (2) give a guarantee to, or for the benefit of, a connected person, where the guarantee will be backed using assets in a with-profits fund;
- unless that loan or guarantee:
- (3) will be on commercial terms;
 - (4) will, in the reasonable opinion of the firm's senior management, be beneficial to the with-profits policyholders in the relevant with-profits fund; and
 - (5) will not, in the reasonable opinion of the firm's senior management, expose those policyholders to undue credit or group risk.

20.2.32A

R

■ COBS 20.2.32R (1) does not apply to a Solvency II firm.

20.2.32B

G

Loans to a connected person using assets in a with-profits fund should be considered as investments of assets within the with-profits fund. As such, a Solvency II firm will need to ensure that:

- (1) such loans comply with the PRA Rulebook: Solvency II Firms: Investments having regard to ■ COBS 20.2.35B G; and
- (2) where there is a conflict of interests, in the reasonable opinion of the firm's senior management, they are in the best interests of the with-profits policyholders in the relevant with-profits fund.

Contingent loans and other forms of support for the with-profits fund

20.2.33

G

- (1) If a firm, or a connected person, provides support to a with-profits fund (for example, by a contingent loan), no reliance should be placed on that support when the firm assesses the with-profits fund's financial position unless there are clear and unambiguous criteria governing any repayment obligations to the support provider.

- (2) The degree of reliance placed on that support should depend on the subordination of the support to the fair treatment of *with-profits policyholders* and clarification of what fair treatment means in various circumstances. For a *realistic basis life firm* this would normally be evidenced by the liability for such support being capable, under stress, of a progressively lower valuation in the *future policy-related liabilities*.

20.2.34 G Where assets from outside a *with-profits fund* are made available to support that fund (and there is no ambiguity in the criteria governing any repayment obligations to the support provider), a *firm* should manage the fund disregarding the liability to repay those assets, at least in so far as that is necessary for its *policyholders* to be treated fairly.

Support arrangements

20.2.34A R (1) A *Solvency II firm* must ensure that, in relation to any arrangements where assets outside a *with-profits fund* provide or may provide support to it, both the following requirements are met:

- (a) the precise terms and conditions on which those support asset arrangements operate and assets may become available, including whether and when they are repayable:
 - (i) are adequately documented in the *firm's* records; and
 - (ii) if the *firm* is required to produce a *PPFM*, are set out clearly and unambiguously in its *PPFM*.
- (b) the operation of those support asset arrangements is consistent with terms and conditions in communications to *with-profits policyholders*, including any *PPFM*.

Other rules and guidance on the conduct of with-profits business

20.2.35 G When a *firm*, other than a *Solvency II firm*, determines its investment strategy, and the acceptable level of risk within that strategy, it should take into account:

- (1) the extent of the guarantee in its *with-profits policies*;
- (2) any representation that it has made to its *with-profits policyholders*;
- (3) its established practice; and
- (4) the amount of capital support available.

20.2.35A G

20.2.35B G (1) A *Solvency II firm* is required to consider its investment strategy in relation to the assets in a *with-profits fund*, including any *strategic investments*, in accordance with the PRA Rulebook: Solvency II Firms: Investments. *Firms* are expected, in applying the PRA Rulebook: Solvency II Firms: Investments, to take into account the particular circumstances and requirements of the liabilities in the *with-profits fund* to which those assets relate. For example, a *Solvency II firm* will need to consider:

20.2.36**R**

A firm, other than a Solvency II firm, must not:

- (1) use with-profits assets to finance the purchase of a strategic investment, directly or by or through a connected person; or
- (2) retain an investment referred to in (1);

unless its governing body is satisfied, so far as it reasonably can be, and can demonstrate, that the purchase or retention is likely to have no adverse effect on the interests of its with-profits policyholders whose policies are written into the relevant fund.

20.2.36A**R**

A firm must keep adequate records setting out the strategic purpose for which a strategic investment has been purchased or retained.

20.2.36B**G**

- (1) In order for a firm to comply with ■ COBS 20.2.36 R, a firm's governing body should consider:
 - (a) the size of the investment in relation to the with-profits fund;
 - (b) the expected rate of return on the investment;
 - (c) the risks associated with the investment, including, but not limited to, liquidity risk, the capital needs of the acquired business or investment and the difficulty of establishing fair value (if any);
 - (d) any costs that would result from divestment;
 - (e) whether the with-profits actuary would regard the investment as having no adverse effect on the interests of with-profits policyholders as a class;
 - (f) in the case of a proprietary firm, whether it would be more appropriate for the investment to be made using assets other than those in the with-profits fund; and
 - (g) any other relevant material factors.
- (2) A firm should consider whether making or retaining a strategic investment should be disclosed to with-profits policyholders.
- (3) Examples of strategic investments include, but are not limited to, a significant investment in another business or significant real estate assets used within the business of the firm.

- 20.2.37** **G** If a *firm* carries out *non-profit insurance business* in a *with-profits fund*, it should review the profitability of the *non-profit insurance business* regularly.
- 20.2.38** **G** If a *firm* has reinsured its *with-profits insurance business* into another *insurance undertaking*, it should take reasonable steps to discharge its responsibilities to its *with-profits policyholders*, in respect of the reinsured business. Those steps should include maintaining adequate controls.
- 20.2.39** **R** A *firm* must not enter into a material transaction relating to a *with-profits fund* unless, in the reasonable opinion of the *firm's governing body*, the transaction is unlikely to have a material adverse effect on the interests of that fund's existing *with-profits policyholders*.
- 20.2.40** **R** A material transaction includes a series of related non-material transactions which, if taken together, are material.
- 20.2.41** **G** Examples of material transactions include:
- (1) a significant bulk outwards *reinsurance* contract;
 - (2) inwards *reinsurance* of *with-profits business* from another *insurance undertaking*;
 - (3) a financial engineering transaction that would materially change the profile of any surplus expected to emerge on the *with-profits fund's* existing *insurance business*; and
 - (4) a significant restructuring of the *with-profits fund*, especially if it involves the creation of new *sub-funds*.
- 20.2.41A** **R** A *firm* must contact the *FCA* as soon as is reasonably practicable to make arrangements to discuss what actions may be required to ensure the fair treatment of *with-profits policyholders* if, in relation to any *with-profits fund* it operates:
- (1) the *firm* reasonably expects, or if earlier, there has been, a sustained and substantial fall in either the volume of new *non-profit insurance contracts*, or in the volume of new *with-profits policies* (effected other than by *reinsurance*), or in both, effected into the *with-profits fund*; or
 - (2) the *firm* cedes by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect.
- 20.2.41B** **G**
- (1) The aim of the discussions in ■ COBS 20.2.41A R is to:
 - (a) allow the *FCA* to comment on the adequacy of the *firm's* planning; and
 - (b) seek agreement with the *firm* on any other appropriate actions to ensure *with-profits policyholders* are treated fairly.
 - (2) If the *firm* is no longer effecting a material volume of new *with-profits policies* (other than by *reinsurance*) into a *with-profits fund*; or

if it is ceding by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect, then it may also be appropriate to consider whether, in the particular circumstances of the *firm*, it should be regarded as ceasing to effect new *contracts of insurance* for the purposes of ■ COBS 20.2.54R (3).

- (3) In the discussions the *FCA* will have with regard to ■ COBS 20.2.28 R (New business), if the volumes of new business are expected to be profitable and, in relation to *non-profit insurance business*, it is demonstrated that a fair distribution to *with-profits policyholders* out of the fund can be achieved and the economic value of any expected future profits is likely to be available for distribution during the lifetime of the *with-profits business* for the purposes of ■ COBS 20.2.60 G, then, in the *FCA*'s view, it is likely to be reasonable for a *firm* to be satisfied that there will be no adverse effect for *with-profits policyholders*, and accordingly that such business may continue to be written.

Process for reattribution of inherited estates: Policyholder advocate: appointment and role

20.2.42

R

A *firm* that is seeking to make a *reattribution* of its *inherited estate* must:

- (1) first discuss with the *FCA* (as part of its determination under ■ COBS 20.2.21 R):
 - (a) its projections for capital required to support existing business, which must include an assessment of:
 - (i) the *firm*'s future risk appetite for the *with-profits fund* and other relevant business; and
 - (ii) how much of the margin for prudence can be identified as excessive and removed from the projected capital requirements; and
 - (b) its projections for capital required to support future new business, which must include an assessment of:
 - (i) new business volumes;
 - (ii) product terms; and
 - (iii) pricing margins;
- (2) following the discussions referred to in (1), identify at the earliest appropriate point a *policyholder advocate*, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of *policyholders*, to negotiate with the *firm* on behalf of relevant *with-profits policyholders* and seek the approval of the *FCA* for the appointment of the *policyholder advocate* as soon as he is identified, or appoint a *policyholder advocate* nominated by the *FCA* if its approval is not granted; and
- (3) involve the *policyholder advocate* designate at the earliest possible opportunity to enable him to participate effectively in the negotiations about the proposals for the *reattribution*.

20.2.42A

R

20.2.43	G The <i>firm</i> should include an independent element in the <i>policyholder advocate</i> selection process, which may include consulting representative groups of <i>policyholders</i> or using the services of a recruitment consultant. When considering an application for approval of a nominee to perform the <i>policyholder advocate</i> role, the <i>FCA</i> will have regard to the extent to which the <i>firm</i> has involved others in the selection process.
20.2.44	G The precise role of the <i>policyholder advocate</i> in any particular case will depend on the nature of the <i>firm</i> and the <i>reatribution</i> proposed. A <i>firm</i> will need to discuss, with a view to agreeing, with the <i>FCA</i> the precise role of the <i>policyholder advocate</i> in a particular case (■ COBS 20.2.45 R). However, the role of the <i>policyholder advocate</i> should include: <ol style="list-style-type: none">(1) negotiating with the <i>firm</i>, on behalf of the relevant <i>with-profits policyholders</i>, the benefits to be offered to them in exchange for the rights or interests they will be asked to give up;(2) commenting to <i>with-profits policyholders</i>, on:<ol style="list-style-type: none">(a) the methodology used for the allocation of benefits amongst the relevant (or groups of) <i>with-profits policyholders</i> and the form of those benefits;(b) the criteria used for determining the eligibility of the various <i>with-profits policyholders</i>;(c) the terms and conditions of the proposals (to the extent that they materially affect the benefits to be offered, or the bonuses that may be added to <i>with-profits policies</i>); and(d) the views expressed by the <i>independent expert</i> or the <i>reatribution expert</i> (as the case may be), and the <i>firm's with-profits actuary</i> on the allocation of any benefits amongst the relevant <i>with-profits policyholders</i>; and(3) telling <i>with-profits policyholders</i>, or each group of <i>with-profits policyholders</i>, with reasons, whether the <i>firm's proposals</i> are in their interests.
20.2.45	R Process for reatribution of inherited estates: Policyholder advocate: terms of appointment A <i>firm</i> must: <ol style="list-style-type: none">(1) notify the <i>FCA</i> of the terms on which it proposes to appoint a <i>policyholder advocate</i> (whether or not the candidate was nominated by the <i>FCA</i>); and(2) ensure that the terms of appointment for the <i>policyholder advocate</i>:<ol style="list-style-type: none">(a) include a description of the role of the <i>policyholder advocate</i> as agreed with the <i>FCA</i> under ■ COBS 20.2.44 G;(aA) stress the independent nature of the <i>policyholder advocate's</i> appointment and function, and are consistent with it;(b) define the relationship of the <i>policyholder advocate</i> to the <i>firm</i> and its <i>policyholders</i>;(c) set out arrangements for communications between the <i>policyholder advocate</i> and <i>policyholders</i>;

- (d) make provision for the resolution of any disputes between the *firm* and the *policyholder advocate*;
- (e) specify when and how the *policyholder advocate's* appointment may be terminated;
- (f) allow the *policyholder advocate* to communicate freely and in confidence with the *FCA*;
- (g) require the *policyholder advocate* to communicate with *policyholders*:
 - (i) as soon as is practicable after his appointment, having regard to (h)(i) and (iii); and
 - (ii) thereafter no less frequently than every six *months* for the duration of the *policyholder advocate's* appointment; and
- (h) require the *policyholder advocate*:
 - (i) to make reasonable endeavours to agree with the *firm* the contents of any proposed *policyholder* communications;
 - (ii) to allow sufficient time for the process in (i) in order to meet any timescales in (g); and
 - (iii) to provide copies of the final draft of the intended *policyholder* communications, whether or not agreement has been reached in accordance with (i) above, both to the *firm* and to the *FCA* at least seven *days* in advance of the date on which the *policyholder advocate* intends to make the communications.

20.2.46

G

A *firm* may include, within the *policyholder advocate's* terms of appointment, arrangements for the *policyholder advocate* to be indemnified in respect of certain claims that may be made against him in connection with the performance of his functions. If such indemnity is included, it should not include protection against any liability arising from acts of bad faith.

Process for reattribution of inherited estates: Reattribution expert

20.2.47

R

Where a *firm* is not otherwise required to appoint an *independent expert*, it must:

- (1) appoint a reattribution expert to undertake an objective assessment of its *reattribution* proposals, who must be:
 - (a) nominated or approved by the *appropriate regulator* before he is appointed; and
 - (b) free from any conflicts of interest that may, or may appear to, undermine his independence or the quality of his report;
- (2) ensure that the *reattribution expert's* terms of appointment allow him to communicate freely and in confidence with the *appropriate regulator*; and
- (3) require the *reattribution expert* to prepare a report which must be available to the *appropriate regulator*, the *policyholder advocate* and the court (if it is relevant to any court proceedings).

20.2.48	G	<p>A <i>reattribution expert's report</i> should comply with the applicable rules on expert evidence. The scope and content of the report should be substantially similar to that of the report required of an <i>independent expert</i> under SUP 18.2 (Insurance business transfers), as if (where appropriate) a reference to:</p> <ol style="list-style-type: none">(1) the '<i>scheme report</i>' was a reference to the '<i>reattribution expert's report</i>'; and(2) the '<i>independent expert</i>' was a reference to the '<i>reattribution expert</i>'; and(3) the '<i>scheme</i>' was a reference to the proposal for a '<i>reattribution</i>'.
		<p>Process for reattribution of inherited estates: Information to policyholders</p>
20.2.49	R	<p>A <i>firm</i> must ensure that every <i>policyholder</i> that may be affected by the proposed <i>reattribution</i> is sent appropriate and timely information about:</p> <ol style="list-style-type: none">(1) the <i>reattribution</i> process, including the role of the <i>policyholder advocate</i>, the <i>independent expert</i> or <i>reattribution expert</i>, as the case may be, and other individuals appointed to perform particular functions;(2) the <i>reattribution</i> proposals and how they affect the relevant <i>policyholders</i>, including an explanation of any benefits they are likely to receive and the rights and interests that they are likely to be asked to give up;(3) the <i>policyholder advocate's</i> views on the <i>reattribution</i> proposals and any benefits the relevant <i>policyholders</i> are likely to receive and the rights and interests that they are likely to be asked to give up; and(4) the outcome of the negotiations between the <i>firm</i> and the <i>policyholder advocate</i> about the benefits that will be offered to relevant <i>with-profits policyholders</i>, in exchange for the rights and interests that they will be asked to give up.
20.2.50	R	<p>An adequate summary of the report by the <i>reattribution expert</i> must be made available to every <i>policyholder</i> that may be affected by the proposed <i>reattribution</i>.</p>
		<p>Process for reattribution of inherited estates: Consent of policyholders</p>
20.2.51	R	<p>A <i>firm</i> must give relevant <i>with-profits policyholders</i> the option to:</p> <ol style="list-style-type: none">(1) individually accept or reject the final proposals for the <i>reattribution</i>; or(2) (if the legal process to be followed allows the majority of <i>policyholders</i> to bind the minority) vote on whether the <i>firm</i> should go ahead with those proposals.

- 20.2.52** **G** **Process for reattribution of inherited estates: Costs**
- (1) *Reattribution and insurance business transfer costs (excluding policyholder advocate costs) should be met from shareholder funds. A firm may present alternative arrangements if it can show good reasons for doing so.*
- (2) Shareholders should pay a reasonable proportion of the *policyholder advocate's costs*.
- (3) If a *reattribution* proposal is not successful, the FCA would expect the costs of the *policyholder advocate* to be met by the *person initiating* the proposal. That will usually be the shareholders of the *firm*.
- 20.2.53** **R** **Ceasing to effect new contracts of insurance in a with-profits fund**
- A *firm* must:
- (1) inform the *appropriate regulator* and its *with-profits policyholders* within 28 days; and
- (2) submit a run-off plan to the *appropriate regulator* as soon as reasonably practicable and, in any event, within three months;
- of first ceasing to effect new contracts of insurance in a with-profits fund.
- 20.2.54** **R** A *firm* will be taken to have ceased to effect new contracts of insurance in a with-profits fund:
- (1) when any decision by the *governing body* to cease to effect new contracts of insurance takes effect; or
- (2) where no such decision is made, when the *firm* is no longer:
- (a) actively seeking to effect new contracts of insurance in that fund; or
- (b) effecting new contracts of insurance in that fund, except by increment; or
- (3) if the *firm*:
- (a) (i) is no longer effecting a material volume of *with-profits policies* (other than by *reinsurance*), into the *with-profits fund*; or
- (ii) is ceding by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect; and
- (b) cannot demonstrate that it will treat *with-profits policyholders* fairly if it does not cease to effect new contracts of insurance.
- 20.2.55** **G** For the purposes of ■ COBS 20.2.54R (3) the FCA will have regard to, amongst other things, the factors set out in ■ COBS 20.2.41BG (3).
- 20.2.56** **R** The run-off plan required by ■ COBS 20.2.53 R must:
- (1) include an up-to-date plan to demonstrate how the *firm* will ensure a fair distribution of the closed *with-profits fund*, and its *inherited estate* (if any); and
- (2) be approved by the *firm's governing body*.

- 20.2.57** **G**
- (1) A *firm* should also include the information described in Appendix 2.15 (Run-off plans for closed with-profits funds) of the Supervision manual in its run-off plan.
 - (2) A *firm* should periodically review and update its run-off plan and submit updated versions to the *FCA* when requested to do so.
- 20.2.58** **G**
- When a *firm* tells its *with-profits policyholders* that it has ceased to effect new *contracts of insurance* in a *with-profits fund*, it should also explain:
- (1) why it has done so;
 - (2) what changes it has made, or proposes to make, to the fund's investment strategy (if any);
 - (3) how closure may affect *with-profits policyholders* (including any reasonably foreseeable effect on future bonus prospects);
 - (4) the options available to *with-profits policyholders* and an indication of the potential costs associated with the exercise of each of those options; and
 - (5) any other material factors that a *policyholder* may reasonably need to be aware of before deciding how to respond to this information.
- 20.2.59** **G**
- A *firm* may not be able to provide its *with-profits policyholders* with all of the information described above until it has prepared the run-off plan. In those circumstances, the *firm* should:
- (1) tell its *with-profits policyholders* that that is the case;
 - (2) explain what is missing and give a time estimate for its supply; and
 - (3) provide the missing information as soon as possible, and within the time estimate given.
- 20.2.60** **G**
- (1) If *non-profit insurance business* is written in a *with-profits fund*, a *firm* should take reasonable steps to ensure that the economic value of any future profits expected to emerge on the *non-profit insurance business* is available for distribution during the lifetime of the *with-profits business*.
 - (1A) Where a *with-profits fund* contains assets which may not be readily realisable, the *firm* should take reasonable steps to ensure that the economic value of those assets is made available as part of a fair distribution to *with-profits policyholders*.
 - (2) Where it is agreed by its *with-profits policyholders*, and subject to meeting the requirements for effecting new *contracts of insurance* in an existing *with-profits fund* (■ COBS 20.2.28 R), a *mutual* may make alternative arrangements for continuing to carry on *non-profit insurance business*, and a *non-directive friendly society* may make alternative arrangements for continuing to carry on non-insurance related business. Where a *mutual* has been granted a *waiver* in accordance with ■ COBS 20.2.61 G, the agreement of its *with-profits policyholders* to alternative arrangements for continuing to carry on *non-profit insurance business* may not be needed.

20.2.61

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- (1) A *mutual* operating a common fund may seek to undertake an exercise to identify that part of the fund to which the *mutual* considers it would be fair for relevant provisions in COBS 20 not to apply.
- (2) To give regulatory effect to the identification exercise, the FCA expects that a *mutual* will need to apply to the FCA to modify the relevant provisions in COBS 20 and elsewhere which are dependent on the definition of the *with-profits fund*.
- (3) A *mutual* will need to demonstrate that the appropriate statutory tests in section 138A of the Act are met. The FCA expects that *mutuals* will need to do at least the following to allow the FCA to consider whether granting the modification would adversely affect the advancement of the FCA's consumer protection objective:
- demonstrate that the exercise does not amount to a *retribution*;
 - demonstrate that its proposals are fair to its *with-profits policyholders*, and other relevant *policyholders*, having regard to the *mutual's* own particular structure, origins and other relevant circumstances, and including reference to the items in (c) to (j) below;
 - obtain the report of an independent expert approved by, and whose terms of reference are agreed with, the FCA on the terms of the *mutual's* proposals and the likely impact and effects on, and fairness to, the *mutual's* *with-profits policyholders* and other relevant *policyholders*. This report should consider whether the firm has sufficiently demonstrated the absence of a *retribution* under (a). The FCA will consider using its powers in section 166 of the Act (Reports by skilled persons) in appropriate circumstances;
 - demonstrate that the *mutual's* *with-profits policyholders* and other *policyholders* are appropriately engaged and informed about the proposals;
 - demonstrate that it has complied with the relevant requirements in the *mutual's* constitutional documents, for example that members are appropriately involved in agreeing to any proposals;
 - demonstrate that the *mutual* has a convincing and robust business case for continuing in business, as opposed to run-off;
 - demonstrate how, and the extent to which, continuing membership rights will benefit *with-profits policyholders* and other *policyholders*;
 - explain the nature and terms of any continuing support to be provided to the *with-profits fund* from outside the *with-profits fund*;
 - demonstrate that *with-profits policyholders* under the *mutual's* proposals will not be at a disadvantage compared to equivalent *with-profits policyholders* in a proprietary *with-profits fund*; and
 - explain how it proposes to pay any compensation or redress that is, or may become, due to a *policyholder*, or former *policyholder*.
- (4) For the purposes of (3)(a) and (c), where the issues to be considered by the independent expert include the extent or value (in the particular circumstances of the *mutual*) of the rights and interests of *with-profits policyholders* in the *with-profits fund*, the FCA expects

the independent expert's terms of reference to require them to take into account other available analyses of such rights and interests which may be more favourable to *policyholders* than the *mutual's* own analysis. The *FCA* considers that any uncertainty in the extent or value of such rights and interests in the case of a particular *mutual* may mean that the independent expert will need to obtain their own independent legal advice on the issue. In the *FCA*'s view the fact of any uncertainty as to the extent or value of the relevant rights and interests, following receipt of independent legal advice, may itself be taken into account by the independent expert when producing their report. The *FCA* will consider on a case by case basis what further information it may provide to the expert and/or independent legal adviser to ensure that the rights and interests of *policyholders* have been appropriately taken into account.

- (5) The *FCA* expects to consult and/or seek information or advice from the *PRA* in accordance with section 3D of the *Act* and the Memorandum of Understanding between the *FCA* and the *PRA* required by section 3E. As part of any such process the *FCA* expects that the *PRA* will wish to consider, among other things, that balance sheet safety and soundness issues have been identified and addressed appropriately.

20.3 Principles and Practices of Financial Management

Production of PPFM

20.3.1

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- (1) A *firm* must:
 - (a) establish and maintain the *PPFM* according to which its *with-profits business* is conducted (or, if appropriate, separate *PPFM* for each *with-profits fund*); and
 - (b) retain a record of each version of its *PPFM* for five years.
- (2) A *firm's with-profits principles* must:
 - (a) be enduring statements of the standards it adopts in managing *with-profits funds*; and
 - (b) describe the business model it uses to meet its duties to *with-profits policyholders* and to respond to longer-term changes in the business and economic environment.
- (3) A *firm's with-profits practices* must:
 - (a) describe how a *firm* manages its *with-profits funds* and how it responds to shorter-term changes in the business and economic environment; and
 - (b) be sufficiently detailed for a knowledgeable observer to understand the material risks and rewards from effecting or maintaining a *with-profits policy* with it.
- (4) A *firm* must not change its *PPFM* unless, in the reasonable opinion of its *governing body*, that change is justified to:
 - (a) respond to changes in the business or economic environment; or
 - (b) protect the interests of *policyholders*; or
 - (c) change the *firm's with-profits practices* better to achieve its *with-profits principles*.
- (5) A *firm* may change its *PPFM* if that change:
 - (a) is necessary to correct an error or omission; or
 - (b) would improve clarity or presentation without materially affecting the *PPFM's substance*; or
 - (c) is immaterial.

20.3.2

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[deleted]

20.3.3	G	[deleted]				
Scope and content of PPFM						
20.3.4	R	A firm's PPFM must cover the issues set out in the table in ■ COBS 20.3.6 R.				
20.3.5	R	A firm's PPFM must cover any matter that has, or it is reasonably foreseeable may have, a significant impact on the firm's management of <i>with-profits funds</i> , including but not limited to: <ol style="list-style-type: none"> (1) any requirements or constraints that apply as a result of previous dealings, including previous business transfer schemes; (2) the nature and extent of any shareholder or other commitment to support the <i>with-profits fund</i>; and (3) the precise terms and conditions of support asset arrangements, as described in ■ COBS 20.2.34A R. 				
20.3.6	R	Table: Issues to be covered in PPFM				
		<table border="1"> <thead> <tr> <th>Subject</th><th>Issues</th></tr> </thead> <tbody> <tr> <td>(1) Amount payable under a with-profits policy</td><td> <p>(a) Methods used to guide determination of the amount that is appropriate to pay individual <i>with-profits policyholders</i>, including:</p> <ul style="list-style-type: none"> (i) the aims of the methods and approximations used; (ii) how the current methods, including any relevant historical assumptions used and any systems maintained to deliver results of particular methods, are documented; and (iii) the procedures for changing the current method or any assumptions or parameters relevant to a particular method. <p>(b) Approach to setting bonus rates.</p> </td></tr> </tbody> </table>	Subject	Issues	(1) Amount payable under a with-profits policy	<p>(a) Methods used to guide determination of the amount that is appropriate to pay individual <i>with-profits policyholders</i>, including:</p> <ul style="list-style-type: none"> (i) the aims of the methods and approximations used; (ii) how the current methods, including any relevant historical assumptions used and any systems maintained to deliver results of particular methods, are documented; and (iii) the procedures for changing the current method or any assumptions or parameters relevant to a particular method. <p>(b) Approach to setting bonus rates.</p>
Subject	Issues					
(1) Amount payable under a with-profits policy	<p>(a) Methods used to guide determination of the amount that is appropriate to pay individual <i>with-profits policyholders</i>, including:</p> <ul style="list-style-type: none"> (i) the aims of the methods and approximations used; (ii) how the current methods, including any relevant historical assumptions used and any systems maintained to deliver results of particular methods, are documented; and (iii) the procedures for changing the current method or any assumptions or parameters relevant to a particular method. <p>(b) Approach to setting bonus rates.</p>					

Subject	Issues
	<p>(c) Approach to smoothing maturity payments and surrender payments, including:</p> <ul style="list-style-type: none"> (i) the smoothing policy applied to each type of <i>with-profits</i> policy; (ii) the limits (if any) applied to the total cost of, or excess from, smoothing; and (iii) any limits applied to any changes in the level of maturity payments between one period to another.
(2) Investment strategy	<p>Significant aspects of the <i>firm's</i> investment strategy for its <i>with-profits</i> business or, if different, any <i>with-profits</i> fund, including:</p> <ul style="list-style-type: none"> (a) the degree of matching to be maintained between assets relevant to <i>with-profits business</i> and liabilities to <i>with-profits policyholders</i> and other creditors; (b) the <i>firm's</i> approach to assets of different credit or liquidity quality and different volatility of market values; (c) the presence among the assets relevant to <i>with-profits business</i> of any assets that would not normally be traded because of their importance to the <i>firm</i>, and the justification for holding such assets; and (d) the <i>firm's</i> controls on using new asset or liability instruments and the nature of any approval required before new instruments are used.
(3) Business risk	The exposure of the <i>with-profits</i> business to business risks (new and existing), including the <i>firm's</i> :

	Subject	Issues
		(a) procedures for deciding if the <i>with-profits business</i> may undertake a particular business risk;
		(b) arrangements for reviewing and setting a limit on the scale of such risks; and
		(c) procedures for reflecting the profits or losses of such business risks in the amounts payable under <i>with-profits policies</i> .
(4)	Charges and expenses	(a) The way in which the <i>firm</i> applies charges and apportionments expenses to its <i>with-profits business</i> , including, if material, any interaction with connected firms. (b) The cost apportionment principles that will determine which costs are, or may be, charged to a <i>with-profits fund</i> and which costs are, or may be, charged to the other parts of its business of its shareholders.
(5)	Management of inherited estate	Management of any <i>inherited estate</i> and the uses to which the <i>firm</i> may put that <i>inherited estate</i> .
(6)	Volumes of new business and arrangements on stopping taking new business	If a <i>firm's with-profits fund</i> is accepting new <i>with-profits business</i> , its practice for review of the limits on the quantity and type of new business and the actions that the <i>firm</i> would take if it ceased to take on new business of any significant amount.
(7)	Equity between the with-profits fund and any shareholders	The way in which the interests of <i>with-profits policyholders</i> are, or may be, affected by the interests of any shareholders of the <i>firm</i> .

20.3.7

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The table in ■ COBS 20.3.8 G sets out *guidance* on how various information relevant to some of the issues covered in a *firm's PPFM* (■ COBS 20.3.6 R) might be split between *with-profits principles* and *with-profits practices*. This is an example of the matters a *firm* should address in its *with-profits principles* and *with-profits practices* and is not exhaustive. A *firm* should consider carefully the scope and content of its *PPFM* as appropriate.

20.3.8

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Table: Guidance on with-profits principles and practices

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
(1) Amount payable under a with-profits policy	<p>General</p> <p>(a) Circumstances under which any historical assumptions or parameters, relevant to methods used to determine the amount payable, may be changed;</p>	<p>General</p> <p>(e) For each major class of <i>with-profits policy</i>, methods establishing the main assumptions or parameters that decide the output of methods that determine the amount payable;</p> <p>(f) Degree of approximation allowed when assumptions or parameters are applied across generations of <i>with-profits policyholders</i> or across different types or classes of <i>with-profits policies</i>;</p> <p>(g) Formality with which the methods, parameters or assumptions used are documented;</p> <p>(h) Target range, or target ranges, that have been set for maturity payments;</p> <p>(i) Factors likely to be regarded as relevant to address <i>policyholders' interests</i> or security when determining <i>excess surplus</i>; and</p> <p>Investment return, expenses or charges and tax</p> <p>(j) How investment return, expenses or charges and tax are brought into account and how the impact of those items is determined on the amount payable. In particular:</p> <ul style="list-style-type: none"> (i) any distinctions made in recognising the investment return from a subset of the total assets of a <i>with-profits fund</i>; (ii) whether expenses are apportioned between all the policies in a <i>with-profits fund</i> or apportioned in some other way;

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
	<p>Bonus rates</p> <p>(b) General aims in setting bonus rates and the constraints to which the <i>firm</i> may be subject in changing economic circumstances;</p> <p>(c) How the range of <i>with-profits policies</i> or generations of <i>with-profits policies</i> over which the <i>firm</i> believes a single bonus rate would be appropriate is determined and the circumstances under which it believes a new bonus series would be necessary; and</p>	<p>(iii) the relationship between the liability to tax attributed to a <i>with-profits fund</i> and the tax that the <i>firm</i> imputes to determine the amount payable;</p> <p>(iv) impact on the amount payable of any attributed liability to tax of a <i>with-profits fund</i> as a result of the <i>firm</i> making a transfer to shareholders; and</p> <p>(v) how any other items are brought into account.</p> <p>Bonus rates</p> <p>(k) Current approach to setting bonus rates, including the weight given to recent economic experience. For final bonus rates, the description should include any distinctions made between <i>with-profits policies</i> that remain in force until contractual dates, or dates on which no market value reduction applies (for example, maturity or retirement dates) and policies that are surrendered or transferred at other dates;</p> <p>(l) Frequency at which bonus rates are re-set or expected to be re-set and the circumstances under which changes in the economic environment would cause the time between re-setting to change;</p> <p>(m) Maximum amount by which annual bonuses would alter if annual bonus rates were reset;</p> <p>(n) Approach to setting any interim bonus rates before the next declaration of annual bonus rates;</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		<p>(o) Relationship or interaction between final bonus rates and any market value reductions, if both can apply at the same time;</p> <p>(p) How final bonus rates influence the value of <i>with-profits policies</i> that have formulaic surrender or transfer bases (for example, older conventional policies rather than unitised policies); and</p>
	<p>Smoothing</p> <p>(d) Statement as to whether smoothing is intended to be neutral over time.</p>	<p>Smoothing</p> <p>(q) Any differences in approach for:</p> <ul style="list-style-type: none"> (i) the various types of <i>with-profits policy</i>; (ii) different categories of payout, such as between surrendered policies and maturing policies; and (iii) different generations of <i>with-profits policyholders</i>.
(2) Investment strategy	<p>(a) How the types, classes or mix of assets are determined; and</p> <p>(b) Strategy in respect of derivatives and other instruments.</p>	<p>(c) Whether and to what extent there is hypothecation of assets;</p> <p>(d) Period between formal reviews of investment strategy;</p> <p>(e) Approach to investment in different asset classes, and assets of different credit or liquidity quality, including assets not normally traded; and</p> <p>(f) Details of any external support available to the <i>with-profits fund</i> and how this affects the investment strategy.</p>
(3) Business risk	<p>(a) Where a <i>firm</i> explicitly excludes business risk from a class of <i>with-profits policies</i> but there are residual risks, clarification where these risks such as guarantee and</p>	<p>(c) Current limits which apply to the taking on of business risk; and</p> <p>(d) Whether and to what extent particular generations of <i>with-profits policyholders</i> or classes of <i>with-profits</i></p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
	<p>smoothing costs are borne; and</p> <p>(b) Define where compensation costs from a business risk would be borne.</p>	<p><i>policies</i> bear or might bear particular business risks, including for example, crystallised or contingent guarantees to other classes of <i>policyholders</i> or whether the out-turn from all business risk is pooled across all <i>with-profits policies</i>.</p>
(4) Charges and expenses	<p>(a) Factors that would drive any change to the basis on which the <i>firm</i> applies charges to or apportions its actual expenses amongst <i>with-profits policies</i>, or exercises any discretion to apply charges to particular <i>with-profits policies</i>.</p>	<p>(b) Charges currently applied and the expenses currently apportioned to major classes of <i>with-profits policies</i>;</p> <p>(c) Relationship between the <i>firm's</i> actual charges and expenses, as applied to determine the amounts payable under <i>with-profits policies</i>, and the charges and expenses borne by the <i>with-profits fund</i>;</p> <p>(d) Circumstances under which expenses will be charged to the <i>with-profits fund</i> at an amount other than cost, and the reasons why; and</p> <p>(e) Interval for reviewing any arrangements for out-sourced services, including those provided by connected parties, giving a broad indication of the terms for termination.</p>
(5) Management of inherited estate	<p>(a) Preferred size or scale of <i>inherited estate</i> and implications for the values of the <i>with profits policies</i>; and</p> <p>(b) Any existing division of the <i>inherited estate</i> between <i>with-profits funds</i>; and</p> <p>(c) Any constraints on the freedom to deal with the <i>inherited es</i></p>	<p>(d) How the <i>inherited estate</i> is used, for example, in meeting costs;</p> <p>(e) Whether the investment strategy for the <i>inherited estate</i> differs from the rest of the <i>with-profits fund</i>; and</p> <p>(f) Any current guidelines in place as to the size or scale of the <i>inherited estate</i> or as to</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
(6) Equity between the with-profits fund and any shareholders	<p>state as a result of previous dealings.</p> <p>(a) Arrangements for, and any changes to, profit sharing between shareholders and <i>with-profits policyholders</i>.</p>	<p>how and over what time period the <i>inherited estate</i> would be managed, if it becomes too large or too small.</p> <p>(b) Current basis on which profit between <i>with-profits policyholders</i> and shareholders is divided; and</p> <p>(c) Whether the pricing of any policies being written, and particular policies open to new business, appear to be significantly and systematically reducing the <i>inherited estate</i> if the shareholder transfer is taken into account.</p>

20.4 Communications with with-profits policyholders

- 20.4.1** **R** **Provision and publication of PPFM**
A firm must:
- (1) on request, provide its *PPFM*, or the *PPFM* applicable to specified *with-profits funds*:
 - (a) free of charge to its *with-profits policyholders*; or
 - (b) for a reasonable charge to any person who is not its *with-profits policyholder*; and
 - (2) if the *firm* publishes its *PPFM* on its website, prominently signpost its location there.
- 20.4.2** **R** **Notification of changes**
*A firm must send its *with-profits policyholders* who are affected by any change in its *PPFM*, written notice, setting out any:*
- (1) proposed changes to the *with-profits principles*, three months in advance of the effective date; and
 - (2) changes to the *with-profits practices*, within a reasonable time.
- 20.4.3** **R** *A firm need not give the notice required if the change to its *PPFM*:*
- (1) is necessary to correct an error or omission; or
 - (2) would improve clarity or presentation without materially affecting the *PPFM's substance*; or
 - (3) is immaterial.
- 20.4.4** **R** **Requirements on EEA insurers**
[deleted]
- 20.4.5** **R** [deleted]
- 20.4.6** **G** [deleted]

20.4.7 R **Annual report to with-profits policyholders**

A firm must produce an annual report to its *with-profits policyholders*, which must:

- (1) state whether, throughout the *financial year* to which the report relates, the *firm* believes it has complied with its obligations relating to its *PPFM* and setting out its reasons for that belief;
- (2) address all significant relevant issues, including the way in which the *firm* has:
 - (a) exercised, or failed to exercise, any discretion that it has in the conduct of its *with-profits business*; and
 - (b) addressed any competing or conflicting rights, interests or expectations of its *policyholders* (or groups of *policyholders*) and, if applicable, *shareholders* (or groups of *shareholders*), including the competing interests of different classes and generations.

20.4.8 G The following documents should be annexed to the annual report in this section:

- (1) the report to *with-profits policyholders* made by a *with-profits actuary* in respect of each financial year (see SUP 4.3.16AR(4)); and
- (2) any statement or report provided by the *person* or committee who provides the independent judgement under the *firm's governance arrangements* for its *with-profits business*.

20.4.9 G In preparing the annual report to *with-profits policyholders*, a *firm* should take advice from a *with-profits actuary*.**20.4.10 G** A *firm* should make the annual report available to *with-profits policyholders* within six *months* of the end of the *financial year* to which it relates. A *firm* should notify its *with-profits policyholders* in any annual statements how copies of the report can be obtained.

20.5 With-profits governance

Requirement to appoint a with-profits committee or advisory arrangement

20.5.1

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A firm must, in relation to each *with-profits fund* it operates:

- (1) appoint:
 - (a) a *with-profits committee*; or
 - (b) a *with-profits advisory arrangement* (referred to in this section as an '*advisory arrangement*'), but only if appropriate, in the opinion of the *firm's governing body*, having regard to the size, nature and complexity of the fund in question;
- (2) ensure that the *with-profits committee* or *advisory arrangement* operates in accordance with its *terms of reference*; and
- (3) make available a copy of any *terms of reference* on the *firm's website*, or if the *firm* does not have a website, at the request of *policyholders*.

20.5.2

G

- (1) Ultimate responsibility for managing a *with-profits fund* rests with the firm through its *governing body*. The role of the *with-profits committee* or *advisory arrangement* is, in part, to act in an advisory capacity to inform the decision-making of a *firm's governing body*. The *with-profits committee* or *advisory arrangement* also acts as a means by which the interests of *with-profits policyholders* are appropriately considered within a *firm's governance structures*. The *with-profits committee* or *advisory arrangement* should address issues affecting *policyholders* as a whole or as separately identifiable groups of *policyholders* generally rather than dealing with individual *policyholder complaints* or taking management decisions with respect to a *with-profits fund*.
- (2) If a *firm* considers that it is appropriate to appoint an *advisory arrangement*, a *firm's governing body* will need to decide whether it is appropriate to appoint an *independent person* or one or more *non-executive directors* to carry out the role. The *FCA* expects *firms* to make this determination according to the nature, size and complexity of the fund in question. So the larger or more complex the fund is, the more likely it would be that it would be appropriate to appoint an *independent person*.
- (3) Where a *firm* has appointed a *with-profits committee* to one of its *with-profits funds* it may also decide to appoint that *with-profits committee* to some or all of its other *with-profits funds*, even if the

firm would not have determined it appropriate to appoint a *with-profits committee* to those other funds when considered individually having regard to their size, nature or complexity.

Terms of reference of with-profits committee or advisory arrangement

20.5.3

R

A *firm* must ensure that the *terms of reference* contain, as a minimum, terms having the following effect:

- (1) the role of the *with-profits committee* or *advisory arrangement* is, as relevant, to assess, report on, and provide clear advice and, where appropriate, recommendations to the *firm's governing body* on:
 - (a) the way in which each *with-profits fund* is managed by the *firm* and, if a *PPFM* is required, whether this is properly reflected in the *PPFM*;
 - (b) if applicable, whether the *firm* is complying with the principles and practices set out in the *PPFM*;
 - (c) whether the *firm* has addressed effectively the conflicting rights and interests of *with-profits policyholders* and other *policyholders* or stakeholders including, if applicable, shareholders, in a way that is consistent with *Principle 6* (treating customers fairly); and
 - (d) any other issues with which the *firm's governing body*, *with-profits committee* or *advisory arrangement* considers *with-profits policyholders* might reasonably expect the *with-profits committee* or *advisory arrangements* to be involved;
- (2) that the *with-profits committee* or *advisory arrangement* must:
 - (a) decide on the specific matters it will consider in order to enable it to carry out its role described in (1)(a) to (d) as appropriate to the particular circumstances of the *with-profits fund(s)*; and
 - (b) in any event give appropriate consideration to the following non-exhaustive list of specific matters:
 - (i) the identification of surplus and *excess surplus*, the merits of its distribution or retention and the proposed distribution policy;
 - (ii) how bonus rates, smoothing and, if relevant, market value reductions have been calculated and applied;
 - (iii) if relevant, the relative interests of *policyholders* with and without valuable guarantees;
 - (iv) the *firm's* *with-profits customer communications* such as annual *policyholder statements* and *product literature* and whether the *with-profits committee* or *advisory arrangement* wishes to make a statement or report to *with-profits policyholders* in addition to the annual report made by a *firm*;
 - (v) any significant changes to the risk or investment profile of the *with-profits fund* including the management of material illiquid investments and the *firm's* obligations in relation to *strategic investments*;
 - (vi) the *firm's* strategy for future sales supported by the assets of the *with-profits fund* and its impact on surplus;

- (vii) the impact of any management actions planned or implemented;
 - (viii) relevant management information such as customer complaints data (but not necessarily information relating to individual customer complaints);
 - (ix) the drafting, review, updating of and compliance with run-off plans, court schemes and similar matters;
 - (x) the costs incurred in operating the *with-profits fund*;
 - (xi) the identification and extent of the *firm's with-profits funds*, with particular regard to the considerations as to whether a part of the *with-profits fund* constitutes a separate *with-profits fund* in accordance with ■ COBS 20.1A.2 R (Sub-funds); and
 - (xii) the use and purpose of, and terms under which, support assets are available to the *with-profits fund*, having regard to the considerations in ■ COBS 20.2.33 G to ■ COBS 20.2.34 G and ■ COBS 20.2.34A R.
- (3) that any person appointed as a member of the *with-profits committee* or as a person carrying out the advisory arrangement must have the appropriate skills, knowledge and experience to perform, or contribute to, as appropriate, the role set out in (1) and (2);
- (4) if the firm appoints a *with-profits committee*:
- (a) that there must be three or more members;
 - (b) that the quorum for any meeting (or decision by written procedure) must be at least half of the number of, and no less than two, members; and
- (5) that the *with-profits committee* or advisory arrangement must:
- (a) advise the *governing body* on the suitability of candidates proposed for appointment as the *with-profits actuary*; and
 - (b) assess the performance of the *with-profits actuary* at least annually, and report its view to the *governing body* of the *firm*.

20.5.4

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- (1) The FCA expects that a *with-profits committee* will meet at least quarterly and ad hoc if required.
- (2) The FCA expects that, in general, a *with-profits committee* or advisory arrangement will work closely with the *with-profits actuary*, and obtain his opinion and input as appropriate.

Role of with-profits committee or advisory arrangement in the firm's governance

20.5.5

R

A firm must:

- (1) ensure that its *governing body*, in the context of its consideration of issues referred to in ■ COBS 20.5.3R (1)(a) to ■ (d) and ■ (2)(b)(i) to ■ (x):
 - (a) obtains, as relevant, assessments, reports, advice and/or recommendations of the *with-profits committee* or advisory arrangement, if the *governing body*, the *with-profits committee*

or advisory arrangement considers that significant issues concerning the interests of *with-profits policyholders* need to be considered by the *firm*;

- (b) allows the *with-profits committee* or advisory arrangement sufficient time to enable it to provide fully considered input on the issues to be considered;
 - (c) considers fully and gives due regard to the input of the *with-profits committee* or advisory arrangement when determining issues concerning the management of the *with-profits funds* and the interests of *with-profits policyholders*;
 - (d) if the *governing body* decides to depart in any material way from the advice or recommendations of the *with-profits committee* or advisory arrangement, sets out fully its reasons and allows the *with-profits committee* or advisory arrangement a reasonable period to consider them and respond; and
 - (e) considers any further representations from the *with-profits committee* or advisory arrangement and, if appropriate, sets out fully any additional reasons if it continues to depart from the *with-profits committee* or advisory arrangement's advice or recommendation;
- (2) provide a *with-profits committee* or advisory arrangement with sufficient resources as it may reasonably require to enable it to perform its role effectively;
 - (3) notify the *FCA* of the decision of the *governing body* to depart from the advice or recommendation of the *with-profits committee* or advisory arrangement if the *with-profits committee* or advisory arrangement considers that the issue is sufficiently significant and requests of the *governing body* that the *FCA* be informed; and
 - (4) consult the *with-profits actuary* on the appointment of a new member of the *with-profits committee* or of the person or persons carrying out the advisory arrangement.

20.5.6

G

- (1) ■ COBS 20.5.5R (2) requires that a *firm* provides a *with-profits committee* or advisory arrangement with sufficient resources. A *with-profits committee* or advisory arrangement should be able to obtain external professional, including actuarial, advice, at the expense of the *firm*, if the *with-profits committee* or advisory arrangement considers the advice to be necessary to perform its role effectively. In a proprietary *firm* the *with-profits committee* or advisory arrangement should be able to request that the cost of the external professional advice either is not chargeable to the *with-profits fund* in question, or is shared with the *with-profits fund*, according to whether the issue under consideration is wholly or partly to the benefit of the *firm* rather than *policyholders*. A *with-profits committee* or advisory arrangement should also be adequately supported by the *firm*'s own internal resources and support functions. This may include the *firm* ensuring that relevant employees, including the *with-profits actuary*, are made sufficiently available, and provide relevant information and input, to assist the *with-profits committee* in its role, as required.
- (2) If the *with-profits committee* or advisory arrangement wishes to make a statement or report to *with-profits policyholders* in addition to the

annual report made by a *firm*, the effect of ■ COBS 20.5.5R (2) is that a *firm* will need to facilitate this.

- (3) In order to comply with ■ SYSC 3.2.20 R the *FCA* expects *firms* to keep full records of all requests of, and material produced by, the *with-profits committee* or advisory arrangement, and of all decisions and reasons of the *governing body* as described in ■ COBS 20.5.5R (1)(d) and ■ (e).
- (4) For the purposes of ■ COBS 20.5.5R (3), the *FCA* expects that it will only be in exceptional circumstances that a *with-profits committee* or alternative arrangement will consider a departure from a recommendation or advice to be sufficiently significant to warrant its making a request of the *governing body* that the *FCA* be informed.

Assessment of independence by governing body

20.5.7

G

- (1) The *FCA* expects the *governing body* of the *firm* to decide whether a member of the *with-profits committee* or a person (other than a *non-executive director*) carrying out the advisory arrangement is independent. The *FCA* expects a *firm's governing body* to adopt the following approach and have regard to the following factors when making this assessment:
 - (a) the *governing body* should determine whether the person is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the person's judgment; and
 - (b) the *governing body* should state its reasons if it determines that a person is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the person:
 - (i) has been an employee of the *firm* or group within the last five years; or
 - (ii) has, or has had within the last three years, a material business relationship with the *firm* either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the *firm*; or
 - (iii) has received or receives additional remuneration from the *firm*, participates in the *firm's share option* or a performance-related pay scheme, or is a member of the *firm's pension scheme*; or
 - (iv) has close family ties with any of the *firm's advisers*, directors or senior employees; or
 - (v) has significant links with the *firm's directors* through involvement in other companies or bodies; or
 - (vi) represents a significant shareholder; or
 - (vii) has served on the *governing body* for more than nine years from the date of their first election.
- (2) If a *firm* appoints one or more *non-executive directors* to carry out the advisory arrangement, the *FCA* expects the *governing body* of the *firm* to be satisfied that that person or persons is or are adequately able to provide independent judgment.

20.5.8

G**Governance arrangements in relation to the PPFM**

In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering (■ SYSC 3.2.6 R), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records, any applicable *PPFM*. These arrangements should:

- (1) be appropriate to the scale, nature and complexity of the *firm's with-profits business*; and
- (2) include the approval of the *firm's PPFM* by its *governing body*.

Chapter 21

Permitted Links and conditional permitted links

21.1 Application

- 21.1.1** **R** The *rules* in this section apply on an ongoing basis to *insurers* who effect G1980/*linked long-term contracts*.
- 21.1.1-A** **R** Where this chapter sets out conditions or requirements in relation to *conditional permitted links*, those conditions or requirements also apply in relation to any *conditional permitted links* that a *linked fund* invests in via *permitted units*.
- Limit to the application of COBS 21.3**
- 21.1.1A** **R** COBS 21.3 (Further rules for firms engaged in linked long-term insurance business) applies only in respect of *linked long-term contracts of insurance* where the investment risk is borne by a *policyholder* who is a natural person.
- 21.1.2** **R**

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

- 21.2.1** **R** For the purposes of determining *policyholder* benefits, a *firm* must ensure that the values of its *permitted links* and *conditional permitted links* are determined fairly and accurately.
- 21.2.1A** **R** An *insurer* must not contract to provide benefits under *linked long-term contracts of insurance* that are determined wholly or partly, directly or indirectly, by reference to fluctuations in any index or wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than in accordance with the rules in this section.
- 21.2.1B** **G** *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.
- 21.2.2** **R**
- 21.2.3** **R**
- 21.2.4** **R** A *firm* must notify its *linked policyholders* of the risk profile and investment strategy for the *linked fund*:
- (1) at *inception*;
 - (2) before making any material changes; and
 - (3) (in relation to *conditional permitted links*) at other appropriate times, taking into account a *policyholder's* needs.
- Reinsurance**
- 21.2.4A** **R** A *firm* that has entered into a *reinsurance contract* in respect of its linked long-term insurance business must nevertheless discharge its responsibilities under its *linked long-term insurance contracts*, as if no *reinsurance contract* had been effected.
- 21.2.4B** **G** To comply with the requirements of **COBS 21.2.4A R**, a *firm* should:
- (1) disclose to *policyholders* the implications of any credit-risk exposure they may face in relation to the solvency of the reinsurer; and

21

		(2) suitably monitor the way the reinsurer manages the business in order to discharge its continuing responsibilities to <i>policyholders</i> .
21.2.5	R	
21.2.6	R	
21.2.7	R	
21.2.8	R	<p>Notification to the FCA</p> <p>A firm must notify the FCA in writing as soon as it becomes aware of any failure to meet the requirements of COBS 21, or of the PRA Rulebook Solvency II Firms Investments or the PRA Rulebook: Non-Solvency II firm sector to the extent applicable to <i>linked long-term contracts of insurance</i>.</p>
21.2.9	G	In considering what action to take in response to written notification of a failure to meet the requirements of this section, the FCA will have regard to the extent to which the relevant circumstances are exceptional and temporary and to any other reasons for the failure.

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

Application

21.3.-1 **R** The *rules* in this section apply to *linked long-term contracts of insurance* where the investment risk is borne by a *policyholder* who is a natural person.

Permitted links and conditional permitted links

21.3.1 **R** An *insurer* must not contract to provide benefits under *linked long-term contracts of insurance* that are determined:

- (1) wholly or partly, or directly or indirectly, by reference to fluctuations in any index other than an *approved index*;
- (2) wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than any of the following:
 - (a) *approved securities*;
 - (b) *listed securities*;
 - (c) *permitted unlisted securities*;
 - (d) *permitted land and property*;
 - (e) *permitted loans*;
 - (f) *permitted deposits*;
 - (g) *permitted scheme interests*;
 - (h) *approved money market instruments* meeting the requirements in ■ COBS 21.3.6 R to ■ COBS 21.3.8 G;
 - (i) cash;
 - (j) *permitted units*;
 - (k) *permitted stock lending*;
 - (l) *permitted derivatives contracts*; and
 - (m) *conditional permitted links*.

21.3.1A **R** A *firm* must classify the types of property listed in ■ COBS 21.3.1R (2)(a) to ■ (2)(m) according to their economic behaviour ahead of their legal form.

21.3.2 **G** (1) Nothing in these rules prevents a *firm* making allowance in the value of any *permitted link* or *conditional permitted link* for any notional

		tax loss associated with the relevant <i>linked assets</i> for the purposes of fair pricing.
(2)		In the FCA's view the Consumer Prices Index, as well as the Retail Prices Index, is a national index of retail prices and so may be used as an <i>approved index</i> for the purposes of ■ COBS 21.3.1R (1).
21.3.3	R	
21.3.4	G	
21.3.5	R	
21.3.6	R	<p>Money-market instruments</p> <p>A <i>money-market instrument</i> will be regarded as normally dealt in on the money market if it:</p> <ul style="list-style-type: none">(1) has a maturity at issuance of up to, and including, 397 days; or(2) has a residual maturity of up to, and including, 397 days; or(3) undergoes regular yield adjustments in line with money market conditions at least every 397 days; or(4) undergoes regular yield adjustments in line with money market conditions at least every 397 days.
21.3.7	R	<ul style="list-style-type: none">(1) A <i>money-market instrument</i> will be regarded as liquid if it can be sold at limited cost in an adequately short timeframe.(2) A <i>money-market instrument</i> will be regarded as having a value which can be accurately determined at any time if accurate and reliable valuations systems, which fulfil the following criteria, are available:<ul style="list-style-type: none">(a) enabling the <i>firm</i> to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and(b) based either on market data or on valuation models, including systems based on amortised costs.(3) A <i>money-market instrument</i> that is normally dealt in on the money market and is admitted to, or dealt in, on an <i>eligible</i> market will be presumed to be liquid and have a value which can be accurately determined at any time, unless there is information available to the <i>firm</i> that would lead to a different determination.

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.

21.3.9**R**

A *permitted stock lending* transaction is one which, for a Solvency II firm, satisfies the requirements in ■ COBS 21.3.11 R to ■ COBS 21.3.12 R and, for an insurer which is not a Solvency II firm, satisfies ■ INSPRU 3.2.36A R to ■ INSPRU 3.2.42 G.

21.3.10**R**

The specific method of *stock lending* permitted is an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers *securities* to the borrower other than by way of *sale* and the borrower is to transfer those *securities*, or *securities of* the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing *collateral* to the "lender" to cover him against the risk that the future transfer back of the *securities* may not be satisfactorily completed.

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 in an EEA State*; or
 - (iii) a *person registered as a broker-dealer with the Securities and Exchange Commission of the United States of America*; or
 - (iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to *OTC derivatives*, by at least one of the following federal banking supervisory authorities of the United States of America:
 - (A) [deleted];
 - (B) the Federal Deposit Insurance Corporation;
 - (C) the Board of Governors of the Federal Reserve System; and
 - (D) the Office of Thrift Supervision; and
 - (c) *collateral* is obtained to secure the obligation of the counterparty under the terms in (a) and the *collateral* is:
 - (i) acceptable to the *firm*;
 - (ii) adequate; and
 - (iii) sufficiently immediate; and

- (d) for the purposes of *property-linked assets* only:
- (i) where the *linked policyholder* bears the whole of the risk associated with the *stock lending* transaction, the *linked policyholder* receives the whole of the recompense (net of fees and expenses);
 - (ii) the extent of any risk that the *linked policyholder* bears in relation to the *stock lending* transaction is disclosed to them; and
 - (iii) where the risk associated with the *stock lending* transaction is borne outside the *linked fund*, the linked fund receives a fair and reasonable recompense for the use of the *linked policyholders' funds*.
- (2) The counterparty for the purpose of (1) is the *person* who is obliged under the agreement in (1)(a) to transfer to the *firm* the *securities* transferred by the *firm* under the *stock lending* arrangement or *securities* of the same kind.
- (3) ■ COBS 21.3.11R (1)(c) does not apply to a *stock lending* transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

Stock lending: treatment of collateral

21.3.12

R

- (1) *Collateral* is adequate for the purposes of this section only if it is:
- (a) transferred to the *firm* or the *firm's agent*;
 - (b) at least equal in value, at the time of the transfer to the *firm* or its agent, to the value of the *securities* transferred by the *firm*; and
 - (c) in the form of one or more of:
 - (i) cash;
 - (ii) a certificate of *deposit*;
 - (iii) a letter of *credit*;
 - (iv) a *readily realisable security*;
 - (v) commercial paper with no embedded *derivative content*;
 - (vi) a *qualifying money market fund*.
- (2) *Collateral* is sufficiently immediate for the purposes of this section if:
- (a) it is transferred before or at the time of the transfer of the *securities* by the *firm*; or
 - (b) the *firm* takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the *day* of the transfer.
- (3) The *firm* must ensure that the value of the collateral at all times is at least equal to the value of the *securities* transferred by the *firm*.
- (4) The duty in (3) may be regarded as satisfied in respect of *collateral* the validity of which is about to expire, or has expired, where the *firm* takes reasonable care to determine that sufficient *collateral* will

21.3.13

be transferred, at the latest, by the close of business on the day of expiry.

Permitted derivatives contracts

21

A *permitted derivatives contract* is one which:

- (1) for a *Solvency II firm*, is effected or issued:
 - (a) on or under the rules of a *regulated market*; or
 - (b) off-market with an *approved counterparty*; andsatisfies ■ COBS 21.3.14 G; and
- (2) for an *insurer* which is not a *Solvency II firm*, satisfies ■ INSPRU 3.2.5 R to ■ INSPRU 3.2.35A G with the exception of ■ INSPRU 3.2.18 R; and
- (3) in each of (1) and (2) the provisions are applied in relation to assets covering liabilities in respect of *linked long-term contracts of insurance*.

21.3.14

G *Solvency II firms* are also required to comply with the PRA Rulebook Solvency II Firms Investment and ensure that the use of *derivative contracts* is adequately covered. *Firms* are also referred to the *rules* in ■ COLL 5.3 (Derivative Exposure) in relation to the use of *derivatives* in investment funds and the further guidance from CESR and its successor body, ESMA, which represent good practice in this area.

Conditional permitted links

21.3.15

A *conditional permitted link* is any of the following property where the conditions in ■ COBS 21.3.16R are met:

- (1) *conditional permitted unlisted securities*;
- (2) *conditional permitted immovables*;
- (3) *conditional permitted loans*;
- (4) *conditional permitted scheme interests*;
- (5) *conditional permitted long-term asset funds*; and
- (6) (only in respect of a *linked fund* included in the *default arrangement of a qualifying scheme*) *conditional permitted illiquid assets*.

21.3.16

R The conditions for the property in ■ COBS 21.3.15R to be a *conditional permitted link* are that an *insurer* must ensure, on a continuing basis, that:

- (-1) (only in respect of *conditional permitted long-term asset funds* to be held other than in connection with a *qualifying scheme*) the *policyholder* has received:
 - a *personal recommendation*, or investment management services, from a *firm*, as to the suitability of the investment for the *policyholder*; or
- (b) (where the *policyholder* has not received any of the services in (a)) an assessment from a *firm* (which could be the *insurer*, and

where the circumstances are appropriate, the *firm* may rely on assessments made by another *person* on whom it is reasonable for the *firm* to rely) that the investment is appropriate for the *policyholder* in accordance with ■ COBS 21.3.16AR;

- (1) a *linked policyholder* is not prevented by the nature of any *conditional permitted link* from exercising any right under the *linked long-term contract of insurance* within the timeframe specified in that contract and, in any event;
 - (a) (in relation to rights to take benefits due under the contract) within a reasonable timeframe based on the needs of the *linked policyholder*; and
 - (b) (in relation to other rights under the contract) within a timeframe that may be reasonably necessary to allow the *firm* to manage the *linked fund* prudently and in the best interests of all relevant *policyholders* linked to the fund.
- (2) the investment risks of any *conditional permitted links*, both individually and in combination with other investments within a linked fund, are suitable and appropriate for:
 - (a) circumstances where investment risk is borne by a *linked policyholder*;
 - (b) the expected period to maturity of the *linked long-term contract of insurance*; and
 - (c) the purpose for which the *linked policyholder* holds the *linked long-term contract of insurance*.
- (3) (only in respect of *conditional permitted illiquid assets*) the *linked fund* investing in *conditional permitted illiquid assets* may only be included in the *default arrangements* of a *qualifying scheme*.

21.3.16A R

- (1) The appropriateness assessment in ■ COBS 21.3.16R(-1)(b) must be done in accordance with the *rules* in either ■ COBS 10 or ■ COBS 10A.
 - (2) The effect of (1) is that if the *rules* in ■ COBS 10 or ■ COBS 10A do not apply to a *firm*, the assessment the *policyholder* has received must be undertaken by the *firm* as if the *rules* in ■ COBS 10 or ■ COBS 10A applied.
 - (3) Where (2) applies, the condition in ■ COBS 21.3.16R(-1)(b) will be met where a *firm* has conducted the appropriateness assessment in accordance with either:
 - (a) ■ COBS 10 as it would apply to a *firm* that *arranges* or *deals* in relation to a *unit* in a *long-term asset fund*; or
 - (b) ■ COBS 10A as it would apply to a *firm* that either:
 - (i) provides *investment services* in relation to a *unit* in a *long-term asset fund*; or
 - (ii) carries on *insurance distribution* in relation to an *insurance-based investment product* (taking into account the guidance in ■ COBS 10A 2.12G as if it referred to investment in *conditional permitted long-term asset funds*), and
- the *firm* must apply the set of *rules* in either (a), (b)(i) or (b)(ii) which are the most:

- (c) consistent with the *firm's* understanding and experience; and
 - (d) appropriate for the *policyholder*.
- (4) The appropriateness assessment must ensure (but is not limited to ensuring) that the total exposure the *policyholder* has or would have to *conditional permitted long-term asset funds*, at the point the investment is made and based on expected contributions at the time, is not greater than 10% of:
- (a) (in relation to a *policy* held by an individual *policyholder* who is a natural person) the person's exposure to *permitted links* in the *policy*;
 - (b) (other than in (a) and (c) and where the investment risk is borne by a *policyholder* who is a natural person) that natural person's individual exposure to *permitted links* in the *policy*; or
 - (c) (where the *policy* is used by the holder of the *policy* for the purposes of providing benefits under a pension scheme, other than a *qualifying scheme*, and the investment risk is borne by a member of the scheme who is a *policyholder* and a natural person), the value of that natural person's benefits under the pension scheme.

21.3.16B G

- (1) Where a *firm* carries out insurance distribution in relation to an *insurance-based investment product* that includes investment in a *conditional permitted long-term asset fund*, the appropriateness requirement in ■ COBS 10A will apply to that *firm* in any event. Therefore, ■ COBS 21.3.16AR(2) will not be relevant to that activity.
- (2) Where the rules in ■ COBS 10 or ■ COBS 10A do not apply, the *firm* undertaking the appropriateness assessment will have the option of electing which *rules* would be most appropriate to follow. The purpose of this is to allow for *firms* to carry out the appropriateness assessment under the *rules* with which they may be most familiar for example where they are involved with the distribution of *units* in *long-term asset fund* or where the *firm* already has processes in place to meet ■ COBS 10A in relation to *insurance-based investment products*. However, this flexibility will need to be exercised in a way that maintains adequate protection for *policyholders* wanting to invest in *conditional permitted long-term asset funds*.
- (3) Where a *firm* is subject to the *rules* in ■ COBS 10A when providing *investment services* in relation to *units* in a *long-term asset fund* it should not elect to comply with the *rules* in ■ COBS 21.3.16AR(3)(a) or ■ (b)(ii) unless it can demonstrate why applying those *rules* was appropriate for the *policyholder*.
- (4) Where the *policy* is used for the purposes of a pension arrangement (for example an *occupational pension scheme* where the trustees include investment in a *long-term contract of insurance*) under which there is more than one *policyholder*, the assessment in ■ COBS 21.3.16AR(4)(c), should consider the total individual exposure that any relevant *policyholder* (who is a natural person and bears the investment risk) has to *conditional permitted long-term asset funds* in that pension scheme, compared to the total value of the benefits that person has under their individual arrangement in the pension scheme.

- 21**
- 21.3.16C G** For ■ COBS 21.3.16R(-1)(b) it would be reasonable for an *insurer* to rely on assessments carried out by a person who is not a *firm* where:
- (1) this is properly done by or for an *occupational pension scheme* trustee or otherwise where the person has a legal responsibility to the *policyholder* who is a natural person to assess appropriateness;
 - (2) the *insurer* has the necessary systems and controls to determine how the assessment assists the *insurer* to comply with ■ COBS 21.3.16AR; and
 - (3) where there is not another *firm* that has (or could) carry out an appropriateness assessment that the *firm* is able to rely on.
- 21.3.17 G**
- (1) Rights under a *linked long-term contract of insurance* which may be relevant for the purposes of ■ COBS 21.3.16R(1) would include a *linked policyholder's* right to:
 - change the property to which the benefits of the *linked long-term contract of insurance* are linked;
 - take benefits due under the *linked long-term contract of insurance*. Benefits due are those which the contract envisages will be paid at a particular date or on the occurrence of a particular event; or
 - withdraw early or transfer the proceeds of, or benefits under, the *linked long-term contract of insurance*. Early withdrawal refers to withdrawals prior to the time or event for paying benefits due that is specifically envisaged in the contract.
 - (2) A *firm* will have to pay benefits due under a *linked long-term contract of insurance* (for example on death or maturity) as specified in the contract. A *firm* is not permitted to specify in the contract that it can defer the payment of any such benefits as, in any event, benefit payments have to be made within a reasonable period based on the needs of the *policyholder*.
 - (3) A *linked long-term contract of insurance* may provide that the *policyholder's* right to exercise rights under (1)(a) or (1)(c) is deferred for as long as may be reasonably necessary to allow the *firm* to ensure that a *linked fund* can be managed in a manner that is prudent and in the best interests of all relevant *policyholders* linked to the fund. The *firm* will need to ensure that it explains clearly to a *policyholder* the impact of any such provision on the *policyholder's* rights to withdraw early, switch or transfer.
- 21.3.18 G** The assessment in ■ COBS 21.3.16R(2), in relation to a *linked fund* which is included in a default or similar arrangement for a pension scheme, would include ongoing consideration of:
- (1) whether the investment risks of any *conditional permitted links* remain suitable and appropriate for a particular cohort of *linked policyholders*, including as that cohort moves toward retirement; and
 - (2) where the *linked fund* contains *conditional permitted long-term asset funds* or *conditional permitted illiquid assets*, the total exposure of the *default arrangement* to those *investments*.

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The assessment in ■ COBS 21.3.16R(2), in relation to a *linked fund* which is included in an individual pension arrangement under a *qualifying scheme* in circumstances where the member self-selects the *linked assets*, must include ensuring that the total exposure of that individual pension arrangement to *conditional permitted long-term asset funds* is not greater than the higher of:

- (1) the exposure to *conditional permitted long-term asset funds* and/or *conditional permitted illiquid assets* which would be considered suitable and appropriate if that member were invested only in the *qualifying scheme's default arrangement*; or
- (2) 10% of the total value of the benefits in that individual pension arrangement under the *qualifying scheme*.

G

- (1) The assessment of the thresholds in ■ COBS 21.3.16AR(4) and ■ COBS 21.3.18AR should consider whether these are or would be exceeded at the point of the proposed investment being made (including the effect of any ongoing contributions as part of that investment).
- (2) Before the *policyholder* makes any further investment in *conditional permitted long-term asset funds* there will need to be an assessment of whether the conditions in ■ COBS 21.3.16R, including the thresholds in ■ COBS 21.3.16AR(4) and ■ COBS 21.3.18AR, will continue to be met (including in relation to ongoing monthly contributions where the thresholds could be breached).
- (3) An *insurer* should consider how to meet the obligation in ■ COBS 21.3.16R for the conditions to be met on a 'continuing basis' and also its obligations under wider *rules* including the *Principles*. Whilst the condition in ■ COBS 21.3.16R(-1) would apply at the point the particular investment is being made including taking account of any ongoing contributions as part of that investment (rather than on a continuing basis), the *insurer* should have appropriate arrangements in place to identify whether a *policyholder*'s investment exposure has become, or risks becoming, materially inconsistent with the thresholds in ■ COBS 21.3.16AR(4) or ■ COBS 21.3.18AR. Where this has occurred the *insurer* should take appropriate action for example communicating with the *policyholder* about this risk and their options.

Conditional permitted links: requirements

21.3.19**R**

Where a *linked fund* is invested in any *conditional permitted link*, no more than 35% of the gross assets of the *linked fund*, when aggregated together, can be invested in:

- (1) *permitted scheme interests* in (b)(v) of the *Glossary* definition of that term; and
- (2) *conditional permitted links*.

21.3.19A**R**

The gross assets that a *linked fund* invests in *conditional permitted long-term asset funds* (when included in a *qualifying scheme*) or *conditional permitted illiquid assets* (when included in the *default arrangement* of a *qualifying*

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21.3.20

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scheme) must not be included in any part of the calculation when working out whether the limit set out in ■ COBS 21.3.19R has been exceeded.

Where a *linked fund* is invested in any *conditional permitted link*, the information that a *firm* must give a *linked policyholder* under ■ COBS 21.2.4R must also prominently include, clearly and in language capable of being understood by a *linked policyholder*:

- (1) an explanation of the risks associated with any *conditional permitted links* and/or gross assets in *permitted scheme interests* in (b)(v) of the *Glossary* definition of that term exceeding 20%, how these might crystallise and how they might impact on a *linked policyholder*;
- (2) a description of the tools and arrangements which the *insurer* would propose using, including those required by *FCA rules*, to mitigate the risks in (1);
- (3) an explanation of the circumstances in which these tools and arrangements would typically be deployed and the likely consequences for *linked policyholders*; and
- (4) an explanation of the possible impact on the *policyholder* of any provision in a *linked long-term contract of insurance* permitted under this section which allows for the deferral of the exercise of any rights under the contract.

Chapter 22

Restrictions on the distribution of certain complex investment products

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 *United Kingdom* where the *retail client* is to enter into the *deal* as buyer.
- (2) The requirements in this section do not apply if:
- (a) the *firm* has taken reasonable steps to ensure that one (or more) of the exemptions in ■ COBS 22.2.4R applies; or
- (b) the *deal* relates to the trading of a *mutual society share* in the secondary market.

In this section, a *retail client* of the *firm* includes a person who would be a *retail client* if he were receiving services in the course of the *firm* carrying on a *regulated activity*.

- 22.2.1A** **G**
- COBS 22.2 does not apply in relation to deferred shares issued by a *credit union*. Firms are reminded that ■ CREDs 3A contains requirements regarding the retail distribution of these shares.

Risk warning requirement

- 22.2.2** **R**
- The *firm* must give the *retail client* the following risk warning on paper or another *durable medium* and obtain confirmation in writing from the *retail client* that he has read it, in good time before the *retail client* has committed to *buy* the *mutual society share*:

"The investment to which this communication relates is a share. Direct investment in shares can be high risk and is very different to investment in deposit accounts or other savings products. In particular, you should note that:

- (i) the entire amount you invest is at risk;
- (ii) income, distribution or dividend payments are not guaranteed, are entirely discretionary, and may be suspended or cancelled at any time, for any reason;
- (iii) the share is a perpetual instrument with no maturity date, and there is no obligation on the issuer to buy the share back;
- (iv) the share may be difficult to sell on for the price you paid for it, or any price; and
- (v) investing more than 10% of your savings or net investment portfolio in this type of instrument is unlikely to be in your best interests."

22.2.3

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Further requirements for non-advised, non-MiFID sales

- (1) The requirements in (2) and (3) must be met if:
 - (a) the *firm* is not providing an *investment service* in the course of *MiFID or equivalent third country business*; and
 - (b) the *retail client* is not otherwise receiving a *personal recommendation* on the *mutual society share* from the *firm* or another person.
- (2) The *firm* must give the *retail client* the following statement on paper or another *durable medium* and obtain confirmation in writing from the *retail client* that he or she has signed it, in good time before the *retail client* has committed to *buy* the *mutual society share*:

"I make this statement in connection with proposed investment in mutual society shares. I have been made aware that investing more than 10% of my net assets in mutual society shares is unlikely to be in my best interests. I declare that the proposed investment would not result in more than 10% of my net assets being invested in mutual society shares. Net assets for these purposes mean my financial assets after deduction of any debts I have, and do not include:

- (a) the property which is my primary residence, any amount owed under a mortgage relating to the purchase of that property, or any money raised through a loan secured on that property;
- (b) any rights of mine under a qualifying contract of insurance (for example, a life assurance or critical illness policy);
- (c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are) or may be entitled; or
- (d) any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

I accept that the investment to which this statement relates will expose me to a significant risk of losing all the money invested.

Signature:

Date: "

- (3) The *firm* must assess whether investment in the *mutual society share* is appropriate for the *retail client*, complying with the requirements in ■ COBS 10 as though the *firm* was providing non-advised *investment services* in the course of *MiFID or equivalent third country business*.

22.2.4

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Each of the exemptions listed below applies only if the *retail client* is of the type described for the exemption and provided any additional conditions for the exemption are met.

Title	Type of retail client	Additional conditions
Certified high net worth investor	(a) An individual who meets the requirements set out in COBS 4.12B.38R; or	The <i>firm</i> must consider that the <i>mutual society share</i> is likely to be suitable for that individual, based on a pre-

Title	Type of retail client	Additional conditions
Certified sophisticated investor	<p>(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) above.</p> <p>(a) An individual who meets the requirements set out in COBS 4.12B.39R; or</p> <p>(b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the <i>firm's</i> client.</p>	Not applicable.
Self-certified sophisticated investor	<p>(a) An individual who meets the requirements set out in COBS 4.12B.40R; or</p> <p>(b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the <i>firm's</i> client.</p>	Not applicable.

Adaptation of other rules and guidance to mutual society shares

22.2.5

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- (1) For the purposes of any assessments or certifications required by the exemptions in ■ COBS 22.2.4R, any references in ■ COBS 4.12B provisions to *non-mass market investments* must be read as though they are references to mutual society shares.
- (2) [deleted]

22.2.6

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- (2) The *firm* must give the *retail client* a written copy of any risk warning or statement that that individual has been asked to sign for the purposes of compliance with this section.

Record keeping

A *firm* which carries on an activity which is subject to this section must comply with the following record-keeping requirements:

- (1) the *person allocated the compliance oversight function* in the *firm* must make a record at or near the time of the activity certifying it complies with the requirements set out in this section;
- (2) the making of the record required in (1) may be delegated to one or more *employees* of the *firm* who report to and are supervised by the *person allocated the compliance oversight function*, provided the process for certification of compliance has been reviewed and approved by the *person allocated the compliance oversight function* no more than 12 months before the date of the deal;
- (3) the record in (1) must include information and evidence demonstrating compliance with each of the requirements in this section, as applicable;
- (4) if the requirements in ■ COBS 22.2.2R and ■ COBS 22.2.3R did not apply because the *firm* relied on one of the exemptions, the record in (1) must include which exemption was relied on, together with the reason why the *firm* is satisfied that that exemption applies;
- (5) where the *firm* relies on the *certified high net worth investor*, the *certified sophisticated investor* or the *self-certified sophisticated investor* exemption, the record required in (1) must include a copy of the certificate or investor statement (as signed by the investor) and of the warnings or indications required by the exemption;
- (6) a *firm* must retain the record required in (1) for five years if it relates to *MiFID* or *equivalent third country business*, and otherwise for three years.

Electronic documents

22.2.7

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In this section:

- (1) any requirement that a document is signed may be satisfied by an electronic signature or electronic evidence of assent; and
- (2) any references to writing should be construed in accordance with ■ GEN 2.2.14R and its related *guidance* provisions.

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

Restrictions

22.3.1

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- (1) The restrictions in this section apply in relation to the following *investments*:
 - (a) a *contingent convertible instrument*; or
 - (b) a security issued by a *CoCo fund*; or
 - (c) a beneficial interest in either of (a) or (b).
- (2) A *firm* must not:
 - (a) *sell an investment to a retail client in the 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 *United Kingdom*.
- (3) The restrictions do not apply if the firm has taken reasonable steps to ensure that one (or more) of the exemptions in **COBS 22.3.2R** applies.
- (4) In this section a *retail client* includes a person who would be a *retail client* if he were receiving services from the *firm* in the course of the *firm* carrying on a *regulated activity*.

Exemptions

22.3.2

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Each of the exemptions listed below applies only if the *retail client* is of the type described for the exemption and provided any additional conditions for the exemption are met.

Title	Type of retail client	Additional conditions
Certified high net worth investor	(a) An individual who meets the requirements set out in COBS 4.12B.38R ; or (b) a person (or persons) legally empowered to make investment decisions on behalf of the individual.	The <i>firm</i> must consider that the <i>investment</i> is likely to be suitable for that individual, based on a preliminary assessment of that individual's profile and objectives (see COBS 4.12B.9G(2)).

Title	Type of retail client	Additional conditions
Certified sophisticated investor	<p>behalf of an individual who meets the earnings or net asset requirements in (a) above.</p> <p>(a) An individual who meets the requirements set out in COBS 4.12B.39R; or</p> <p>(b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the <i>firm's</i> client.</p>	Not applicable.
Self-certified sophisticated investor	<p>(a) An individual who meets the requirements set out in COBS 4.12B.40R; or</p> <p>(b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the <i>firm's</i> client.</p>	The <i>firm</i> must consider that the <i>investment</i> is likely to be suitable for that individual, based on a preliminary assessment of that individual's profile and objectives (see COBS 4.12B.9G(2)).
Solicited advice	Any <i>retail</i> client.	<p>The restrictions do not apply provided all of the following requirements are met:</p> <ul style="list-style-type: none"> (a) there is no invitation or inducement to participate in, acquire or underwrite the <i>investment</i> other than a <i>personal recommendation</i> on the <i>investment</i>; (b) the <i>personal recommendation</i> is made following a specific request by that <i>client</i> for advice on the <i>investment</i>; and (c) the <i>client</i> has not previously received any other communication

Title	Type of retail client	Additional conditions
<i>MiFID or equivalent third country business other than financial promotions</i>	<i>Any retail client.</i>	(whether or not a <i>financial promotion</i>) from the <i>firm</i> or from a <i>person connected to the firm</i> which is intended to influence the <i>client</i> in relation to the <i>investment</i> . (See Note 1)
Prospectus	<i>Any retail client.</i>	COBS 22.3.1R(2)(a) does not apply to <i>MiFID or equivalent third country business</i> (see COBS 9.3.5G). The restrictions do not apply to the distribution of a prospectus required under the <i>Prospectus Regulation</i> .
Issuers	<i>Any retail client</i>	To the extent that the <i>firm</i> is acting as issuer of a <i>contingent convertible instrument</i> , the restrictions only apply to the original issuance of the <i>contingent convertible instrument</i> and not to subsequent trading in the secondary market.
Indirect investment	<i>Any retail client</i>	The restrictions do not apply in relation to a beneficial interest in a <i>contingent convertible instrument</i> acquired through participation in a <i>regulated collective investment scheme</i> , investment in a <i>non-mainstream pooled investment</i> (provided it is not a <i>CoCo fund</i>), or membership of an <i>occupational pension scheme</i> .
Note 1	A person is connected with a firm if it acts as an <i>introducer</i> or <i>appointed representative</i> for that firm or if it is any other person, regardless of <i>authorisation</i> status, who has a relevant business relationship with the firm.	
Note 2	See COBS 2.4 for rules and guidance on agent as <i>client</i> and reliance on others.	

22.3.3

R

Adaptation of other rules and guidance to contingent convertible instruments and CoCo funds

- (1) For the purposes of any assessments or certifications required by the exemptions in ■ COBS 22.3.2R, any references in ■ COBS 4.12B provisions to *non-mass market investments* must be read as though they are references to *contingent convertible instruments* or *CoCo funds*, as relevant.
- (2) [deleted]
- (3) The *firm* must give the *retail client* a written copy of any statements that individual has been asked to sign as part of certification as a *high net worth, sophisticated or self-certified sophisticated investor* for the purposes of compliance with this section.

22.3.4

G

A *firm* wishing to certify a *retail client* as a sophisticated investor for the purposes of this section should note that, in the *FCA's* view, it is likely that the only *retail clients* with the requisite sophistication in relation to *contingent convertible instruments* or *CoCo funds* are those with significant experience with investment in multiple types of complex *financial instruments* and who have sufficient understanding of how *credit institutions* are run, including risks to the ability of those institutions to meet prudential requirements on an ongoing basis.

Record keeping

22.3.5

R

A *firm* which carries on an activity which is subject to this section must comply with the following record-keeping requirements:

- (1) the *person allocated the compliance oversight function* in the *firm* must make a record at or near the time of the activity certifying it complies with the restrictions set out in this section;
- (2) the making of the record required in (1) may be delegated to one or more *employees* of the *firm* who report to, and are supervised by, the *person allocated the compliance oversight function*, provided the process for certification of compliance has been reviewed and approved by the *person allocated the compliance oversight function* no more than 12 months before the date of the sale or communication or approval of the invitation or inducement;
- (3) when making the record required in (1), the *firm* must make a record of which exemption was relied on for the purposes of the activity within the scope of this section, together with the reason why the *firm* is satisfied that that exemption applies;
- (4) where the *firm* relies on the *certified high net worth investor*, the *certified sophisticated investor* or the *self-certified sophisticated investor* exemption, the record in (1) must include a copy of the certificate or investor statement (as signed by the investor) and of the warnings or indications required by the exemption, as applicable;
- (5) a *firm* must retain the record required in (1) for five years if it relates to *MiFID or equivalent third country business*, and otherwise for three years.

22.3.6

G

To the extent the requirements in **COBS 22.3.5R** apply to the communication or approval of any invitation or inducement, such requirements are in addition to those set out in **COBS 4.11**.

22.4 Prohibition on the retail marketing, distribution and sale of derivative contracts of a binary or other fixed outcomes nature

22

Application

22.4.1

R

This section applies to:

- (1) *MiFID investment firms*, with the exception of *collective portfolio management investment firms*; and
- (2) *branches of third country investment firms*,

in relation to the marketing, distribution or sale of *investments* specified in **articles 85(4A)** and **85(4B)** of the *Regulated Activities Order* in or from the *United Kingdom* to a *retail client*.

22.4.2

G

Firms are reminded that the *Glossary* definition of *MiFID investment firm* includes *CRD credit institutions* when those institutions are providing an *investment service or activity*.

22.4.2A

G

Persons (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

- (1) Part 7 of the *EU Exit Passport Regulations*; or
- (2) **Part 4** of the *Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019* (SI 2019/1361)

are required to comply with the *rules* in this section as a consequence of:

- (3) regulation 59 of the *EU Exit Passport Regulations*; or
- (4) regulation 19 of **the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019**.

22.4.3

G

For the avoidance of doubt, in **COBS 22.4.1R**, “marketing” includes *communicating and/or approving financial promotions*, and “distribution or sale” includes *dealing* in relation to *investments* specified in **articles 85(4A)** and **85(4B)** of the *Regulated Activities Order*.

22.4.4

R

Prohibitions.....

- (1) A firm must not:
- (a) sell an *investment* specified in **articles 85(4A)** and **85(4B)** of the *Regulated Activities Order* to a *retail client*; or
 - (b) distribute an *investment* specified in **articles 85(4A)** and **85(4B)** of the *Regulated Activities Order* to a *retail client*; or
 - (c) market an *investment* specified in **articles 85(4A)** and **85(4B)** of the *Regulated Activities Order* if the marketing is addressed to or disseminated in such a way that it is likely to be received by a *retail client*.
- (2) "Marketing" includes, but is not limited to, *communicating* and/or *approving financial promotions*.

22.5 Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative investments

22

Application

22.5.1

R

- (1) Subject to **COBS 22.5.1AR** and **COBS 22.5.1BG** this section applies to:
- (a) *MiFID investment firms* with the exception of *collective portfolio management investment firms*; and
 - (b) *branches of third country investment firms*,
- in relation to the marketing, distribution or sale of *restricted speculative investments* in or from the *United Kingdom* to a *retail client*.
- (2) [deleted]

22.5.1-A

G

Persons (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

- (1) Part 7 of the *EU Exit Passport Regulations*; or
- (2) **Part 4** of the *Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019* (SI 2019/1361)

are required to comply with the *rules* in this section as a consequence of:

- (3) regulation 59 of the *EU Exit Passport Regulations*; or
- (4) regulation 19 of **the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019**.

22.5.1A

R

The *rules* in this section do not apply to the sale and distribution of *restricted options* by a *firm* (F) in circumstances where F sells a *restricted option* to a *retail client* through an intermediary.

22.5.1B

G

For the avoidance of doubt, the exclusion in **COBS 22.5.1AR** only applies to F.

22.5.1C

R

[deleted]

22.5.2

G

[deleted]

- 22.5.3** **G** Firms are reminded that the *Glossary* definition of *MiFID investment firm* includes *CRD credit institutions* when those institutions are providing an *investment service or activity*.
- 22.5.4** **G** For the avoidance of doubt, “marketing” *restricted speculative investments* includes *communicating and/or approving financial promotions*, and “distribution or sale” includes *dealing* in relation to *restricted speculative investments*.
- 22.5.5** **R** The *rules* in this section do not apply to:
- (1) *derivative instruments* for the transfer of credit risk to which ~~article 85(3)~~ of the *Regulated Activities Order* applies; or
 - (2) *cryptoasset derivatives*.
- 22.5.5A** **G** Firms are reminded of the prohibitions in relation to the marketing, distribution and sale of *cryptoasset derivatives* in ■ COBS 22.6.
- 22.5.6** **R**
- (1) Subject to ■ COBS 22.5.7R and ■ COBS 22.5.7AR, a *firm* must not:
- (a) market, publish, provide or communicate in any other way any communication or information in a *durable medium* or on a webpage or website to a *retail client*, or in such a way that it is likely to be received by a *retail client*;
 - (b) *approve or communicate a financial promotion* in a *durable medium* or on a webpage or website; or
 - (c) disseminate such a communication, information or *financial promotion* to a *retail client*, or in such a way that it is likely to be received by a *retail client*,
- unless the *firm* includes one of the following risk warnings, as appropriate.
- (1A) Subject to 1B, if a *firm* markets, distributes or sells:
- (a) *leveraged contracts for differences*;
 - (b) *leveraged spread bets*; or
 - (c) *leveraged rolling spot forex contracts*,
- the *firm* must include the following risk warning:
- “CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.
[insert percentage per provider] % of retail investor accounts lose money when trading CFDs with this provider.
You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.”
- If a *firm* markets, distributes or sells:
restricted options; and

one or more of the following:

leveraged contracts for differences;

leveraged spread bets; or

leveraged rolling spot forex contracts,

the firm must include the following risk warning:

"CFDs and restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.

[insert percentage per provider]% of retail investor accounts lose money when trading CFDs and restricted options with this provider.

You should consider whether you understand how CFDs and restricted options work and whether you can afford to take the high risk of losing your money."

If a firm markets, distributes or sells restricted options but does not market, distribute or sell leveraged contracts for differences, leveraged spread bets or leveraged rolling spot forex contracts, the firm must include the following risk warning:

"Restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.

[insert percentage per provider]% of retail investor accounts lose money when trading restricted options with this provider.

You should consider whether you understand how restricted options work and whether you can afford to take the high risk of losing your money."

- (2) The risk warning must be modified as necessary to refer to the percentage of *retail client* accounts that lost *money* relevant to the firm.
- (3) The firm's disclosure of the percentage of *retail client* accounts that lost *money* must include an up-to-date percentage based on a calculation of the percentage of *retail client* accounts held with the firm that lost *money*.
- (4) The calculation in (3) must be performed every three *months* and cover the 12-month period preceding the date of the calculation.
- (5) For the purposes of the calculation in (3), an individual *retail client* account must be considered to have lost *money* if the sum of all realised and unrealised net profits on *restricted speculative investments* traded in that *retail client*'s account during the 12-month calculation period is below zero.
- (6) The calculation in (3) must include all costs, fees, commissions and any other charges.
- (7) The calculation in (3) must not include:
 - (a) a *retail client* account that did not have an open *restricted speculative investment* connected to it within the calculation period;
 - (b) any profits or losses from investments other than *restricted speculative investments*;

- (c) any deposits of funds; or
(d) any withdrawals of funds.
- (8) The *firm* must retain records of the *retail client accounts* used for these calculations for five years.
- (9) Where the *retail client* has not approached the *firm* through a website or mobile application, the risk warning must be provided in a *durable medium* in good time before the *firm* carries on any business for the *retail client*.
- (10) Where the communication, information or *financial promotion* referred to in ■ COBS 22.5.6R(1) is in a medium other than a *durable medium*, website or webpage, *firms* must include one of the following risk warnings, as appropriate.
- (10A) Subject to 10B, if a *firm* markets, distributes or sells:
- (a) leveraged *contracts for differences*;
(b) leveraged *spread bets*; or
(c) leveraged *rolling spot forex contracts*,
- the *firm* must include the following risk warning:
- "[insert percentage per provider]% of retail investor accounts lose money when trading CFDs with this provider.**
- You should consider whether you can afford to take the high risk of losing your money."
- (10B) If a *firm* markets, distributes or sells:
- (a) *restricted options*; and
(b) one or more of the following:
- (i) leveraged *contracts for difference*;
(ii) leveraged *spread bets*; or
(iii) leveraged *rolling spot forex contracts*,
- the *firm* must include the following risk warning:
- "[insert percentage per provider]% of retail investor accounts lose money when trading CFDs and restricted options with this provider.**
- You should consider whether you can afford to take the high risk of losing your money."
- (10C) If a *firm* markets, distributes or sells *restricted speculative options* but does not market, distribute or sell leveraged *contracts for differences*, leveraged *spread bets* or leveraged *rolling spot forex contracts*, the *firm* must include the following risk warning:
- "[insert percentage per provider]% of retail investor accounts lose money when trading restricted options with this provider.**
- You should consider whether you can afford to take the high risk of losing your money."
- (11) For the purposes of ■ COBS 22.5.6R(10), if the number of characters contained in that risk warning exceeds the character limit permitted

by a third party marketing provider, the following risk warning must be used:

[insert percentage per provider] % of retail CFD accounts lose money."

- (12) Where the risk warning in ■ COBS 22.5.6R(11) is used, the *firm* must ensure that the risk warning is accompanied by a direct link to the *firm's* webpage which contains the risk warning in ■ COBS 22.5.6R.

22.5.7

R

- (1) This rule applies when:

- (a) a *firm* is required to perform the calculation of percentage of loss for the purposes of the risk warning and the *firm* has not entered into a single trade involving a *restricted speculative investment* with a *retail client* in the previous 12 months; and
- (b) the *firm's* communication, information or *financial promotion* is provided in a *durable medium*, website or webpage.
- (c) [deleted]

The *firm* must use one of the following risk warnings as appropriate for the purposes of ■ COBS 22.5.6R:

- (a) If a *firm* markets, distributes or sells:

- (i) leveraged *contracts for differences*;
- (ii) leveraged *spread bets*; or
- (iii) leveraged *rolling spot forex contracts*,

the *firm* must use the following risk warning:

"CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

The vast majority of retail client accounts lose money when trading in CFDs.

You should consider whether you can afford to take the high risk of losing your money."

- (b) If a *firm* markets, distributes or sells:

- (i) *restricted speculative options*; and
- (ii) leveraged *contracts for differences*;
- (iii) leveraged *spread bets*; or
- (iv) leveraged *rolling spot forex contracts*,

the *firm* must use the following risk warning:

"CFDs and restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.

The vast majority of retail client accounts lose money when trading in CFDs and restricted options.

You should consider whether you can afford to take the high risk of losing your money."

- (c) If a *firm* markets, distributes or sells *restricted options* but does not market, distribute or sell leveraged *contracts for differences*, leveraged *spread bets* or leveraged *rolling spot forex contracts*, the *firm* must use the following risk warning:

"Restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.

The vast majority of retail client accounts lose money when trading in restricted options.

You should consider whether you can afford to take the high risk of losing your money."

22

22.5.7A R

(1) This *rule* applies when:

- (a) a *firm* is required to perform the calculation of percentage of loss for the purposes of the risk warning and the *firm* has not entered into a single trade involving a *restricted speculative investment* with a *retail client* in the previous 12 months; and
- (b) the *firm's* communication, information or *financial promotion* is in a medium other than a *durable medium*, website or webpage.

(2) The *firm* must use one of the following risk warnings as appropriate for the purposes of ■ COBS 22.5.6R:

(a) If a *firm* markets, distributes or sells:

- (i) leveraged *contracts for differences*;
- (ii) leveraged *spread bets*; or
- (iii) or leveraged *rolling spot forex contracts*,

the *firm* must use the following risk warning:

"The vast majority of retail client accounts lose money when trading in CFDs.

You should consider whether you can afford to take the high risk of losing your money."

(b) If a *firm* markets, distributes or sells:

- (i) *restricted options*; and
- (ii) leveraged *contracts for differences*;
- (iii) leveraged *spread bets*; or
- (iv) leveraged *rolling spot forex contracts*,

the *firm* must use the following risk warning:

"The vast majority of retail client accounts lose money when trading in CFDs and restricted options.

You should consider whether you can afford to take the high risk of losing your money."

(c) If a *firm* markets, distributes or sells *restricted options* but does not market, distribute or sell leveraged *contracts for differences*, leveraged *spread bets* or leveraged *rolling spot forex contracts*, the *firm* must use the following risk warning:

"The vast majority of retail client accounts lose money when trading in restricted options.

You should consider whether you can afford to take the high risk of losing your money."

(d) Where the number of characters contained in the risk warnings in this *rule* exceeds the character limit permitted by a third party marketing provider, the following risk warning must be used:

"CFD-retail client accounts generally lose money."

22.5.8

R

The relevant risk warning in ■ COBS 22.5.6R or ■ COBS 22.5.7R must be:

- (1) prominent;
- (2) contained within its own border and with bold and unbold text as indicated;
- (3) if provided on a website or via a mobile application, statically fixed and visible at the top of the screen even when the *retail client* scrolls up or down the webpage; and
- (4) if provided on a website, included on each linked webpage on the website.

22.5.9

G

The relevant risk warning, including the font size, should be:

- (1) proportionate, taking into account the content, size and orientation of the marketing material as a whole; and
- (2) published against a neutral background.

Margin requirements for retail clients

22.5.10

R

A firm must not open a position in relation to a *restricted speculative investment* for a *retail client* unless the *margin* posted to open the position is in the form of *money*.

22.5.11

R

A firm must require a *retail client* to post *margin* to open a position of at least the following amounts:

- (1) 3.33% of the value of the exposure that the trade provides when the underlying asset is a *major foreign exchange pair* or *relevant sovereign debt*;
- (2) 5% of the value of the exposure that the trade provides when the underlying asset is a *major stock market index*, *minor foreign exchange pair* or gold;
- (3) 10% of the value of the exposure that the trade provides when the underlying asset is a *minor stock market index* or a *commodity* other than gold; or
- (4) [deleted]
- (5) 20% of the value of the exposure that the trade provides when the underlying asset is a *share* or an asset not otherwise listed in ■ COBS 22.5.11R(1) to (4) above.

22.5.12

G

For the purposes of ■ COBS 22.5.11R, "exposure" means the total value of the exposure that the *restricted speculative investment* provides. Examples are set out below.

- (1) A firm offers a *restricted speculative investment* when the underlying asset is a 5 x leveraged index on gold. The value of the index is £800.

The value of the exposure that the trade provides is therefore £800 x 5, or £4000; or

- (2) a *firm* offers a *contract for differences* where the underlying asset is a *restricted option* that references the FTSE 100. For this *contract for differences*, the value of the exposure that the trade provides is equal to the value of the underlying asset of the *restricted option*. For pricing the *restricted option*, the *firm* offers £1 of exposure for each point of the FTSE 100. Under these terms, if the *retail client* buys the *contract for differences* on a *restricted option* when the FTSE 100 is trading at 7070, the value of the exposure that the trade provides is £7070 (i.e. 7070 x £1).

Margin close out requirements for retail clients

22.5.13

R

- (1) A *firm* must ensure a *retail client*'s net equity in an account used to trade *restricted speculative investments* does not fall below 50% of the *margin* requirement (as outlined in ■ COBS 22.5.11R) required to maintain the *retail client*'s open positions.
- (2) Where a *retail client*'s net equity falls below 50% of the *margin* requirement, the *firm* must close the *retail client*'s open position(s) on restricted speculative investments as soon as market conditions allow.
- (3) In this *rule*, "net equity" means the sum of the *retail client*'s net profit and loss on their open position(s) and the *retail client*'s deposited *margin*.

22.5.14

R

A *firm* must not maintain an open position in relation to a *restricted speculative investment* for a *retail client* unless the *margin* posted to maintain the open position is in the form of *money*.

22.5.15

R

A *firm* must provide to a *retail client* a clear description in a *durable medium* or make available on a website (where that does not constitute a *durable medium*) that meets the *website conditions* of how the *retail client*'s *margin* close out level will be calculated and triggered:

- (1) in good time before the *retail client* opens their first position; and
- (2) in good time before any change to the terms and conditions applicable to the *retail client* takes effect.

22.5.16

G

Firms are reminded that they must comply with ■ COBS 2.1.1R (the client's best interests rule) and ■ COBS 11.2A.2R (obligation to execute orders on terms most favourable to the client) when:

- (1) making a *margin call* to a *retail client*; or
- (2) exercising a discretionary right to close a *retail client*'s position; or
- (3) closing a *retail client*'s position(s).

Negative balance protection		
22.5.17	R	The liability of a <i>retail client</i> for all <i>restricted speculative investments</i> connected to the <i>retail client's account</i> is limited to the funds in that account.
22.5.18	G	■ COBS 22.5.17R means that a <i>retail client</i> cannot lose more than the funds specifically dedicated to trading <i>restricted speculative investments</i> .
22.5.19	G	For the purposes of ■ COBS 22.5.17R, funds in a <i>retail client's account</i> are limited to the <i>cash</i> in the account and unrealised net profits from open positions. "Unrealised net profits from open positions" means the sum of unrealised gains and losses of all open positions recorded in the account. Any funds or other assets in the <i>retail client's account</i> for purposes other than trading <i>restricted speculative investments</i> should be disregarded.
Restrictions on monetary incentives and non-monetary incentives		
22.5.20	R	A <i>firm</i> must not offer to a <i>retail client</i> , or provide a <i>retail client</i> with, any of the following when marketing, distributing or selling a <i>restricted speculative investment</i> :
		(1) a monetary incentive; or
		(2) a non-monetary incentive.
22.5.21	G	For the purposes of ■ COBS 22.5.20R:
		(1) monetary incentives include, but are not limited to, the offering of bonuses in relation to the opening of a new account or the offering of rebates on fees (including volume-based rebates);
		(2) lower fees offered to all <i>retail clients</i> do not constitute a monetary incentive; and
		(3) information and research tools do not constitute non-monetary incentives.
Other products		
22.5.22	G	<i>Firms</i> that market, distribute or sell <i>derivatives</i> with similar features to <i>restricted speculative investments</i> (particularly where the <i>derivatives</i> are leveraged) to <i>retail clients</i> , should have particular regard to how they comply with applicable obligations found elsewhere in the <i>FCA Handbook</i> , including, where relevant:
		(1) ■ COBS 2.1.1R (The client's best interests rule);
		(2) ■ COBS 4.2.1R (The fair, clear and not misleading rule);
		(3) ■ COBS 9A (Suitability (MiFID and insurance-based investment products provisions));
		(4) ■ COBS 10A (Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions));

- (5) *PRIN*, particularly *principles 1, 2 and 6*; and
- (6) ■ PROD 3 (Product governance: MiFID).

22.6 Prohibition on the retail marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes

22

Application

22.6.1

R

This section applies to:

- (1) *MiFID investment firms*, with the exception of *collective portfolio management investment firms*;
- (2) *branches of third country investment firms*
- (3) *MiFID optional exemption firms*; and
- (4) *TP firms* which are *EEA MiFID investment firms* with the exception of *collective portfolio management investment firms*,

in relation to the marketing, distribution or sale of *cryptoasset derivatives* and *cryptoasset exchange traded notes* in or from the *United Kingdom* to a *retail client*.

22.6.2

G

In addition to the *persons* listed above, *persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

- (1) Part 7 of the *EU Exit Passport Regulations*; or
- (2) **Part 4** of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)

are required to comply with the *rules* in this section as a consequence of:

- (3) regulation 59 of the *EU Exit Passport Regulations*; or
- (4) regulation 19 of **the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019**.

22.6.3

G

Firms and *TP firms* are reminded that the *Glossary* definition of *MiFID investment firm* includes *CRD credit institutions* when those institutions are providing an *investment service or activity*.

22.6.4

G

For the avoidance of doubt, in COBS 22.6.1R, "marketing" includes *communicating and/or approving financial promotions*, and "distribution or sale" includes *dealing* in relation to *cryptoasset derivatives* and *cryptoasset exchange traded notes*.

Prohibitions

22.6.5

R

- (1) A firm or TP firm must not:
 - (a) sell a *cryptoasset derivative* or a *cryptoasset exchange traded note* to a *retail client*; or
 - (b) distribute a *cryptoasset derivative* or a *cryptoasset exchange traded note* to a *retail client*; or
 - (c) market a *cryptoasset derivative* or a *cryptoasset exchange traded note* if the marketing is addressed to or disseminated in such a way that it is likely to be received by a *retail client*.
- (2) "Marketing" includes, but is not limited to, *communicating and/or approving financial promotions*.

Conduct of Business Sourcebook

COBS TP 1 Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
			Material to which the transitional provision applies	Transitional provision	Handbook provisions: coming into force
1.1	COBS 3	G	<p>Overview of transitional provisions for client categorisation</p> <p>(1) COBS TP 1.2 contains default transitional categorisation provisions in relation to the existing <i>clients</i> of a <i>firm</i> on 1 November 2007. In many cases, they allow a <i>client</i> to be automatically provided with the nearest equivalent categorisation under COBS 3 to their previous categorisation.</p> <p>(2) COBS TP 1.3 explains how the transitional provisions for <i>client</i> categorisation relate to the requirement for a <i>firm</i> to act if it becomes aware that an <i>elective professional client</i> no longer satisfies the initial conditions for its categorisation.</p> <p>(3) The default provisions do not prevent a <i>firm</i> categorising such a <i>client</i> differently in accordance with COBS 3. COBS TP 1.4 provides guidance on how some of the procedural requirements in COBS 3 apply in some such cases.</p> <p>(4) COBS TP 1.5 contains transitional notification obligations, which apply if the default provisions do not allow that <i>client</i> to be provided with the nearest equivalent categorisation or a <i>firm</i> chooses not to take advantage of those provisions in relation to a <i>client</i>.</p> <p>(5) COBS TP 1.6 contains a transitional notification obligation that applies to a <i>firm</i> that, in relation to <i>MiFID</i> or <i>equivalent third country business</i>, takes advantage of the default transitional categorisation provisions to classify a <i>client</i> as a <i>per se professional client</i>.</p> <p>(6) COBS TP 1.9 contains transitional categorisation provisions in relation to <i>clients</i> of a <i>firm</i> that are taken on between 1 November 2007 and 30 June 2008 in relation to business that is not <i>MiFID</i> or <i>equivalent third country business</i>.</p>	Transitional provision: dates in force	Handbook provisions: coming into force

(1)	(2)	(3)	(4)	(5)	(6)
Categorisation of existing clients					
1.2	COBS 3	R	<p>(1) An existing <i>client</i> that was correctly categorised as a <i>private customer</i> immediately before 1 November 2007 is a <i>retail client</i> unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>(2) An existing <i>client</i> that was correctly categorised as an <i>intermediate customer</i> immediately before 1 November 2007:</p> <ul style="list-style-type: none"> (a) is an <i>elective professional client</i> if it was an expert <i>private customer</i> that had been re-classified as an <i>intermediate customer</i> on the basis of its experience and understanding; or (b) is otherwise a <i>per se professional client</i>; <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>(3) An existing <i>client</i> that was correctly categorised as a <i>market counterparty</i> immediately before 1 November 2007 is:</p> <ul style="list-style-type: none"> (a) for <i>eligible counterparty business</i> that is not <i>MiFID</i> or equivalent <i>third country business</i>, an <i>eligible counterparty</i>; and (b) otherwise, a <i>per se professional client</i>; <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>[Note: Article 71(6) of, and third paragraph of section II.2 of Annex II to, Directive 2004/39/EC of the European Parliament and of the Council]</p>	From 1 November 2007 to 2 January 2018	1 November 2007
1.3	COBS 3	G	<p>Under COBS 3.5.9 R, if a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i>, the <i>investment firm</i> must take the appropriate action. In the case of a <i>client</i> that has been classified as an <i>elective professional client</i> under COBS TP 1.2R(2)(a), the initial conditions are those that applied to the <i>client's</i> initial categorisation as an <i>intermediate customer</i>.</p> <p>Former inter-professional business</p>	From 1 November 2007 to 2 January 2018	1 November 2007
1.4	COBS 3	G	<p>The requirement to provide notices under COBS 3.3.1 R only applies in relation to new <i>clients</i>. The requirement to obtain confirmation under COBS 3.6.4 R (2) only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent</p>	From 1 November 2007 to 2 January 2018	1 November 2007

(1)	(2)	(3)	(4)	(5)	(6)
			<p>that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under COBS 3 in relation to <i>eligible counterparty business</i>.</p> <p>Transitional notification obligations</p> <p>(1) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>private customer</i> immediately before 1 November 2007 as a <i>retail client</i>, it must notify that <i>client</i> of its categorisation as a <i>professional client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(2) If a <i>firm</i> does not categorise a <i>client</i> that was an <i>intermediate customer</i> immediately before 1 November 2007 as a <i>professional client</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(3) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>market counterparty</i> immediately before 1 November 2007 as an <i>eligible counterparty</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>professional client</i> on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>[Note: article 28(1) of the <i>MiFID implementing Directive</i>]</p>	From 1 November 2007 to 2 January 2018	1 November 2007
1.6	COBS 3	R	<p>If a <i>firm</i>, in relation to <i>MiFID</i> or equivalent <i>third country business</i>, categorises a <i>client</i> who would not otherwise have been a <i>professional client</i> as a <i>professional client</i> under COBS TP 1.2(2)(b) or (3)(b), it must inform that <i>client</i> about the relevant conditions for the categorisation of <i>clients</i>. This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>[Note: article 71(6) of Directive 2004/39/EC of the European Parliament and of the Council]</p>	From 1 November 2007 to 2 January 2018	1 November 2007

(1)	(2)	(3)	(4)	(5)	(6)
1.7	G	A notice to a <i>professional client</i> under COBS TP 1.6 should inform that <i>client</i> : (a) that they have been categorised as a <i>professional client</i> ; and (b) of the main differences between the treatment of a <i>retail client</i> and a <i>professional client</i> .	From 1 November 2007 to 2 January 2018	1 November 2007	1 November 2007
1.8	R	The record-keeping requirements under COBS 3.8.2 R apply in relation to any <i>client</i> categorisations or re-categorisations made under the transitional provisions for COBS 3. Categorisation of new clients before 30 June (business that is not MiFID or equivalent third country business)	From 1 November 2007 indefinitely	1 November 2007	1 November 2007
1.9	COBS 3	R	Expired		

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COBS TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.2 COBS, with the exception of COBS 15	R	Expired			
2.2A COBS 2.5.1R(1) to (3)	R	A <i>firm</i> need not comply with COBS 2.5.1R(1) to (3) in relation to an automatic renewal of an agreement for an optional additional product which was entered into on or before 31 March 2016 provided:		From 1 April 2016	On 1 April 2016
		(1) the automatic renewal of the agreement is on substantially the same terms. The phrase "on substantially the same terms" is to be interpreted in the same way as in COBS 2.5.1 (1) (b) and (c);			
		(2) on the occasion of the first automatic renewal on or after 1 April 2016, the <i>firm</i> takes reasonable steps to ensure that the <i>client</i> is informed:			
		(a) that the renewal of the agreement is optional;			
		(b) that the <i>client</i> may elect not to renew the agreement; and			
		(c) of the effect of the non-renewal of the agreement, if any, on the <i>designated investment</i> ; and			
		(3) the procedure to be used by <i>clients</i> for electing not to renew the agreement pays due regard to the interests of <i>clients</i> and treats them fairly.			
2.2B COBS 2.3A	R	The <i>rules and guidance</i> on inducements in COBS 2.3A:	From 3 January 2018	3 January 2018 (and in relation to an <i>insurance-based investment</i>)	

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
					(ment product, 1 October 2018)
			(1) apply to fees, commission, monetary and non-monetary benefits which are paid, provided or received by a <i>firm</i> in respect of:		
			(a) (unless (b) applies) services that are provided to a <i>client</i> on or after 3 January 2018;		
			(b) (in relation to an <i>insurance-based investment product</i>) services that are provided to a <i>client</i> on or after 1 October 2018; and		
			(2) do not apply to fees, commission, monetary or non-monetary benefits which are paid, provided or received in respect of:		
			(a) (unless (b) applies) services that are provided to a <i>client</i> before 3 January 2018;		
			(b) (in relation to an <i>insurance-based investment product</i>) services that are provided to a <i>client</i> on or after 1 October 2018		
2.-1	COBS 4	R	Expired		
2.-1A	COBS 4.7.7 R to COBS 4.7.10 R	R	Expired		
2.-1B	COBS 4.5.12R to 4.5.15R	R	The <i>rules</i> specified in column (2) apply:	From 7 May 2019 to 7 August 2019	7 May 2019
			(1) from 7 May 2019 in respect of any <i>authorised fund</i> which is authorised on or after that date; and		
			(2) from 7 August 2019 in respect of any <i>authorised fund</i> which is authorised before 7 May 2019.		
2.-1C	COBS 4.12A.22R	R	Any change to the <i>rules</i> specifying the form and content of the investor statements in COBS 4 Annex 2R to COBS 4 Annex 5R does not affect the continuing validity of a statement complying with the relevant <i>rule</i> in force at the time that it was completed and signed.	From 3 July 2023	From 3 July 2023

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.1	COBS 6.1	G	<p>(1) If a <i>firm</i> provides services of an ongoing nature to an existing <i>client</i> it need not provide information to that <i>client</i> that it would be required to provide under COBS to a new <i>client</i> but which it was not required to provide under COB.</p> <p>(2) Services of an ongoing nature include <i>safe-keeping and administration investments</i> and <i>managing investments</i>,</p>	From 1 November 2007 indefinitely	1 November 2007
2.2	COBS 6.1	G	<p>(1) If a <i>firm</i> provides a service for an existing <i>client</i> that is not of an ongoing nature and which relates to the same particular type of <i>designated investment</i> as a previous service, the <i>firm</i> need not provide information to that <i>client</i> that it would be required to provide under COBS 6.1 to a new <i>client</i> but which it was not required to provide under COB.</p> <p>(2) But a <i>firm</i> should ensure that the <i>client</i> has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those described in respect of a previous transaction.</p>	From 1 November 2007 indefinitely	1 November 2007
2.-2B	COBS 9.4.11R(2)(e) and COBS 9.4.11R(6)(c)	R	In relation to a particular <i>client</i> , a <i>firm</i> need not comply with the requirements in rules in column (2) relating to charges in any <i>default arrangement</i> in any available <i>qualifying scheme</i> , where the <i>firm's</i> work for the <i>client</i> on advice on <i>pension transfer or pension conversion</i> commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020
2.-2A	COBS 9.4.12G(3) and COBS 9.4.12G(4)	G	In relation to a particular <i>client</i> , a <i>firm</i> need not consider the <i>guidance</i> in column (2) to the extent that it relates to the charges in any <i>default arrangement</i> in any available <i>qualifying scheme</i> , where the <i>firm's</i> work for the <i>client</i> on advice on <i>pension transfer or pension conversion</i> commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020
[deleted]					
2.2A	COBS 6.1E	R	[expired]		
2.2AA	COBS 6.1E	G	[expired]		
2.2AB	COBS 6.1E	G	[expired]		
2.2AC	COBS 6.1E	G	[expired]		

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
[deleted]					
2.2B	COBS 6.3	R	Expired		
2.2C	COBS 6.3	G	Expired		
2.2D	COBS 6.3	R	Expired		
2.2E	COBS 6.3.7 G	R	Expired		
2.2EA	COBS 19.1.2BR (3) and COBS 19.1.2BR(4)	R	In relation to a particular <i>client</i> , the rules in column (2) do not apply in relation to the <i>default arrangement</i> of the <i>qualifying scheme</i> where a firm's work for the <i>client</i> on advice on <i>pension transfer</i> or <i>pension conversion</i> commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.2EB	COBS 19.1.6(7) to COBS 19.1.6(11)	G	In relation to a particular <i>client</i> , a <i>firm</i> need not consider the <i>guidance</i> in column (2) where the <i>firm's</i> work for the <i>client</i> on advice on <i>pension transfer</i> or <i>pension conversion</i> commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020
2.3	COBS 10.1.2 R	R	Expired		
2.4	COBS 10.1.2 R	G	Expired		
2.4-A	COBS 10.1.2 R	R	Expired		
2.4A	COBS 11.2	R	Expired		
2.4B	COBS 11.2	G	Expired		
2.4C	COBS 11.2	R	Expired		
2.4D	COBS 11.2	R	Expired		
2.4E	COBS 12.2 and COBS 12.3	R	Expired		
2.4F	COBS 12.2 and COBS 12.3	G	Expired		
2.4G	COBS 12.2 and COBS 12.3	R	Expired		
2.5	COBS 13	R	Expired		
2.5-A	COBS 13.4.1 R	R	Expired		
2.5A	COBS 13.4.2 R	R	Expired		
2.5AA	COBS 13.5.1 R	R	Expired		
2.5AB	COBS 13.5.2 R	R	Expired		
2.5-B	COBS 13 Annex 2	R	Expired		
2.5B	COBS 13 Annex 2.2.3	R	Expired		
2.5C	COBS 13 Annex 2.2.4	R	Expired		
2.5D	COBS 13 Annex 3	R	Expired		
2.5E	COBS 13 Annex 4	R	Expired		
2.6	COBS 14.1 and COBS 14.2	R	Expired		
2.6A	COBS 14.2 and COBS 14.3		Expired		
			Expired		
2.7	COBS 15	R	Expired		

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.8	COBS 16.3 (Periodic statements)	G	<p>This transitional rule applies in relation to a periodic reporting period for a <i>periodic statement</i> that includes 1 November 2007.</p> <p>A firm may choose to comply with either COBS 16.3 or COB 8.2 in providing any <i>periodic statement</i> in relation to which this rule applies.</p>	From 1 November 2007 indefinitely	1 November 2007
2.8A	COBS 18	R	Expired		
2.8B	COBS 18	G	Expired		
2.8C	COBS 18	R	Expired		
2.8D	COBS 18	G	[deleted]		
2.8E	COBS 18	R	Expired		
2.8F	COBS 19.4.3 R	R	[expired]		
2.8F-B	COBS 19.1B.3R, COBS 19.1B.4R, and COBS 19.1B.5R.	R	<p>The rules in column (2) do not apply in relation to a <i>firm's adviser charges, employer or trustee funded pension advice charge, or remuneration incurred in respect of work that is commenced prior to 1 October 2020 and is completed before 1 January 2021 where:</i></p> <p>(1) a firm agreed in writing to be engaged by a <i>retail client</i> before 1 October 2020; or</p> <p>(2) (in the case of an <i>employer or trustee funded pension advice charge</i>) a firm agreed in writing to be engaged by the employer or the trustee before 1 October 2020; and</p> <p>(3) (in either case) the firm agreed in writing to provide <i>full pension transfer or conversion advice</i> on a contingent basis.</p>	1 October 2020 to 31 December 2020	1 October 2020
2.8F-A	COBS 19. Annex 4AR(5)	R	In relation to a particular <i>client</i> , the rule in column (2) does not apply where a firm's work for the <i>client</i> on advice on <i>pension transfer or pension conversion</i> commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020
2.8FA	COBS 19.9.6AR(4)	R	<p>(1) The rule in column (2) does not apply to a firm until 1 January 2020 and is replaced by TP 2.8FAR(2), the guidance in TP 2.8FB and the guidance in TP 2.8FC below.</p> <p>(2) Where a <i>retail client</i> refuses to answer questions that would allow a firm to determine whether a <i>pension annuity</i> on an enhanced basis could be available, a firm must:</p> <p>(a) include information warning the <i>retail client</i> that:</p> <p>(i) a higher annual income might be obtained; or</p>	1 November 2019 to 31 December 2019	1 November 2019

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.8FB	COBS 19.9.6AR(4)	G	<p>(ii) at least the requested annual income might be obtained for a lower purchase price;</p> <p>by searching the open market for a <i>pension annuity</i>; and</p> <p>(b) as applicable, use the template in Part 3 or Part 6 of COBS 19 Annex 3R,</p> <p>unless the <i>firm</i> obtains a market leading <i>pension annuity</i> in line with the <i>guidance</i> below in TP 2.8FC.</p> <p>A <i>firm</i> in TP 2.8FAR(2) may consider it appropriate to include in the quote provided to the <i>retail client</i> a statement that the <i>client</i> may have health or lifestyle factors that could mean that they are eligible for a higher income.</p> <p>For example, the wording in the "Did you know?" box in the template in Part 3 or Part 6 of COBS 19 Annex 3R could be adapted to reflect the fact that a <i>client</i> has refused to answer questions about their health or lifestyle.</p>	1 November 2019 to 31 December 2019	1 November 2019
2.8FC	COBS 19.9.6AR(4)	G	<p>Where a <i>retail client</i> refuses to answer a <i>firm's</i> questions to allow the <i>firm</i> to determine whether the <i>retail client</i> is eligible for an enhanced annuity, the <i>firm</i> is encouraged to generate a market leading <i>pension annuity</i> quote using the same information that it used to generate its guaranteed quote and compare the two.</p>	1 November 2019 to 31 December 2019	1 November 2019
2.8G	COBS 19.10.30R(2)(b) and 19.10.34R	R	<p>An operator of a <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> must, within 6 months of 1 February 2021, identify which of its non-advised <i>retail clients</i> have more than 50% of their drawdown fund invested in cash-like investments (subject to COBS 19.10.32R) and provide those <i>retail clients</i> with a cash warning.</p>	26 February 2021 to 1 August 2021	1 February 2021
2.8H	COBS 19.10.43R	R	<p>An operator of a <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> must, within 6 months of 1 February 2021, identify which of its <i>retail clients</i> have value remaining in an expired fixed term product, such that COBS 19.10.43R applies, and provide those <i>retail clients</i> with warnings as set out in that rule.</p>	26 February 2021 to 1 August 2021	1 February 2021
2.8I	COBS 19.10.47G(13)	G	<p>A <i>firm</i> to which TP 2.8GR applies should maintain a record of the number of <i>retail clients</i> provided with a cash warning in accordance with COBS TP 2.8GR.</p>	26 February 2021 to 1 August 2021	1 February 2021
2.8J	COBS 19.10.47G(17) and (18)	G	<p>A <i>firm</i> to which TP 2.8HR applies should maintain a record of the number of <i>retail clients</i> provided with a warning in accordance with COBS TP 2.8HR.</p>	26 February 2021 to 1 August 2021	1 February 2021

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.9	COBS 20.2.1 G to COBS 20.2.23 R; COBS 20.2.26 R to COBS 20.2.41 G	R	The provisions listed in column (2) do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>appropriate regulator</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005.	From 1 November 2007 indefinitely	1 November 2007
2.9A	COBS 20.2.24 R to COBS 20.2.25A R (Charging payments of compensation and redress to a with-profits fund)	R	The provisions listed in column (2) do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>appropriate regulator</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 31 July 2009.	From 31 July 2009 indefinitely	31 July 2009
2.10	COBS 20.2.42R (3) (Policyholder advocate: appointment and role)	R	Expired		
2.11	COBS TP 2.9	G	<p>The <i>rules and guidance</i> on treating with-profits policyholders fairly (COBS 20.2.1 G – COBS 20.2.41 G;) may be contrary to, or inconsistent with, some arrangements that were formally approved by the <i>appropriate regulator</i>, a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005. The effect of TP 2.9 is that these <i>rules</i> do not apply to such arrangements if, and to the extent that, it is inconsistent with them.</p> <p>A <i>firm</i> should be mindful, however, that, even if some or all of these <i>rules</i> are disappplied, the <i>firm</i> is still subject to the <i>rules</i> in the rest of the <i>Handbook</i>, including <i>Principle 6</i>.</p>	From 1 November 2007 indefinitely	1 November 2007
2.12	COBS	R	[deleted]		
2.13	COBS	R	[deleted]		
2.14	COBS 20.2.24 R to COBS 20.2.25A R	R	<p>(1) COBS 20.2.24 R to COBS 20.2.25A R have effect in relation to payments of compensation and redress arising out of events occurring on or after 31 July 2009.</p> <p>(2) For payments of compensation and redress arising out of events occurring before 31 July</p>	From 31 July 2009 indefinitely	31 July 2009

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2009, COBS 20.2.23 R to COBS 20.2.25 R apply as they were in force on 30 July 2009.					
	[deleted]		[deleted]		[deleted]
2.16	COBS 9.4.10 G; COBS 13 Annex 2; COBS 13 An- nex 3; COBS 14.2.1 R	R	Expired		
2.17	COBS 9.4.10 G; COBS 13 Annex 2; COBS 13 An- nex 3; COBS 14.2.1 R	G	Expired		
2.18	COBS 20.2.53 R to COBS 20.2.60 G, SUP App 2.15G	R	<p>(1) Unless (2) applies, and subject to (3), a <i>firm</i> that has ceased to effect new <i>contracts of insurance</i> in a <i>with-profits fund</i> must submit to the <i>FCA</i> a run-off plan of the type described in COBS 20.2.53R (2); COBS 20.2.56 R, and COBS 20.2.57 G, if it has not done so already, by 31 December 2012, regardless of when it closed to new business.</p> <p>(2) Paragraph (1) does not apply to a <i>firm</i> if, and to the extent that, to comply would be contrary to or inconsistent with an arrangement that was formally approved by a court of competent jurisdiction, on or before 1 April 2012.</p> <p>(3) A <i>firm</i> required by (1) above to produce a run-off plan:</p> <ul style="list-style-type: none"> (a) should consider the guidance in SUP App 2.15.6 G, 2.15.7G (11), 2.15.13 G, 2.15.14 G and 2.15.15 G to continue to apply to it, as appropriate; (b) may demonstrate compliance with the guidance in SUP App 2.15.2 G, 2.15.3 G, 2.15.4 G and 2.15.5 G by reference to existing documents created by or for the <i>firm</i>, provided that it submits copies of relevant extracts to the <i>FCA</i>; (c) may disregard the remaining provisions in SUP App 2.15G if to do so would be consistent with meeting the requirements of COBS 20.2.56R (1); and (d) may otherwise tailor the run-off plan to reflect the fact that the fund in question has already been closed. 	From 1 April 2012 indefinitely	1 November 2007 and 1 April 2012

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.19	COBS 20.2.53 R to COBS 20.2.60 G	G	The effect of COBS TP 2.18 is that <i>firms</i> which were not required to submit a run-off plan to the FCA because they ceased to effect new contracts of insurance before 1 November 2007 or because of previous transitional provisions in COBS, will need to submit a version of a run-off plan to the FCA, taking into account the fact that the fund has already closed, by 31 December 2012. However, this will not apply to the extent that it would be inconsistent with a formally approved court scheme.	From 1 April 2012 indefinitely	1 November 2007 and 1 April 2012
2.20	COBS 20.2.28 R	R	Expired		
2.21	COBS 20.2.36 R to COBS 20.2.36A R	R	Expired		
2.22	COBS 20.5.1 R to COBS 20.5.5 R	R	Expired		
2.23	The changes to COBS set out in Annex K of the Alternative Investment Fund Managers Directive Instrument 2013	R	Expired		
2.24	COBS 13 Annex 2		A firm will comply with the provisions listed in column (2) if it chooses to comply with the following amendments made to those provisions by the Conduct of Business (Pension Supplementary Rules) Instrument 2016 as if those amendments were already in force: COBS 13 Annex 2.2.4R (3); COBS 13 Annex 2.3.3R; COBS 13 Annex 2.3.4G; COBS 13 Annex 2.5.1R(2)(g)	25 April 2016 to 5 April 2017	6 April 2017
2.25	COBS 19.6A.5R	R	COBS 19.6A.5R does not apply where the instruction for the action giving rise to the early exit charge was received by the firm before 31 March 2017.	From 31 March 2017 indefinitely	31 March 2017
2.26	COBS 17.1.7R	R	An insurer need not comply with COBS 17.1.7R for contracts entered into or variations agreed before 1 August 2017.	From 1 August 2017	On 1 August 2017

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.27	The rules and guidance in COBS that relate to a NURS-KII document	R	Where the <i>authorised fund manager</i> of a <i>non-UCITS retail scheme</i> , or an <i>ICVC</i> that is a <i>non-UCITS retail scheme</i> , complies with the <i>rules and guidance</i> in <i>COLL</i> that relate to a <i>NURS-KII document</i> , in accordance with <i>COLL TP 1.1.46R</i> , by using a <i>key investor information document</i> (as modified by a general direction from the FCA), the <i>rules and guidance</i> in column (2) apply in relation to that <i>document</i> as if a reference to a " <i>NURS-KII document</i> " were a reference to that <i>document</i> .	From 1 January 2018 until 19 February 2018	1 January 2018
2.28	COBS TP 2.27R	G	The effect of <i>COBS TP 2.27R</i> is that where a modified form of a <i>key investor information document</i> has been produced for a <i>non-UCITS retail scheme</i> prior to 1 January 2018, firms may continue to use that <i>document</i> for a short period until the <i>AFM</i> of the <i>KII-compliant NURS</i> has had time to produce a replacement <i>NURS-KII document</i> that complies with <i>COLL Appendix 2R</i> .	From 1 January 2018 until 19 February 2018	1 January 2018
2.29	COBS 19.1.2R to COBS 19.1.4BR		A <i>firm</i> will comply with the provisions in column (2) if it chooses to comply with the following amendments made by Part 2 of the Conduct of Business Sourcebook (Pension Transfers) Instrument 2018 as if those amendments were already in force: COBS 19.1.1-A; COBS 19.1.2BR; COBS 19.1.2CR; COBS 19.1.2DG; COBS 19.1.2EG; COBS 19.1.3AR; COBS 19.1.3BG; COBS 19 Annex 4A; COBS 19 Annex 4B; COBS 19 Annex 4C; COBS 19 Annex 5. If a <i>firm</i> does so, the reference to "comparison" in <i>COBS 19.1.7BG</i> must be read as a reference to "appropriate pension transfer analysis".	1 April 2018 to 30 September 2018	1 October 2018
2.29A	COBS 19.5.5R(8) and 19.5.13R(1)	R	(1) The requirement to publish administration charges and transactions costs information does not apply in respect of the year 1 January to 31 December 2019. Accordingly, the first publication of administration charges and transactions costs information must be completed by 31 July 2021, in respect of the year 1 January to 31 December 2020. (2) In respect of the year 1 January to 31 December 2020, the requirement to publish administration charges and transactions costs information applies to default arrangements only.	1 April 2020 to 31 July 2021	1 April 2020
2.29B	COBS 19.5.5R(6)(g) and 19.5.16R	R	The requirement to set out administration charges and transactions costs information only applies in respect of the annual report for the year 1 January to 31 December 2020 and future years.	1 April 2020 to 31 July 2021	1 April 2020

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.29C	COBS 19.5.5R(7)	R	The requirement to ensure the production of the annual report by 31 July each year, in respect of the previous calendar year, only applies in respect of the year 1 January to 31 December 2020 and future years.	1 April 2020 to 31 July 2021	1 April 2020
2.29D	COBS 19.5.5R(7)	G	The effect of COBS 19.5.5R(7) and TP 2.29CR is that, in respect of the year 2020 onwards, the annual report must align with the calendar year.	1 April 2020 to 31 July 2021	1 April 2020
2.29E	COBS 19.5.16R(2)	R	In respect of the year 1 January to 31 December 2020 only, the annual report need not explain how a <i>relevant scheme</i> member can access the costs and charges information for each alternative fund option that a member is able to select. This is because the publication of such information is not required in respect of that year, due to TP 2.29AR(2).	1 April 2020 to 31 July 2021	1 April 2020
2.29F	COBS 19.5.5R(9) and 19.5.17R	G	<i>IGCs</i> do not need to ensure that members of <i>relevant schemes</i> are provided with the annual communication required by COBS 19.5.5R(9) until after the first publication of administration charges and transaction costs information. As a result of TP 2.29AR, the first annual communication will be in respect of the information published for the year 1 January to 31 December 2020.	1 April 2020 to 31 December 2021	1 April 2020
2.30	COBS TP 2.31	G	The purpose of the transitional provision in COBS TP 2.31 is to treat the specified <i>Glossary</i> definitions (and the relevant provisions referred to within these definitions) of the Conduct of Business Sourcebook (Investment Pathways) Instrument 2019 coming into force on 1 February 2021 as in force to enable a <i>firm</i> and its <i>IGCs</i> to comply with the requirements of COBS 19.5 and the guidance in SYSC 3.2 and SYSC 4.1.	From 6 April 2020 to 31 January 2021	6 April 2020
2.31	COBS 19.5	R	The following <i>Glossary</i> definitions (and the relevant provisions referred to within these definitions) have the same meaning as in Annex A of the Conduct of Business Sourcebook (Investment Pathways) Instrument 2019 coming into force on 1 February 2021: (1) <i>capped drawdown pension fund</i> ; (2) <i>flexi-access drawdown pension fund</i> ; (3) <i>manufacture</i> ; and (4) <i>pathway investment</i> .	From 6 April 2020 to 31 January 2021	6 April 2020

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.32	COBS 19.5.5R(2A)(c)	R	The <i>rule</i> in column (2) does not apply until 1 August 2020 and is replaced by the <i>guidance</i> in COBS TP 2.33.	From 6 April 2020 to 31 July 2020	6 April 2020
2.33	COBS 19.5.5R(2A)(c)	G	From 6 April 2020 to 31 July 2020, an <i>IGC</i> may consider it appropriate to consider the <i>firm's</i> processes and procedures, and any related service legal agreements, regarding the processing of core financial transactions, as part of its assessment of value for money.	From 6 April 2020 to 31 July 2020	6 April 2020
2.34	COBS 19.5.5R(6)	R	In relation to the matters in COBS 19.5.5R(2A) to (2D), where the first annual report produced by the Chair of an <i>IGC</i> from 6 April 2020 relates to a year: (1)that ends before 6 April 2020, the <i>rule</i> in column (2) does not apply; or (2)that starts before (but ends after) 6 April 2020, the <i>IGC</i> is not required to comply with the <i>rule</i> in column (2) to the extent the <i>IGC</i> does not have sufficient information to produce a substantive report. In such cases where there is insufficient information to produce a substantive report, the Chair of the <i>IGC</i> must include a statement in the annual report to that effect.	From 6 April 2020 to 31 December 2020	6 April 2020
2.35	COBS 19.5.5R(6)(aa)	R	The <i>rule</i> in column (2) does not apply until 6 April 2021 and is replaced by the <i>guidance</i> in COBS TP 2.36 below.	From 6 April 2020 to 5 April 2021	6 April 2020
2.36	COBS 19.5.5R(6)(aa)	G	Where an annual report produced by the Chair of an <i>IGC</i> after 6 April 2020 relates to a year that ends before 6 April 2021, an <i>IGC</i> may consider it appropriate to report on the extent to which the <i>firm</i> has implemented its stated policies in relation to the matters in COBS 19.5.5R(2B) to (2D).	From 6 April 2020 to 5 April 2021	
2.37	COBS chapters 9, 13 and 19	R	A <i>firm</i> may choose to comply with COBS chapters 9, 13 and 19 as if the changes to it made by the Money and Pensions Service (Consequential Amendments) Instrument 2021 had not been made.	26 November 2021 to 25 November 2022	26 November 2021
2.38	COBS 19.11	R	A <i>firm</i> need not comply with all of the provisions in COBS 19.11 (unless COBS TP 2.38BR applies) except that the <i>firm</i> must:	30 March 2023 to 31 October 2026	30 March 2023

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
			<ul style="list-style-type: none"> (a) comply with <i>pensions dashboard standards</i> on connection and security; (b) comply with technical <i>pensions dashboard standards</i>; (c) have regard to <i>pensions dashboard guidance</i> on connection; and (d) comply with COBS 19.11.5R. 		
2.38A	COBS 19.11	G	The purpose of COBS TP 2.38R is to ensure that firms are able to connect to the MaPS dashboards digital architecture by 31 October 2026.	30 March 2023 to 31 October 2026	30 March 2023
2.38B	COBS 19.11	R	If a firm that could have taken advantage of COBS TP 2.38R connects to the MaPS dashboards digital architecture before 31 October 2026, it must instead comply with all of the provisions in COBS 19.11 from the date of connection.	30 March 2023 to 31 October 2026	30 March 2023
2.39	[deleted]				
2.39A	[deleted]				
2.40	[deleted]				
2.40A	[deleted]				

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies			Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.41	[deleted]				
2.42	COBS 19.11.27	R	The rule in column (2) does not apply to a firm until 1 October 2023.	30 March 2023 to 30 September 2023	30 March 2023
2.43	COBS 19 Annex 6 3.1R(3), COBS 19 Annex 6 3.1R(4) and COBS 19 Annex 6 3.2R(2)	R	The rule in column (2) does not apply to a firm until 1 October 2023 and until then is replaced by COBS TP 2.43G.	30 March 2023 to 30 September 2023	30 March 2023
2.44	COBS 19 Annex 6 3.1R(3), COBS 19 Annex 6 3.1R(4) and COBS 19 Annex 6 3.2R(2)	G	A firm may provide the value data referred to in COBS 19 Annex 6 3.1R(3) and (4) or COBS 19 Annex 6 3.2R(2) on a voluntary basis before 1 October 2023 using the version of the relevant guidance available prior to 1 October 2023.	30 March 2023 to 30 September 2023	30 March 2023
2.45	COBS 19.11	G	For information purposes only, for the benefit of providers of personal pension products, the consultation version of the following pensions dashboard standards as at 28 October 2022 are included in the links below:	30 March 2023 to 30 October 2023	30 March 2023
			<ul style="list-style-type: none"> • data standards (https://www.pensionsdashboardsprogramme.org.uk/wp-content/uploads/2022/07/PDP-Data-standards.pdf) • technical standards (https://www.pensionsdashboardsprogramme.org.uk/wp-content/uploads/2022/07/PDP-Technical-standards.pdf) • reporting standards (https://www.pensionsdashboardsprogramme.org.uk/wp-content/uploads/2022/07/PDP-Reporting-standards.pdf) • code of connection (https://www.pensionsdashboardsprogramme.org.uk/wp-content/uploads/2022/07/PDP-Code-of-connection.pdf) <p>The effect of the rules in COBS 19.11 is that firms need to comply on an ongoing basis with the most up-to-date published versions of the pensions dashboard standards.</p>		
2.46	COBS 19.12.10R, COBS 19.12.15R	R	COBS 19.12.10R and COBS 19.12.15R do not apply in relation to a firm's existing non-advised clients as of 1 December 2023, provided the firm does not enter into new non-workplace pensions with non-advised clients after 1 December 2023.	From 1 December 2023 indefinitely	1 December 2023

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Hand-book provisions: coming into force
2.47	COBS TP 2.46R, COBS 19.12.10R, COBS 19.12.15R	G	<p>The effect of COBS TP 2.46 is that a firm will not be required to offer a <i>default option</i> in accordance with COBS 19.12.10R and COBS 19.12.15R where the <i>firm</i> has legacy only business. A <i>firm</i> has legacy only business for the purpose of COBS TP 2.46 where it does not enter into a new <i>non-workplace pension</i> with <i>non-advised clients</i> after 1 December 2023.</p> <p>For the avoidance of doubt, where a <i>firm</i> does not enter into new <i>non-workplace pensions</i> with <i>non-advised clients</i> after 1 December 2023, but still continues to offer, distribute or promote new <i>investments</i>, or promote <i>platform services</i> that distribute new <i>investments</i> to (or top-up existing <i>investments</i> for) existing <i>non-advised clients</i> to include in their existing <i>non-workplace pension</i>, the <i>firm</i> will still be considered to have 'legacy only business'. As a result, it will not be required to offer a <i>default option</i> in that situation.</p>	From 1 December 2023 indefinitely	1 December 2023
2.48	COBS 19.12.23, COBS 19.12.24(1)	R	For the purposes of COBS 19.12.23R and 19.12.24(1), the start of the 3-month period is initially determined, in respect of existing members on 1 December 2023, by reference to that date, and not by reference to the date they entered into their <i>non-workplace pensions</i> with the <i>firm</i> .	From 1 December 2023 to 1 March 2024	1 December 2023
2.49	COBS 19.9 and COBS 19 Annex 3 Part 4; COBS 19.9, COBS 19 Annex 3 Part 5, COBS 19.9 and COBS 19 Annex 3 Part 6	R	In respect of the requirement for a <i>firm</i> to update the weblink to MoneyHelper's website in the <i>rules</i> in column (2), this will not apply to a <i>firm</i> until 2 April 2025.	From 2 April 2024 to 2 April 2025	2 April 2024

Conduct of Business Sourcebook

Schedule 1 Record keeping requirements

Sch 1

Sch 1.1 G

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

Sch 1.2 G

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.2A G

- (1) A *MiFID investment firm*, *third country investment firm* or *MiFID optional exemption firm* should refer to the requirements on record keeping in the *MiFID Org Regulation* and ■ SYSC 9. In particular, Annex I to the *MiFID Org Regulation* contains a minimum list of records to be kept by those *firms* to which it applies.

[**Note:** article 72 of the *MiFID Org Regulation*]

- (2) An *insurance distributor* should refer to the requirements on record keeping in the *IDD Regulation* and in ■ SYSC 3 (for *insurers* and *managing agents*) or ■ SYSC 9 (for other *firms*).

[**Note:** article 19 of the *IDD Regulation*]

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 2.3.17R (1)	Information disclosed to the <i>client</i> in accordance with COBS 2.3.1R (2)(b)	The information disclosed	When information is disclosed	5 years from date information is given
COBS 2.3.17R (2)	Each benefit given to another <i>firm</i> which does not have to be disclosed to the <i>client</i> in accordance with COBS 2.3.1R (2)(b)(ii)	Each benefit given	When benefit is given	5 years from date of benefit

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 2.3A.19R (5)(f)(iv)	Trial periods of research received in accordance with COBS 2.3A.19R (5)(f).	Dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in COBS 2.3A.19R(5)(f)(i) to (iii).	When the trial period is received	
COBS 2.3A.32R	Evidence that any fees, commissions and non-monetary benefits paid or received are designed to enhance the quality of the relevant service to the <i>client</i>	(1) List of all fees, commissions and non-monetary benefits received; and (2) record of how any fees, commissions or non-monetary benefits enhance the quality of the services provided and the steps taken in order not to impair compliance with the duty to act honestly, fairly and professionally in the best interests of the <i>client</i>	When the relevant fee, commission or non-monetary benefit is paid or received	Not specified
COBS 2.3B.11R	Audit trail in relation to the operation of any <i>research</i> payment accounts	(1) Payments made to <i>research</i> providers; and (2) how the amounts paid were determined	When a payment for <i>research</i> is made	Not specified
COBS 2.3B.20R	Summary details in relation to the operation of a <i>research</i> payment account	(1) the providers paid from the account; (2) the total amount paid over a defined period; (3) the benefits and services received; and (4) how the total amount spent compares to the budget	From when the <i>research</i> payment account is established	Not specified

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 3.8.2 R (1)	Standard form notice to <i>clients</i> and agreements under COBS 3	Each standard form notice and agreement	When standard form is first used	Relevant period from when the firm ceases to carry on business with clients under that standard form (see COBS 3.8.2 R (3))
COBS 3.8.2 R (2)	<i>Client categorisation</i>	<i>Client categorisation</i> and supporting information, evidence of dispatch to client of any notice (the notice itself where this differs from standard form) and a copy of any agreement entered into	From time of categorisation	Relevant period from when the firm ceases to carry on business with or for that client (see COBS 3.8.2 R (3))
COBS 4.11.1R (1)	<i>Financial promotion</i>	A <i>financial promotion</i> communicated, approved or in relation to which the firm has confirmed compliance (subject to exemptions)	When communicated, approved or confirmed	See COBS 4.11.1R (3)
COBS 4.11.1R (2)	Telemarketing scripts	Copy of any script used	Date script used	See COBS 4.11.1R (3)
[deleted]		(1) (2)	(1) (2)	
COBS 4.11.1R(2B)	<i>Financial promotion: competence and expertise</i>	Evidence of how the firm has satisfied the competence and expertise requirement in COBS 4.10.9AR	When relevant financial promotion communicated or approved, or compliance confirmed	See COBS 4.11.1R(3)
COBS 4.11.2 G	<i>Compliance of financial promotions</i>	<i>Firms</i> encouraged to consider recording why a <i>financial promotion</i> is considered compliant.	Date of assessment of compliance	
COBS 4.11.4R	<i>Non-mass market investments: certification of compliance</i>	Certification by the person allocated the <i>compliance oversight function</i> or em-	Date of certification Date the <i>financial promotion</i> is communic-	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 4.11.5R	<i>Restricted mass market investments: consumer journey</i>	<p>ployees of the firm reporting to and supervised by that person confirming that the financial promotion is compliant with the restrictions in section 238 of the Act and COBS 4.12B, as applicable.</p> <p>Which exemption applies and the reason why that exemption applies. Where the exemption requires a certificate, investor statement, warning or indication, a copy of that certificate, investment statement, warning or indication.</p>	ated or approved	5 years
COBS 4.12A.44R COBS 4.12B.13R	Risk summaries	<p>Records of the outcomes of the firm's categorisation (COBS 4.12A.21R) of retail clients and in relation to appropriateness assessments undertaken (COBS 4.12A.28R)</p>	<p>Ongoing basis in connection with the communication of financial promotions relating to restricted mass market investments</p>	5 years
COBS 4.12A.11R(5) COBS 4.12B.21R(5)	Protection language	<p>Grounds for using an alternative form of risk summary</p> <p>Basis for omitting reference to investors being unlikely to be protected in risk warning</p>	<p>When alternative form of risk summary for a particular investment is adopted</p>	Not specified

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 6.1A.5AR(2)(e)(vi)(D)	Trial periods of research received in accordance with COBS 6.1A.5AR(2)(e)(vi)	Dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in COBS 6.1A.5AR(2)(e)(vi)(A) to (C)	When the trial period is received	
COBS 6.1A.27 R	Adviser charging and remuneration	(1) the <i>firm's</i> charging structure; (2) the total adviser charge payable by each retail client; (3) if the total adviser charge paid by a <i>retail client</i> has varied materially from the charge indicated for that service in the <i>firm's</i> charging structure, the reasons for that difference.	(1) when the charging structure is first used; (2) from the date of disclosure; (3) from the date of disclosure;	See COBS 6.1A.27R (1) to (3)
COBS 6.1C.21 R	Consultancy charging and remuneration	(1) the firm's charging structure; (2) the total <i>consultancy charge</i> payable by each employer. (3) if the total <i>consultancy charge</i> for a particular service has varied materially from that indicated in the <i>firm's</i> charging structure, the reasons for that difference.	(1) when the charging structure is first used; (2) from the date of disclosure;	See COBS 6.1C.21 R
COBS 8.1.4 R	Client agreements (non-MiFID provisions)	Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i>	From date of agreement	At least the duration of the relationship with the <i>client</i> unless the record relates to a <i>pension transfer, pension conversion, pension</i>

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
				<i>opt-out or FSAVC in which case it must be retained indefinitely</i>
COBS 8A.1.9R	Client agreements (MiFID provisions)	Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i>	From date of agreement	At least the duration of the relationship with the <i>client</i>
COBS 9.2.9 R	Recommendations on friendly society life policies.	Why the recommendation is considered suitable	Date of recommendation.	5 years.
COBS 9.5.1 G	Suitability (non-MiFID provisions)	<i>Client information for suitability report</i>	From date of <i>suitability report</i>	See COBS 9.5.2 R.
COBS 9.6.19 R	<i>Basic advice</i>	Decision to give <i>basic advice</i> , range used and <i>basic advice</i> summary prepared for <i>retail client</i>	Date on which <i>basic advice</i> given	5 years
COBS 9.6.20 R	Scope of <i>basic advice</i> (stakeholder products)	Scope of <i>basic advice</i> and its range (or ranges) of stakeholder products	Date on which the scope and range becomes relevant	5 years from the date replaced by more up-to-date record
COBS 9A.4.1G	Suitability (MiFID provisions)	<i>Client information for suitability report</i>	From date of <i>suitability report</i>	At least 5 years
COBS 9A.4.3R	Suitability (insurance-based investment products)	<i>Client information for suitability report - details in COBS 9A.4.3R and COBS 9A.4.4R</i>	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>
COBS 10.7.1 G	Appropriateness (non-MiFID provisions)	<i>Client information obtained in making assessment of appropriateness and the appropriateness assessment</i>	Date of assessment	At least 5 years
COBS 10A.7.2UK	Appropriateness (MiFID provisions)	Records of appropriateness assessments including the results of such assessments and any warnings given to <i>clients</i>	Date of assessment	At least 5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 10A.7.2AR	Appropriateness (insurance-based investment products)	Records of appropriateness assessments including the results of such assessments and any warnings given to <i>clients</i> - details in COBS 10A.7.2AR	Date of assessment	For whichever is the longer of 5 years or the duration of the relationship with the <i>client</i>
COBS 11.5A.4UK	<i>Client</i> orders	Initial orders from <i>clients</i> and decisions to deal	Immediately	At least 5 years
COBS 11.5A.5UK	<i>Client</i> orders	Transactions and order processing	Immediately	At least 5 years
COBS 11.7.4 R	Personal account dealing	Notifications by outsourcing provider and authorisation or prohibition.	Date of notification or decision.	5 years
COBS 11.7A.5UK	Personal account dealing (MiFID provisions)	A record of any personal transaction notified or identified, including any authorisation or prohibition	Date of notification, identification or decision	At least 5 years
COBS 11A.1.4BR(3)(c)	The <i>firm's</i> assessment under COBS 11A.1.4BR(3)(a)	1) The <i>firm's</i> process for conducting the assessment and reaching the opinion under COBS 11A.1.4BR (3)(a); (2) the <i>firm's</i> staff that were involved in reaching that opinion; and (3) an explanation of the <i>firm's</i> consideration of the number and expertise of the unconnected analysts included in the range.	Once the <i>firm</i> has formed its opinion under COBS 11A.1.4BR (3)(a)	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 11A.1.4CR	Restrictions on unconnected analysts	Any restrictions that would be imposed on each unconnected analyst that accepts the opportunity under COBS 11A.1.4BR(2)	When the opportunity is communicated to the range of unconnected analysts	5 years
COBS 11A.1.4ER	Information given by the <i>issuer</i> team during the relevant period under COBS 11A.1.4BR(2)(b)(iv)	(1) The information on the <i>issuer</i> or the relevant securities that is given by the <i>issuer</i> team to the <i>firm's</i> analysts during the relevant period under COBS 11A.1.4BR(2)(b)(iv); and (2) the information on the <i>issuer</i> or the relevant securities that is given by the <i>issuer</i> team to each of the range of unconnected analysts during the same period.	At the end of the relevant period under COBS 11A.1.4BR(2)(b)(iv)	5 years
COBS 11A.1.9UK	Underwriting and placing	Content and timing of instructions received from <i>clients</i> and allocation decisions	Date of receipt of instructions or of allocation decision	5 years
COBS 15.3.4 R	Cancellation: exercise of right	Exercise of the right to cancel or withdraw	Date of exercise	As specified in COBS 15.3.4 R(1), (2) and (3)
COBS 16.2.7 R	Confirmation to <i>clients</i> (non-MiFID provisions)	Copy of a confirmation	From date of despatch to <i>client</i>	At least 3 years
COBS 16.3.11 R	Periodic statements (non-MiFID provisions)	A copy of a <i>periodic statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	At least 3 years
COBS 16A.3.1UK	Confirmation to <i>clients</i> (MiFID provisions)	A copy of a confirmation	From date of despatch to <i>client</i>	At least 5 years
COBS 16A.4.1UK	Periodic statements (MiFID provisions)	A copy of a <i>periodic statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	At least 5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 16A.4.2AR	<i>Periodic statements (insurance-based investment products)</i>	A copy of a <i>periodic statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	At least 5 years
COBS 16.6.6 R	Life insurance contracts	Information to be provided during the terms of the contract	When information is given	5 years after information given
COBS 18.5.14 R	<i>Residual CIS operators and small authorised UK AIFMs of an unauthorised AIF</i>	<i>Periodic statement</i> to be provided to <i>participants</i>	When provided	3 years
COBS 18 Annex 2.1R	<i>Client orders and decisions to deal in portfolio management</i>	Orders received from <i>clients</i> and decisions taken - details in COBS 18 Annex 2.1R(2)	Immediately	5 years
COBS 18 Annex 2.3.R	<i>Client orders</i>	Execution of orders	Immediately after executing a <i>client order</i> , or, in the case of <i>firms</i> that transmit orders to another <i>person</i> for execution, immediately after receiving confirmation that an order has been executed	5 years
COBS 18 Annex 2.3.R	<i>Client orders</i>	Transmission details (see COBS 18 Annex 2.3.R)	Immediately on transmitting an order to another <i>person</i> for execution	5 years
COBS 19.1.7CR	Execution only pension transfer or opt out	That no personal recommendation was given to the <i>client</i>	Date of transaction	Indefinitely
COBS 19.2.3 R	Promotion of personal pension scheme	Why the promotion was justified	When promoted	5 years
COBS 20.2.34AR (1)(a)(i)	Support assets outside the <i>with-profits fund</i>	Precise terms and conditions on which support assets operate and are available including whether and when they are repayable	When a <i>firm</i> first has support assets outside the <i>with-profits fund</i>	Until the <i>firm</i> ceases to use support assets outside the <i>with-profits fund</i>

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 20.2.36A R	<i>strategic investments</i>	A description of the strategic purpose for which a <i>strategic investment</i> has been purchased or retained	Before making a <i>strategic investment</i> or when reviewing whether to retain a <i>strategic investment</i>	Until the <i>firm</i> ceases to hold the <i>strategic investment</i> in question
COBS 20.3.1 R	<i>PPFMs</i>	Each version of the <i>PPFM</i>	Date on which the <i>PPFM</i> is relevant	5 years
COBS 22.2.6 R	Retail distribution of mutual society shares	Information and evidence demonstrating compliance with the requirements of COBS 22.2	At or near the time of the sale to a <i>retail client</i>	5 years for <i>MiFID</i> or equivalent third country business and 3 years for other business
COBS 22.3.5 R	Retail distribution of contingent convertible instruments and <i>CoCo funds</i>	Information and evidence demonstrating compliance with the restrictions in COBS 22.3	At or near the time of the sale or communication or approval of a promotion to a <i>retail client</i>	5 years for <i>MiFID</i> or equivalent third country business and 3 years for other business
COBS TP 1	<i>Client categorisation transitional</i>	Categorisation or re-categorisation under TP1	Date of categorisation/ re-categorisation	See COBS 3.8.2 R (2)
COBS TP 2	<i>Investment research transitional</i>	Election to comply with COBS 12.2 - COBS 12.3 sooner than 1 May 2008	Date of decision and date from which election is to be effective	5 years
COBS TP 2	<i>Specialist regimes</i>	Election to comply with COBS 18 sooner than 1 May 2008	Date of decision and date from which election is to be effective	5 years

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Schedule 2 Notification requirements

Sch 2.1 G

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
COBS 20.2.19AR (1)	Details of a proposed distribution	Written details of the proposed distribution, together with copies of draft notifications it proposes to send to <i>policyholders</i> .	The proposed distribution to <i>policyholders</i> is smaller than the 'pre-notification to <i>policyholder</i> minimum' calculated in accordance with COBS 20.2.19BR (1).	At least two months prior to the proposed distribution
COBS 20.2.19AR (2)	Details of a proposed distribution	Written details of the proposed distribution, together with copies of draft notifications it proposes to send to <i>policyholders</i> .	The distribution to <i>policyholders</i> does not meet the test in COBS 20.2.19AR (1) but is smaller than the 'after the event notification to <i>policyholder</i> minimum' calculated in accordance with COBS 20.2.19BR (2).	At least one month prior to the proposed distribution
COBS 20.2.45 R	Appointment of <i>policyholder advocate</i> .	The terms on which the <i>firm</i> proposes to appoint a <i>policyholder advocate</i> .	Proposal to appoint <i>policyholder advocate</i> .	As soon as reasonably practicable
COBS 21.2.8 R	Breach of COBS 21.3.5 R	Any failure to meet the requirements of COBS 21.3.5 R	Breach of COBS 21.3.5 R	As soon as the <i>firm</i> becomes aware of the failure
COBS 20.5.5R (3)	The decision of a <i>firm's governing body</i> to depart from the advice or recommendation of the <i>with-profits</i>	A description of: (1) the decision of, and reasons given by, the <i>firm's governing body</i> ;	The <i>with-profits committee</i> or advisory arrangement considers that the issue is sufficiently significant	As soon as reasonably practicable

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
	<p><i>committee or advisory arrangement.</i></p> <p>(2) the recommendation and advice of the <i>with-profits committee</i> or <i>advisory arrangement</i>;</p> <p>together with a copy of the <i>firm's records</i> of the decision, reasons, advice and recommendations.</p>		<p>ant and requests of the <i>governing body</i> that the <i>FSA</i> be informed.</p>	

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Schedule 3 Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in *COBS*.

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Schedule 4 Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

Conduct of Business Sourcebook

Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in COBS contravention of which by an *authorised person* may be actionable under section 138D of the Act (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the FCA has removed the right of action under section 150(2) of the Act. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
All rules in COBS with the status letter "E"			No	No	No
Any rule in COBS which prohibits an authorised person from seeking to make provision excluding or restricting any duty or liability			Yes	No	Yes Any other person
Any rule in COBS which is directed at ensuring that transactions in <i>designated investments</i> are not effected with the benefit of unpublished information that, if made public, would be likely to affect the price of that designated investment			Yes	No	Yes Any other person
The <i>fair, clear and not misleading rule</i>			Yes	In part (Note 1)	No
All other rules in COBS			Yes	No	No

Notes

1. COBS 4.2.6R provides that if, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the *Act*.

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Schedule 6 Rules that can be waived

Sch 6.1 G

As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the Act.

General Provisions

General Provisions

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GEN 2	Interpreting the Handbook
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GEN 5	Regulators' logos and the Key facts logo
5.1	Application and purpose

5 Annex 1 Licence for use of the FSA and Key facts logos

GEN 6 Insurance against financial difficulties

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GEN 7 Charging consumers for telephone calls

**7.1 Application
7.2 Call charges**

Transitional provisions and Schedules

TP 1 Transitional provisions

TP 2 Transitional Provisions applying across the FCA Handbook and the PRA Rulebook

TP 3 Transitional Provision in relation to the Alternative Investment Fund Managers Directive Instrument 2013

TP 4 Transitional Provision on early compliance with the Insurance Distribution Directive applying across the Handbook [deleted]

TP 5 Transitional provisions applying across the FCA Handbook and Technical Standards relating to the UK's exit from the EU

TP 6 Transitional provisions applying to GEN only – status disclosure for temporary permission firms [deleted]

Sch 1 Record keeping requirements

Sch 2 Notification requirements

Sch 3 Fees and other required payments

Sch 4 Powers exercised

Sch 5 Rights of action for damages

Sch 6 Rules that can be waived

GEN Contents

Chapter 1

FCA approval and emergencies

1.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access. See www.fca.org.uk]

1.1.1

R

- (1) This chapter applies to every *firm*. ■ GEN 1.3 (Emergency) also applies to an *unauthorised person* to whom a *rule* in the *Handbook* applies.
- (2) [deleted]
- (3) ■ GEN 1.2.2AR(1) also applies to a *registered person* communicating a *financial promotion* relating to one or more *qualifying cryptoassets* (in reliance on the exemption in article 73ZA of the *Financial Promotion Order*).
- (4) For the purpose of (3), reference in ■ GEN 1.2.2AR(1) to a *firm* include reference to a *registered person*.

1.1.2

G

[deleted]

1.2 Referring to approval by the FCA

- 1.2.1 **G** The purpose of ■ GEN 1.2.2AR is to prevent *clients* being misled about the extent to which the *FCA* has approved a *firm's* affairs.
- 1.2.2 **R** [deleted]
- 1.2.2A **R**
- (1) Unless required to do so under the *regulatory system*, a *firm* must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client, expressly or by implication, that its affairs, or any aspect of them, have the approval or endorsement of the *FCA* or another competent authority.
 - (1A) Paragraph (1) does not apply to a *firm* to the extent that it is incompatible with obligations under article 44(8) of the *MiFID Org Regulation*.
 - (2) Paragraph (1) does not apply to statements that explain, in a way that is fair, clear and not misleading, that:
 - (a) the *firm* is an *authorised person*;
 - (b) [deleted]
 - (c) the *firm* has *permission* to carry on a specific activity;
 - (d) an *authorisation order* has been made in relation to an *AUT*, *ACS* or *ICVC*;
 - (e) a *recognised scheme* has that status;
 - (f) the *firm's approved persons* have been approved by the *appropriate regulator* for the purposes of section 59 of the *Act* (Approval for particular arrangements);
 - (g) the *firm* has been given express written approval by the *appropriate regulator* in respect of a specific aspect of the *firm's* affairs.
 - (3) Paragraph (1) applies with respect to the carrying on of both *regulated activities* and *unregulated activities*.
 - (4) [deleted]
- 1.2.3 **G** ■ GEN 1.2.2AR(2)(g) is confined to written approval because of the need for clarity as to the scope of any approval given by the *appropriate regulator*.

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1.2.4**G**

A firm that carries on *MiFID, equivalent third country or optional exemption business* should have regard to the requirement in article 44(8) of the *MiFID Org Regulation* which is reproduced at ■ COBS 4.5A.16UK.

1.3 Emergency

1.3.1**G**

The *FCA* recognises that there may be occasions when, because of a particular emergency, a *person* (generally a *firm*, but in certain circumstances, for example in relation to *price stabilising rules*, an *unauthorised person*) may be unable to comply with a particular *rule* in the *Handbook*. The purpose of ■ GEN 1.3.2 R is to provide appropriate relief from the consequences of contravention of such a *rule* in those circumstances.

1.3.2**R**

- (1) If any emergency arises which:
 - (a) makes it impracticable for a *person* to comply with a particular *rule* in the *Handbook*;
 - (b) could not have been avoided by the *person* taking all reasonable steps; and
 - (c) is outside the control of the *person*, its *associates* and *agents* (and of its and their *employees*);
the *person* will not be in contravention of that *rule* to the extent that, in consequence of the emergency, compliance with that *rule* is impracticable.
- (2) Paragraph (1) applies only for so long as:
 - (a) the consequences of the emergency continue; and
 - (b) the *person* can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the *rule*, and to mitigate losses and potential losses to its *clients* (if any).
- (3) The *person* must notify the *FCA* as soon as practicable of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.
- (4) A notification under (3) must be given to or addressed and delivered in accordance with ■ SUP 15.7 (Form and method of notification) (whether or not the *person* is a *firm*). If the *person* is not a *firm*, the notification must be given to or addressed for the attention of: Contact Centre, The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN (tel: 0300 500 0597).

1.3.2A**R**

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- | | |
|-------|---|
| 1.3.3 | G A <i>firm</i> should continue to keep the <i>FCA</i> informed of the steps it is taking under ■ GEN 1.3.2 R (3) , in order to comply with its obligations under <i>Principle 11</i> (Relations with regulators). |
| 1.3.4 | G In the context of ■ GEN 1.3.2 R , an action is not practicable if it involves a person going to unreasonable lengths. |
| 1.3.5 | G ■ GEN 1.3.2 R operates on the <i>FCA's rules</i> . It does not affect the <i>FCA's powers</i> to take action against a <i>firm</i> in an emergency, based on contravention of other requirements and standards under the <i>regulatory system</i> . For example, the <i>FCA</i> may exercise its <i>own-initiative power</i> in appropriate cases to vary a <i>firm's Part 4A permission</i> based on a failure or potential failure to satisfy the <i>threshold conditions</i> (see ■ SUP 7 (Individual requirements) and ■ SUP 6B (Variation and cancellation of permission and imposition of requirements on the <i>FCA's own initiative</i>)). |

Chapter 2

Interpreting the Handbook

2.1 Introduction

Application

- 2.1.1 **G** [deleted]
- 2.1.2 **R** This chapter applies to every *person* to whom any provision in the *Handbook* applies. In relation to a provision other than a *rule*, the *rules* in this chapter apply as if they were part of that provision.
- 2.1.3 **P** [deleted]
- 2.1.4 **E** [deleted]
- 2.1.5 **D** [deleted]
- 2.1.6 **G** [deleted]
- 2.1.7 **R** [deleted]
- 2.1.8 **R** This chapter applies to all provisions made by *FOS Ltd*.
- 2.1.9 **G** The effect of ■ GEN 2.1.8 R is that this chapter applies with respect to those provisions in ■ DISP 2 (Jurisdiction of the Financial Ombudsman Service), ■ DISP 3 (Complaint handling procedures of the Financial Ombudsman Service), ■ DISP 4 (Standard terms) and ■ FEES 5 (Financial Ombudsman Service Funding) made by *FOS Ltd*.

The Reader's Guide

- 2.1.10 **G** The Reader's Guide supplements this chapter. It provides an introduction to the structure and contents of the *Handbook* and its related materials, explaining how the different modules fit together and how to interpret and use the *Handbook*.

2.2 Interpreting the Handbook

Purposive interpretation

- 2.2.1** **R** Every provision in the *Handbook* must be interpreted in the light of its purpose.
- 2.2.2** **G** The purpose of any provision in the *Handbook* is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions. The *guidance* given on the purpose of a provision is intended as an explanation to assist readers of the *Handbook*. As such, *guidance* may assist the reader in assessing the purpose of the provision, but it should not be taken as a complete or definitive explanation of a provision's purpose.

Evidential provisions

- 2.2.3** **R** Any *rule* in the *Handbook* which has the status letter "E" in the margin or heading:
- (1) is to be taken also to provide that contravention of the *rule* does not give rise to any of the consequences provided for by provisions of the Act other than section 138C (Evidential provisions); and
 - (2) incorporates the status letter "E" in the margin or heading as part of the *rule*.
- 2.2.4** **G**
- (1) The *rules* to which section 138C of the Act applies ("evidential provisions") are identified in the *Handbook* by the status letter "E" in the margin or heading.
 - (2) Other provisions in the *Handbook*, although also identified by the status letter "E" in the margin or heading, are actually not *rules* but provisions in codes and **2.2.3 R** does not apply to them.

- 2.2.5** **G** Chapter 6 of the Reader's Guide contains an explanation of the significance of the status letters R, E, G, D, UK, EU, P and C, and includes further information on *Handbook* provisions, including *evidential provisions*.

Use of defined expressions

- 2.2.6** **G** Expressions with defined meanings appear in *italics* in the *Handbook*, unless otherwise stated in individual sourcebooks or manuals.

- 2.2.7** **R** In the *Handbook* (except *IPRU*, unless otherwise indicated):
- (1) an expression in italics which is defined in the *Glossary* has the meaning given there; and
 - (2) an expression in italics which relates to an expression defined in the *Glossary* must be interpreted accordingly.
- 2.2.8** **G** Examples of related expressions are:
- (1) "*advice on investments*" and "*advise on investments*", which should be interpreted by reference to "*advising on investments*";
 - (2) "*closely linked*", which should be interpreted by reference to "*close links*";
 - (3) "*controls*" and "*controlled*", which should be interpreted by reference to "*control*";
 - (4) "*effect*", as for example in "*effect a life policy*", which should be interpreted by reference to "*effecting contracts of insurance*"; and
 - (5) "*employment*", which should be interpreted by reference to "*employee*".
- 2.2.9** **G** Unless the context otherwise requires or unless otherwise stated in a particular sourcebook or manual, where italics have not been used, an expression bears its natural meaning (subject to the **Interpretation Act 1978**; see ■ GEN 2.2.11 R to ■ GEN 2.2.12 G).
- 2.2.10** **G** The Interim Prudential sourcebooks (*IPRU*) have individual arrangements for defined terms and each contains *rules* or *guidance* on its own arrangements. In respect of those sourcebooks, reliance should not be placed on the definitions which appear in the *Glossary* unless otherwise indicated.
- Application of the Interpretation Act 1978**
- 2.2.11** **R** The **Interpretation Act 1978** applies to the *Handbook*.
- 2.2.12** **G** The application of the **Interpretation Act 1978** to the *Handbook* has the effect, in particular, that:
- (1) expressions in the *Handbook* used in the *Act* have the meanings which they bear in the *Act*, unless the contrary intention appears;
 - (2) where reference is made in the *Handbook* to an enactment, it is a reference to that enactment as amended (but see also ■ GEN 2.2.13R), and includes a reference to

that provision as extended or applied by or under any other enactment, unless the contrary intention appears; and

- (3) unless the contrary intention appears:
 - (a) words in the *Handbook* importing the masculine gender include the feminine and words importing the feminine gender include the masculine;
 - (b) words in the *Handbook* in the singular include the plural and words in the plural include the singular.

Civil partnership - references to stepchildren etc

2.2.12A R

Any reference in a provision of the *Handbook* made before 5 December 2005 to a stepchild, step-parent, stepdaughter, stepson, stepbrother or stepsister is to be interpreted in accordance with section 246 of the Civil Partnership Act 2004.

2.2.12B G

■ GEN 2.2.12A R and sections 246 and 247 of the Civil Partnership Act 2004 amend each reference in the *Handbook* to a stepchild, step-parent and certain related expressions to take account of civil partnerships. As a result a reference (for example) to a stepchild of a person (A) includes a reference to the child of the civil partner of A where that child is not A's child.

Cross-references in the Handbook

2.2.13 R

- (1) A reference in the *Handbook* to another provision in the *Handbook* is a reference to that provision as amended from time to time.
- (2) Unless a contrary intention appears:
 - a reference in the *Handbook* to a provision in the PRA Rulebook is a reference to that provision as amended from time to time;
 - a reference in a *Handbook* rule (other than a rule made by FOS Ltd) to an enactment is a reference to that enactment as amended from time to time;
 - for the purposes of *Handbook* rules (other than rules made by FOS Ltd), any reference to an enactment in the *Glossary* is to be construed as a reference to that enactment as amended from time to time.

2.2.13A R

Unless a contrary intention appears, to the extent that a provision made by the FCA ('the referring provision') contains a cross-reference to another provision that is not made by the FCA including a provision formerly made by the PRA which the PRA has now deleted ('the referred provision'), the referred provision as amended from time to time (excepting deletion in its entirety) is to be treated as having been made by the FCA to the extent necessary to make the referring provision function with the full effect indicated by the reference.

2.2.13B G

The purpose of ■ GEN 2.2.13AR is to ensure that cross references in the FCA *Handbook* to provisions outside the FCA *Handbook* are effective, including

		<p>cross references to material that was formerly in the <i>PRA Handbook</i> but which the <i>PRA</i> has now deleted.</p>
		<h3>References to writing</h3>
2.2.14	R	<p>If a provision in the <i>Handbook</i> refers to a communication, notice, agreement or other <i>document</i> "in writing" then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.</p>
2.2.15	G	<p>■ GEN 2.2.14 R means that, for example, electronic media may be used to make communications which are required by a provision of the <i>Handbook</i> to be "in writing", unless a contrary intention appears, or the use of electronic media would contravene some other requirement. ■ GEN 2.2.14 R does not, however, affect any other legal requirement which may apply in relation to the form or manner of executing a <i>document</i> or agreement.</p>
2.2.15A	G	<p>An example of a requirement relevant to whether a communication required by a provision of the <i>Handbook</i> to be "in writing" may be made by use of electronic media is the requirement to treat <i>customers</i> fairly under <i>Principle 6</i>.</p>
2.2.16	G	<p>"<i>Document</i>" is a defined term in the <i>Glossary</i>, the definition of which includes information recorded in any form, including electronic form.</p>
		<h3>Activities covered by general rules</h3>
2.2.17	R	<p>A general <i>rule</i> (that is a <i>rule</i> made by the <i>FCA</i> the <i>general rule making powers</i>) is to be interpreted as:</p> <ol style="list-style-type: none">(1) applying to a <i>firm</i> with respect to the carrying on of all <i>regulated activities</i>, except to the extent that a contrary intention appears; and(2) not applying to a <i>firm</i> with respect to the carrying on of <i>unregulated activities</i>, unless and then only to the extent that a contrary intention appears.
		<h3>Continuity of authorised partnerships and unincorporated associations</h3>
2.2.18	R	<ol style="list-style-type: none">(1) If a <i>firm</i>, which is a partnership or unincorporated association, is dissolved, but its authorisation continues to have effect under <u>section B2</u> of the <i>Act</i> (Partnerships and unincorporated associations) in relation to any partnership or unincorporated association which succeeds to the business of the dissolved <i>firm</i>, the successor partnership or unincorporated association is to be regarded as the same <i>firm</i> for the purposes of the <i>Handbook</i> unless the context otherwise requires.(2) [deleted](3) [deleted]

- 2.2.19** **G** In principle, it is possible to view a change of partners in a partnership, or a change in the membership of the unincorporated association, as the formation of a new partnership or association. ■ GEN 2.2.18 R reflects section 32 of the Act (Partnerships and unincorporated associations), which provides for the continuing *authorisation* of partnerships and unincorporated associations following a change in partners or members if certain conditions are satisfied. ■ GEN 2.2.18 R ensures a similar effect to section 32 in relation to the status of the partnership or unincorporated associations as a "firm" or "authorised person" for the purposes of the *Handbook*.

Designated investment exchanges

- 2.2.20** **G** In the *Glossary*, the definition of *designated investment exchange* lists certain investment exchanges. Further information on *designated investment exchanges*, including *guidance* on the addition of an investment exchange to the list, is set out in ■ GEN 2 Annex 1 G and the obligation to pay the application fee is set out in ■ FEES 3.2.

Registered persons

- 2.2.20A** **G**
- (1) *Registered persons* are able to communicate *financial promotions* relating to *qualifying cryptoassets* in reliance on an exemption in article 73ZA of the *Financial Promotion Order*.
 - (2) The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 applies certain powers in the Act in relation to *registered persons* in connection with their *communication of financial promotions* in reliance on this exemption.
 - (3) In order to ensure that *registered persons* are subject to appropriate FCA oversight and enforcement in relation to their *communication of financial promotions*, the FCA is able to exercise certain supervisory and enforcement powers under the Act in relation to *registered persons*. Where the *Handbook* contains *guidance* on the exercise of these powers in relation to *authorised persons* (in particular, in SUP), that guidance should be read as also being relevant to *registered persons* (and references to *firms* should be construed accordingly).

- 2.2.21** **G** [deleted]

Treaty of Lisbon

- 2.2.22** **G** As a result of the Treaty of Lisbon, the European Union has replaced and succeeded the European Community. References in the *Handbook* to the European Community should therefore be interpreted as references to the European Union, where the context requires.

Onshored Regulations and third country firms

- 2.2.22A** **R**
- (1) Unless exempted in (2) and subject to (3), *MiFIR*, and any *onshored regulations* previously deriving from *MiFIR* or *MiFID*, apply to a *third country investment firm* as if it were a *UK MiFID investment firm* when the following conditions are met:
 - (a) when it carries on *MiFID* or equivalent *third country business*; and

2.2.22B

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- (b) it carries on the business in (a) from an establishment in the *United Kingdom*.
 - (2) Paragraph (1) does not apply:
 - (a) to the extent *MiFIR* or an *onshored regulation* previously deriving from *MiFIR* or *MiFID* imposes a specific requirement in relation to a *third country investment firm*; and
 - (b) to *onshored regulations* which were previously *EU regulations* adopted under article 7 of *MiFID*.
 - (3) Paragraph (1) is modified by the application provisions in individual *Handbook* chapters for particular purposes.
 - (4) ■ GEN 2.2.22AR(1) is subject to articles 2A to 2E of *MiFIR* and article 1(3) to (5) of the *MiFID Org Regulation*.
 - (5) In relation to *TP firms* ■ GEN 2.2.22AR(1) does not apply requirements imposed by and under *MiFIR* or by the *MiFID Org Regulation* in addition to those referred to in articles 2A to 2E *MiFIR* and article 1(3) to (5) of the *MiFID Org Regulation*.
- (1) The purpose of ■ GEN 2.2.22AR is to ensure that a *third country investment firm* should not be treated in a more favourable way than a *UK firm*.
 - (2) ■ GEN 2.2.22AR may be overridden where the application provisions at the beginning of individual *Handbook* chapters qualify its effect.

Application of provisions where there are commensurate PRA provisions

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- (1) This *rule* applies to *Handbook* provisions where the *PRA* have made commensurate provisions in the *PRA Rulebook*. It may affect their application by the *FCA* to *PRA-authorised persons* and *PRA approved persons*.
- (2) Where a *Handbook* provision (or part of one) goes beyond the *FCA's* powers or regulatory responsibilities, it is to be interpreted as applied to the extent of the *FCA's* powers and regulatory responsibilities only.
- (3) The extent of a *Handbook* provision is to be interpreted as cut back under (2) by the minimum degree necessary.
- (4) [deleted]

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The published Memorandum of Understanding between the *FCA* and the *PRA* describes their regulatory responsibilities.

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An example of a *rule* being interpreted as cut back by ■ GEN 2.2.23R is ■ SYSC 6.1.1R, which requires a *firm* to maintain adequate policies and procedures to ensure compliance with its obligations under the *regulatory system*; ■ SYSC 6.1.1R should be interpreted as applied by the *FCA* in respect of a *PRA-authorised person's* compliance with regulatory obligations that are

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the responsibility of the FCA (for example, in respect of a *bank* maintaining policies and procedures to ensure compliance with banking conduct requirements in *BCOBS*).

- (1) [deleted]
- (2) [deleted]
- (3) [deleted]

Rules applying while a firm has temporary permission: the General Rules

Unless the contrary intention appears, a *rule* does not apply to a *TP firm* except that:

- (1) A *rule* which imposed an obligation on a *person* immediately before *IP completion day* who becomes a *TP firm* continues to apply to the *TP firm* to the same extent and to the same activities to which the *rule* applied at that time.
- (2) In addition, a *rule* which deals with a matter (in relation to an activity of a *TP firm* in either (3) or (4)) which immediately before *IP completion day* was reserved to the:
 - (a) *Home State* of the *firm* under an *EU directive*; or
 - (b) where applicable, *EEA state* where the *firm* has the establishment from which the service is provided, under an *EU directive*, also applies to a *TP firm* if and to the extent that that *rule*:
 - (i) applies to a *UK firm* (or other cognate expression) that carries on the same *regulated activity* as the *TP firm*; and
 - (ii) immediately before *IP completion day*, implemented a provision of an *EU directive* (disregarding any provision of a directive which allocates responsibility between different member states).
- (3) A *TP firm* which carries on an activity from its *UK branch* or establishment (or that of its *appointed representative*) does not contravene a *rule* applied by (2) to the extent that:
 - (a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* (or its *appointed representative*) complied with or applied a provision which implements the same provision of the relevant directive reserved to its *Home State* and imposed by that state's law; and
 - (b) the *firm's* compliance with or application of the provision covers the *firm's* activities provided from its *UK branch* or establishment (or that of its *appointed representative*).
- (4) A *TP firm* which carries on an activity other than from its *UK branch* or establishment (or that of its *appointed representative*) into the *United Kingdom* does not contravene a *rule* applied by (2) to the extent that:
 - (a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied a provision

- which implements the same provision of the relevant directive reserved to its *Home State* (or, where (2)(b) applies, to the *EEA state* where it has the establishment from which the service is provided) and imposed by that state's law; and
- (b) the *firm's* compliance with or application of the provision covers the *firm's* activities into the *UK* (or that of its *appointed representative*).
- (5) Paragraph (3) or (4) does not apply unless a *TP firm* can demonstrate to the *FCA* that, at the relevant time, it complied with or applied a provision in (3) or (4) to the extent referred to there.
- (6) Where a *TP firm's Home State* (or, where applicable, the *EEA state* where it has the establishment from which the service is provided) exercises a national discretion expressly permitted by an *EU directive* not to apply a provision which would implement a provision of an *EU directive* referred to in (2) which the *FCA* has chosen to apply as a *rule*, the *TP firm* has no need to comply with or apply the *rule* in question.
- (7) A provision referred to in paragraph (3) or (4) includes a provision where an *EU directive* sets out a number of options, and the state referred to in paragraph (3) or (4) has chosen one or more such options different from those chosen by the *FCA* in order to implement the same provision.

Amendments to rules applied by the General Rules

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- (1) A *rule* applied by ■ GEN 2.2.26R(1) or ■ GEN 2.2.26R(2):
- (a) applies with any amendment made to the *rule* in question which comes into force on *IP completion day* to address an issue resulting from the *UK's withdrawal from the European Union*;
- (b) applies until it is deleted after *IP completion day*, or where a *rule* is amended or replaced after *IP completion day* it continues to apply as amended or replaced unless the *rule* states that it does not apply; and
- (c) only applies to the *firm's* activities carried on from a *UK branch* or establishment (maintained by the *firm* or by its *appointed representative*) or carried on other than from a *UK branch* or establishment into the *UK* (by the *firm* or its *appointed representative*).
- (2) Apart from in *COMP* and ■ *FEES 6*, where a *rule* (or paragraph of a *rule*) applied by ■ GEN 2.2.26R(1) or ■ GEN 2.2.26R(2):
- (a) only applied to a *person* which passported into the *United Kingdom* under Schedule 3 or 4 to the Act; and
- (b) is deleted on *IP completion day*;
- deletion is disregarded and it continues to apply to the *TP firm*; and references in the *rule* (or paragraph of the *rule*) to the *EU* or to an *EU matter* or *thing* are deemed to be references to the *UK* or a *UK matter* or *thing*, as the case may be.

(3) [deleted]

(4) [deleted]

(5) [deleted]

Modification of rules applied by the General Rules in cases of conflict

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(1) Where a *rule* in ■ GEN 2.2.26R(1) applies and:

(a) as a result of an amendment which comes into force on *IP completion day* which removes a reference to a matter in relation to the *EEA*; and

(b) it is no longer practicable for the *TP firm* to comply with the *rule* because of the amendment,

the *firm* may treat the *rule*, to the extent necessary, as if it continued to refer to a matter in relation to the *EEA*.

(2) Where a *rule* applied by ■ GEN 2.2.26R(1) contradicts a *rule* applied by ■ GEN 2.2.26R(2), to the extent necessary the *rule* in ■ GEN 2.2.26R(2) does not apply.

(3) Where as a result of the *UK's withdrawal from the EU* different provisions (than those which applied to the *person* immediately before *IP completion day*) apply in an *EEA State* to a *TP firm* and if as a result of complying with a *rule* applied by ■ GEN 2.2.26R(2) the *firm* would contravene a provision in that *EEA State*, the *rule* in ■ GEN 2.2.26R(2), to the extent necessary, does not apply.

MiFID technical standards

2.2.29

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(1) The provisions, as amended on or after *IP completion day*, in (2) apply to a *TP firm* which is an *EEA MiFID investment firm* as if it were a *MiFID investment firm* when the following conditions are met:

(a) where it carries on *MiFID or equivalent third country business*; and

(b) that business is carried on from a *UK branch* (maintained by the *firm* or its *appointed representative*) or, where it is carried on other than from a *UK branch*, that business is provided into the *United Kingdom* (by the *firm* or its *appointed representative*).

(2) The provisions referred to in (1) are technical standards deriving from previously adopted *EU regulations* under *MiFID* which are assimilated law, except:

(a) those deriving from previously adopted *EU regulations* under article 7 of *MiFID*;

(b) those deriving from previously adopted *EU regulations* under article 32(2) and (3) of *MiFID* where they apply to a *firm* other than a *TP firm operating an organised trading facility* or acting as a *systematic internaliser* from a *branch* in the *United Kingdom*; or

(c) to the extent that their application to a *TP firm* would be inconsistent with the application to that *firm* of Chapter 5 of the *MiFID Org Regulation* or ■ MAR 10.4.

- (3) A *TP firm* which carries on business from a *UK branch* (maintained by the *firm* or its *appointed representative*) does not contravene a *rule* applied by (1) to the extent that:
- at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied the same provision of the relevant measure referred to in (2) applied by its *Home State*; and
 - the *firm's* compliance with or application of the provision covers the *firm's* activities provided from the *UK branch* (maintained by the *firm* or its *appointed representative*).
- (4) A *TP firm* which carries on business other than from a *UK branch* into the *United Kingdom* (by the *firm* or its *appointed representative*) does not contravene a *rule* applied by (1) to the extent that:
- at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied the same provision of the relevant measure referred to in (2) applied by its *Home State*; and
 - the *firm's* compliance with or application of the provision covers the *firm's* or its *appointed representative's* activities in the *UK*.
- (5) A *rule* in (3) or (4) does not apply unless a *TP firm* can demonstrate to the *FCA* that, at the relevant time, it complied with or applied a provision in (3) or (4) to the extent referred to there.
- (6) Neither of paragraphs (3) and (5) apply to *rules* applied by (1) which are provisions deriving from previously adopted *EU regulations* under article 27 of *MiFID*.

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Rules and guidance applying while a firm has temporary permission – capital adequacy requirements

- (1) Nothing in *GENPRU*, *MIFIDPRU*, *INSPRU*, *MIPRU*, *IPRU(FSOC)*, *IPRU(INS)* or *IPRU(INV)* applies to a *TP firm*, except for the provisions in (2).
- (2) To the extent a *TP firm* carries on the relevant *regulated activity*, the following apply by virtue of ■ GEN 2.2.26R:
 - (a) ■ *INSPRU* 1.5.33R;
 - (b) *MIPRU*;
 - (c) *IPRU(FSOC)*; and
 - (d) ■ *IPRU(INV)* 5, 6, ■ 12 and 13, except that *rules* relating to capital adequacy in these chapters, which would apply to a *TP firm* through the operation of ■ GEN 2.2.26R(2), do not apply to that *TP firm*. Specifically, the financial resources requirements for *depositaries* of *UCITS schemes* and *depositaries* of certain *AIFs* in ■ *IPRU(INV)* 5, and requirements involving the holding of professional indemnity insurance which relate to capital adequacy in ■ *IPRU(INV)* 13.

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- (1) ■ GEN 2.2.30R operates by excluding the application of the sourcebooks contained in the Prudential Standards part of the *FCA Handbook*, except for the sourcebooks or parts of sourcebooks referred to in ■ GEN 2.2.30R(2).
- (2) The sourcebooks referred to in ■ GEN 2.2.30R(2) contain *rules* that may apply to a *TP firm* either by virtue of ■ GEN 2.2.26R(1) if they applied to that *firm* immediately before *IP completion day*, or *rules* that may apply to a *TP firm* by virtue of ■ GEN 2.2.26R(2) if the conditions in that provision are met, and the *rule* does not relate to capital adequacy.
- (3) The approach in ■ GEN 2.2.30R to applying *rules* relating to capital adequacy to a *TP firm* is generally to ensure that the *firm* is only subject to those *rules* that applied to it immediately before *IP completion day*. Therefore, a *TP firm* will not be subject to additional capital adequacy requirements to those that applied to the *firm* immediately before *IP completion day*.
- (4) The sourcebooks referred to in ■ GEN 2.2.30R(2) contain some *rules* which do not relate to capital adequacy. Such *rules* may apply to *TP firms* by virtue of ■ GEN 2.2.26R. Certain of these *rules* may apply to *TP firms* by virtue of ■ GEN 2.2.26R(2), as follows:
 - (a) *rules* in ■ *MIPRU* 2.2 (Allocation of the responsibility for insurance distribution activity or MCD credit intermediation activity);
 - (b) certain of the *rules* in ■ *MIPRU* 3.2 (Professional indemnity insurance requirements);
 - (c) *rules* in ■ *MIPRU* 5.2 (Use of intermediaries); and
 - (d) certain of the *rules* in ■ *IPRU(INV)* 13.1 (Application, general requirements and professional indemnity insurance requirements).
- (5) The sourcebooks contained in the Prudential Standards part of the *FCA Handbook* are not the only sourcebooks which include *rules*

relating to capital adequacy. For example, see the *rules* in ■ CONC 10 and ■ MAR 8. The capital adequacy requirements in such other sourcebooks may apply to a *TP firm* by virtue of ■ GEN 2.2.26R, to the extent the *firm* carries on the relevant *regulated activity*. However, a *TP firm* will not be subject to additional capital adequacy requirements to those that applied to the *firm* immediately before *IP completion day*.

- (6) For the purpose of this *guidance*, *rules* relating to capital adequacy comprise *rules* relating to the adequacy of a *firm's* financial resources, including both capital resources and liquidity resources. However, *rules* relating to capital adequacy do not include *rules* involving the holding of professional indemnity insurance, except where such *rules* are tied to capital adequacy requirements by a form of optionality. Therefore, *rules* involving the holding of professional indemnity insurance may apply to a *TP firm* by virtue of ■ GEN 2.2.26R, but if such *rules* are tied to capital adequacy requirements, they cannot apply by virtue of ■ GEN 2.2.26R(2).

2.2.32 R

- (1) Unless the contrary intention appears, a *rule* does not apply to a *TP UCITS qualifier*, except that in relation to a *scheme* or a *sub-fund* a *rule* which imposed an obligation on a *person* immediately before *IP completion day* who becomes a *TP UCITS qualifier* continues to apply to that *person* to the same extent and to the same activities to which the *rule* applied at that time.
- (2) (a) If after *IP completion day* a *person* becomes a *TP UCITS qualifier* in relation to a *new sub-fund* then, unless the contrary intention appears, a *rule* which would have imposed an obligation on that *person* immediately before *IP completion day* had that *new sub-fund* been recognised under section 264 of the Act at that time applies to the *TP UCITS qualifier*.
- (b) A *rule* in (a) applies in relation to the *new sub-fund* to the same extent and to the same activities to which the *rule* would have applied had that *new sub-fund* been recognised under section 264 of the Act immediately before *IP completion day*.

2.2.33 R

- (1) A *rule* applied by ■ GEN 2.2.32R:
- (a) applies with any amendment made to the *rule* in question which comes into force on *IP completion day* arising from the *United Kingdom's* exit from the *European Union*;
- (b) applies until it is deleted after *IP completion day*, or, where a *rule* is amended or replaced after *IP completion day*, it continues to apply as amended or replaced unless the *rule* states that it does not apply; and
- (c) only applies to the *firm's* activities in relation to the *AIF* or the *scheme* in the *United Kingdom*.

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- (2) Where a *rule* (or paragraph of a *rule*) applied by ■ GEN 2.2.32R:
- only applied to a *person* who was an *authorised person* by virtue of paragraph 1(1) of Schedule 5 to the *Act*; and
 - is deleted on *IP completion day*;
deletion is disregarded and it continues to apply to the *TP UCITS qualifier*; and references in the *rule* (or paragraph of the *rule*) to the *EU* or to an *EU* matter or thing are deemed to be references to the *UK* or a *UK* matter or thing, as the case may be.
- (3) [deleted]
- (4) [deleted]

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- (1) Where a *rule* in ■ GEN 2.2.32R applies and:
- as a result of an amendment which comes into force on *IP completion day* which removes a reference to a matter in relation to the *EEA*; and
 - it is no longer practicable for the *TP UCITS qualifier* to comply with the *rule* because of the amendment,
the *TP UCITS qualifier* may treat the *rule*, to the extent necessary, as if it continued to refer to a matter in relation to the *EEA*.
- (2) If as a result of:
- the *UK's* withdrawal from the *EU*; and
 - complying with a *rule* applied by ■ GEN 2.2.32R,
a *TP UCITS qualifier* would contravene a provision in its *Home State*, the *rule* applied by ■ GEN 2.2.32R which caused the contravention, to the extent necessary, does not apply.

Guidance applying while a firm has temporary permission

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Unless the contrary intention appears, *guidance* does not apply to a or a *TP UCITS qualifier* except that:

- guidance* on or in connection with a *rule* applied by ■ GEN 2.2.26R(1) applies to a *TP firm* to the same extent as that *rule*;
- guidance* on or in connection with a *rule* applied by ■ GEN 2.2.26R(2) applies to a *TP firm* to the same extent as that *rule*;
- guidance* on or in connection with a *rule* applied by ■ GEN 2.2.32R applies to a *TP UCITS qualifier* to the same extent as that *rule*; and
- to the extent that an enactment, other than a *rule*, applies to both a *TP firm* and a *firm* with a *Part 4A permission* granted by the *FCA* or *PRA*, *guidance* on, or in connection with, that enactment (or relevant part of that enactment) applies to a *TP firm* to the same extent as it applies to a *firm* with *Part 4A permission* granted by the *FCA* or *PRA*. To the extent an enactment is modified for the purposes of the *EU Exit Passport Regulations*, *guidance* on, or in connection with, that enactment must be read subject to those modifications. This provision

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applies mutatis mutandis to *guidance* which applies to a *TP UCITS qualifier*.

A *TP firm* should refer to the provisions listed below, which identify the *rules* and *guidance* in their sourcebooks that came into force after *IP completion day* and in respect of which special provision has been made to apply them to *TP firms*.

- PRIN 3.1.13R,
- COBS 1.1.1CR,
- COBS 2.2.-1R,
- COBS 4.12A.3R
- COBS 4.12B.1R
- COBS 10.1.2R,
- COBS 14.3.1R
- and ■ COBS 22.6.1R,
- [deleted]
- ICOBS 1 Annex 1, Part 1, Who? (paragraph 7)
- PROD 1.3.1AR
- and
- PROD 1.4.1-AR
- SUP 16.28.7R
- SUP 16.1.3R,
- SUP 16.27.2R
- and ■ SUP 16.27.8R
- CONC 5D.1.1AG
- CONC 5D.3.4R to ■ CONC 5D.3.11G
- CONC 7.2.2AG
- CONC 7.2.4R and ■ CONC 7.2.5G
- CONC 7.3.4AG and ■ CONC 7.3.4BR
- CONC 7.3.5AG to ■ CONC 7.3.5JG
- CONC 7.3.13AG
- CONC 7.3.17AR
- CONC 7.3.20G to ■ CONC 7.3.22G and
- CONC 7.7.6G

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Purpose.....

- (1) The approach to what rules apply to *TP firms* is broadly to apply *rules* to *TP firms* which applied to them immediately prior to *IP completion day*, whether those rules applied in the United Kingdom (as was the case for host state *rules*) or, where rules are directive-based, in the *firm's Home State* or, where relevant under an *EU measure* in relation to which the law of the country of origin applies, the state where the establishment is located and from which the *firm's service* is provided.
- (2) The Glossary definitions of *TP firm* and *temporary permission* each now apply in practice only to *firms* that have entered the financial services contracts regime set out in Part 6 of the *EU Exit Passport Regulations*.
- (3) ■ GEN 2.2.26R (1) and ■ GEN 2.2.33R refer to “*a rule* which imposed an obligation on a *person*”. This is to distinguish a *rule* which imposes substantive obligations from a *rule* which sets out the application of *rules*.
- (4) ■ GEN 2.2.26R to ■ GEN 2.2.35R apply *rules* and *guidance* to *firms* which before *IP completion day* had passporting rights by virtue of the Treaty on the Functioning of the European Union, or of that Treaty as applied by the Agreement on the European Economic Area signed at Oporto on 2 May 1992 whose parties consist of the EEA States.
- (5) The application of *rules* and *guidance* to *TP firms* must be read in the light of the purpose of *temporary permission* under Part 6 of those Regulations, which is to allow *TP firms* to continue to carry on *regulated activities* in the *United Kingdom*, or of the purpose of the temporary recognition regime for *TP UCITS qualifiers* to continue to market funds in the *United Kingdom*. In each case that purpose takes into account that the legal framework underpinning cross border financial services has changed because the *Treaty*, EU regulations and EU directives no longer apply in the *United Kingdom* by virtue of EU law.
- (6) For a *TP firm* under Part 6 of the *EU Exit Passport Regulations* the scope of authorisation of an *EEA-based firm* which qualified for authorisation under *Schedule 3* or *4* to the *Act* is preserved, but is now limited by what is permitted under regulation 33 or 40 of those Regulations (that is, activity necessary for the performance of a pre-existing contract). Those Regulations do not extend the means by which a *TP firm* can carry on *regulated activities* in the *United Kingdom*, which remain limited (leaving aside top-up permission) to those which were available under the *Treaty on the Functioning of the European Union*, for example, a *firm* carrying on *regulated activities* in the *United Kingdom* from an establishment outside of the *EEA* cannot rely upon this means to do so.
- (7) The General Rules also apply where *regulated activities* have been amended on *IP completion day*, because the purpose of *temporary permission* is to enable *TP firms* to continue to carry on such *regulated activities* in the *United Kingdom*.
- (8) *Part 6* of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 enables a *new sub-fund* to be a recognised scheme for the purposes of *Part 17* of the *Act* in certain

circumstances. Therefore, the purpose of ■ GEN 2.2.32R(2) is to ensure that a *rule* applies to a *TP UCITS qualifier* in relation to a *new sub-fund* if that *rule* would have applied to the *sub-fund* had it been a scheme recognised under **section 264** of the Act immediately before *IP completion day* (unless the contrary intention appears).

- (9) In relation to persons with *temporary EMI authorisation*, *temporary PI authorisation* and *temporary RAISP authorisation*, the specified directions, rules and guidance in ■ FEES 4A, 7C and 13A apply to them. In addition, in relation to those persons, rules and guidance in *DISP*, *SUP*, *PRIN* and *BCOBS* apply to them as they apply to *electronic money institutions*, *payment institutions* and *registered account information service providers* that are authorised or registered in the UK.
- (10) A person with *temporary EMI authorisation* is deemed to be an *authorised electronic money institution* in accordance with paragraph 12B of Part 1A of Schedule 3 to the *E-money and Payments Transitional Provisions Regulations*. As such, the provisions of the *Electronic Money Regulations* as amended by the *E-money and Payments Transitional Provisions Regulations* and subject to the exclusions set out in paragraph 7 of Part 1 and paragraph 12H of Part 1A of Schedule 3 to the *E-money and Payments Transitional Provisions Regulations* apply to such persons.
- (11) This paragraph applies to persons with *temporary PI authorisation* and *temporary RAISP registration*:
 - (a) a person with *temporary PI authorisation* is deemed to be an *authorised payment institution* in accordance with paragraph 26(4)(a)(i) of Part 3 of Schedule 3 to the *E-money and Payments Transitional Provisions Regulations*.
 - (b) a person with *temporary RAISP registration* is deemed to be a *Registered Account Information Service Provider* in accordance with paragraph 26(4)(a)(ii) of Part 3 of Schedule 3 to the *E-money and Payments Transitional Provisions Regulations*.
- (12) As such, the provisions of the *Payment Services Regulations* as amended by the *E-money and Payments Transitional Provisions Regulations* and subject to the exclusions set out in paragraph 19 of Part 2 and paragraph 32 of Part 3 of Schedule 3 to the *E-money and Payments Transitional Provisions Regulations* apply to persons to whom paragraph (11) applies.
- (13) The *Glossary* definitions of *temporary EMI authorisation*, *temporary PI authorisation* and *temporary RAISP registration* each now apply in practice only to persons that have entered the financial services contracts regime in accordance with regulation 12B and 26 of Parts 1A and 3 of Schedule 3 to the *E-money and Payments Transitional Provisions Regulations*.

2.2.37**G****2****The effect of the General Rules**

- (1) The approach in these *rules* is a general one and does not apply where a *rule* states explicitly that a different provision applies to such a *firm* or that position is stated in relation to the *rule*.
- (2) The FCA has decided in certain cases specifically to apply rules to *TP firms*, for example:
 - (a) in relation to the application of our Principles for Businesses (*PRIN*);
 - (b) in chapters 4A, 6, 7C, 7D and 13A, and at rule 5.1.1CR, of the Fees Manual (*FEES*);
 - (c) in the General Provisions (*GEN*) which relate to status disclosure;
 - (d) in the Client Assets sourcebook (*CASS*) at chapter 14;
 - (e) in the Compensation sourcebook (*COMP*);
 - (f) in chapters 1, 2 and 3 of the Dispute Resolution: Complaints sourcebook (*DISP*);
 - (g) in relation to the approved persons regime, such specific applications are largely to be found in the Supervision Manual (*SUP*) 10A; and
 - (h) in relation to the senior managers and certification regime, the main provisions so applied are listed in the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) at ■ SYSC 23.3.3G.
- (3) The effect of ■ GEN 2.2.26R(1) and ■ GEN 2.2.32R also includes a *rule* which applied immediately before *IP completion day* to a *firm's* activity beyond the activity that was its permitted activity under Schedule 3 (or its permitted activity under Schedule 4 to the Act or beyond the activity that was permitted under paragraph 2(1) of Schedule 5 to the Act). For example, where such a *firm* had a *Part 4A permission* for that other activity before *IP completion day* (i.e. it had a top-up permission).
- (4) None of ■ GEN 2.2.26R(1), ■ GEN 2.2.26R(2) and ■ GEN 2.2.32R prevent changes being made to the *rules* that apply to such *firms* on and after *IP completion day*.
- (5) ■ GEN 2.2.26R(2) refers to a *rule* which deals with a matter which immediately before *IP completion day* was reserved to the *Home State* of the *firm*. These *rules* include both *rules* that under an *EU directive* are always the responsibility of that state, such as *rules* concerning the safeguarding of client assets, and also *rules* the responsibility for which depends on whether the service or activity takes place at a *branch* or establishment in a state other than the *Home State* of the *firm* or is provided cross border from a *branch* or establishment in the *Home State*. For example, it would cover all of the *rules* which implement the provisions which are the responsibility of the *Home State* under, as the case may be, article 34 or article 35 of *MIFID*. ■ GEN 2.2.26R(2)(b) and the words in (4) and (6) concerning the *EEA State* where the *TP firm* has its establishment will be applicable in a situation where an *EU directive* includes a country of origin provision (one which generally requires compliance with the law of the state where the establishment from which the service is

provided), such as the *E-Commerce Directive* or the *Distance Marketing Directive*. In that case ■ GEN 2.2.26R(2)(b) and the related words in (4) and (6) would apply to an *FCA rule* which deals with a matter reserved, under such a directive, to the law of the state where the *TP firm* has its establishment from which the service is provided, an example of which is the *rules* in ■ COBS 5.2.

- (6) The effect of ■ GEN 2.2.26R(2) is to apply a *rule* to the extent that the *rule* implemented an EU directive, notwithstanding that before *IP completion day* the matter was reserved to the *Home State* or to the state where the establishment from which the service is provided is situated. A *rule* which the *FCA* imposes by virtue of a national discretion set out in a directive is to be taken as a *rule* which implements a directive. Where a *TP firm's* home state or, where relevant, the country of origin of the *firm's* establishment exercises a national discretion expressly permitted by a directive not to apply a provision, which the *FCA* has chosen to apply through a *rule*, the *firm* has no need to comply with or apply the *rule* in question. To the extent a *rule* goes beyond what is necessary to implement a directive, it does not apply as a result of ■ GEN 2.2.26R(2). Therefore a more stringent *rule* applied by the *FCA* in relation to a minimum harmonisation EU directive would not be applied by ■ GEN 2.2.26R(2).
- (7) The General Rules set out in ■ GEN 2.2.26R to ■ 2.2.31G do not address EEA fund managers which only market funds in the *UK* without carrying on any *regulated activity* here (e.g. without managing any funds). The definition of *TP firm* does not include a *person* which was a recognised scheme under section 264 of the *Act* and a *person* which exercised its right only to market an *AIF* in the *UK* in accordance with Schedule 3 to the *Act*. *Persons* when only marketing are defined for these *rules* and *guidance* as *TP UCITS qualifiers* and *TP AIFM qualifiers*, and are covered by ■ GEN 2.2.32R, ■ 2.2.33R, ■ 2.2.34R and ■ 2.2.35R.
- (8) An example of a matter falling within ■ GEN 2.2.28R(1) or ■ GEN 2.2.34R(1) may be a *rule* which on *IP completion day* (as a result of an amendment made under the European Union (Withdrawal) Act 2018) then only refers to membership of a *UK professional body*. Where ■ GEN 2.2.28R(1) or ■ GEN 2.2.34R(1) applies, the *firm* may treat the *rule* in question as if it continued to refer to an EEA professional body.
- (9) In determining the *rules* that apply to them by virtue of ■ GEN 2.2.26R(1), *TP firms* may as a starting point find it helpful to refer to the table in ■ SUP 13A Annex 1 (Rules that apply to incoming EEA firms) as it applied immediately before *IP completion day*. However, the table will not apply in its entirety to each *TP firm*, for example, because a *TP firm* with top-up permission (see paragraph (3)) needs to continue to comply with *rules* that apply in relation to that activity, and specified *rules* referred to in the table were deleted on *IP completion day* and are not applied by the General Rules as set out in ■ GEN 2.2.27R(2)), namely those in *COMP* and ■ FEES 6.
- (10) In determining the *rules* that apply to them by virtue of ■ GEN 2.2.26R(2), *TP firms* may as a starting point find it helpful to refer to the table in ■ SUP 13A Annex 2G (Matters reserved to the home state) as it applied immediately before *IP completion day*.

2.2.38

(11) [deleted]

Rules and guidance applying while a firm has temporary permission – tied agents

- (1) A *tied agent* that is an *appointed representative* may not start to act as a *tied agent* until it is included on the *Financial Services Register* (see section 39(1A) of the *Act*).
- (2) To ensure that a *tied agent* is included on the *Financial Services Register*, a *TP firm* should complete the Appointed representative appointment form in ■ SUP 12 Annex 3R when appointing a *tied agent* to carry on *MiFID* business on its behalf in the *United Kingdom*.
- (3) A *TP firm* that terminates its relationship with a *tied agent* that was required to be notified to the *FCA* should complete the Appointed representative termination form in ■ SUP 12 Annex 5R to have that *tied agent* removed from the *Financial Services Register*.

2.2.39

TP firms that enter the financial services contracts regime under Part 6 of the EU Exit Passport Regulations

- (1) As the definitions of *TP firm* and *temporary permission* also include *TP firms* under Part 6 of the *EU Exit Passport Regulations*, the *rules and guidance* in ■ GEN 2.2.26R to ■ GEN 2.2.35G also apply to *firms* which enter the financial services contracts regime set out in Part 6 of those *Regulations* after *IP completion day* having been in *temporary permission* under Part 3 of those *Regulations*, or which become *TP firms* under regulation 32 of those *Regulations*.
- (2) The application of *rules and guidance* to *TP firms* under Part 6 of the *EU Exit Passport Regulations* must be read in the light of the purpose of *temporary permission* under Part 6 of those *Regulations*, which is to enable such a *TP firm* to run down its regulated business in the *United Kingdom*. Regulation 33 or 40 of the *EU Exit Passport Regulations* sets out the scope of permitted activities, which is generally those *regulated activities* previously within the scope of the *firm's passport*, necessary to perform a pre-existing contract (as defined in regulation 46 of the *EU Exit Passport Regulations*).
- (3) Accordingly, the *rules and guidance* in ■ GEN 2.2.26R to ■ 2.2.31G, and ■ 2.2.35R to ■ 2.2.37G continue to apply where a *TP firm* leaves *temporary permission* under Part 3 of the *EU Exit Passport Regulations* and then enters *temporary permission* under Part 6 of the *EU Exit Passport Regulations*, namely, where the *person* falls within regulation 31, 37 or 38 of the *EU Exit Passport Regulations*. The same is true for a *TP firm* which leaves *temporary permission* under regulation 28 of the *EU Exit Passport Regulations* and then enters *temporary permission* under regulation 39 of those *Regulations*.
- (4) In those cases, ■ GEN 2.2.27R has the effect that any changes referred to in that *rule*, which happen between *IP completion day* and when the *person* enters *temporary permission* (notwithstanding that they were previously in *temporary permission*) under the regulation in question, apply to the *TP firm*. This also applies to a *TP firm* which

enters *temporary permission* for the first time under regulation 32 of the *EU Exit Passport Regulations*.

- (5) Where a *TP firm* enters *temporary permission* under regulation 32 of the *EU Exit Passport Regulations*, a *rule* referred to in ■ GEN 2.2.26R(1) once again applies to that *person*, together with any changes referred to in paragraph (3). The *rules* applied by ■ GEN 2.2.26R(2) to such a *TP firm* apply together with any changes referred to in paragraph (3).

2.3 General saving of the Handbook for Gibraltar

Continued application of the Handbook with respect to Gibraltar

2.3.1

R

- (1) The *FCA Handbook* shall, after *IP completion day*, be construed, unless the contrary intention appears, as conferring rights and imposing obligations in relation to or in connection with Gibraltar corresponding to those that existed immediately before *IP completion day*.
- (2) Accordingly, any provision of these *rules* which immediately before *IP completion day* applied in relation to or in connection with Gibraltar shall, with any necessary modifications to give effect to that corresponding right or obligation, continue to apply after *IP completion day*; and any provision which did not so apply shall continue not to apply, unless provision indicating the contrary intention is made.
- (3) In ■ GEN 2.3, a reference to "Gibraltar" includes, but is not limited to, rights or obligations conferred or imposed in relation to or in connection with *Gibraltar-based firms*, public institutions established, *persons* resident and *body corporates* incorporated in Gibraltar, and activities of *firms* in Gibraltar.
- (4) A *Gibraltar-based firm* with *permission for funeral plan provision activity* or *funeral plan distribution* must comply with the relevant *Handbook* provisions relating to *regulated funeral plan activity*.

Extent of guidance applying in relation to or in connection with Gibraltar

2.3.2

R

- (1) *Guidance* which, immediately before *IP completion day*, was *guidance* on or in connection with a *rule* to which, on and after *IP completion day*, ■ GEN 2.3.1R applies, shall, with any necessary modifications, continue to apply on and after *IP completion day* in relation to or in connection with Gibraltar to the same extent as the *rule*, unless provision indicating the contrary intention is made.
- (2) *Guidance* which, immediately before *IP completion day*, was *guidance* on or in connection with an *enactment* other than a *rule*, shall continue to apply on and after *IP completion day* in relation to or in connection with Gibraltar to the same extent as the *enactment* continues to apply in relation to or in connection with Gibraltar.

2.3.3

G

Purpose of GEN 2.3.1R and GEN 2.3.2R

- (1) The purpose of ■ GEN 2.3.1R and ■ GEN 2.3.2R is to ensure that the *rules and guidance* that apply in relation to or in connection with Gibraltar before *IP completion day* continue to apply in the same way after *IP completion day*, notwithstanding amendments made to the *FCA Handbook* as a result of the UK's withdrawal from the EU.
- (2) Accordingly, any amendment to or deletion of a *rule or guidance* made to address a matter arising from the UK's withdrawal from the EU is to be disregarded to the extent it changed the application of a *rule or guidance* in relation to or in connection with Gibraltar.
- (3) As such, any *rule or guidance* that applied before *IP completion day* in relation to or in connection with a Gibraltar-based firm, a person resident in Gibraltar, a *body corporate* incorporated in Gibraltar, or the activities of a *firm* in Gibraltar will so apply after *IP completion day* with any necessary modifications, taking into account any other amendments made on *IP completion day*.
- (4) However, the approach in ■ GEN 2.3.1R is a general one, and as such that approach does not apply where a *rule or guidance* states explicitly that a different provision applies in relation to or in connection with Gibraltar or where a different position is explicitly stated in relation to a *rule or guidance*.
- (5) In ■ GEN 2.3.1R, the contrary intention should be construed in the light of regulations made under the EUWA. ■ GEN 2.3.1R is not intended to apply where the application of a *rule or guidance* in the FCA Handbook in relation to or in connection with Gibraltar would be contrary to the intention of regulations made under the EUWA or would have a result that is incompatible or inconsistent with the legislative scheme with which the *rule or guidance* is connected.
- (6) The *rules and guidance* are saved subject to any necessary modification to give effect to a right or obligation that corresponds to the right or obligation that existed before *IP completion day*. So, for example, where the removal of a reference to a matter in relation to Gibraltar could make it impracticable for a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order* to continue to comply with a *rule*, the *rule* should be construed as applying, to the extent necessary, as if it continued to refer to a matter in relation to Gibraltar.
- (7) An example of such a matter may be a *rule* which on and after *IP completion day* (as a result of an amendment made under the EUWA) refers only to the membership of a UK professional body. Where this is the case, a Gibraltar-based *firm* may treat the *rule* as if it continues to refer to a Gibraltar-based professional body, if that is necessary to correspond with the obligation that had effect in relation to the Gibraltar-based firm before *IP completion day*.
- (8) None of ■ GEN 2.3.1R or ■ GEN 2.3.2R prevents changes being made to *rules and guidance* that apply in relation to or in connection with Gibraltar after *IP completion day*.

2.3.4

G

Further guidance on GEN 2.3.1R and GEN 2.3.2R as they apply in relation to Gibraltar-based firms exercising market access rights by virtue of the Gibraltar Order

2

- (1) Where ■ GEN 2.3.1R and ■ GEN 2.3.2R apply in relation to a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order* and which carries on *regulated activities* outside of the scope of its entitlement, such as by virtue of a *Part 4A permission* (i.e. it has a top-up permission), *rules* and *guidance* will continue to apply to such a firm in respect of those activities by virtue of that *permission*.
- (2) Where ■ GEN 2.3.1R and ■ GEN 2.3.2R apply in relation to a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order*, in determining which *rules* and *guidance* could apply to them in the *UK*, such firms may, as a starting point, find it helpful to refer to the table in ■ SUP 13A Annex 1G (Rules that applied to incoming EEA firms) as it applied immediately before *IP completion day*. However, the table will not apply in its entirety to each such firm, if, for example, a *firm* has a *Part 4A permission* for other activities.

2.3.5

G

Exception for fee rates

Provisions in *FEES* that immediately before *IP completion day* applied in relation to or in connection with Gibraltar shall continue to apply after *IP completion day*. The exceptions to this provision are the fee rates set out in *FEES* which may change each *fee year*.

Designated investment exchanges

Introduction

1. A *designated investment exchange* is an exchange appearing in the list of such exchanges in the *Glossary*.

Benefits of designation

2. Under certain *rules*, *firms* may treat transactions effected on a *designated investment exchange* in the same way as transactions on *R/Es* (for example, see **CASS 2**).

Criteria for inclusion in the list of designated investment exchanges

3. Before adding an investment exchange to the list of *designated investment exchanges* in the *Handbook*, the *FCA* will comply with all the requirements imposed by the *Act* in relation to the exercise of its rule-making powers. This will include consulting on the proposed amendment to the list.
4. In considering compatibility of the proposed addition with the *statutory objectives*, the *FCA* will determine whether the investment exchange provides an appropriate degree of protection for *consumers* having regard in particular to:
 - (1) the relevant law and practice, including the regulatory framework in which the investment exchange operates, in the country or territory in which the investment exchange's head office is situated and any other relevant country or territory; and
 - (2) the rules and practices of the investment exchange.
5. Only investment exchanges which do not carry on a *regulated activity* in the *United Kingdom* and are not *regulated markets* may be added to the list. This is because an investment exchange carrying on a *regulated activity* in the *United Kingdom* will need to apply for recognition as an *R/E*, or authorisation, and because a regulated market is usually treated in the same way as an *R/E* in the *rules*.

Applications to be added to the list of designated investment exchanges

6. An application to be added to the list should be in writing and delivered to the *FCA* by:
 - (1) post to:

The Financial Conduct Authority
12 Endeavour Square
London
E20 1JN; or
 - (2) leaving the application at that address.
7. In support of the application, an investment exchange should provide information on the questions set out in the table below.
8. An application will not be considered by the *FCA* until the application fee has been paid. See **FEES 3.2**

Designated investment exchange questionnaire

1

- In what way are members subject to formal supervision by the exchange or another supervisory or regulatory body? Describe how capital resources of members are monitored on an ongoing basis and how this is related to business done.

Designated investment exchange questionnaire	
2	What powers does the exchange or any other supervisory or regulatory body have to intervene in a member's business in the event of misconduct, financial difficulties or otherwise?
3	What are the clearing arrangements of the exchange? How does the exchange ensure performance of a contract between its members? If relevant, what type of contract guarantee is available?
4	How is price information in respect of contracts effected on the exchange disseminated to investors, particularly those investors in the <i>United Kingdom</i> ?
5	What are the exchange's arrangements for reporting and recording of transactions effected on the exchange? Please describe.
6	Does the exchange, or any other supervisory or regulatory body, require members to segregate the money and assets of the member's <i>clients</i> from the money and assets of the member? If so, please describe in outline how this operates. If not, are investors protected in any other way in the event of the insolvency of a member or the exchange?
7	Does the exchange have procedures for the investigation of complaints? Please describe what they are.
8	Does the exchange classify the different contracts traded on it in terms of liquidity? Is it possible to identify certain contracts which are more liquid than others and in which a ready market might be considered to exist?

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Chapter 2A

Interpreting the Handbook
and other documents during the
implementation period

2A

2A.1 Introduction

Application

- 2A.1.1** **G** This chapter applies to any *person* to whom any provision in the *FCA Handbook* applies and to any reader of the *Handbook*.
- 2A.1.2** **G** This chapter also applies in respect of instruments or documents issued by the *FCA* under an enactment that do not form part of the *FCA Handbook*. Accordingly, it applies to any *person* to whom such an instrument or document applies and to any reader of any such instrument or document.

Purpose

- 2A.1.3** **G** Section 1B of the EUWA makes cross-cutting provision to ensure that *UK* legislation gives effect to the implementation period at Part 4 of the withdrawal agreement. For example, it makes sure, where relevant, that the definition of "Member State" used in EU-derived legislation is treated as if it includes "the *UK*" and that references to "EU law" (however expressed) are read as a reference to such law so far as it is applicable to and in the *UK* by virtue of Part 4 of the withdrawal agreement. The effect of the EUWA is that these provisions also apply to *FCA Handbook rules* and other legislation (within the meaning of the EUWA) made by the *FCA*.

- 2A.1.4** **G** The purpose of this chapter is to confirm and explain that, during the implementation period, the entire *FCA Handbook* and other documents issued by the *FCA* should be read in light of section 1B of the EUWA.

Interpretation

- 2A.1.5** **G** In this chapter, the expression "EUWA" means the European Union (Withdrawal) Act 2018.
- 2A.1.6** **G** In this chapter the expressions "implementation period", "EU-derived domestic legislation" and "enactment" have the same meaning as in the EUWA and the expressions "withdrawal agreement" and "IP completion day" have the same meaning as in the European Union (Withdrawal Agreement) Act 2020.

2A.2 Interpreting the Handbook and other documents during the implementation period

2A.2.1

G

- (1) During the implementation period *rules*, directions (including *waivers*), guidance, statements of policy and/or procedure, and any other instrument or document made or issued by the FCA under an enactment should be read in light of section 1B of the EUWA.
 - (2) This means that, until IP completion day, those things should be read as far as the context permits or requires as if:
 - (a) any reference to the "Treaties" or the "EU Treaties" as defined in section 1(2) to (4) (Interpretation) of the European Communities Act 1972, includes Part 4 of the withdrawal agreement (implementation period), other than that Part so far as it relates to, or could be applied in relation to, the Common Foreign and Security Policy;
 - (b) the *United Kingdom* were a member State of the *EU*;
 - (c) any reference to:
 - (i) *EU* law;
 - (ii) any particular *EU* Treaty or part of it;
 - (iii) any *EU* instrument, or other document of an *EU* entity or of the *EU*, or any part of any such instrument or document;
 - (iv) any part of *EU* law not falling within the (b) or (c);
 - (v) any tax, duty, levy or interests of the *EU*; or
 - (vi) any arrangement involving, or otherwise relating to, the *EU* of a kind not mentioned above,were a reference to any such thing so far as it is applicable to and in the *United Kingdom* by virtue of Part 4 of the withdrawal agreement;
 - (d) any reference (however expressed and subject to paragraph (a) of section 1B(3)(a) of the EUWA) to the European Communities Act 1972 were, or (as the case may be) included, a reference to that act as it continues to have effect by virtue of section 1A(2) to (4) of the EUWA;
 - (e) any reference (however expressed) to the area of the *EU* or of the *EEA* included the *United Kingdom*; and
 - (f) any reference (however expressed) to a citizen of the *EU* or a national of the *EEA* included a *United Kingdom* national (within the meaning given by article 2(d) of the withdrawal agreement).

- (3) Such things should also be read in light of any additional modifications referred to in section 1B(3)(f) of the EUWA.

Chapter 3

FSA Fees: General Provisions

Chapter 4

Statutory status disclosure

4.1 Application

- Who? What?**
- 4.1.1 R** This chapter applies to every *firm* and with respect to every *regulated activity*, except that:
- (1) [deleted]
 - (2) [deleted]
 - (3) [deleted]
 - (4) [deleted]
 - (5) only ■ GEN 4.1 (Application) and ■ GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) apply in relation to *MiFID or equivalent third country business* and only where that *MiFID or equivalent third country business* is not business falling within paragraph 2 (Transactions between an MTF operator and its users), 3 (Transactions concluded on an MTF) or 4 (Transactions concluded on a regulated market) of Part 1 of ■ COBS 1 Annex 1; and
 - (6) only ■ GEN 4.1 (Application) and ■ GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) apply in relation to *administering a benchmark*.
- Where?**
- 4.1.2 R** ■ GEN 4.3 (Letter disclosure) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, subject to ■ GEN 4.3.4 R (Exception: insurers). In relation to *regulated claims management activities*, ■ GEN 4.3 applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see ■ PERG 2.4A).
- 4.1.2A R** ■ GEN 4.3 (Letter disclosure) applies to a *TP firm* in relation to activities carried on from an establishment maintained by the *TP firm* (or by its *appointed representative*) in the *United Kingdom*, or carried on by the *TP firm* (or its *appointed representative*) into the *United Kingdom* from an establishment that is not in the *United Kingdom*, subject to ■ GEN 4.3.4R (Exception: insurers).
- 4.1.3 R** ■ GEN 4.4 (Business for private customers from non-UK offices) applies in connection with a *regulated activity* carried on from an establishment of the *firm* (or its *appointed representative*) that is not in the *United Kingdom*.

4.1.4 **R** ■ GEN 4.5 (Statements about authorisation and regulation by the *appropriate regulator*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*.

4.1.4A **R** ■ GEN 4.5 (Statements about authorisation and regulation by the *appropriate regulator*) applies in relation to activities carried on from an establishment maintained by the *TP firm* (or by its *appointed representative*) in the *United Kingdom* or carried on by the *TP firm* (or its *appointed representative*) into the *United Kingdom* from an establishment that is not in the *United Kingdom*.

4.2 Purpose

- 4.2.1** **G** This chapter requires the provision of appropriate minimum information about the identity of the regulator that authorised a *firm*. It also governs the way in which a *firm* may describe its regulation by the *appropriate regulator*.
- 4.2.1A** **G** [deleted]
- 4.2.1B** **G** This chapter builds upon *Principle 7* (Communications with clients), which requires a *firm* to pay due regard to the information needs of its *clients*. This assists in the achievement of the *statutory objectives*, including the FCA's strategic objective of ensuring that relevant markets function well and the consumer protection and integrity objectives.
- 4.2.1C** **G**
- 4.2.2** **G** There are other pre-contract information requirements outside this chapter, including:
- (1) for *financial promotions*, in the *financial promotion rules*;
 - (2) for *designated investment business*, in ■ COBS 8 and ■ COBS 8A (Client agreements), ■ COBS 5 (Distance Communications), ■ COBS 6 (Information about the firm, its services and remuneration), ■ COBS 13 and ■ 14 (which relate to product information) and CASS (Client assets);
 - (2A) for *PRIIPs*, a requirement under the *PRIIPs Regulation* to provide retail investors (as defined in that Regulation) with a *key information document*;
 - (3) for *non-investment insurance contracts*, distance communication requirements in ■ ICOBS 3, initial disclosure requirements in ■ ICOBS 4, disclosures relating to client needs and advice in ■ ICOBS 5 and product information requirements in ■ ICOBS 6;
 - (4) for *electronic commerce activities* carried on from an *establishment* in the *United Kingdom*, in ■ COBS 5.2, ■ ICOBS 3.2 and ■ MCOB 2.8;
 - (5) for *regulated mortgage contracts* and *home purchase plans*, initial disclosure requirements in ■ MCOB 4, pre-application disclosure requirements in ■ MCOB 5, and disclosure at the offer stage in ■ MCOB 6;

- (6) for *equity release transactions*, initial disclosure requirements in ■ MCOB 8.4, pre-application disclosure requirements in ■ MCOB 9.4 and disclosure at the offer stage in ■ MCOB 9.5;
- (7) for *regulated sale and rent back agreements*, initial disclosure requirements in ■ MCOB 4.11, pre-sale disclosure requirements in ■ MCOB 5.9 and disclosure at the offer stage requirements in ■ MCOB 6.9;
- (8) for *regulated credit agreements*, the pre-contract information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013) and in the Consumer Credit (Disclosure of Information) Regulations 2004 (SI 2004/1481); and
- (9) for *regulated claims management activities*, the pre-contract information and other requirements in ■ CMCOB 4.2 and ■ CMCOB 4.3.

4.3 Letter disclosure

Disclosure in letters to retail clients

- 4.3.1** **R** A *firm* must take reasonable care to ensure that every letter (or electronic equivalent) which it or its *employees* send to a *retail client*, with a view to or in connection with the *firm* carrying on a *regulated activity*, includes the disclosure in ■ GEN 4 Annex 1 R (firms that are not PRA-authorised persons) or GEN 4 Annex 1AR (PRA-authorised persons) as applicable.
- 4.3.1-A** **R** A *TP firm* must take reasonable care to ensure that every letter (or electronic equivalent) which it or its *employees* send to a *retail client*, with a view to or in connection with the *TP firm* carrying on a *regulated activity*, includes the disclosure in, as the case may be:
- (1) [deleted]
 - (2) for a *TP firm* under Part 6 of the *EU Exit Passport Regulations*, ■ GEN 4 Annex 1C 1.1R or ■ 1.2R (firms that are not PRA-authorised persons) or ■ GEN 4 Annex 1C 2.1R or ■ 2.2R (PRA-authorised persons).
- 4.3.1A** **G** Where a letter covers both activities to which this section applies and activities to which this section does not apply, the *firm* should comply with the *rules* in this chapter in relation to the business to which it applies.
- 4.3.1B** **G** An example for ■ GEN 4.3.1A G would be where a letter covers business for which the FCA is the *competent authority* under the UK provisions which implemented *IDD* and under the UK provisions which implemented *MiFID*.
- 4.3.2** **G** [deleted]
- 4.3.2A** **G** For a *UK domestic firm* that is not a *PRA-authorised person*, the required disclosure in ■ GEN 4 Annex 1 R is "Authorised and regulated by the Financial Conduct Authority".
- 4.3.2B** **G** For a *UK domestic firm* that is a *PRA-authorised person*, the required disclosure in GEN 4 Annex 1AR is "Authorised by the Prudential Regulation

		Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority".
4.3.3	G	<p>(1) ■ GEN 4.3.1 R (Disclosure in letters to retail clients) covers letters delivered by hand, sent by post and sent by fax and also electronic mail, but not text messages, account statements, business cards or compliment slips (used as such).</p> <p>(2) ■ GEN 4.3.1 R (Disclosure in letters to retail clients) applies in relation to letters sent by any of the <i>firm's employees</i>, which includes its <i>appointed representatives</i> and their <i>employees</i>.</p> <p>(3) <i>Firms</i> are likely to find it convenient to include the required disclosure in their letterhead.</p>
4.3.4	R	<p>Exception: insurers</p> <p>■ GEN 4.3.1 R (Disclosure in letters to retail clients) does not apply in relation to:</p> <p>(1) <i>general insurance business</i> if the <i>State of the risk</i> is outside the <i>United Kingdom</i> and the <i>client</i> is not in the <i>United Kingdom</i> when the <i>contract of insurance</i> is entered into; or</p> <p>(2) <i>long-term insurance business</i> if the <i>client</i> is <i>habitually resident</i> outside the <i>United Kingdom</i> and is not present in the <i>United Kingdom</i> when the <i>contract of insurance</i> is entered into.</p>
4.3.5	R	<p>Exception: authorised professional firms</p> <p>For an <i>authorised professional firm</i>, ■ GEN 4.3.1 R (Disclosure in letters to retail clients) does not apply with respect to its <i>non-mainstream regulated activities</i>.</p>
4.3.6	R	<p>Exception: use of third party processors in home finance and insurance distribution activities</p> <p>(1) Where a <i>firm</i> has outsourced activities to a <i>third party processor</i> other than <i>advising on life policies</i>, ■ GEN 4.3.1 R does not apply to that <i>third party processor</i> when acting as such, so long as the outsourcing <i>firm</i> ensures that the <i>third party processor</i> and its <i>employees</i> comply with that <i>rule</i> as if it was the <i>firm</i> and they were <i>employees</i> of the <i>firm</i>.</p> <p>(2) Where an <i>appointed representative</i> has outsourced <i>insurance distribution activities</i> other than <i>advising on life policies</i> or <i>home finance mediation activities</i> to a <i>third party processor</i>, ■ GEN 4.3.1 R does not apply to that <i>third party processor</i> when acting as such, so long as the <i>appointed representative's principal</i> ensures that the <i>third party processor</i> and its <i>employees</i> comply with that <i>rule</i> as if it was the <i>appointed representative</i> and they were the <i>employees</i> of the <i>appointed representative</i>.</p> <p>(3) Where an <i>appointed representative</i> of a <i>firm</i> is carrying on:</p>

(a) *insurance distribution activities other than advising on life policies*; or
(b) *home finance mediation activities*;
which have been outsourced to it by the *firm*, ■ GEN 4.3.1 R does not apply to the *firm* when the *appointed representative* is carrying on the outsourced activities, so long as the *firm* ensures that the *appointed representative* and its *employees* comply with that *rule* as if it was the *firm* and they were *employees* of the *firm*.

Exception: credit firms

4.3.7

R

■ GEN 4.3.1 R (Disclosure in letters to retail clients) does not apply to a *credit firm* (other than a *firm* with a *limited permission*) with respect to the activity of *entering into a regulated credit agreement as lender* to which the *Consumer Credit Directive* would have applied if the activity had been carried on immediately before *IP completion day*.

4.3.8

G

A *credit firm* which carries on the activity of *entering into a regulated credit agreement as lender*, in respect of an agreement to which ■ GEN 4.3.1R (Disclosure in letters to retail clients) does not apply as a result of ■ GEN 4.3.7R is under an obligation to disclose pre-contract information in the form and to the extent required by the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013). Firms which carry on *credit broking* may take on the same obligation. A *credit firm* must also ensure specified information is included in *credit agreements* to which ■ GEN 4.3.1R (Disclosure in letters to retail clients) does not apply as a result of ■ GEN 4.3.7R in the form and to the extent required by the Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014).

4.3.9

G

The effect of ■ GEN 4.3.7 R is that a *credit firm* in relation to a *regulated credit agreement* which would have been covered by the *Consumer Credit Directive* if the activity had been carried on immediately before *IP completion day* does not need to comply with ■ GEN 4.3.1 R in relation to those letters (or electronic equivalents) that accompany the information required under the Regulations referred to in ■ GEN 4.3.8 G.

4.3.10

G

■ GEN 4.3.7R and the guidance related to it are not relevant to *regulated activities covered by a limited permission* (see the "relevant credit activities" set out in paragraph 2G of Schedule 6 to the Act).

4.4 Business for retail clients from non-UK offices

4.4.1

R

(1) If, in any communication:

(a) made to:

(i) (in relation to a *non-investment insurance contract*) a *consumer*;

(ii) (in relation to a *home finance transaction*) a *customer*; or

(iii) (in all other cases) a *retail client*; and

(b) in connection with a *regulated activity* carried on from an establishment of the *firm* (or its *appointed representative*) that is not in the *United Kingdom*;

the *firm* indicates that it is an *authorised person*, it must also, where relevant, and with equal prominence, give the information in (2) in writing.

(2) The information required is that in some or all respects the *regulatory system* applying will be different from that of the *United Kingdom*. The *firm* may also indicate the protections and complaints or compensation arrangements available under another relevant system of regulation.

(3) A *firm* need not provide the information required by (1) if it has already provided it in writing to the *customer* to whom the communication is made.

4.4.2

G

[deleted]

Exception

4.4.3

R

This section does not apply in relation to *regulated claims management activities* (but *firms* carrying on such activities in *Great Britain* will be subject to ■ GEN 4.3: see ■ GEN 4.1.2R).

4.5 Statements about authorisation and regulation by the appropriate regulator

Application

- 4.5.1** **R** This section applies to a *firm*:
- (1) communicating with a *customer*; or
 - (2) communicating or approving a *financial promotion* other than:
 - (a) a *financial promotion* that would benefit from an exemption in the *Financial Promotion Order* if it were communicated by an *unauthorised person*;
 - (b) a promotion of an *unregulated collective investment scheme* that would breach ~~section 238(1)~~ of the Act if made by an *authorised person* (*firms* may not communicate or approve such promotions).
- 4.5.1A** **R**
- (1) This section also applies to a *registered person* communicating a *financial promotion* relating to one or more *qualifying cryptoassets* (in reliance on the exemption in article 73ZA of the *Financial Promotion Order*).
 - (2) For the purpose of (1), references in this section to a *firm* include reference to a *registered person*.
- 4.5.1B** **G** As *unauthorised persons*, *registered persons* must also ensure that they do not contravene section 24 of the Act (False claims to be authorised or exempt).
- 4.5.2** **G** ■ GEN 4.5.1 R (1) does not apply to a *firm* when communicating with an *eligible counterparty*.
- 4.5.2A** **G** However, misleading statements by a *firm* when communicated with an *eligible counterparty* may involve a breach of *Principle 7* (Communications with clients) or Part 7 (Offences relating to financial services) of the Financial Services Act 2012, as well as giving rise to private law actions for misrepresentation.

The duty.....	
4.5.3	R A <i>firm</i> must not indicate or imply that it is authorised by the <i>FCA</i> in respect of business for which it is not so authorised.
4.5.3A	R A <i>firm</i> must not indicate or imply that it is authorised by the <i>PRA</i> in respect of business for which it is not so authorised.
4.5.4	R A <i>firm</i> must not indicate or imply that it is regulated or otherwise supervised by the <i>FCA</i> in respect of business for which it is not regulated by the <i>FCA</i> .
4.5.4A	R A <i>firm</i> must not indicate or imply that it is regulated or otherwise supervised by the <i>PRA</i> in respect of business for which it is not regulated by the <i>PRA</i> .
4.5.5	G [deleted]
4.5.6	G It is likely to be misleading for a <i>firm</i> that is not <i>authorised</i> by the <i>FCA</i> or <i>PRA</i> to state or imply that it is so <i>authorised</i> . It is also likely to be misleading for a <i>firm</i> to state or imply that a <i>client</i> will have recourse to the <i>Financial Ombudsman Service</i> or the <i>FSCS</i> where this is not the case. (3) [deleted]
4.5.6A	G As well as potentially breaching the requirements in this section, misleading statements by a <i>firm</i> may involve a breach of <i>Principle 7</i> (Communications with clients) or section Part 7 (Offences relating to financial services) of the Financial Services Act 2012, as well as giving rise to private law actions for misrepresentation.

Statutory status disclosure

This rule applies to *firms* that are not *PRA-authorised persons*:

Type of firm	Required disclosure (Note 5)
(1) UK domestic firm; or overseas firm	"Authorised and regulated by the Financial Conduct Authority" (Note 1)
(2) [deleted]	
(3) [deleted]	
(4) Appointed representative of a firm	"[Name of appointed representative] is an appointed representative of [name of firm] which is [then continue with the required disclosure of the firm]" (Note 4)

Note 1 = A *firm* must use the formulation "Financial Conduct Authority" and not the abbreviated formulation "FCA".

Note 2 [deleted]

Note 2a [deleted] FCA, in which case it must make disclosure (b).

Note 3 = If a *firm* offers to make details about the extent of its authorisation or regulation by the FCA available on request and a *customer* requests such details, it must provide those details in a way that is clear, fair and not misleading.

Note 4 = If the *appointed representative* has more than one *principal*, the disclosure must relate to the *principal* or *principals* responsible for the *regulated activity* or *activities* concerned. The required disclosure of the *firm* is that which would apply were the *firm* to make the disclosure under the rules applicable to it.

Note 5 = Any *firm* listed in this table is permitted to add words to the relevant required disclosure statement but only if the *firm* has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received. For example, an *authorised professional firm* may wish to make it clear that it is also regulated by its professional body.

Statutory status disclosure (PRA-authorised persons)

This rule applies to firms that are PRA-authorised persons:

Type of firm	Required disclosure (Note 5)
(1) UK domestic firm	"Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority" (Note 1)
(2) overseas firm	"[Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]]. Authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request." (Notes 1, 2, 3, and 3a)
(3) [deleted]	
(4) [deleted]	
(5) Appointed representative of a firm	"[Name of appointed representative] is an appointed representative of [name of firm] which is [then continue with the required disclosure of the firm]" (Note 4)
(6) Society of Lloyd's	"Authorised under the Financial Services and Markets Act 2000"

Note 1 = A firm must use the formulation "Financial Conduct Authority" or "Prudential Regulation Authority" and not the abbreviated formulation "FCA" or "PRA" respectively.

Note 2 = An overseas firm is free to translate the name of its *Home State regulator* or *overseas regulator* into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.

Note 2a [deleted]

Note 3 = If a firm offers to make details about the extent of its authorisation by the PRA or regulation by the FCA or PRA available on request and a customer requests such details, it must provide those details in a way that is clear, fair and not misleading.

Note 3a = An overseas firm is only required to disclose its authorisation and/or regulated by an overseas regulator if it is so authorised and/or regulated.

Note 4 = If the appointed representative has more than one principal, the disclosure must relate to the principal or principals responsible for the regulated activity or activities concerned. The required disclosure of the firm is that which would apply were the firm to make the disclosure under the rules applicable to the firm.

Note 5 = Any firm listed in this table is permitted to add words to the relevant required disclosure statement but only if the firm has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.

Statutory status disclosure (TP firms) [deleted]

[deleted]

4

Statutory status disclosure (TP firms under Part 6 of the EU Exit Passport Regulations)

TP firms under Part 6 of the EU Exit Passport Regulations that are not PRA-authorised persons

This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are not PRA-authorised persons in relation to activities carried on by them or their appointed representatives from establishments in the United Kingdom:

Type of firm	Required disclosure (Note 2)
(1) A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission	"Deemed authorised and regulated by the Financial Conduct Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority's website." (Notes 1, 3 and 4)
(2) A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission	"Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority's website." (Notes 1, 3 and 4)

This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are not PRA-authorised persons in relation to activities carried on by them or their appointed representatives into the United Kingdom from an establishment that is not in the United Kingdom:

Type of firm	Required disclosure (Note 2)
(1) A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission	"Deemed authorised and regulated by the Financial Conduct Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority's website." (Notes 1, 3 and 4)
(2) A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission	"Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct

Type of firm	Required disclosure (Note 2)
	<p>Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority's website."</p> <p>(Notes 1, 3 and 4)</p>

TP firms that are PRA-authorised persons

This rule applies to *TP firms* under Part 6 of the *EU Exit Passport Regulations* that are *PRA-authorised persons*, in relation to activities carried on by them or their *appointed representatives* from establishments in the *United Kingdom*:

Type of firm	Required disclosure (Note 2)
(1) A <i>TP firm</i> under Part 6 of the <i>EU Exit Passport Regulations</i> without a top-up permission	<p>"Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority's website."</p> <p>(Notes 1, 3 and 4)</p>
(2) A <i>TP firm</i> under Part 6 of the <i>EU Exit Passport Regulations</i> with a top-up permission	<p>"Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]. Authorised by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority's website."</p> <p>(Notes 1, 3 and 4)</p>

This rule applies to *TP firms* under Part 6 of the *EU Exit Passport Regulations* that are *PRA-authorised persons* in relation to activities carried on by them or their *appointed representatives* into the *United Kingdom* from an establishment that is not in the *United Kingdom*:

Type of firm	Required disclosure (Note 2)
(1) A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission	<p>"Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority's website."</p> <p>(Notes 1, 3 and 4)</p>
(2) A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission	<p>"Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority's website."</p> <p>(Notes 1, 3 and 4)</p>

Note 1 = A *firm* must use the formulation "Financial Conduct Authority" or "Prudential Regulation Authority" and not the abbreviated formulation "FCA" or "PRA" respectively.

Note 2 = Any *firm* listed in this table is permitted to add words to the relevant required disclosure statement but only if the firm has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.

Note 3 = A "top-up permission" is a *Part 4A permission* granted to a *firm* which exercised passporting rights, but which activity was outside of the scope of its passport, i.e. where the *regulated activity* in question is not an activity which could be passported.

Note 4 = A *firm* is free to translate the name of its *Home State regulator* into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.

Chapter 5

Regulators' logos and the Key facts logo

5.1 Application and purpose

Application

5.1.1**G**

This chapter contains:

- (1) *guidance for firms, authorised payment institutions, registered account information service providers and authorised electronic money institutions and their appointed representatives, agents or tied agents on the circumstances in which the FCA permits them to reproduce the FSA and FCA logos;*
- (2) *rules on the use by firms of the Key facts logo.*

Purpose

5.1.2**G**

The FSA logo is a registered UK service mark, with number 2150560. The FCA logo is a registered UK service mark, with number 3213355. The Key facts logo is a registered Community trade mark, with the number EU3866688. All are the property of the FCA. They are also subject to copyright and may be used or reproduced with permission of the FCA only. If the FSA, FCA, or Key facts logos are reproduced or otherwise used by any person without such permission the FCA may seek to enforce its rights over its property through the Courts.

5.1.3**G**

■ GEN 5 Annex 1 G is a general licence, which sets out the circumstances in which the FCA permits a person to whom this chapter applies to reproduce the FSA and Key facts logos. Such a person need not apply for an individual licence if it uses or reproduces the logos in accordance with the general licence.

5.1.3A**G**

No general licence is granted by the FCA in respect of the FCA logo.

5.1.4**G**

The FCA has no policy to allow use of the FSA or Key facts logos by a person to whom this chapter applies other than as set out in ■ GEN 5 Annex 1 G. If, however, such a person wishes to use or reproduce either of the logos other than in accordance with the general licence, it may apply to the FCA for an individual licence, giving full reasons why it considers the FCA should grant the licence.

The Key facts logo	
5.1.5	R A firm must not use the Key facts logo other than as and when it is required or expressly permitted to be used by the <i>rules</i> , and in accordance with the general licence in ■ GEN 5 Annex 1 G.
5.1.6	R A firm must take all reasonable steps to ensure that its <i>representatives</i> do not use the Key facts logo other than as and when the logo is required to be used by the <i>rules</i> .
5.1.7	R A firm must take all reasonable steps to ensure that the Key facts logo is not reproduced on any document that the <i>firm</i> , or any <i>person</i> acting on its behalf, provides to a <i>customer</i> unless the reproduction is required by the <i>rules</i> .
The FSA logo	
5.1.8	R A firm must not use the FSA logo (and must take all reasonable steps to ensure that its <i>representatives</i> do not use the FSA logo) in any communication with a <i>client</i> other than in accordance with the general licence in ■ GEN 5 Annex 1 G or any individual licence granted by the FCA to the <i>firm</i> or its <i>representatives</i> .
5.1.9	G The general licence in ■ GEN 5 Annex 1 G to use the FSA logo will continue till 1 April 2014 whereupon the general licence is revoked by ■ GEN 5 Annex 1 G, 7.1.
The FCA logo	
5.1.10	R A firm must not use the FCA logo (and must take all reasonable steps to ensure that its <i>representatives</i> do not use the FCA logo) in any communication with a <i>client</i> other than in accordance with any individual licence granted by the FCA to the <i>firm</i> or its <i>representatives</i> .
5.1.11	R ■ GEN 5.1.10 R also applies to a registered person communicating a financial promotion relating to one or more qualifying cryptoassets (in reliance on the exemption in article 73ZA of the Financial Promotion Order). The reference in that rule to a <i>firm</i> must be read accordingly.

Licence for use of the FSA and Key facts logos

Application

1.1

The FCA grants this licence to *firms, authorised payment institutions, authorised electronic money institutions, appointed representatives, agents and tied agents*.

The FSA logo

2.1

The FSA logo is made up of two elements which together make up the registered UK service mark, with number 2150560:

- (1) the symbol (the scroll and globe device); and
- (2) the FSA letters.

2.2

The Key facts logo is made up of two elements which together make up the registered Community trade mark, with number E3866688:

- (1) the symbol (the rectangular speech bubble); and
- (2) the word 'Key facts'.

2.3

There are two versions of the FSA logo, version A and a smaller version B in which the scroll has been simplified. There are two versions of the Key facts logo, a low resolution version and a high resolution version.

2.4

Copyright subsists in the FSA logo.

2.5

Copies of the FSA logo that are capable of being reproduced for printing can be found on the FCA's website at www.fca.org.uk

Permission to use the FSA logo

3.1

A UK domestic firm, its appointed representatives and tied agents, an authorised payment institution and its agents and an authorised electronic money institution and its agents are permitted to use the FSA logo:

- (1) as part of a statement by that person, in a letter or electronic equivalent, that it or, in relation to an appointed representative, agent or tied agent, its principal, is authorised and regulated by the FSA; or
- (2) if required to do so by the FCA.

3.1A

[deleted]

3.2

The disclosure required by [GEN 4.3.1 R](#) (Disclosure in letters to retail clients) as continued in [GEN TP 1.3\(3\).13](#) is an example of a statement within paragraph 3.1 above.

3.3

Business cards, compliment slips, text messages, account statements and other similar documents are not letters (or electronic equivalents). Therefore, the licence does not extend to documents such as these.

Permission to use the Key facts logo

3A.1

A firm, its appointed representatives and tied agents are permitted to use the Key facts logo as and when it is required or permitted to be used by the rules.

3A.2

The following are examples of places where the rules require or permit the Key facts logo to be used:

- | | |
|-----|--|
| (1) | [deleted] |
| (2) | In <i>ICOBS</i> : |
| (a) | [deleted] |
| (b) | in a <i>policy summary</i> ; and |
| (c) | in a <i>key features</i> as an alternative to a <i>policy summary</i> . |
| (3) | In <i>MCOB</i> |
| (a) | [deleted] |
| (b) | in an <i>illustration</i> (<i>MCOB 5.6.2 R</i> and <i>MCOB 9.4.2 R</i>); and |
| (c) | in a risks and features statement (<i>MCOB 4.10.11 R</i>) and financial information statement (<i>MCOB 5.8.7 R</i>). |

Conditions on appearance of the FSA logo

- 4.1 The permission in paragraph 3.1 is subject to the following conditions:
- (1) the regulatory mark is attached to the FSA logo;
 - (2) the FSA logo and regulatory mark appear in black type, or reversed out white on a coloured background;
 - (3) the FSA letters appear in type which is not more than three times the size of the accompanying script;
 - (4) the two elements of the FSA logo appear together in the same way, and in the same proportion, as in the registered service mark;
 - (5) the FSA logo is not redrawn in any way, or matched by a typesetter;
 - (6) version B of the FSA logo is used only at sizes below 10 mm in overall height; and
 - (7) if the FSA logo is reproduced electronically, no hyperlink is incorporated.

Conditions on appearance of the Key facts logo

- 4A.1 The permission in paragraph 3A.1 is subject to the following conditions:
- (1) the regulatory mark (®) is attached to the Key facts logo;
 - (2) the Key facts logo and regulatory mark appear:
 - (a) in black type;
 - (b) reversed out white on a coloured background; or
 - (c) in colour provided that this does not diminish their prominence;
 - (3) the two elements of the Key facts logo appear together in the same way, and in the same proportion, as in the Community trade mark;
 - (4) the Key facts logo is not redrawn in any way, or matched by a typesetter;

- (5) the low resolution version of the Key facts logo is used only in documents intended to be read on a computer, television or other screen; and
- (6) if the Key facts logo is reproduced electronically, no hyperlink is incorporated.

Further conditions on the use of the FSA and Key facts logos

- 5.1 The permissions in paragraphs 3.1 and 3A.1 are also subject to the conditions that any material, whether produced on paper or electronically, on which the FSA or Key facts logos are displayed does not:
- (1) in any way imply that the FCA is endorsing the licensee or its products, services or communications (see also GEN 1.2.2 R (1)); or
 - (2) misrepresent the licensee's relationship with the FCA or present false information about the FCA; or
 - (3) contain content that could be construed as distasteful, offensive or controversial; or
 - (4) infringe any intellectual property or other rights of any person or otherwise not comply with any relevant law or regulation.

- 6.1 [deleted]

Commencement and duration

- 7.1 This licence comes into effect on 1 May 2003 except that in relation to the Key facts logo it comes into effect on 6 November 2006. In relation to the FSA logo, this licence ceases to have effect and is revoked on 1 April 2014.
- 7.2 The FCA may alter or revoke this licence at any time, by giving at least two months' notice on the FCA's website.

Interpretation

- 8.1 This licence is to be interpreted in accordance with chapter 2 of the General provisions (Interpreting the Handbook) of the Handbook. In particular, expressions in italics are defined in the Handbook Glossary.

Governing law and jurisdiction

- 9.1 This licence is governed by and interpreted in line with English law. The courts of any jurisdiction in the United Kingdom have the exclusive jurisdiction to settle any dispute in connection with this licence.

Chapter 6

Insurance against financial difficulties

6.1 Payment of financial penalties

Application

6.1.1 **R** This chapter applies to every *firm*, but only with respect to business that can be regulated under section 137A (The FCA's general rules) of the Act.

6.1.2 **G** For the purposes of ■ GEN 2.2.17 R (Activities covered by general rules), the chapter applies to *regulated* and *unregulated activities* carried on in the *United Kingdom* or overseas. In relation to *regulated claims management activities* and *ancillary activities*, this chapter applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the UK (see ■ PERG 2.4A).

Purpose

6.1.3 **G** The purpose of this section is to ensure that financial penalties are paid by the *person* on whom they are imposed.

Interpretation

6.1.4 **R** In this chapter 'financial penalty' means a financial penalty that the FCA has imposed, or may impose, under the Act. It does not include a financial penalty imposed by any other body.

Payment of a penalty imposed on an employee

6.1.4A **R** No *firm*, except a *sole trader*, may pay a financial penalty imposed by the FCA on a present or former *employee*, *director* or *partner* of the *firm* or of an *affiliated company*.

Insurance against financial penalties

6.1.5 **R** No *firm* may enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a financial penalty

6.1.6 **R** The *Society*, *managing agents* and *members' agents* must not cause or permit any *member*, in the conduct of his *insurance business* at Lloyd's, to enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a financial penalty.

6.1.7

G

■ GEN 6.1.4A R, ■ GEN 6.1.5 R and ■ GEN 6.1.6 R do not prevent a *firm* or *member* from entering into, arranging, claiming on or making any payment under a *contract of insurance* which indemnifies any *person* against all or part of the costs of defending *FCA* enforcement action or any costs they may be ordered to pay to the *FCA*.

Chapter 7

Charging consumers for telephone calls



7.1 Application

Who? Where?

7.1.1

R

This chapter applies to a *firm* carrying on activities from an establishment in the *United Kingdom*. In relation to *regulated claims management activities*, this chapter applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see ■ PERG 2.4A).

What?

7.1.2

R

This chapter applies where a *firm* operates a telephone line for the purpose of enabling a *consumer* to contact the *firm* in relation to a contract that has been entered into with the *firm* in the course of, or in connection with:

- (1) *regulated activities*; or
- (2) *payment services*.

MiFID firm exception

7.1.3

R

This chapter does not apply for telephone lines provided in respect of contracts relating to the *MiFID business* of a *firm*.

Payment services exception

7.1.4

R

This chapter does not apply to telephone lines which:

- (1) enable *payment service users* to request information to which paragraph (2) of regulation 56 of the *Payment Services Regulations* applies; or
- (2) relate to the termination of a *framework contract*, unless:
 - (a) the *framework contract* was concluded either for a fixed period of more than 12 *months* or for an indefinite period; and
 - (b) at least 12 *months* of the *framework contract* have expired.

	<h3>Complaints exception</h3>
7.1.5	<p>R This chapter does not apply for telephone lines provided by a <i>respondent</i> for the purpose of enabling an <i>eligible complainant</i> to submit a <i>complaint</i>.</p>
7.1.6	<p>G ■ DISP 1.3 contains rules that apply for telephone lines provided by <i>respondents</i> for the purpose of enabling <i>eligible complainants</i> to submit <i>complaints</i> to a <i>respondent</i>.</p>
	<h3>Application to firms carrying on credit-related regulated activities</h3>
7.1.7	<p>G An effect of ■ GEN 7.1.1R and ■ GEN 7.2.1R is that this chapter applies for contracts by which a <i>firm</i> provides, or agrees to provide, <i>credit broking</i> services. In particular, this chapter applies where a telephone line is operated by a <i>credit broker</i> so that following the entry into a contract for the provision of <i>credit broking</i> services, a <i>customer</i> is able to contact the <i>firm</i> with a view to entering into a <i>credit agreement</i> or a <i>consumer hire agreement</i>.</p>
	<h3>Related consumer credit rules</h3>
7.1.8	<p>G The following provisions of CONC continue to apply where a <i>firm</i> operates a telephone line in respect of the relevant credit-related regulated activities but the <i>call charges rule</i> does not apply (for example, where a telephone line is operated for the purpose of enabling a consumer to contact the <i>firm</i> before a contract has been entered into):</p> <ol style="list-style-type: none">(1) ■ CONC 2.5.8R and ■ CONC 2.5.9G (unfair business practices: credit broking);(2) ■ CONC 2.6.3R and ■ CONC 2.6.4G (unfair business practices: debt counselling, debt adjusting and providing credit information services);(3) ■ CONC 3.3.9G (financial promotions and communications);(4) ■ CONC 3.9.5R and ■ CONC 3.9.6G (financial promotions and communications in relation to debt counselling and debt adjusting);(5) ■ CONC 7.9.5R (arrears, default and recovery); and(6) ■ CONC 8.7.6R (charging for debt counselling, debt advice and related services).
	<h3>Regulated benchmark administrators</h3>
7.1.9	<p>R This chapter does not apply to telephone lines provided in respect of contracts relating to a <i>firm's administration of a benchmark</i>.</p>



7.2 Call charges

Call charges rule

- 7.2.1** **R** A *firm* which operates a telephone line for the purpose of enabling a *consumer* to contact the *firm* in relation to a contract that has been entered into with the *firm*, must not bind the *consumer* to pay more than the basic rate for the telephone call.
- 7.2.2** **G** The contract entered into with the *firm* may be in writing or otherwise.
- ### Meaning of basic rate
- 7.2.3** **R** For the purposes of the *call charges rule*, the basic rate is the simple cost of connection and must not provide the *firm* with a contribution to its costs or revenues.
- 7.2.4** **R** The following numbers, if used by *firms*, would comply with the *call charges rule*:
- (1) geographic numbers or numbers which are always set at the same rate, which usually begin with the prefix 01, 02 or 03;
 - (2) calls which can be free of charge to call, for example 0800 and 0808 numbers; and
 - (3) standard mobile numbers, which usually begin with the prefix 07, provided that the firm ordinarily uses a mobile number to receive telephone calls.
- 7.2.5** **R** The following numbers, if used by *firms*, would not comply with the *call charges rule*:
- (1) premium rate numbers that begin with the prefix 09;
 - (2) other revenue sharing numbers in which a portion of the call charge can be used to either provide a service or make a small payment to the *firm*, such as telephone numbers that begin with the prefix 084 or 0871, 0872 or 0873; and
 - (3) telephone numbers that begin with the prefix 0870 as the cost of making a telephone call on such numbers can be higher than a

geographic cost and will vary depending on the consumer's telephone tariff.

General Provisions

GEN TP 1 Transitional provisions

(1)	(2) Material to which the transi- tional provi- sion applies	(3)	(4) Transitional provision	(5) Transi- tional provi- sion: dates in force	(6) Handbook provision: coming into force
5	GEN 6.1	R	<p>GEN 6.1 does not:</p> <p>(1) apply to an unamended <i>contract of insurance</i>, first entered into on or before 24 July 2003; or</p> <p>(2) prohibit a <i>firm</i> from claiming on, or making a payment under, a <i>contract of insurance</i>:</p> <ul style="list-style-type: none"> (a) in connection with a financial penalty imposed by the <i>FSA</i> pursuant to a <i>warning notice</i> issued before 25 July 2003; or (b) first entered into between 25 July 2003 and 31 December 2003 in respect of a financial penalty imposed by the <i>FSA</i> by a <i>final notice</i> issued on or before 31 December 2003. <p>(For these purposes only, a <i>contract of insurance</i> will be regarded as unamended if:</p> <ul style="list-style-type: none"> (i) it was amended on or before 24 July 2003; or (ii) it was amended after 24 July 2003, but the amendments did not affect the duration or scope of any indemnity against a financial penalty imposed by the <i>FSA</i> under the <i>Act</i>.) 	From 1 January 2004	1 January 2004
9	GEN 5 An-	G	[expired]		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	nex 1 G				
10	GEN 4.3.1 R	R	[expired]		
11	GEN 4.5	R	[expired]		
12	GEN 4 Annex 1 R	R	[expired]		
13	GEN 4.3.1 R, GEN 4 Annex 1 R and GEN 4 Annex 1A	R	[expired]		
14	GEN 4.5.3 R and GEN 4.5.4 R	R	[expired]		
15	Rules and directions implementing MiFID II	R	[expired]		
16	Rules and directions implementing	G	[expired]		

(1)	(2) Mat- erial to which the trans- itional provi- sion applies	(3)	(4) Transitional provision	(5) Trans- itional provi- sion: dates in force	(6) Handbook provision: coming into force
	<i>Mi- FID II</i>				

GEN TP 1.3 (4) Transitional Provisions applying to GEN only

TRAN refers to "GEN 6.1" in the table above must be read as "GEN 6.1 and General Provisions 7 in the

General Provisions

GEN TP 2

Transitional Provisions applying across the FCA Handbook and the PRA Rulebook

- (1) The purpose of these transitional provisions is to assist a smooth transition at cutover. They comprise various technical provisions that will apply across the whole *FCA Handbook* and *PRA Rulebook* and achieve results that most people would probably expect to apply in any event.
- (2) These transitional provisions consist of general transitional provisions, which apply at a high level of generality, and more specific transitional provisions in relation to record keeping and notification rules.
- (3) The more specific transitional provisions relating to record keeping and notification rules override the general transitional provisions. Both the general and the more specific transitional provisions do not apply if the context requires otherwise and are subject to any more specific transitional provision elsewhere in the *FCA Handbook* and *PRA Rulebook* relating to the matter.
- (4) Definitions for these transitional provisions, additional to those in the *Glossary*, are provided at paragraph 15 of the table.

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Hand-book provision: coming into force
1	Every provision in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>Acts under pre-cutover provisions</p> <p>Anything done, or having effect as done, under or for the purposes of any pre-cutover provision has effect as if done under or for the purposes of any substantially similar provision in the <i>FCA Handbook</i> and <i>PRA Rulebook</i>.</p>	From cutover	Cutover
2	Paragraph 1	G	<p>For example, a <i>firm</i> may rely on action to establish the best price, taken shortly before cutover for the purposes of the <i>FSA's</i> best execution rule, for the purposes of compliance with the <i>FCA's</i> best execution rule, even if the transaction is executed after cutover.</p>	From cutover	Cutover
3	Every provision in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> , unless the context otherwise requires and subject to any more specific trans-	R	<p>Series of events</p> <p>If the application of any provision in the <i>FCA Handbook</i> or <i>PRA Rulebook</i></p> <p>is dependent on the occurrence of a series of events, some of which occur before, and some of which</p>	From cutover	Cutover

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
4	ditional provision relating to the matter [deleted]		occur after, cutover, the provision applies with respect to the events that occur after cutover.		
5	Every provision in the FCA Handbook and PRA Rulebook, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>Deemed references to pre-cutover provisions</p> <p>Any reference (express or implied) in a provision in the FCA Handbook or PRA Rulebook</p> <p>to a provision of or made under the Act is to be read (so far as the context permits and according to the context) as being or including, in relation to times, circumstances and purposes before cutover, a reference to any substantially similar pre-cutover provision.</p>	From cutover	Cutover
6	Paragraph 5	G	<p>For example, SUP 11.6.4 R requires a firm authorised by the FCA to notify the FCA when a change in control, previously notified under SUP 11.4.2 R, has taken place. Such a firm must notify a change in control that takes place after cutover, even if previously notified under SUP 11.4.2 R as made by the FSA (and SUP 11.6.4 R is to be read as referring to that pre-cutover provision).</p>	From cutover	Cutover
7	Every provision in the FCA Handbook and PRA Rulebook, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>Time starting before cutover</p> <p>If, at cutover, time has begun to run for any purpose under any pre-cutover provision applicable to a firm or other person, then:</p> <ul style="list-style-type: none"> (1) time will be regarded as having started to run, for the purposes of any substantially similar provision in the FCA Handbook or PRA Rulebook , when it started to run for that other purpose; and (2) the firm or other person will be relieved of its obligation to comply with the relevant pre-cutover provision if and to the extent that it complies with the substantially similar provision 	From cutover	Cutover

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
8	Paragraph 7	G	<p>as extended by this transitional provision.</p> <p>For example, certain <i>firms</i> were required to submit product sales data reports within 20 <i>business days</i> of the end of the quarter by SUP 16.11.3 R as made by the FSA. If the quarter end fell five days before cutover, the <i>firms</i> must still submit the report within 20 <i>business days</i>, but in accordance with SUP 16.7.8 R as made by the FCA.</p>	From cutover	Cutover
9	Every <i>rule</i> in the FCA Handbook and PRA Rulebook requiring a record to be made or retained (see schedule 1), unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>Record keeping</p> <p>A <i>firm</i> or other person will not contravene a <i>rule</i> in the FCA Handbook or PRA Rulebook</p> <p>requiring a record to be made or retained to the extent that the <i>firm</i> or other person:</p> <p>(1) made a record of the matter before cutover in accordance with the <i>rule</i> or with a substantially similar pre-cutover provision applicable to the <i>firm</i> or other person; and</p> <p>(2) retains that record as if the <i>rule</i> was in force when the record was made.</p>	From cutover	Cutover
10	Every <i>rule</i> in the FCA Handbook and PRA Rulebook requiring a record to be made or retained (see schedule 1), unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	G	This transitional provision makes specific provision, in relation to record keeping, for the matters covered by paragraph 1. It is included for clarity and overrides those general transitional provisions.	From cutover	Cutover
11	Every <i>rule</i> in the FCA Handbook and PRA Rulebook requiring a record to be made or retained (see schedule 1), unless the context otherwise requires and subject to any more specific transitional provision	R	A <i>firm</i> or other person must retain a record in accordance with a <i>rule</i> in the FCA Handbook or PRA Rulebook requiring a record of that sort to be retained, if the <i>firm</i> or other person was required to make and retain that record before cutover under a substantially similar pre-cutover provision applicable to the <i>firm</i> or other person.	From cutover	Cutover

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
12	Paragraph 9 relating to the matter	G	This transitional provision makes specific provision, in relation to records, for the matters covered by paragraphs 5 and 7. It is included for clarity and overrides those general transitional provisions.	From cutover	Cutover
13	Every notification rule in the FCA Handbook and PRA Rulebook (see schedule 2), unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	Notification <i>A firm (or its auditor, appointed actuary or appropriate actuary) or other person will not contravene a notification rule in the FCA Handbook or PRA Rulebook</i> to the extent that notice of the relevant matter was given to the FSA before cutover in accordance with: (1) the notification rule; or (2) a substantially similar pre-cut-over provision applicable to the firm or other person.	From cutover	Cutover
14	Paragraph 13	G	This transitional provision makes specific provision, in relation to notifications, for the matters covered by paragraphs 1 and 3. It is included for clarity and overrides those general transitional provisions.	From cutover	Cutover
15	As paragraphs 1 to 14	R	Definitions In these transitional provisions: (1) "pre-cutover provision" means a provision repealed or revoked by, or under, the <u>Financial Services Act 2012</u> or a rule or guidance of the FSA, including (where the context permits) any relevant provision which it replaced before cutover; (2) "substantially similar" means substantially similar in purpose and effect; and (3) a reference to a "provision" in the FCA Handbook or PRA Rulebook means every type of provision, including rules, guidance, provisions in codes, and so on.	From cutover	Cutover
16	Paragraph 17	G	Application for provisions which are not rules The purpose of paragraph 17 is to ensure that the transitional provisions in paragraphs 1 to 8 apply	From cutover	Cutover

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
17	<i>Statements of Principle</i> , the Code of Practice for Approved Persons and MAR 1 (Market Abuse) and directions and requirements and guidance and other provisions in the FCA Handbook and PRA Rulebook (that is, provisions with the status letter "D" or "G" in the margin or heading) unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	P	throughout the FCA Handbook and PRA Rulebook. The provisions in paragraphs 1 to 10 apply to every person to whom the provisions referred to in column (2) apply as if the rules in those paragraphs were part of those provisions.	From cutover	Cutover
18	Every provision in the FCA Handbook	G	References in the FCA Handbook to Directive 2004/39, where not otherwise amended, shall be interpreted as references to MiFID II or MiFIR or the corresponding provisions in or under MiFID II or MIFIR, except where the context indicates otherwise.	From 3 January 2018	3 January 2018

General Provisions

GEN TP 3

Transitional Provision in relation to the Alternative Investment Fund Managers Directive Instrument 2013

General Provisions

GEN TP 4

Transitional Provision on early compliance with the Insurance Distribution Directive applying across the Handbook [deleted]

Transitional provisions applying across the FCA Handbook and Technical Standards relating to the UK's exit from the EU

GEN TP 5

Transitional provisions applying across the FCA Handbook and Technical Standards relating to the UK's exit from the EU

Table 1: Transitional provisions applying across the FCA Handbook and Technical Standards

(1)	The purpose of these transitional provisions is to assist a smooth transition on <i>IP completion day</i> . They comprise various technical provisions that will apply across the whole <i>FCA Handbook</i> and Technical Standards to achieve results that most people would probably expect to apply in any event.
(2)	These transitional provisions consist of general transitional provisions, which apply at a high level of generality, and more specific transitional provisions in relation to record keeping and <i>notification rules</i> .
(3)	The more specific transitional provisions relating to record keeping and <i>notification rules</i> override the general transitional provisions. Both the general and the more specific transitional provisions do not apply if the context requires otherwise and are subject to any more specific transitional provision elsewhere in the <i>FCA Handbook</i> , Technical Standards or other legislative material relating to the matter.
(4)	Definitions for these transitional provisions, additional to those in the <i>Glossary</i> , are provided at row 13 of Table 2.

Table 2: Transitional provisions applying across the FCA Handbook and Technical Standards

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force.	(6) Handbook provision: coming into force
1	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>Acts under pre-IP completion day provisions</p> <p>Anything done, or having effect as done, under or for the purposes of any pre-IP completion day provision has effect as if done under or for the purposes of any substantially similar provision in the <i>FCA Handbook</i>.</p>	From <i>IP completion day</i>	<i>IP completion day</i>
2	Row 1 of this table	G	<p>For example, a firm may continue to treat a client as an <i>elective eligible</i></p>	From <i>IP completion day</i>	<i>IP completion day</i>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force.	(6) Handbook provision: coming into force
3	Every provision in the FCA Handbook, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>counterparty pursuant to COBS</p> <p>3.6.4R where prior to <i>IP completion day</i> it had categorised that <i>client</i> as such in deference to the status of that undertaking under the law or measures of the EEA State of that client's establishment in accordance with COBS</p> <p>3.6.7R.</p>	From <i>IP completion day</i>	<i>IP completion day</i>
4	Every provision in the FCA Handbook, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>Series of events</p> <p>If the application of any provision in the FCA Handbook is dependent on the occurrence of a series of events, some of which occur before, and some of which occur after, <i>IP completion day</i>, the provision applies with respect to the events that occur after <i>IP completion day</i>.</p> <p>Deemed references to pre-IP completion day provisions</p> <p>Any reference (express or implied) in a provision in the FCA Handbook to a provision of or made under the Act or of assimilated law is to be read (so far as the context permits and according to the context) as being or including, in relation to times, circumstances and purposes before <i>IP completion day</i>, a reference to any substantially similar pre-IP completion day provision.</p>	From <i>IP completion day</i>	<i>IP completion day</i>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force.	(6) Handbook provision: coming into force
5	Row 4 of this table	G	For example, BIPRU 2.1.11R requires a firm to notify the FCA immediately of any breach, or expected breach, of the <i>main BIPRU firm Pillar 1 rules</i> (GENPRU 2.1.40R (Variable capital requirement for BIPRU firms), GENPRU 2.1.41R (Base capital resources requirement for BIPRU firms) and GENPRU 2.1.48R (Table: Base capital resources requirement for a BIPRU firm). This includes breaches of the <i>main BIPRU firm Pillar 1 rules</i> as they applied before <i>IP completion day</i> .	From <i>IP completion day</i>	<i>IP completion day</i>
6	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>Time starting before IP completion day</p> <p>If, at <i>IP completion day</i>, time has begun to run for any purpose under any pre-<i>IP completion day</i> provision applicable to a <i>firm</i> or other person, then:</p> <ul style="list-style-type: none"> (1) time will be regarded as having started to run, for the purposes of any substantially similar provision in the <i>FCA Handbook</i>, when it started to run for that other purpose; and (2) the <i>firm</i> or other person will be relieved of its obligation to comply with the relevant pre-<i>IP completion day</i> provision 	From <i>IP completion day</i>	<i>IP completion day</i>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force.	(6) Handbook provision: coming into force
7	Every rule in the FCA Handbook requiring a record to be made or retained, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>if and to the extent that it complies with the substantially similar provision as extended by this transitional provision.</p> <p>Record keeping</p> <p>A firm or other person will not contravene a rule in the FCA Handbook requiring a record to be made or retained to the extent that the firm or other person:</p> <ul style="list-style-type: none"> (1) made a record of the matter before IP completion day in accordance with the rule or with a substantially similar pre-IP completion day provision applicable to the firm or other person; and (2) retains that record as if the rule was in force when the record was made. 	From IP completion day	IP completion day
8	Every rule in the FCA Handbook requiring a record to be made or retained, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	G	This transitional provision makes specific provision, in relation to record keeping, for the matters covered by row 1 of this table. It is included for clarity and overrides those general transitional provisions.	From IP completion day	IP completion day
9	Every rule in the FCA Handbook requiring a record to be made or retained, unless the context otherwise requires and subject to any more specific transitional	R	A firm or other person must retain a record in accordance with a rule in the FCA Handbook requiring a record of that sort to be retained, if the	From IP completion day	IP completion day

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force.	(6) Handbook provision: coming into force
10	Row 7 of this table	G	<p><i>firm</i> or other person was required to make and retain that record before <i>IP completion day</i> under a substantially similar pre-<i>IP completion day</i> provision applicable to the <i>firm</i> or other person.</p> <p>This transitional provision makes specific provision, in relation to records, for the matters covered by rows 4 and 6 of this table. It is included for clarity and overrides those general transitional provisions.</p>	From <i>IP completion day</i>	<i>IP completion day</i>
11	Every <i>notification rule</i> in the FCA Handbook, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p>Notification</p> <p>A <i>firm</i> (or its auditor, appointed actuary or appropriate actuary) or other person will not contravene a <i>notification rule</i> in the FCA Handbook to the extent that notice of the relevant matter was given to the FCA before <i>IP completion day</i> in accordance with:</p> <ul style="list-style-type: none"> (1) the <i>notification rule</i>; or (2) a substantially similar pre-<i>IP completion day</i> provision applicable to the <i>firm</i> or other person. 	From <i>IP completion day</i>	<i>IP completion day</i>
12	Row 11 of this table	G	<p>This transitional provision makes specific provision, in relation to notifications, for the matters covered by rows 1 and 3 of this table. It is in-</p>	From <i>IP completion day</i>	<i>IP completion day</i>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force.	(6) Handbook provision: coming into force
13	As rows 1 to 12 of this table	R	<p>cluded for clarity and overrides those general transitional provisions.</p> <p>In these transitional provisions:</p> <p>(1) “<i>pre-IP completion day</i> provision” means a provision in force on the day preceding IP completion day;</p> <p>(2) “substantially similar” means substantially similar in purpose and effect; and</p> <p>(3) a reference to a “provision” in the <i>FCA Handbook</i> means every type of provision, including <i>rules, guidance, provisions in codes, and so on.</i></p>	From <i>IP completion day</i>	<i>IP completion day</i>
14	Rows 15 and 16 of this table	G	<p>Application for provisions which are not rules</p> <p>The purpose of row 15 of this table is to ensure that the transitional provisions in rows 1 to 13 apply throughout the <i>FCA Handbook</i>. The purpose of row 16 is to ensure that the transitional provisions in rows 1 to 13 apply throughout Technical Standards made by the Board of the FCA.</p>	From <i>IP completion day</i>	<i>IP completion day</i>
15	Directions, requirements, guidance, evidential provisions and other provisions in the <i>FCA Handbook</i> (that is, provisions with the status	G	The provisions in rows 1 to 13 apply to every person to whom the provisions referred to in column (2) apply as if the <i>rules</i> in those	From <i>IP completion day</i>	<i>IP completion day</i>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force.	(6) Handbook provision: coming into force
	letter "D" or "G" or "E" in the margin or heading) unless the context otherwise requires and subject to any more specific transitional provision relating to the matter		rows were part of those provisions.		
16	Technical Standards (that is, provisions with the status letter "TS" in the margin or heading) made by the Board of the FCA under [The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018] unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	TS	The provisions in rows 1 to 13 of this table apply to every person to whom the provisions referred to in column (2) apply as if references to the Handbook were to Technical Standards made by the Board of the FCA. References in this table and in headings to the FCA Handbook should be read as referring to Technical Standards made by the Board of the FCA, where the context requires.	From IP completion day	<i>IP completion day</i>

Transitional provisions applying to GEN only - status disclosure for temporary permission firms

GEN TP 6

Transitional provisions applying to GEN only – status disclosure for temporary permission firms [deleted] [deleted]

General Provisions

Schedule 1 Record keeping requirements

Sch 1.1 G [deleted]

Sch 1.2 G

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

Sch 1.3 G

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.4 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
GEN TP 4, row 4G	An election to comply early with the Insurance Distribution Directive (<i>IDD</i>)	The election and the new and replaced provisions to which that election relates	In accordance with the firm's general record keeping obligations	In accordance with the firm's general record keeping obligations

General Provisions

Schedule 2 Notification requirements

Sch 2.1 G

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
GEN 1.3.2 R	An emergency which makes it impracticable for a <i>firm</i> to comply with a particular rule.	Notification of the emergency and of the steps the <i>firm</i> is taking and proposes to take to deal with its consequences	An emergency which makes it impracticable for a <i>firm</i> to comply with a particular rule.	Notification as soon as practicable

General Provisions

Schedule 3 Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in GEN. FEES 2 (General Provisions) contains general provisions relating to the payment of fees.

General Provisions

Schedule 4 Powers exercised

Sch 4.1 G

In this Schedule, references to *GEN* include the *Glossary*.

Sch 4.2 G

Powers to make rules

The following powers and related provisions in or under the Act have been exercised by the FCA to make the rules in *GEN*:

- Section 59 (Approval for particular arrangements)
- Section 60A (Vetting of candidates by authorised persons)
- Section 63F (Issuing of certificates)
- Section 64A (Rules of conduct)
- Section 73A (Part 6 Rules)
- Section 74 (The official list)
- Section 75 (Applications for listing)
- Section 77 (Discontinuance and suspension of listing)
- Section 79 (Listing particulars and other documents)
- Section 80 (General duty of disclosure in listing particulars)
- Section 81 (Supplementary listing particulars)
- Section 84 (Matters which may be dealt with by prospectus rules)
- Section 85 (Prohibition of dealing etc in transferable securities without approved prospectus)
- Section 87 (Election to have prospectus)
- Section 87A (Criteria for approval of prospectus by competent authority)
- Section 87B (Exemptions from disclosure)
- Section 87G (Supplementary prospectus)
- Section 88 (Sponsors)
- Section 89A (Transparency rules)
- Section 89B (Provision of voteholder information)
- Section 89C (Provision of information by issuers of transferable securities)
- Section 89D (Notification of voting rights held by issuer)
- Section 89E (Notification of proposed amendment of issuer's constitution)
- Section 89F (Transparency rules: interpretation etc)
- Section 89G (Transparency rules: other supplementary provisions)
- Section 89O (Corporate governance rules)

Section 89P (Primary information providers)
Section 96 (Obligations of issuers of listed securities)

Section 101(2) (Part 6 Rules: general provisions)

Section 136(2) (Funding of the legal assistance scheme)

Section 137A (The FCA's general rules)

Section 137B (FCA general rules: clients' money, right to rescind etc)

Section 137C (FCA general rules: cost of credit and duration of credit agreements)

Section 137D (FCA general rules: product intervention)

Section 137F (Rules requiring participation in benchmark)

Section 137FB (FCA general rules: disclosure of information about the availability of pensions guidance)

Section 137FC (General rules: disclosure of information about the availability of financial guidance)

Section 137H (General rules about remuneration)

Section 137O (Threshold condition code)

Section 137P (Control of information rules)

Section 137Q (Price stabilising rules)

Section 137R (Financial promotion rules)

Section 137SA (Rules to recover expenses relating to the Money and Pension Service)

Section 137SB (Rules to recover debt advice expenses incurred by the devolved authorities)

Section 137T (General supplementary powers)

Section 138C (Evidential provisions)

Section 138D (Actions for damages)

Section 138M (Temporary product intervention rules)

Section 192J (Rules requiring provision of information by parent undertakings)

Section 192JB (Rules requiring parent undertakings to facilitate resolution)

Section 213 (The compensation scheme) (including as referred to in section 216(5) (Continuity of long-term insurance policies) and section 217(7) (Insurers in financial difficulties))

Section 214 (General)

Section 214A (Contingency funding)

Section 214D(13) (Contributions under section 214B: supplementary)

Section 215 (Rights of the scheme in insolvency)

Section 216 (Continuity of long-term insurance policies)

Section 217 (Insurers in financial difficulties)

Section 218(2)(b) (Annual report)

Section 218A (Regulators' power to require information)

Section 223 (Management expenses)

Section 223C (Payments in error)

Section 224F (Rules about relevant schemes)

Section 226 (Compulsory jurisdiction) (including as applied by regulations 117 and 133 of the *Payment Services Regulations* and article 26(1) (Extension of

the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms) of the *MCD Order*)

Section 229 (Awards)

Section 234 (Industry funding)

Section 238 (Restrictions on promotion)

Section 239 (Single property schemes)

Section 242 (Applications for authorisation of unit trust schemes)

Section 247 (Trust scheme rules)

Section 248 (Scheme particulars rules)

Section 261C (Applications for authorisation of contractual schemes)

Section 261I (Contractual scheme rules)

Section 261J (Contractual scheme particulars rules)

Section 278 (Rules etc as to scheme particulars)

Section 283(1) (Facilities and information in UK)

Section 286(4F) (Qualification of recognition)

Section 293 (Notification requirements)

Section 295 (Notification: overseas investment exchanges and overseas clearing houses)

Section 300B (Duty to notify proposal to make regulatory provision)

Section 332(1) (Rules in relation to persons to whom the general prohibition does not apply)

Section 340 (Appointment)

Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority) (including as applied by article 25 (Application of provisions of the Act to the FCA in respect of its supervision of consumer buy-to-let mortgage firms) of the *MCD Order*), and by regulation 15A of the *ADR Regulations*

Paragraph 23 (fees) of Schedule 1ZA as applied by regulation 118(1) of the *Payment Services Regulations*

Paragraph 12 (Funding of the relevant costs by authorised persons or payment service providers) of Part 2 (Funding) of Schedule 1A (Further provision about the Consumer Financial Education Body)

Paragraphs 7(3) (Annual reports), 13 (FCA's procedural rules), 16B (Procedure for complaints etc) and 16D (Enforcement of money awards) of Schedule 17 (The Ombudsman Scheme) (including as applied by article 26(1) (Extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms) of the *MCD Order*)

Article 60E(3) of the Regulated Activities Order

Regulation 6 (FCA rules) of the *OEIC Regulations*

Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the *Ombudsman Transitional Order*

Articles 4 (Pending applications), 6 (Post-commencement applications), 9 (Article 9 defaults occurring before commencement), 9A (Contributions in relation to mesothelioma claims), 10 (Applications in respect of compulsory liability insurance), 12 (Applications under the new scheme) and 23 (Record-keeping and reporting requirements relating to pre-commencement) of the *compensation transitionals order*

Regulation 3 (Consumer contract requirements: modification of rule-making powers) of the *Electronic Commerce Directive (Financial Services and Markets) Regulations 2002* (SI 2002/1775)

Regulation 2 (Power of the Authority to make rules under section 138 of the Financial Services and Markets Act 2000) of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706)

Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the *Mortgage and General Insurance Complaints Transitional Order*

Sch 4.3 G

The following additional powers have been exercised by the FCA to make the *rules* in GEN:

Regulation 2(3) (Application for permission) of the Capital Requirements Regulations 2006 (SI 2006/3221)

Regulations 109 (Reporting requirements), 112 (Proposal to take disciplinary measures) and 118 (Costs of supervision) of and paragraph 1 of Schedule 6 (Disciplinary powers) to the *Payment Services Regulations*

Regulations 49 (Reporting requirements) and 59 (Costs of supervision) of the *Electronic Money Regulations*

Regulations 8 (Applications for registration), 9 (Applications for admission to the register of issuers), 18 (Notification requirements), 20 (Material changes to the regulated covered bond), 24 (Requirements relating to the asset pool), 25 (Change of owner), 36 (financial penalties policy statement), 46 (Modifications of primary and secondary legislation) of, and paragraph 5 (fees) to the Schedule (Modifications to primary and secondary legislation) to, the *RCB Regulations*

Paragraph 9 (Funding) of Schedule 4 (The Payment Systems Regulator) to the Financial Services (Banking Reform) Act 2013

Articles 2 (Requirement to give notice in relation to an approved person), 6 (Revision of an article 2 notice), 19 (Power to impose penalties) and 20 (Rules and requirements by a regulator under this Order) of the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015 (SI 2015/429)

Article 21 (Monitoring and Enforcement) of the *MCD Order*

Article 78(10) of *EMIR*

Article 31 of *MiFIR*

Sch 4.3A G

Power to make rules or to direct

The following additional powers and related provisions have been exercised by the FCA in GEN to direct, require or specify:

Regulation 5 (FCA rules) of the *Securitisation Regulations 2024*

Regulation 6 (Power of FCA to give directions) of the *Securitisation Regulations 2024*

Regulation 15 (Application for registration) of the *Securitisation Regulations 2024*

Regulation 22 (Power of FCA to make rules in relation to securitisation repositories) of the *Securitisation Regulations 2024*

Regulation 26 (Application for registration to provide third party verification service) of the *Securitisation Regulations 2024*

Regulation 34 (Due-diligence requirements of small registered UK AIFMs as institutional investors) of the *Securitisation Regulations 2024*

Sch 4.4 G

Powers to make codes

The following powers and related provisions in the Act have been exercised by the FCA to issue the parts of the codes in GEN:

Section 64(2) (Conduct: statements and codes)

Sch 4.5 G

Powers to issue statements

The following powers and related provisions in the Act have been exercised by the FCA to issue the parts of the statements in GEN:

Section 63ZD (Statement of policy relating to conditional approval and variation)

Section 63C (Statement of policy)

Section 64 (Conduct: statements and codes)

Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 6 to the *Payment Services Regulations*, paragraph 1 of ~~5chedule 3~~ to the *Electronic Money Regulations*, regulation 29(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635) and regulation 28(1) of the *Immigration Regulations*)

Section 88C (Action under section 88A: statement of policy)

Section 89S (Action under section 89Q: statement of policy)

Section 93 (Statement of policy)

Section 124 (Statement of policy)

Section 131J(1) (Statement of policy)

Section 138N (Temporary product intervention rules: statement of policy)

Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 6 to the *Payment Services Regulations* and paragraph 3 of ~~5chedule 3~~ to the *Electronic Money Regulations* and by regulation 71(2) of the *AIFMD UK regulation*)

Section 192H (Statement of policy: directions under section 192C)

Section 192N (Imposition of penalties under section 192K: statement of policy)

Section 210 (Statements of policy) (including as applied by regulation 112(6) of the *Payment Services Regulations*, regulation 53 (6) of the *Electronic Money Regulations*, regulation 71(3) of the *AIFMD UK regulation*, regulation 29(2) of the ~~Legal Aid, Sentencing and Punishment of Offenders Act 2012~~(Referral Fees) Regulations 2013 (SI 2013/1635), regulation 28(2) (Statements of policy) of the *Immigration Regulations* and article 23(4) (Application of provisions of the Act to registered consumer buy-to-let mortgage firms) of the *MCD Order*)

Section 312J (Statement of policy under section 312F)

Section 395 (The FCA's and PRA's procedures) (including as applied by paragraph 9 of Schedule 6 to the *Payment Services Regulations*, ~~paragraph 8 of Schedule 3 to the *Electronic Money Regulations*, regulation 30(7) of the ~~Legal Aid, Sentencing and Punishment of Offenders Act 2012~~(Referral Fees) Regulations 2013 (SI 2013/1635), article 3(11) of the Financial Services Act 2012 (Consumer Credit) Order 2013, regulation 29 (Application of Part 26 of the 2000 Act) of the *Immigration Regulations* and article 24(2) (Application of procedural provisions of the Act) of the *MCD Order*)~~

Section 404(3) (Consumer redress schemes)

Section 404A (Rules under s404: supplementary)

Sch 4.6 G

The following additional powers and related provisions have been exercised by the FCA to issue the parts of the statements in *GEN*:

Regulation 42 (Guidance) of the *RCB Regulations*

Regulation 44 (Warning notices and decision notices) of the *RCB Regulations*

Regulation 120 (Guidance) of the *Payment Services Regulations*

Regulation 60 (Guidance) of the *Electronic Money Regulations*

Section 80 (Statement of policy under sections 73 to 79) of the *Financial Services Act 2012*

Regulations 70 (Application of procedural provisions of the Act) and 71 (Application of provisions of the Act to unauthorised AIFMs) of the *AIFMD UK regulation*

Article 4 (Statements of policy) of the *Financial Services Act 2012 (Consumer Credit) Order 2013*

Regulations 28 (Statements of policy) and 29 (Application of Part 26 of the 2000 Act) of the *Immigration Regulations*

Sch 4.7 G**Powers to direct, require or specify**

The following powers and related provisions in the Act have been exercised by the FCA in *GEN* to direct, require or specify:

Section 55U (Applications under this Part)

Section 60 (Applications for approval)

Section 61 (Determination of applications)

Section 62A (Changes to responsibilities of senior managers)

Section 63ZA (Variation of senior manager's approval at request of authorised person)

Section 63ZB (Variation of senior manager's approval on initiative of regulator)

Section 63E (Certification of employees by authorised persons)

Section 64C (Requirement for authorised persons to notify regulator of disciplinary action)

Section 137S (Financial promotion rules: directions given by FCA)

Section 138A (Modification or waiver of rules)

Section 179 (Requirements for section 178 notices)

Section 218A (Authority's power to require information)

Section 242 (Applications for authorisation of unit trust schemes)

Section 250 (Modification or waiver of rules)

Section 274 (Applications for recognition of individual schemes)

Section 279 (Revocation of recognition)

Section 287 (Application by an investment exchange)

Section 294 (Modification or waiver of rules)

Section 316 (Direction by Authority)

Section 317 (The core provisions)

Section 318 (Exercise of powers through Council)

Regulations 7(3) and (4) (Modification or waiver of FCA rules) and 12 (Application for authorisation) of the *OEIC Regulations*

Sch 4.8 G

The following additional powers and related provisions have been exercised by the FCA in GEN to direct, require or specify:

Regulation 74A (Reporting Requirements) of the *Money Laundering Regulations*

Regulation 49 (Reporting requirements) of the *Electronic Money Regulations*

Regulations 21 (Disclosure obligations of small registered UK AIFMs), 54 (FCA approval for marketing), 58 (Marketing of AIFs managed by small third country AIFMs) and 60 (Manner and content of notifications) of the *AIFMD UK regulation*

Regulation 9 (Reporting requirements) of the *Immigration Regulations*

Articles 5 (Regulators' power to impose requirements for an article 2 notice), 7 (Application of section 63ZA to a continuing approval), 8 (Application of section 62A to a statement provided under article 2(3)(c)), 13 (Regulators' power to impose requirements for an article 11 notice), 15 (Application of section 62A to a statement provided under article 11(d)), 17 (Power for the regulators to specify equivalent functions) and 20 (Rules and requirements imposed by a regulator under this Order) of the *Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015* (SI 2015/429)

Articles 18 (Obligations of registered consumer buy-to-let mortgage firms) and 19 (Power to direct registered consumer buy-to-let mortgage firms to take appropriate action) of the *MCD Order*

Regulations 30(4) and (5) (Supervision of firms exercising passport rights), 71(8) (Limits on the use of payment instruments and access to payment accounts), 98(3) (Management of operational and security risks), 99(2) (Incident reporting), 105(4) (Access to bank accounts) and 109 (Reporting requirements) of the *Payment Services Regulations*

Sch 4.9 G

[deleted]

Sch 4.10 G

Power to make the complaints scheme

The following power has been exercised by the FCA to make the complaints scheme in GEN:

Part 6 of the Financial Services Act 2012

Sch 4.11 G

Powers to give guidance

The following powers in or under the Act have been exercised by the FCA to give the guidance in GEN:

Section 139A (Power of the FCA to give guidance)

Section 234G (Guidance)

Sch 4.12 G

The following additional powers have been exercised by the FCA to give the other *guidance* in GEN:

Article 14 (Guidance on continued provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501)

Articles 9D (Applications for certificates), 9F (Revocation of certificate on request), 9G (Obtaining information from certified persons etc) and 9H (Rules prohibiting the issue of electronic money at a discount) of the *Regulated Activities Order*

Regulation 120 (Guidance) of the *Payment Services Regulations*

Section 123 (Application of insolvency law) of the Banking Act 2009

Regulation 60 (Guidance) of the *Electronic Money Regulations*

Regulation 42 (Guidance) of the *RCB Regulations*

Regulation 15 (Guidance) of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (SI 2012/3122)

Regulation 5 (Guidance) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Article 22 (Guidance) of the *MCD Order*

Sch 4.13 G**Powers exercised by the FOS Ltd**

GEN 2.1.8 R is made by FOS Ltd in exercise of its powers referred to in Schedule 4 to DISP

General Provisions

Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in *GEN* contravention of which by an *authorised person* may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

Sch 5.2 G

If a 'Yes' appears in the column headed 'For private person?', the *rule* may be actionable by a 'private person' under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A 'Yes' in the column headed 'Removed' indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed 'For other person?' indicates whether the *rule* may be actionable by a person other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed	For other person?
All <i>rules</i> in <i>GEN</i> with the status letter "E"			No	No	No
GEN 2.1.8 R			No	No	No
All other rules in <i>GEN</i>			Yes	No	No

General Provisions

Schedule 6 Rules that can be waived

Sch 6.1 G

[deleted]

Sch 6.1A G

As a result of **section 138A** of the Act (Modification or waiver of rules) the FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the Act.

Sch 6.2 G

- 1 GEN 2.1.8R is made by *FOS Ltd* and not by the *FCA* and cannot be waived by the *FCA*.
- 2 Every other *rule* in *GEN* can be waived by the *FCA* if, and to the extent that, the *rules* elsewhere in its *Handbook* which it modifies or to which it otherwise relates can be waived by the *FCA*.

Senior management arrangements, Systems and Controls

Senior management arrangements, Systems and Controls

SYSC 1 Application and purpose

- 1.1A Application
- 1.2 Purpose
- 1.4 Application of SYSC 11 to 28A
- 1.5 Significant SYSC firm
- 1 Annex 1 Detailed application of SYSC

SYSC 2 Senior management arrangements

- 2.1 Apportionment of Responsibilities
- 2.2 Recording the apportionment

SYSC 3 Systems and controls

- 3.1 Systems and controls
- 3.2 Areas covered by systems and controls
- 3.3 Additional requirements for insurance distribution
- 3.4 SRD requirements

SYSC 4 General organisational requirements

- 4.1 General requirements
- 4.2 Persons who effectively direct the business
- 4.3 Responsibility of senior personnel
- 4.3A Management body and nomination committee
- 4.4 Apportionment of responsibilities
- 4.5
- 4.6
- 4.7
- 4.8
- 4.9
- 4 Annex 1

SYSC 5 Employees, agents and other relevant persons

- 5.1 Skills, knowledge and expertise
- 5.2
- 5 Annex 1 [deleted]

SYSC Contents

SYSC 6	Compliance, internal audit and financial crime
6.1	Compliance
6.2	Internal audit
6.3	Financial crime
 SYSC 7	 Risk control
7.1	Risk control
 SYSC 8	 Outsourcing
8.1	General outsourcing requirements
 SYSC 9	 Record-keeping
9.1	General rules on record-keeping
9.2	Credit institutions providing account information services or payment initiation services
 SYSC 10	 Conflicts of interest
10.1	Application
10.1A	Insurance-based investment products – Conflicts of interest
10.2	Chinese walls
 SYSC 10A	 Recording telephone conversations and electronic communications
10A.1	Application
 SYSC 11	 Liquidity risk systems and controls
11.1	Application
 SYSC 12	 Group risk systems and controls requirements
12.1	Application
 SYSC 13	 Operational risk: systems and controls for insurers
13.1	Application
13.2	Purpose

SYSC Contents

13.3	Other related Handbook sections
13.4	Requirements to notify the appropriate regulator
13.5	Risk management terms
13.6	People
13.7	Processes and systems
13.8	External events and other changes
13.9	Outsourcing
13.10	Insurance
SYSC 14	Risk management and associated systems and controls for insurers
14.1	Application
SYSC 15	Credit risk management systems and controls for insurers
SYSC 15A	Operational resilience
15A.1	Application
15A.2	Operational resilience requirements
15A.3	Strategies, processes and systems
15A.4	Mapping
15A.5	Scenario testing
15A.6	Self-assessment and lessons learned exercise documentation
15A.7	Governance
15A.8	Communications
15A.9	Supervisory review and feedback
SYSC 16	Market risk management systems and controls for insurers
SYSC 17	Insurance risk systems and controls
SYSC 18	Whistleblowing
18.1	Application and purpose
18.3	Internal arrangements
18.4	The whistleblowers' champion
18.5	Settlement agreements with workers
18.6	Whistleblowing obligations under the MiFID regime and other sectoral legislation

SYSC Contents

SYSC 19A	IFPRU Remuneration Code [deleted]
SYSC 19B	AIFM Remuneration Code
19B.1	Application
SYSC 19C	BIPRU Remuneration Code [deleted]
SYSC 19D	Dual-regulated firms Remuneration Code
19D.1	Application and purpose
19D.2	General requirement
19D.3	Remuneration principles
19D Annex 1	Detailed provisions on voiding and recovery (SYSC 19D.3.66R and SYSC 19D.3.67R)
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Chapter 1

Application and purpose

1.1A Application

1.1A.1 **G** The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in ■ SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
<i>Insurer, UK ISPV</i>	Chapters 2, 3, 12 to 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28, 28A
<i>Managing agent</i>	Chapters 2, 3, 11, 12, 15A, 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28, 28A
<i>Society</i>	Chapters 2, 3, 12, 15A, 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28, 28A
<i>Any other SMCR firm</i>	Chapters 4 to 12, 15A, 18, 19D, 19F, 19G, 21, 22, 23, 24, 25, 26, 27, 28, 28A
<i>Every other firm</i>	Chapters 4 to 12, 15A, 18, 19D, 19F, 19G, 21, 22, 28, 28A

Firms that ■ SYSC 19D applies to should also refer to the Remuneration part of the *PRA Rulebook*.

1.1A.1A **G** The application of this sourcebook to specific *firms* that are not *PRA-authorised persons* is summarised at a high level in the following table. The detailed application is cut back in ■ SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
<i>Full-scope UK AIFM</i>	Chapters 4 to 10, 12, 18, 19B, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28, 28A
<i>MIFIDPRU investment firm</i> (including an overseas firm that would have been a <i>MIFIDPRU investment firm</i> if it had been a <i>UK domestic firm</i> , except that SYSC 19G does not apply to such a firm)	Chapters 4 to 10, 12, 18, 19F, 19G, 21, 22, 23, 24, 25, 26, 27, 28, 28A

1.1A.1B **G** Chapter 15A of this sourcebook also applies to:

- (1) an *electronic money institution*, a *payment institution* and a *registered account information service provider*;

(2) a UK RIE.

as set out in the text of that chapter.

1.1A.2

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The provisions in SYSC should be read in conjunction with ■ GEN 2.2.23 R to ■ GEN 2.2.25 G. In particular:

- (1) [deleted]
- (2) Provisions made by the FCA, and by the PRA in the PRA Rulebook, may be applied by both regulators to PRA-authorised persons. Such provisions are applied by each regulator to the extent of its powers and regulatory responsibilities.
- (3) For Solvency II firms, the FCA considers that the requirements and guidance in Chapters 2, 3, 12 to 18, 19F.2, 21, 22 and 28 of SYSC are not inconsistent with:
 - (a) the parts of the PRA Rulebook which implemented the governance provisions in the Solvency II Directive (articles 40 to 49);
 - (b) the Solvency II Regulation, or
 - (c) EIOPA guidelines on systems of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN).

In most cases, there is no direct overlap with those provisions because the SYSC requirements are directed at FCA conduct requirements not expressly covered by or under provisions which implemented or supplemented the Solvency II Directive. Where there is a direct overlap with SYSC rules and guidance, the FCA will take requirements and guidelines which implemented or supplemented the Solvency II Directive into account. The definition of Solvency II firm includes (for SYSC) large non-directive insurers because the PRA have applied certain Solvency II derived requirements to those firms. Where SYSC refers to the PRA Rulebook applicable to Solvency II firms, large non-directive insurers should read those references as if they were references to the corresponding part of the PRA Rulebook applicable to large non-directive insurers.

1

1.2 Purpose

1.2.1

G

The purposes of SYSC are:

- (1) to encourage *firms' directors* and *senior managers* to take appropriate practical responsibility for their *firms'* arrangements on matters likely to be of interest to the FCA because they impinge on the FCA's functions under the Act;
- (2) to increase certainty by amplifying *Principle 3*, under which a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
- (3) to encourage *firms* to vest responsibility for effective and responsible organisation in specific *directors* and *senior managers*; and
- (4) to create a common platform of organisational and systems and controls requirements for all *firms*.
- (5) [deleted]

1.2.1A

G

1.4 Application of SYSC 11 to 28A

What?

- 1.4.1** **G** The application of each of chapters ■ SYSC 11 to ■ SYSC 21 is set out in those chapters and in ■ SYSC 1.4.1A R.
- 1.4.1-A** **G** The application of each of the chapters ■ SYSC 19F.2, ■ SYSC 22 to ■ SYSC 28A is set out in those chapters.
- 1.4.1A** **R** ■ SYSC 12 and ■ SYSC 21 do not apply to a *firm* in relation to its carrying on of *auction regulation bidding*.
- 1.4.1B** **G** Apart from ■ SYSC 12, and ■ SYSC 21 which are disapplied by ■ SYSC 1.4.1A R, the other chapters of ■ SYSC 11 to ■ SYSC 14 do not apply in relation to a *firm's* carrying on of *auction regulation bidding* because they only apply to an *insurer*. ■ SYSC 18 provides guidance on the Public Interest Disclosure Act. Other chapters of SYSC may not apply to *auction regulation bidding*, for example because an *exempt MiFID commodities firm* will not be a *MIFIDPRU investment firm*.

Actions for damages

- 1.4.2** **R** A contravention of a *rule* in ■ SYSC 11 to ■ SYSC 14, ■ SYSC 18 to ■ SYSC 21, ■ SYSC 22.8.1R, ■ SYSC 22.9.1R or ■ SYSC 23 to ■ SYSC 28A does not give rise to a right of action by a *private person* under section 138D of the Act (and each of those *rules* is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).

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1.5 Significant SYSC firm

Purpose

1.5.1**G**

- (1) The purpose of **SYSC 1.5** is to set out the definition of a *significant SYSC firm*.
- (2) The following governance requirements in **SYSC** apply by reference to the term *significant SYSC firm*:
 - (a) **SYSC 4.3A.6R** on the limitations in the number of directorships;
 - (b) **SYSC 4.3A.8R** on the nomination committee; and
 - (c) **SYSC 7.1.18R** and **SYSC 7.1.18AAR** on the risk committee.
- (3) **MIFIDPRU investment firms** are not subject to **SYSC 4.3A.8R** or **SYSC 7.1.18R**, and should refer instead to **MIFIDPRU 7.3**.
- (4) The definition of *significant SYSC firm* is also relevant in determining whether a *firm* is an *enhanced scope SMCR firm* for the purposes of the senior managers and certification regime.

Definition of a significant SYSC firm

1.5.2**R**

A *firm* is a *significant SYSC firm* if it meets one or more of the following conditions:

- (1) its total assets exceed £530 million;
- (2) its total liabilities exceed £380 million;
- (3) the annual fees and commission income it receives in relation to the *regulated activities* carried on by the *firm* exceeds £160 million in the 12-month period immediately preceding the date the *firm* carries out the assessment under this *rule*;
- (4) the client money that it receives or holds exceeds £425 million; and
- (5) the assets belonging to its *clients* that it holds in the course of, or in connection with, its *regulated activities* exceeds £7.8 billion.

1.5.3**R**

- (1) This *rule* defines some of the terms used in **SYSC 1.5.2R**.
- (2) “Total assets” means the *firm’s* total assets:
 - (a) as set out in the most recent relevant report submitted to the FCA under **SUP 16.12** (Integrated Regulatory Reporting); or

- (b) (where the *firm* carries out the assessment under ■ SYSC 1.5.4R at any time after the date of its most recent report in (a)) as the *firm* would report to the *FCA* in accordance with the relevant report, as if the reporting period for that report ended on the date of the assessment.
- (3) "Total liabilities" means the *firm's* total liabilities:
- as set out in the most recent relevant report submitted to the *FCA* under ■ SUP 16.12 (Integrated Regulatory Reporting); or
 - (where the *firm* carries out the assessment under ■ SYSC 1.5.4R at any time after the date of its most recent report in (a)) as the *firm* would report to the *FCA* in accordance with the relevant report, as if the reporting period for that report ended on the date of the assessment.
- (4) "client money" means *client money* that a *firm* receives or holds in the course of, or in connection with, all of the *regulated activities* that it carries on:
- as set out in the relevant questions in a CCR009 return submitted to the *FCA* under ■ SUP 16.12 (Integrated Regulatory Reporting); or
 - (where the *firm* carries out the assessment under ■ SYSC 1.5.4R at any time after the date of its most recent report in (a)) as the *firm* would report to the *FCA* in accordance with the relevant report, as if the reporting period for that report ended on the date of the assessment.
- (5) "Assets belonging to its *clients*" means the assets to which the *custody rules* apply:
- as set out in the relevant questions in a CCR009 return submitted to the *FCA* under ■ SUP 16.12 (Integrated Regulatory Reporting); or
 - (if the *firm* carries out the assessment under ■ SYSC 1.5.4R at any time after the date of its most recent report in (a)) as the *firm* would report to the *FCA* in accordance with the relevant report, as if the reporting period for that report ends on the date the assessment is carried out.

- 1.5.4** **R** A *firm* must assess regularly whether it becomes a *significant SYSC firm*.
- 1.5.5** **R**
- If a *firm*, at any time, becomes aware that it is likely to become a *significant SYSC firm*, it must forthwith make arrangements to establish and have in place sound, effective and comprehensive strategies, processes and systems to achieve compliance with the requirements that apply to a *significant SYSC firm*.
 - The *firm* in (1) must comply with the requirements that apply to a *significant SYSC firm* on the expiry of a period of 3 months from the date it meets any one of the conditions in ■ SYSC 1.5.2R.
- 1.5.6** **R** If a *firm* that is a *significant SYSC firm* ceases to meet any of the conditions in ■ SYSC 1.5.2R, it must continue to comply with the *rules* and requirements

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		applicable to a <i>significant SYSC firm</i> until the first anniversary of the date on which the <i>firm</i> ceased to be a <i>significant SYSC firm</i> .
1.5.7	G	The <i>FCA</i> may, on a case-by-case basis, require a <i>firm</i> which does not meet any of the conditions in ■ SYSC 1.5.2R to comply with the rules and requirements that apply to a <i>significant SYSC firm</i> if the <i>FCA</i> considers it appropriate to do so to meet its strategic objective or to advance one or more of its operational objectives under the <i>Act</i> .
1.5.8	G	<p>(1) A <i>firm</i> may apply to the <i>FCA</i> under section 138A of the <i>Act</i> to waive any one or more of the conditions in ■ SYSC 1.5.2R if it believes that one or more of the governance requirements in (2) that apply to a <i>significant SYSC firm</i> may be disproportionate. In its application for a <i>waiver</i>, the <i>FCA</i> expects the <i>firm</i> to demonstrate that it should not be considered as significant, taking into account the size, nature, scope and complexity of its activities, any membership of a <i>group</i> and the internal organisation of that <i>group</i>.</p> <p>(2) The governance requirements referred to in (1) are:</p> <ul style="list-style-type: none">(a) ■ SYSC 4.3A.6R on the limitations in the number of directorships;(b) ■ SYSC 4.3A.8R on the nomination committee; or(c) ■ SYSC 7.1.18 R on the risk committee. <p>(3) The effect of such <i>waiver</i> is that the <i>firm</i> would not be a <i>significant SYSC firm</i> only for the purpose of the particular governance requirement in (2) that the <i>waiver</i> is expressed to apply to. For the avoidance of doubt, such a <i>firm</i> would still be a <i>significant SYSC firm</i> for the purpose of the other <i>rules</i> in the <i>FCA Handbook</i> that apply to a <i>significant SYSC firm</i>, except where expressly otherwise provided for.</p>

Detailed application of SYSC

Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society		
Part 1		
		Who?
1.1	R	<p>SYSC 2 and SYSC 3 only apply to an <i>insurer</i>, a <i>UK ISPV</i>, a <i>managing agent</i> and the <i>Society</i> except that:</p> <ul style="list-style-type: none"> (1) [deleted] (2) [deleted] (3) [deleted] (4) for a <i>sole trader</i>: <ul style="list-style-type: none"> (a) SYSC 2 applies but only if he employs any person who is required to be approved under section 59 of the Act (Approval for particular arrangements); (b) SYSC 3.2.6I R does not apply if he has no employees; and (5) [deleted] (6) Except as provided for in (7), SYSC 2 and SYSC 3 do not apply to a firm in relation to benchmark activities. (7) SYSC 2 and SYSC 3 continue to apply to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.
1.1A	G	<ul style="list-style-type: none"> (1) As a consequence of the <i>benchmarks regulation</i>, the <i>regulated activity</i> referred to in SYSC 1 Annex 1 1.1R(7) will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances). (2) The effect of SYSC 1 Annex 1 1.1R(7) is that SYSC 2 and SYSC 3 continue to apply to <i>firms</i> which still have <i>permission</i> to carry on the <i>regulated activity</i> in SYSC 1 Annex 1 1.1R(7) when carrying on that activity.
1.2	G	[deleted]
		What?
1.3	R	<p>SYSC 2 and SYSC 3 apply with respect to the carrying on of:</p> <ul style="list-style-type: none"> (1) <i>regulated activities;</i> (2) activities that constitute <i>dealing in investments as principal</i>, disregarding the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc); (3) <i>ancillary activities</i> in relation to <i>designated investment business</i>, <i>home finance activity</i> and <i>insurance distribution activity</i>; and (4) activities directly arising from <i>insurance risk transformation</i>; <p>except that SYSC 3.3 applies as described in SYSC 1 Annex 1 1.3AR and SYSC 3.2.6A R to SYSC 3.2.6J G do not apply as described in SYSC 1 Annex 1.1.4R.</p>

Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society		
Part 1		
1.3A	R	SYSC 3.3 only applies in relation to the carrying on of <i>insurance distribution activities</i> .
1.4	R	<p>SYSC 3.2.6A R to SYSC 3.2.6J G do not apply:</p> <ul style="list-style-type: none"> (1) with respect to the activities described in SYSC 1 Annex 1.1.3R(2) and SYSC 1 Annex 1.1.3R(3); or (2) in relation to the following <i>regulated activities</i>: <ul style="list-style-type: none"> (a) <i>general insurance business</i>; (aa) <i>insurance risk transformation</i>; (b) <i>insurance distribution activity</i> in relation to a <i>general insurance contract</i> or <i>pure protection contract</i>; (c) <i>long-term insurance business</i> which is outside the scope of the <i>Solvency II Directive</i> (unless it is otherwise one of the <i>regulated activities</i> specified in this rule); (d) business relating to contracts which are within the <i>Regulated Activities Order</i> only because they fall within paragraph (e) of the definition of "contract of insurance" in article 3 of that Order; (e) <ul style="list-style-type: none"> (i) arranging, by the <i>Society</i>, of deals in <i>general insurance contracts</i> written at Lloyd's; and (ii) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's; (f) <i>home finance mediation activity</i> and <i>administering a home finance transaction</i>; and (g) <i>reversion activity</i>; or <ul style="list-style-type: none"> (3) to a <i>pure reinsurer</i>; or (4) in relation to activities directly arising from <i>insurance risk transformation</i>.

Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society		
Part 1		
1.5	R	<p>SYSC 2 and SYSC 3, except SYSC 3.2.6A R to SYSC 3.2.6J G, also apply with respect to the <i>communication and approval of financial promotions</i> which:</p> <ul style="list-style-type: none"> (1) if communicated by an <i>unauthorised person</i> without <i>approval</i> would contravene section 21(1) of the Act (Restrictions on financial promotion); and (2) may be communicated by a <i>firm</i> without contravening section 238(1) of the Act (Restrictions on promotion of collective investment schemes).
1.6	R	<p>SYSC 2 and SYSC 3, except SYSC 3.2.6A R to SYSC 3.2.6J G, also:</p> <ul style="list-style-type: none"> (1) apply with respect to the carrying on of <i>unregulated activities</i> in a <i>prudential context</i>; and (2) take into account any activity of other members of a <i>group</i> of which the <i>firm</i> is a member.
1.7	G	<p>SYSC 1 Annex 1.1.6R(2) does not mean that inadequacy of a <i>group</i> member's systems and controls will automatically lead to a <i>firm</i> contravening, for example, SYSC 3.1.1 R. Rather, the potential impact of a <i>group</i> member's activities, including its systems and controls, and any systems and controls that operate on a <i>group</i> basis, will be relevant in determining the appropriateness of the <i>firm's</i> own systems and controls.</p>
Where?		
1.8	R	<p>SYSC 2 and SYSC 3 apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i> or, where applicable, its <i>tied agent</i>) in the <i>United Kingdom</i> unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case SYSC 2 and SYSC 3 apply with that wider scope in relation to the activity described in that <i>rule</i>.</p>
1.8A	R	<ul style="list-style-type: none"> (1) SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, and (2) for a <i>UK domestic firm</i>, SYSC 2; <p>also apply in a <i>prudential context</i> with respect to activities wherever they are carried on.</p>
1.9	R	<p>SYSC 2 and SYSC 3, except SYSC 3.2.6A R to SYSC 3.2.6J G, also apply in a <i>prudential context</i> to a <i>UK domestic firm</i> with respect to activities wherever they are carried on.</p>
1.10	R	<p>SYSC 3, except SYSC 3.2.6A R to SYSC 3.2.6J G, also applies in a <i>prudential context</i> to an <i>overseas firm</i> with respect to activities wherever they are carried on.</p>
1.11	G	<ul style="list-style-type: none"> (1) In considering whether to take regulatory action under SYSC 2 or SYSC 3 in relation to activities carried on outside the <i>United Kingdom</i>, the <i>appropriate regulator</i> will take into account the standards expected in the market in which the <i>firm</i> is operating. (2) Most of the <i>rules</i> in SYSC 3 are linked to other requirements and standards under the <i>regulatory system</i> which have their own territorial limitations so that those SYSC <i>rules</i> are similarly limited in scope.
Actions for damages		
1.12	R	<p>A contravention of the <i>rules</i> in SYSC 2 and SYSC 3 does not give rise to a right of action by a <i>private person</i> under section 138D of the Act (and each of those <i>rules</i> is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).</p>

Part 2 Application of the common platform requirements (SYSC 4 to 10)

Who?

Part 2 Application of the common platform requirements (SYSC 4 to 10)		
2.1	R	The <i>common platform requirements</i> apply to every <i>firm</i> apart from an <i>insurer</i> , a UK <i>ISPV</i> , a <i>managing agent</i> and the <i>Society</i> unless provided otherwise in a specific <i>rule</i> .
2.2	R	[deleted]
2.3	R	For a <i>sole trader</i> : <ul style="list-style-type: none"> (1) SYSC 4.3 does not apply as long as they do not employ any person who is required to be approved under <u>section 59</u> of the Act (Approval for particular arrangements); (2) SYSC 4.1.4 R and SYSC 6.3.9 R do not apply if he has no employees.
2.4	R	For a <i>UCITS qualifier</i> : <ul style="list-style-type: none"> (1) the <i>rule</i> on responsibility of senior personnel (SYSC 4.3) does not apply; and (2) the <i>common platform requirements</i> apply in relation to the <i>communication and approval of financial promotions</i> only as set out in SYSC 1 Annex 1.2.12R. <p>[Note: <u>section 260</u> of the Act.]</p>
2.4A	R	For an <i>AIFM qualifier</i> : <ul style="list-style-type: none"> (1) the <i>rule</i> on responsibility of senior personnel (SYSC 4.3) does not apply; and (2) the <i>common platform requirements</i> apply in relation to the <i>communication and approval of financial promotions</i> only as set out in SYSC 1 Annex 1.2.12R.
2.5	R	For an <i>authorised professional firm</i> when carrying on <i>non-mainstream regulated activities</i> , the <i>common platform requirements on financial crime</i> , conflicts of interest and <i>Chinese walls</i> do not apply.
2.5A	R	The <i>common platform requirements on financial crime</i> do not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i> , and not the FCA, acts as the supervisory authority for the purposes of those regulations.
2.6	R	[deleted]
2.6A	R	[deleted]

Part 2 Application of the common platform requirements (SYSC 4 to 10)		
2.6B	R	<p>Subject to SYSC 1 Annex 1 2.6CR, the <i>common platform requirements</i> do not apply to a <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> except for:</p> <ul style="list-style-type: none"> (1) SYSC 4.1.1 R to SYSC 4.1.2 R and SYSC 4.1.2B R to SYSC 4.1.2D R; (2) SYSC 4.2.1 R, SYSC 4.2.1B R, SYSC 4.2.2 R to SYSC 4.2.5 G, SYSC 4.2.7 R and SYSC 4.2.8 G; (3) SYSC 6.1.1 R, which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the <i>firm</i> (including its managers and <i>employees</i>) might be used to further <i>financial crime</i>; (4) SYSC 6.1.4-AAG (5) SYSC 6.3; (6) SYSC 7.1.7BA G (7) SYSC 10.1.1 R and SYSC 10.1.22 R to SYSC 10.1.26 R; and (8) SYSC 10.2.
2.6C	R	The <i>common platform requirements</i> apply to an <i>AIFM investment firm</i> which is a <i>full-scope UK AIFM</i> in respect of its <i>MiFID business</i> in line with Column A in Table A of Part 3.
2.6D	R	The <i>common platform requirements</i> apply to a <i>full-scope UK AIFM</i> of an <i>authorised AIF</i> in line with Column A++ in Table A of Part 3.
2.6E	G	The <i>common platform requirements</i> apply to a <i>small authorised UK AIFM</i> in line with Column B in Table A of Part 3 (unless such a <i>firm</i> is also a <i>common platform firm</i> , in which case they must comply with Column A).
2.6F	R	[deleted]
2.6G	R	<ul style="list-style-type: none"> (1) Except as provided for in (2), the <i>common platform requirements</i> do not apply to a <i>firm</i> in relation to <i>benchmark activities</i>. (2) The <i>common platform requirements</i> continue to apply to a person with <i>permission</i> to carry on the <i>regulated activity</i> of <i>administering a specified benchmark</i> acting as such.
2.6H	G	<ul style="list-style-type: none"> (1) As a consequence of the <i>benchmarks regulation</i>, the <i>regulated activity</i> referred to in SYSC 1 Annex 1 2.6GR(2) will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances). (2) The effect of SYSC 1 Annex 1 2.6GR(2) is that the <i>common platform requirements</i> continue to apply to <i>firms</i> which still have <i>permission</i> to carry on the <i>regulated activity</i> in SYSC 1 Annex 1 2.6GR(2) when carrying on that activity.
2.7	G	[deleted]
2.7A	G	[deleted]
What?		
2.8	R	<p>The <i>common platform organisational requirements</i> apply with respect to the carrying on of the following (unless provided otherwise within a specific rule):</p> <ul style="list-style-type: none"> (1) <i>regulated activities</i>; (2) activities that constitute <i>dealing in investments as principal</i>, disregarding the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc);

Part 2 Application of the common platform requirements (SYSC 4 to 10)		
		(3) <i>ancillary activities;</i>
		(4) in relation to <i>MiFID business, ancillary services; and collective portfolio management.</i>
2.8A	R	(5)
		(1) Subject to (2), (3) and (5), in SYSC 1 Annex 1 2.8R , articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i> (including any relevant definitions in the <i>Glossary, MiFIR</i> and the <i>MiFID Org Regulation</i>) apply as if they were <i>rules or guidance</i> in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a <i>firm's</i> carrying on of the business set out in SYSC 1 Annex 1 2.8R which is not <i>MiFID business</i> or a <i>structured deposits regulated activity</i> .
		(1A) Subject to (2), (3) and (6), articles 33 to 35 of the <i>MiFID Org Regulation</i> (including any relevant definitions in the <i>Glossary, MiFIR</i> and the <i>MiFID Org Regulation</i>) apply as if they were <i>rules or guidance</i> in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a <i>firm's</i> carrying on of the business set out in SYSC 10.1.1R which is not <i>MiFID business</i> or a <i>structured deposits regulated activity</i> .
		(2) References in Column (1) to a word or phrase used in the <i>MiFID Org Regulation</i> for the purpose of (1) have the meaning indicated in Column (2) of the table below:
	(1)	(2)
	"ancillary services"	<i>ancillary services or ancillary activities associated with the firm's regulated activities</i>
	"client" and "potential client"	<i>client</i>
	"competent authority"	<i>FCA</i>

Part 2 Application of the common platform requirements (SYSC 4 to 10)		
		"investment firm" <i>firm</i> and "firm"
		"investment service" <i>designated investment business</i> and "investment services and activities"
		"portfolio management" and "portfolio management service" <i>managing investments</i>
		"shall" must
(3)		[deleted]
(4)		This rule does not apply to a <i>collective portfolio management investment firm</i> in relation to the <i>firm's</i> business other than its <i>MiFID business</i> .
(5)		The requirements in article 72 of the <i>MiFID Org Regulation</i> do not apply to a <i>firm</i> to the extent that SYSC 9.1.2CR applies to the <i>firm</i> .
(6)		SYSC 1 Annex 1.2.8AR(1A) does not apply to a <i>firm</i> to the extent that SYSC 10A applies to the <i>firm</i> (see SYSC 1 Annex 1.3.1AG).
2.8B	G	The purpose of SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR is that the <i>common platform organisational requirements</i> and the <i>common platform requirements</i> on conflicts of interest also apply when carrying on any of the activities listed in SYSC 1 Annex 1.2.8R or SYSC 10.1.1R respectively even where they do not involve <i>investment services and/or activities</i> and, where relevant, <i>ancillary services</i> (unless provided otherwise within a specific rule).
2.8C	G	SYSC 1 Annex 1.2.8AR(3) has the effect that, where the requirement in the <i>MiFID Org Regulation</i> that is a <i>common platform organisational requirement</i> or a <i>common platform requirement</i> on conflicts of interest includes a reference or cross reference to another part of the <i>MiFID Org Regulation</i> , that reference or cross reference is given the same meaning as for the purposes of SYSC 1 Annex 1.2.8AR.
2.8D	G	For the purpose of SYSC 1 Annex 1.2.8AR, a <i>firm</i> should apply any <i>guidance</i> published by the FCA that assists with interpreting the definitions in <i>MiFID</i> , <i>MiFIR</i> and the <i>MiFID Org Regulation</i> .
2.9	G	The application of the provisions on the conflicts of interest in SYSC 10 is set out in SYSC 10.1.4G to SYSC 10.1.1AR and SYSC 10.2.1R
2.10	R	The provisions on record-keeping in SYSC 9 and articles 21 and 72 of the <i>MiFID Org Regulation</i> apply as set out in SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR, except that they only apply to the carrying on of <i>ancillary activities</i> that are performed in relation to:
	(1)	<i>designated investment business</i> ;
	(2)	<i>home finance activity</i> ;
	(3)	<i>insurance distribution activity</i> ;
	(4)	<i>credit-related regulated activity</i> ; and
	(5)	<i>regulated pensions dashboard activity</i> .
2.11	R	The <i>common platform requirements on financial crime</i> apply as set out in SYSC 1 Annex 1.2.8R, except that they do not apply:
	(1)	with respect to:
	(a)	activities that constitute <i>dealing in investments as principal</i> , disregarding the exclusion in <i>article 15</i> of the <i>Regulated Activities Order</i> (Absence of holding out etc); and

Part 2 Application of the common platform requirements (SYSC 4 to 10)		
		<ul style="list-style-type: none"> (b) ancillary activities; or
	(2)	<ul style="list-style-type: none"> in relation to the following regulated activities:
2.12	R	<ul style="list-style-type: none"> (a) general insurance business; (b) insurance distribution activity in relation to a general insurance contract or pure protection contract; (c) long-term insurance business which is outside the Solvency II Directive (unless it is otherwise one of the regulated activities specified in this rule); (d) business relating to contracts which are within the Regulated Activities Order only because they fall within paragraph (e) of the definition of "contract of insurance" in article 3 of that Order; (e) <ul style="list-style-type: none"> (i) arranging by the Society of deals in general insurance contracts written at Lloyd's; and (ii) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's; (f) home finance mediation activity and administering a home finance transaction; (g) reversion activity; (h) meeting of repayment claims and managing dormant asset funds (including the investment of such funds); and (i) regulated funeral plan activities. <p>The common platform organisational requirements, except the common platform requirements on financial crime, also apply with respect to the communication and approval of financial promotions which:</p> <ul style="list-style-type: none"> (1) if communicated by an unauthorised person without approval would contravene section 21(1) of the Act (Restrictions on financial promotion); and (2) may be communicated by a firm without contravening section 238(1) of the Act (Restrictions on promotion of collective investment schemes).
2.13	R	<p>The common platform organisational requirements, except the common platform requirements on financial crime, also:</p> <ul style="list-style-type: none"> (1) apply with respect to the carrying on of unregulated activities in a prudential context; and (2) take into account any activity of other members of a group of which the firm is a member.

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
2.13A	R	<i>SYSC 6.3 only applies to a firm in relation to carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, to which the Money Laundering Regulations also apply.</i>
2.13B	R	<i>SYSC 6.3.8 R and SYSC 6.3.9 R do not apply to a firm with a limited permission for entering into a regulated credit agreement as lender.</i>
2.13C	G	The persons to whom the Money Laundering Regulations apply are set out in regulation 10 of the Money Laundering Regulations. The persons include credit institutions (for example, banks) and financial institutions (for example, persons who carry on regulated activities which consist of or include entering into regulated credit agreements as lender). These expressions are defined in regulation 10 of those Regulations.
2.14	G	<i>SYSC 1 Annex 1.2.13R(2) does not mean that inadequacy of a group member's systems and controls will automatically lead to a firm contravening any of the common platform organisational requirements. Rather, the potential impact of a group member's activities, including its systems and controls, and any systems and controls that operate on a group basis, will be relevant in determining the appropriateness of the firm's own systems and controls.</i>
2.14A	G	The systems and control requirements in article 17 of MiFID for the following are in chapter 7A of the Market Conduct sourcebook (MAR): <ul style="list-style-type: none"> (1) <i>algorithmic trading;</i> (2) <i>direct electronic access to a trading venue; and</i> (3) <i>acting as a general clearing member of a trading venue.</i>
2.14B	G	<i>Firms should refer to articles 38 to 42 of the MiFID Org Regulation for additional organisational requirements for underwriting and placing.</i>
	Where?	
2.15	R	The common platform requirements, except the common platform record-keeping requirements, apply to a firm in relation to activities which: <ul style="list-style-type: none"> (1) <i>(except for regulated claims management activities and ancillary activities) are carried on by it from an establishment in the United Kingdom; or</i> (2) <i>are, or are ancillary to, regulated claims management activities.</i>
2.16	R	[deleted]
2.16A	R	[deleted]
2.16B	G	[deleted]
2.16C	R	The common platform requirements apply to a full-scope UK AIFM in respect of its management of an AIF where carried on from an establishment in the UK.
2.16D	R	[deleted]
2.16E	R	The common platform requirements apply to an AIFM investment firm which is a full-scope UK AIFM in respect of its MiFID business where carried on from an establishment in the UK.
2.16F	R	[deleted]
2.17	R	The common platform record-keeping requirements apply to activities which: <ul style="list-style-type: none"> (1) <i>(except for regulated claims management activities and ancillary activities) are carried on by it from an establishment in the United Kingdom; or</i>

Part 2 Application of the common platform requirements (SYSC 4 to 10)		
(2) are, or are ancillary to, <i>regulated claims management activities</i> . If, however, another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> . [Note: article 16(11) first paragraph of MiFID]		
2.17A	G	For an activity to amount to a <i>regulated claims management activity</i> it must be carried on in <i>Great Britain</i> (see PERG 2.4A). Subject to the exception for <i>common platform record-keeping requirements</i> in paragraph 2.17R of this Annex, the application of the <i>common platform requirements</i> to <i>firms</i> which carry on <i>regulated claims management activities</i> (and ancillary activities) depends on whether the activity is carried on in <i>Great Britain</i> rather than whether it is carried on from an establishment maintained in the <i>United Kingdom</i> . The <i>common platform organisational requirements</i> , except the <i>common platform requirements on financial crime</i> , also apply in a <i>prudential context</i> to a <i>UK domestic firm</i> and to an <i>overseas firm</i> with respect to activities wherever they are carried on.
2.18A	G	SYSC 6.1.1R on systems and controls for countering the risk that a <i>firm</i> might be used to further <i>financial crime</i> is: (1) a <i>common platform organisational requirement</i> , not a <i>common platform requirement on financial crime</i> ; and (2) subject to the application, amongst other provisions, of SYSC 1 Annex 1 2.13R, SYSC 1 Annex 1 2.16R and SYSC 1 Annex 1 2.18R.
2.19	R	Actions for damages A contravention of a <i>rule</i> in the <i>common platform requirements</i> does not give rise to a right of action by a <i>private person</i> under section 138D of the Act (and each of those <i>rules</i> is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).

Part 3		Tables summarising the application of the common platform requirements to different types of firm	
3.1	G	The <i>common platform requirements</i> apply as described in the following table (subject to the provisions in Part 2 of this Annex (Application of the common platform requirements)).	
		Type of firm	Common plat-form re-requirements
		<i>Common platform firm</i>	<i>SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR</i>
		<i>Management company</i>	<i>SYSC 1 Annex 1 3.2AG</i>
		<i>Full-scope UK AIFM of an authorised AIF</i>	<i>SYSC 1 Annex 1 3.2BR</i>
		<i>MiFID optional exemption firm</i>	<i>SYSC 1 Annex 1 3.2CR</i>
		<i>Third country firm</i>	<i>SYSC 1 Annex 1 3.2CR</i>
		All other firms (apart from <i>insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms</i>)	<i>SYSC 1 Annex 1.3.3R</i>
3.1A	G	[deleted]	
		Common platform firm	
3.2	G	For a <i>common platform firm</i> (other than a <i>dormant asset fund operator</i> not subject to <i>MiFID</i>):	
		(1) <i>SYSC 4 to SYSC 10</i> apply in accordance with Column A in Table A below; and	
		(2) articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> are directly applicable to the <i>firm</i> .	
3.2-ZA	G	A <i>common platform firm</i> that is a <i>MIFIDPRU investment firm</i> should read <i>SYSC 4 to SYSC 10</i> together with <i>MIFIDPRU 7</i> . While <i>MIFIDPRU investment firms</i> are not in scope of the requirements in <i>SYSC 4.3A.8R</i> and <i>SYSC 7.1.18R</i> regarding nomination and risk committees, certain <i>MIFIDPRU investment firms</i> are required by <i>MIFIDPRU 7.3.1R</i> and <i>MIFIDPRU 7.3.5R</i> to establish nomination and risk committees.	
3.2-A	R	For a <i>common platform firm</i> (other than a <i>dormant asset fund operator</i> not subject to <i>MiFID</i>), articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> apply to the <i>firm's business</i> other than <i>MiFID business or structured deposits regulated activities</i> as if the <i>MiFID Org Regulation</i> applied to the <i>firm as rules</i> in accordance with <i>SYSC 1 Annex 1 2.8R</i> and <i>SYSC 1 Annex 1 2.8AR</i> .	
3.2-B	R	For a <i>common platform firm</i> that is a <i>dormant asset fund operator</i> and is not subject to <i>MiFID</i> :	
		(1) <i>SYSC 4 to SYSC 10</i> apply in accordance with Column A in Table A below; and	
		(2) articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> apply as if the <i>MiFID Org Regulation</i> applied to the <i>firm as rules</i> in accordance with <i>SYSC 1 Annex 1 2.8R</i> and <i>SYSC 1 Annex 1 2.8AR</i> .	
		Management company	
3.2A	G	For a <i>management company</i> , the <i>common platform requirements</i> in <i>SYSC 4 to SYSC 10</i> apply in accordance with Column A+ in Table A below.	

Tables summarising the application of the common platform requirements to different types of firm		
Part 3		
Full-scope UK AIFM of an authorised AIF		
3.2B	R	For a <i>full-scope UK AIFM of an authorised AIF</i> , the <i>common platform requirements</i> in SYSC 4 to SYSC 10 apply in accordance with Column A++ in Table A below.
MiFID optional exemption firm and a third country firm		
3.2C	R	For a <i>MiFID optional exemption firm</i> and a <i>third country firm</i> :
	(1)	SYSC 4 to SYSC 10 apply as <i>rules</i> or as <i>guidance</i> in accordance with Table B below in the following way:
	(a)	where a <i>rule</i> is shown modified as ' <i>Guidance</i> ', it should be read as <i>guidance</i> (as if " <i>should</i> " appeared in that <i>rule</i> instead of " <i>must</i> "); and
	(b)	the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the <i>firm's business</i> ; and
	(2)	articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i> apply as if the <i>MiFID Org Regulation</i> applied to the <i>firm</i> as <i>rules</i> (in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR) or as <i>guidance</i> in accordance with Part 1 of Table C below. Part 2 of Table C sets out those articles of the <i>MiFID Org Regulation</i> .
3.2D	R	Subject to (2), SYSC 4.3A.6R , SYSC 4.3A.8R and SYSC 7.1.18R apply to a <i>MiFID optional exemption firm</i> that is ' <i>significant</i> ' as a <i>rule</i> or as <i>guidance</i> in accordance with SYSC 1 Annex 1 3.2CR .
	(2)	In (1), ' <i>significant</i> ' means a <i>MiFID optional exemption firm</i> that is a <i>significant SYSC firm</i> .
Other firms		
3.2E	R	SYSC 1 Annex 1 3.3R does not apply to the following:
	(1)	<i>insurers</i> and <i>UK ISPVs</i> ;
	(2)	<i>managing agents</i> ;
	(3)	<i>the Society</i> ;
	(4)	<i>full-scope UK AIFMs of unauthorised AIFs</i> ;
	(5)	<i>MiFID optional exemption firms</i> ; and
	(6)	<i>third country firms</i> .
3.3	R	For all other <i>firms</i> :
	(1)	SYSC 4 to SYSC 10 apply as <i>rules</i> or as <i>guidance</i> in accordance with Column B in Table A below in the following way:
	(a)	where a <i>rule</i> is shown modified in Column B as ' <i>Guidance</i> ', it should be read as <i>guidance</i> (as if " <i>should</i> " appeared in that <i>rule</i> instead of " <i>must</i> "); and

Part 3	Tables summarising the application of the common platform requirements to different types of firm	
	(b)	the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the <i>firm's business</i> ; and
3.3A R	(2)	articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> do not apply.

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

Provision SYSC 4	COLUMN A	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
	Application to a common platform firm other than to a UCITS investment firm		Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable
SYSC 4.1.-2G	Guidance	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Not applicable
SYSC 4.1.-1G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 4.1.1R	Rule	Rule	Rule	Rule
SYSC 4.1.1AR	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.1.1BR	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.1.1CR	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.1.1DR	Not applicable	Rule	Not applicable	Not applicable
SYSC 4.1.1ER	Not applicable	Rule	Not applicable	Not applicable
SYSC 4.1.1FG	Not applicable	Guidance	Not applicable	Not applicable
SYSC 4.1.2R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Rule	Guidance
SYSC 4.1.2AG	Not applicable	Guidance for a <i>UCITS firm</i> ; not applicable to a <i>UCITS investment firm</i>	Not applicable	Guidance
SYSC 4.1.2AAR	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.1.2BR	Not applicable	Rule	Rule	Not applicable
SYSC 4.1.2CR	Not applicable		Rule	Not applicable
SYSC 4.1.2DR	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.1.3R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.1.4R	Not applicable	Rule	Not applicable	(1) and (3): Guidance; (2): Rule

Provision SYSC 4	COLUMN A			COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 4.1.4AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 4.1.5R	Not applicable	Rule	Not applicable	Not applicable
SYSC 4.1.5AR	Not applicable	Not applicable	Not applicable	Applies as a <i>rule</i> only to a <i>firm</i> carrying on <i>regulated pensions dashboard activity</i>
SYSC 4.1.5BR	Not applicable	Not applicable	Not applicable	Applies as a <i>rule</i> only to a <i>firm</i> carrying on <i>regulated pensions dashboard activity</i>
SYSC 4.1.5CR	Not applicable	Not applicable	Not applicable	Applies as a <i>rule</i> only to a <i>firm</i> carrying on <i>regulated pensions dashboard activity</i>
SYSC 4.1.6R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 4.1.7R	Rule <i>CRR firm</i> for a only	Rule	Not applicable	Guidance
SYSC 4.1.7AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 4.1.8G	Guidance	Guidance	Guidance	Guidance
SYSC 4.1.8AR	Applies as a rule only to an <i>operator of an electronic system in relation to lending</i>	Not applicable	Not applicable	Applies as a rule only to an <i>operator of an electronic system in relation to lending</i>
SYSC 4.1.8CG	Applies as guidance only to an <i>operator of an electronic system in relation to lending</i>	Not applicable	Not applicable	Applies as guidance only to an <i>operator of an electronic system in relation to lending</i>
SYSC 4.1.8DG	Applies as guidance only to an <i>operator of an electronic system</i>	Not applicable	Not applicable	Applies as guidance only to an <i>operator of an electronic system</i>

Provision SYSC 4	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 4.1.8DAG	<i>in relation to lending</i> Applies as guidance only to an operator of an electronic system <i>in relation to lending</i>	Not applicable	Not applicable	<i>in relation to lending</i> Applies as guidance only to an operator of an electronic system <i>in relation to lending</i>
SYSC 4.1.8DBR	Applies as a rule only to an operator of an electronic system <i>in relation to lending</i>	Not applicable	Not applicable	Applies as a rule only to an operator of an electronic system <i>in relation to lending</i>
SYSC 4.1.8DCR	Applies as a rule only to an operator of an electronic system <i>in relation to lending</i>	Not applicable	Not applicable	Applies as a rule only to an operator of an electronic system <i>in relation to lending</i>
SYSC 4.1.8DDR	Applies as a rule only to an operator of an electronic system <i>in relation to lending</i>	Not applicable	Not applicable	Applies as a rule only to an operator of an electronic system <i>in relation to lending</i>
SYSC 4.1.9R	Not applicable	Rule	Not applicable	Not applicable
SYSC 4.1.10R	Not applicable	Rule	Not applicable	Guidance - except reference to SYSC 4.1.9 R which does not apply to these firms
SYSC 4.1.10AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 4.1.11G	Guidance	Guidance	Guidance	Guidance
SYSC 4.1.13G	Guidance	Guidance	Guidance	Guidance
SYSC 4.1.14G	Guidance	Guidance	Guidance	Guidance
SYSC 4.2.1R	Rule	Rule	Rule	Guidance
SYSC 4.2.1AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 4.2.2R	Rule	Rule	Rule	Not applicable
SYSC 4.2.3G - 4.2.5G	Guidance	Guidance	Guidance	Not applicable

Provision SYSC 4	COLUMN A		COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company		
SYSC 4.2.6R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	Not applicable	Not applicable
SYSC 4.2.7R	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.2.8G	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.2.9G	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.3.1R	Not applicable	Rule	Not applicable	Rule
SYSC 4.3.2R	Not applicable	Rule	Not applicable	Guidance but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 4.3.2AG	Not applicable	Not applicable	Not applicable	Guidance (but not applicable to an <i>operator of an electronic system in relation to lending</i>)
SYSC 4.3.3G	Guidance	Guidance	Not applicable	Guidance
SYSC 4.3A.-1R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.3A.1R	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.1AR	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.2R	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.2AG	Guidance	Guidance for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.3R	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.3AG	Guidance	Guidance for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.4R	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.5R	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable

Provision SYSC 4	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 4.3A.6R	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.7R	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.7AR	Rule (except for a <i>MIFIDPRU investment firm</i>)	Not applicable	Not applicable	Not applicable
SYSC 4.3A.7BG	Guidance for a <i>MIFIDPRU investment firm</i>	Guidance for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.8R	Rule (except for a <i>MIFIDPRU investment firm</i>)	Not applicable	Not applicable	Not applicable
SYSC 4.3A.9R	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.10R	Rule	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.11R	Rule applicable to <i>CRR firms</i>	Not applicable	Not applicable	Not applicable
SYSC 4.4.1R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.4.1AR	Not applicable	Not applicable	Not applicable	As specified in SYSC 4.4.1AR
SYSC 4.4.2G	Not applicable	Not applicable	Not applicable	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1A R
SYSC 4.4.3R	Not applicable	Not applicable	Not applicable	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1A R
SYSC 4.4.4G	Not applicable	Not applicable	Not applicable	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1A R
SYSC 4.4.5R	Not applicable	Not applicable	Not applicable	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1A R
SYSC 4.4.6G	Not applicable	Not applicable	Not applicable	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1A R

Provision SYSC 4	COLUMN A		COLUMN B	
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+	Application to a UCITS management company	COLUMN A++
Provision SYSC 5	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+	Application to a UCITS management company	COLUMN B
SYSC 5.1.-2G	Guidance	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 5.1.-1G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 5.1.1R	Not applicable	Rule	Not applicable	Rule
SYSC 5.1.2G	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.3G	Guidance	Guidance	Not applicable	Guidance
SYSC 5.1.3AG	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.4G	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.4AG	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.5AG	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.5AAR	Rule	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Not applicable
SYSC 5.1.5ABR	Rule	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Not applicable
SYSC 5.1.5ACG	Guidance	Not applicable save in relation to a <i>UCITS invest</i>	Not applicable	Not applicable

Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
	<i>ment firm and its MiFID business</i>			
SYSC 5.1.5ADG				[deleted]
SYSC 5.1.5AEG				[deleted]
SYSC 5.1.5BR	Rule	Rule	Rule	Rule
SYSC 5.1.6R	Not applicable	Rule	Guidance	Guidance
SYSC 5.1.7R	Rule	Rule for a UCITS investment firm; otherwise guidance	Guidance	Guidance
SYSC 5.1.7AG	Not applicable	Not applicable to a UCITS investment firm; otherwise guidance	Guidance	Guidance
SYSC 5.1.8G	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.9G	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.10G	Guidance	Guidance	Guidance, but not applicable for the segregation of risk management functions	Guidance
SYSC 5.1.11G	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.12R	Not applicable	Rule	Not applicable	Guidance
SYSC 5.1.12AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 5.1.13R	Not applicable	Rule	Not applicable	Rule
SYSC 5.1.14R	Not applicable	Rule	Not applicable	Guidance
SYSC 5.1.15G	Not applicable	Not applicable	Not applicable	Guidance

Provision SYSC 6	COLUMN A			COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+	Application to a UCITS management company	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.1.-2G	Guidance	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Not applicable
SYSC 6.1.-1G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 6.1.1R	Rule	Rule	Rule but only regarding the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the <i>firm</i> (including its managers and employees) might be used to further <i>financial crime</i>	Rule
SYSC 6.1.1AG	Guidance	Guidance	Guidance	Guidance
SYSC 6.1.2R	Not applicable	Rule	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 6.1.2AG	Not applicable	Not applicable	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 6.1.3R	Not applicable	Rule	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i> . For firms other than an <i>operator of an electronic system in relation to lending</i> , this provision shall be read with the fol

Provision SYSC 6	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.1.3AG	Not applicable	Not applicable	Not applicable	l owing additional sentence at the start. "Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to have a separate compliance function. Where a <i>firm</i> has a separate compliance function, the <i>firm</i> should also take into account SYSC 6.1.3R and SYSC 6.1.4R as guidance."
SYSC 6.1.4R	Not applicable	Rule	Not applicable	Guidance, but does not apply to an <i>operator of an electronic system in relation to lending</i>
SYSC 6.1.4-AG	Guidance	Not applicable	Rule	(1), (3) and (4): Guidance;
SYSC 6.1.4-AAG	Not applicable	Not applicable	Guidance	(2): - Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for <i>retail clients</i> or <i>professional clients</i> . - Guidance for all other <i>firms</i> .
				Applies as a rule to an <i>operator of an electronic system in relation to lending</i> .
				Guidance
			Guidance	Not applicable

Provision SYSC 6	COLUMN A		COLUMN B	
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.1.4-ABG	Guidance applies to <i>relevant authorised persons only</i>	Not applicable	Guidance	Not applicable
SYSC 6.1.4AR	Not applicable	Not applicable	Not applicable	Rule for <i>firms which carry on designated investment business with or for retail clients or professional clients.</i>
SYSC 6.1.4CR	Not applicable	Not applicable	Not applicable	As specified in SYSC 6.1.4CR.
SYSC 6.1.5R	Not applicable	Rule	Not applicable	- Guidance, but applies as a rule to <i>an operator of an electronic system in relation to lending</i> - " <i>investment services and activities</i> " shall be read as " <i>financial services and activities</i> "
SYSC 6.1.6G	Not applicable	Not applicable	Not applicable	Guidance, but does not apply to <i>an operator of an electronic system in relation to lending</i>
SYSC 6.1.7R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	Not applicable	Guidance
SYSC 6.1.8G	Not applicable	Not applicable	Not applicable	Only applies to <i>an operator of an electronic system in relation to lending</i>
SYSC 6.2.1R	Not applicable	Rule	Not applicable	Guidance, but applies as a rule to <i>an operator of an electronic system</i>

Provision SYSC 6	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.2.1AG	Not applicable	Not applicable	Not applicable	<i>in relation to lending</i> Guidance, but does not apply to an operator of an electronic system <i>in relation to lending</i>
SYSC 6.2.1BG	Guidance applies to <i>relevant authorised persons only</i>	Not applicable	Not applicable	Not applicable
SYSC 6.2.2G	Guidance	Guidance	Not applicable	Guidance
SYSC 6.3.1R	Rule	Rule	Rule	Rule
SYSC 6.3.2G	Guidance	Guidance	Guidance	For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system <i>in relation to lending</i> , applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.(FCA Handbook only)
				Guidance
				For firms carrying on a credit-re-

	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
Provision SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.3.3R	Rule	Rule	Rule	<p><i>lated regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm.</i> Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.(FCA Handbook only)</p> <p>Rule</p> <p><i>For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm.</i> Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Re</p>

Provision SYSC 6	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.3.4G	Guidance	Guidance	Guidance	<p><i>gulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.(FCA Handbook only)</i></p> <p><i>For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</i></p>
SYSC 6.3.5G	Guidance	Guidance	Guidance	<p><i>For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lend-</i></p>

Provision SYSC 6	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.3.6G	Guidance	Guidance	Guidance	<p><i>ing, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</i></p> <p><i>For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those</i></p>

Provision	COLUMN A			COLUMN B
	SYSC 6	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.3.7G	Guidance	Guidance	Guidance	regulations. (FCA Handbook only) For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.8R	Rule	Rule	Rule	Rule For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule

Provision SYSC 6	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.3.9R	Rule	Rule	Rule	<p>does not apply to a <i>firm</i> with a <i>limited permission</i> for entering into a <i>regulated credit agreement as lender</i>. Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p> <p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> or <i>regulated claims management activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to a <i>firm</i> with a <i>limited permission</i> for entering into a <i>regulated credit agreement as lender</i>. Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6	Guidance	Guidance	Guidance	<p><i>Laundering Regulations</i>, and not the FCA, acts as the supervisory authority for the purposes of those regulations (FCA Handbook only). Rule does not apply to a firm carrying on <i>regulated pensions dashboard activity</i>.</p>
SYSC 6.3.10G	Guidance	Guidance	Guidance	Guidance
SYSC 6.3.11G	Guidance	Guidance	Guidance	<p>For firms carrying on a <i>credit-related regulated activity</i> or <i>regulated claims management activity</i>, or operating an electronic system in relation to lending, applies only where the <i>Money Laundering Regulations</i> apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
	Guidance	Guidance	Guidance	Guidance
	For firms carrying on a <i>credit-related regulated</i>			

					COLUMN B
Provision	COLUMN A	COLUMN A+	COLUMN A++		
SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms	<i>activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</i>
Provision	COLUMN A	COLUMN A+	COLUMN A++		COLUMN B
SYSC 7	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms	
SYSC 7.1.-2G	Guidance	Not applicable save in relation to a UCITS investment firm and its MiFID business	Not applicable	Not applicable	Not applicable
SYSC 7.1.-1G	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 7.1.1G	Guidance	Guidance	Not applicable	Not applicable	Guidance

Provision SYSC 7	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 7.1.2R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 7.1.2AG	Not applicable	Not applicable to a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance, but does not apply to an <i>operator of an electronic system in relation to lending</i>
SYSC 7.1.2BG	Not applicable	Guidance	Not applicable	Not applicable
SYSC 7.1.3R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule for an <i>operator of an electronic system in relation to lending</i>
SYSC 7.1.4R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 7.1.4AG	Guidance for a <i>MiFIDPRU investment firm</i>	Guidance for a <i>UCITS investment firm</i>	Not applicable	Guidance
SYSC 7.1.4BG	Not applicable	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.5R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 7.1.6R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>

Provision SYSC 7	COLUMN A		COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company		
SYSC 7.1.7R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its <i>non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 7.1.7AG	Not applicable	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance, but does not apply to an <i>operator of an electronic system in relation to lending</i>
SYSC 7.1.7BG	Guidance applicable to a <i>CRR firm</i>	Not applicable	Guidance	Guidance
SYSC 7.1.7BAG	Not applicable	Not applicable	Guidance	Not applicable
SYSC 7.1.7BBG	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.7BDG	Guidance applies only to a <i>MiFID-PRU investment firm</i>	Guidance applies only to a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 7.1.7CG	Guidance	Guidance	Guidance	Guidance
SYSC 7.1.8G	Guidance	Guidance	Guidance	Guidance
SYSC 7.1.9R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.10R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.11R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.12G	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.13R - 7.1.16R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.16AG	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.16BG	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.16CR	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.17R	Rule applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable
SYSC 7.1.18R	Rule applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable
SYSC 7.1.18AAG	Guidance applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable
SYSC 7.1.18BR	Rule applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable

Provision SYSC 7	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 7.1.19R	Rule applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable
SYSC 7.1.20R	Rule applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable
SYSC 7.1.21R	Rule applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable
SYSC 7.1.22R	Rule applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable
SYSC 7.1.23G	Guidance applies to <i>UK relevant authorised persons and third country relevant authorised persons only</i>	Not applicable	Not applicable	Not applicable

Provision SYSC 8	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 8.1.-2G	Guidance	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Not applicable
SYSC 8.1.-1G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 8.1.1R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.1AG	Not applicable	Not applicable to a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.2G	Guidance	Guidance	Not applicable	Guidance

Provision SYSC 8	COLUMN A		COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company		
SYSC 8.1.3G	Guidance	Guidance	Not applicable	Guidance
SYSC 8.1.4R	Not applicable	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.5R	Not applicable	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.5AG	Not applicable	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.6R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance	Not applicable	Rule
SYSC 8.1.6AG	Guidance for a <i>UCITS investment firm</i> in relation to its <i>MiFID business</i>	Not applicable	Not applicable	Not applicable
SYSC 8.1.7R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.8R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.9R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.10R	Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID busi</i>	Not applicable	Guidance

Provision SYSC 8	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 8.1.11R	Not applicable	<i>ness; otherwise guidance</i> Rule for a <i>UCITS investment firm</i> in relation to its <i>non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.11AG	Not applicable	Not applicable to a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.12G	Guidance	Guidance	Not applicable	Guidance
SYSC 8.1.13R	Not applicable	Rule	Not applicable	Not applicable
SYSC 8.1.14G	Not applicable	Guidance	Not applicable	Not applicable
SYSC 8.2	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 8.3	[deleted]	[deleted]	[deleted]	[deleted]

Provision SYSC 9	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 9.1.-2G	Guidance	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Not applicable
SYSC 9.1.-1G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 9.1.1R	Not applicable	Rule	Rule but only for the requirement to arrange for orderly records to be kept of its business and internal organisation	Rule

Provision SYSC 9	COLUMN A		COLUMN B	
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+	Application to a UCITS management company	COLUMN A++
				Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
				which do not relate to portfolio transactions and subscription and redemptions orders
SYSC 9.1.1AR	Rule	Not applicable	Not applicable	Not applicable
SYSC 9.1.2R	Rule applies only in relation to <i>MiFID business</i>	Rule applies only in relation to <i>MiFID business of a UCITS investment firm</i>	Rule but only for records specified by the modified application of SYSC 9.1.1 R	Not applicable
SYSC 9.1.2AR	Rule	Rule	Rule	Rule
SYSC 9.1.2BG	Guidance	Guidance	Guidance	Guidance
SYSC 9.1.2CR	Rule applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	Rule applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	Rule applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	Rule applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>
SYSC 9.1.3R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 9.1.4G	Guidance	Guidance	Guidance	Guidance
SYSC 9.1.5G	Guidance	Guidance	Not applicable	Guidance
SYSC 9.1.6G	Guidance	Guidance	Not applicable	Guidance
SYSC 9.1.6A	Guidance	Guidance	Guidance	Guidance
	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 9.2G	Not applicable	Not applicable	Not applicable	Applicable to <i>credit institutions</i> only

Provision SYSC 10	Column A	COLUMN A+	COLUMN A++	Column B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 10.1.-5G	Not applicable	Not applicable	Not applicable	Guidance in relation to <i>funeral plan distribution</i>
SYSC 10.1.-4G	Guidance in relation to <i>insurance distribution activities</i>	Guidance in relation to <i>insurance distribution activities</i>	Guidance in relation to <i>insurance distribution activities</i>	Guidance in relation to <i>insurance distribution activities</i>
SYSC 10.1.-3R	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.-2G	Guidance	Guidance in relation to a UCITS investment firm in relation to its <i>MiFID business</i> ; otherwise not applicable	Not applicable	Not applicable
SYSC 10.1.-1G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 10.1.1R	Rule	Rule	Not applicable	Rule
SYSC 10.1.1AR	Not applicable	Not applicable	Rule	Not applicable
SYSC 10.1.2G	Guidance	Guidance	Guidance in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance
SYSC 10.1.3R	Rule	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise not applicable	Rule
SYSC 10.1.4R	Not applicable	Rule, but not applicable in relation to <i>insurance distribution activities</i>	Not applicable	Guidance - but applies as a rule in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2

Provision	Column A			Column B
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+	COLUMN A++	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 10	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF		Not applicable in relation to <i>insurance distribution activities</i> or <i>funeral plan distribution</i>
SYSC 10.1.4AG	Not applicable	Not applicable	Not applicable	Guidance -but not applicable in relation to <i>insurance distribution activities</i> or <i>funeral plan distribution</i>
SYSC 10.1.4BR	Not applicable	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
SYSC 10.1.4CR	Not applicable	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
SYSC 10.1.5G	Guidance	Guidance	Not applicable	Guidance
SYSC 10.1.6R	Not applicable	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
SYSC 10.1.6AG	Not applicable	Not applicable	Guidance - but not applicable in relation to <i>insur-</i>	Guidance - but not applicable in relation to <i>insur-</i>

Provision	Column A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	Column B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 10				<i>ance distribution activities</i>
SYSC 10.1.6AAR	Not applicable	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities and funeral plan distribution</i>
SYSC 10.1.6BG	Not applicable	Guidance	Guidance	Guidance
SYSC 10.1.7R	Rule	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise not applicable	Rule
SYSC 10.1.7AR	Rule	Rule	Rule	Rule
SYSC 10.1.8R	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Rule
SYSC 10.1.9G	Not applicable	Guidance	Not applicable	Guidance
SYSC 10.1.9AR	Not applicable	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance - but applies as a rule in relation to <i>insurance distribution activities and funeral plan distribution</i>
SYSC 10.1.10R	Not applicable	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) in relation to <i>insurance distribution activities and fu-</i>

Provision SYSC 10	Column A		COLUMN A++	Column B
	Application to a common platform firm other than to a UCITS investment firm	COLUMN A+	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 10.1.11R	Not applicable	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	<i>funeral plan distribution</i> Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
SYSC 10.1.11AG	Not applicable	Not applicable	Guidance - but not applicable in relation to <i>insurance distribution activities</i>	Guidance - but not applicable in relation to <i>insurance distribution activities</i> or <i>funeral plan distribution</i>
SYSC 10.1.11AAR	Not applicable	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
SYSC 10.1.11ABR	Rule in relation to <i>insurance distribution activities</i>	Not applicable	Not applicable	Not applicable
SYSC 10.1.11BG	Not applicable	Guidance	Guidance	Guidance
SYSC 10.1.12G	Guidance	Guidance	Guidance	Guidance
SYSC 10.1.13-10.1.15G	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 10.1.16R	Not applicable	Not applicable	Not applicable	Rule
SYSC 10.1.17R	Not applicable	Rule	Not applicable	Not applicable
SYSC 10.1.18G [FCA]	Not applicable	Guidance	Not applicable	Not applicable

Provision SYSC 10	Column A	COLUMN A+	COLUMN A++	Column B
	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 10.1.19R	Not applicable	Rule	Not applicable	Not applicable
SYSC 10.1.20R	Not applicable	Rule	Not applicable	Not applicable
SYSC 10.1.21R	Not applicable	Rule	Not applicable	Not applicable
SYSC 10.1.22R	Not applicable	Rule	Rule	Not applicable
SYSC 10.1.23R to SYSC 10.1.26R	Not applicable	Not applicable	Rule	Not applicable
SYSC 10.1A	R Rules applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	R Rules applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	R Rules applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	R Rules applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>
SYSC 10.2.1R	Rule	Rule	Rule	Rule
SYSC 10.2.2R	Rule	Rule	Rule	Rule
SYSC 10.2.3G	Guidance	Guidance	Guidance	Guidance
SYSC 10.2.4R	Rule	Rule	Rule	Rule
SYSC 10.2.5G	Guidance	Guidance	Guidance	Guidance

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

Provision SYSC 4	COLUMN A	COLUMN B
	MiFID optional exemption firms	Third country firms
SYSC 4.1.-2G	Not applicable	Not applicable
SYSC 4.1.-1G	Guidance	Guidance
SYSC 4.1.1R	Rule	Rule
SYSC 4.1.1AR	Not applicable	Not applicable
SYSC 4.1.1BR	Not applicable	Not applicable
SYSC 4.1.1DR	Not applicable	Not applicable
SYSC 4.1.1ER	Not applicable	Not applicable
SYSC 4.1.1FG	Not applicable	Not applicable
SYSC 4.1.2R	Rule	Guidance
SYSC 4.1.2AG	Not applicable	Not applicable
SYSC 4.1.2BR	Not applicable	Not applicable

Provision	COLUMN A	COLUMN B
	MiFID optional exemption firms	Third country firms
SYSC 4		
SYSC 4.1.2CR	Not applicable	Not applicable
SYSC 4.1.2DR	Not applicable	Not applicable
SYSC 4.1.4R	Not applicable	Not applicable
SYSC 4.1.4AG	Not applicable	Not applicable
SYSC 4.1.5R	Not applicable	Not applicable
SYSC 4.1.6R	Rule	Guidance
SYSC 4.1.7R	Rule	Guidance
SYSC 4.1.7AG	Not applicable	Not applicable
SYSC 4.1.8G	Guidance	Guidance
SYSC 4.1.8AR	Rule	Rule
SYSC 4.1.8CG	Guidance	Guidance
SYSC 4.1.8DG	Guidance	Guidance
SYSC 4.1.8DAG	Guidance	Guidance
SYSC 4.1.8DBR	Rule	Rule
SYSC 4.1.8DCR	Rule	Rule
SYSC 4.1.8DDR	Rule	Rule
SYSC 4.1.9R	Not applicable	Not applicable
SYSC 4.1.10R	Not applicable	Not applicable
SYSC 4.1.10AG	Not applicable	Not applicable
SYSC 4.1.11G	Guidance	Guidance
SYSC 4.1.13G	Guidance	Guidance
SYSC 4.1.14G	Guidance	Guidance
SYSC 4.2.1R	Rule	Rule
SYSC 4.2.1AG	Not applicable	Not applicable
SYSC 4.2.2R	Rule	Rule
SYSC 4.2.3G - 4.2.5G	Guidance	Guidance
SYSC 4.2.6R	Rule	Rule
SYSC 4.2.7R	Not applicable	Not applicable
SYSC 4.2.8G	Not applicable	Not applicable
SYSC 4.3.1R	Not applicable	Not applicable
SYSC 4.3.2R	Not applicable	Not applicable
SYSC 4.3.2AG	Not applicable	Not applicable
SYSC 4.3.3G	Guidance	Guidance
SYSC 4.3A.1AR	Rule	Not applicable
SYSC 4.3A.2R	Rule	Not applicable
SYSC 4.3A.2AG	Guidance	Not applicable
SYSC 4.3A.3R	Rule	Not applicable
SYSC 4.3A.3AG	Guidance	Not applicable
SYSC 4.3A.4R	Rule	Not applicable
SYSC 4.3A.5R	Rule	Not applicable

Provision	COLUMN A	COLUMN B
	MiFID optional exemption firms	Third country firms
SYSC 4		
SYSC 4.3A.6R	Rule	Not applicable
SYSC 4.3A.7R	Rule	Not applicable
SYSC 4.3A.8R	Rule	Not applicable
SYSC 4.3A.9R	Rule	Not applicable
SYSC 4.3A.10R	Rule	Not applicable
SYSC 4.3A.11R	Not applicable	Not applicable
SYSC 4.4.1AR	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR
SYSC 4.4.2G	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR
SYSC 4.4.3R	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR
SYSC 4.4.5R	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR
SYSC 4.4.6G	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR

Note = SYSC 4.1.8AR to SYSC 4.1.8DDR apply as a *rule* or *guidance*, as indicated above, only to an *operator of an electronic system in relation to lending*.

SYSC 5		
SYSC 5.1.-2G	Not applicable	Not applicable
SYSC 5.1.-1G	Guidance	Guidance
SYSC 5.1.1R	Not applicable	Not applicable
SYSC 5.1.2G	Guidance	Guidance
SYSC 5.1.3G	Guidance	Guidance
SYSC 5.1.4G	Guidance	Guidance
SYSC 5.1.4AG	Guidance	Guidance
SYSC 5.1.5G	Guidance	Guidance
SYSC 5.1.5AAR	Not applicable	Rule
SYSC 5.1.5ABR	Not applicable	Rule
SYSC 5.1.5ACG	Not applicable	Guidance
SYSC 5.1.5ADG	Not applicable	Guidance
SYSC 5.1.5AEG	Not applicable	Guidance
SYSC 5.1.5AG	Guidance	Guidance
SYSC 5.1.6R	Not applicable	Not applicable
SYSC 5.1.7R	Rule	Rule
SYSC 5.1.7AG	Not applicable	Not applicable
SYSC 5.1.8G	Guidance	Guidance
SYSC 5.1.9G	Guidance	Guidance
SYSC 5.1.10G	Guidance	Guidance
SYSC 5.1.11G	Guidance	Guidance
SYSC 5.1.12R	Not applicable	Not applicable
SYSC 5.1.12AG	Not applicable	Not applicable
SYSC 5.1.13R	Not applicable	Not applicable
SYSC 5.1.14R	Not applicable	Not applicable

SYSC 5		
SYSC 5.1.15G	Not applicable	Not applicable
SYSC 6		
SYSC 6.1.-2G	Not applicable	Not applicable
SYSC 6.1.-1G	Guidance	Guidance
SYSC 6.1.1R	Rule	Rule
SYSC 6.1.1AG	Guidance	Guidance
SYSC 6.1.2R	Not applicable	Not applicable
SYSC 6.1.2AG	Not applicable	Not applicable
SYSC 6.1.3R	Not applicable	Not applicable
SYSC 6.1.3AG	Not applicable	Not applicable
SYSC 6.1.4R	Not applicable	Not applicable
SYSC 6.1.4-AG	Guidance	Guidance
SYSC 6.1.4-AAG	Not applicable	Not applicable
SYSC 6.1.4-ABG	Not applicable	Guidance for a <i>third country relevant authorised person</i>
SYSC 6.1.4AR	Not applicable	Not applicable
SYSC 6.1.4CR	SYSC 6.1.4CR(3) applies as specified in SYSC 6.1.4CR	SYSC 6.1.4CR(3) applies as specified in SYSC 6.1.4CR
SYSC 6.1.5R	Otherwise not applicable	Otherwise not applicable
SYSC 6.1.6G	Not applicable	Not applicable
SYSC 6.1.7R	Not applicable	Not applicable
SYSC 6.2.1R	Not applicable	Not applicable
SYSC 6.2.1AG	Not applicable	Not applicable
SYSC 6.2.1BG	Not applicable	Guidance for a <i>third country relevant authorised person</i>
SYSC 6.2.2G	Guidance	Guidance
SYSC 6.3.1R	Rule	Rule
SYSC 6.3.2G	Guidance	Guidance
SYSC 6.3.3R	Rule	Rule
SYSC 6.3.4G	Guidance	Guidance
SYSC 6.3.5G	Guidance	Guidance
SYSC 6.3.6G	Guidance	Guidance
SYSC 6.3.7G	Guidance	Guidance
SYSC 6.3.8R	Rule	Rule
SYSC 6.3.9R	Rule	Rule
SYSC 6.3.10G	Guidance	Guidance
SYSC 6.3.11G	Guidance	Guidance
SYSC 7		
SYSC 7.1.-2G	Not applicable	Not applicable
SYSC 7.1.-1G	Guidance	Guidance
SYSC 7.1.1G	Guidance	Guidance

SYSC 7		
SYSC 7.1.2R	Not applicable	Not applicable
SYSC 7.1.2AG	Not applicable	Not applicable
SYSC 7.1.2BG	Not applicable	Not applicable
SYSC 7.1.3R	Not applicable	Not applicable
SYSC 7.1.4R	Rule	Guidance
SYSC 7.1.4AG	Guidance	Guidance
SYSC 7.1.4BG	Not applicable	Not applicable
SYSC 7.1.5R	Not applicable	Not applicable
SYSC 7.1.6R	Not applicable	Not applicable
SYSC 7.1.7R	Not applicable	Not applicable
SYSC 7.1.7AG	Not applicable	Not applicable
SYSC 7.1.7BG	Not applicable	Not applicable
SYSC 7.1.7BAG	Not applicable	Not applicable
SYSC 7.1.7CG	Guidance	Guidance
SYSC 7.1.8G	Guidance	Guidance
SYSC 7.1.16AG	Not applicable	Not applicable
SYSC 7.1.16BG	Not applicable	Not applicable
SYSC 7.1.17R	Guidance	Not applicable
SYSC 7.1.18R	Guidance	Not applicable
SYSC 7.1.18AAG	Guidance	Not applicable
SYSC 7.1.18BR	Guidance	Not applicable
SYSC 7.1.19R	Guidance	Not applicable
SYSC 7.1.20R	Guidance	Not applicable
SYSC 7.1.21R	Guidance	Not applicable
SYSC 7.1.22R	Guidance	Not applicable
SYSC 7.1.23G	Not applicable	Guidance for a <i>third country relevant authorised person</i>
SYSC 8		
SYSC 8.1.-2G	Not applicable	Not applicable
SYSC 8.1.-1G	Guidance	Guidance
SYSC 8.1.1R	Rule	Guidance
SYSC 8.1.1AG	Not applicable	Not applicable
SYSC 8.1.2G	Guidance	Guidance
SYSC 8.1.3G	Guidance	Guidance
SYSC 8.1.4R	Not applicable	Not applicable
SYSC 8.1.5R	Not applicable	Not applicable
SYSC 8.1.5AG	Not applicable	Not applicable
SYSC 8.1.6R	Not applicable	Not applicable
SYSC 8.1.6AG	Not applicable	Not applicable
SYSC 8.1.7R	Not applicable	Not applicable

	SYSC 8	
SYSC 8.1.8R	Not applicable	Not applicable
SYSC 8.1.9R	Not applicable	Not applicable
SYSC 8.1.10R	Not applicable	Not applicable
SYSC 8.1.11R	Not applicable	Not applicable
SYSC 8.1.11AG	Not applicable	Not applicable
SYSC 8.1.12G	Not applicable	Not applicable
SYSC 8.1.13R	Not applicable	Not applicable
SYSC 8.1.14G	Not applicable	Not applicable
	SYSC 9	
SYSC 9.1.-2G	Not applicable	Not applicable
SYSC 9.1.-1G	Guidance	Guidance
SYSC 9.1.1R	Not applicable	Not applicable
SYSC 9.1.1AR	Rule	Rule
SYSC 9.1.2R	Rule	Not applicable
SYSC 9.1.2AR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 9.1.2BG	Guidance in relation to <i>insurance distribution activities</i>	Guidance in relation to <i>insurance distribution activities</i>
SYSC 9.1.2CR	Rule applicable to a <i>firm</i> carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	Rule applicable to a <i>firm</i> carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>
SYSC 9.1.4G	Guidance	Guidance
SYSC 9.1.5G	Guidance	Guidance
SYSC 9.1.6G	Guidance	Guidance
SYSC 9.1.6AG	Guidance in relation to <i>insurance distribution activities</i>	Guidance in relation to <i>insurance distribution activities</i>
	SYSC 10	
SYSC 10.1.-4G	Guidance in relation to <i>insurance distribution activities</i>	Guidance in relation to <i>insurance distribution activities</i>
SYSC 10.1.-3G	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.-2G	Not applicable	Not applicable
SYSC 10.1.-1G	Guidance	Guidance
SYSC 10.1.1R	Rule	Rule
SYSC 10.1.1AR	Not applicable	Not applicable
SYSC 10.1.2G	Guidance	Guidance
SYSC 10.1.3R	Rule	Rule
SYSC 10.1.4R	Rule	Guidance – but applies as a rule in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2

SYSC 10		
SYSC 10.1.4AG	Not applicable	Guidance
SYSC 10.1.4BR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.4CR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.5G	Guidance	Guidance
SYSC 10.1.6R	Rule	Guidance – but applies as a rule in relation to: (a) the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) <i>insurance distribution activities</i>
SYSC 10.1.6AG	Not applicable	Guidance
SYSC 10.1.6AAR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.6BG	Not applicable	Guidance
SYSC 10.1.7R	Rule	Rule
SYSC 10.1.7AR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.8R	Rule	Rule
SYSC 10.1.9G	Guidance	Guidance
SYSC 10.1.9AR	Rule in relation to <i>insurance distribution activities</i> . Otherwise not applicable	Rule in relation to <i>insurance distribution activities</i> . Otherwise not applicable
SYSC 10.1.10R	Rule	Guidance – but applies as a rule in relation to: (a) the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) <i>insurance distribution activities</i>
SYSC 10.1.11R	Rule	Guidance – but applies as a rule in relation to: (i) the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (ii) <i>insurance distribution activities</i>
SYSC 10.1.11AG	Not applicable	Guidance
SYSC 10.1.11AAR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.11ABR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.11BG	Not applicable	Guidance
SYSC 10.1.12G	Guidance	Guidance
SYSC 10.1.16R	Not applicable	Not applicable
SYSC 10.1.17R	Not applicable	Not applicable

SYSC 10		
SYSC 10.1.18G	Not applicable	Not applicable
SYSC 10.1.19R	Not applicable	Not applicable
SYSC 10.1.20R	Not applicable	Not applicable
SYSC 10.1.21R	Not applicable	Not applicable
SYSC 10.1.22R	Not applicable	Not applicable
SYSC 10.1.23R	Not applicable	Not applicable
SYSC 10.1.24R	Not applicable	Not applicable
SYSC 10.1.25R	Not applicable	Not applicable
SYSC 10.1.26R	Not applicable	Not applicable
SYSC 10.1.27G	Not applicable	Not applicable
SYSC 10.1A	R Rule applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	R Rule applicable to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>
SYSC 10.2.1R	Rule	Rule
SYSC 10.2.2R	Rule	Rule
SYSC 10.2.3G	Guidance	Guidance
SYSC 10.2.4R	Rule	Rule
SYSC 10.2.5G	Guidance	Guidance

Table C:

Part 1: Application of the requirements in articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation to MiFID optional exemption firms and third country firms

Provision MiFID Org Regulation	MiFID optional exemption firm	Third country firm
Article 1 – Subject-matter and scope (2)	Not applicable	Not applicable
Article 21 – General organisational requirements (1)	Rule	(a), (b) and (g): Guidance; (c), (d), (e), (f) and final paragraph: Rule
(2)	Rule	Rule
(3)	Rule	Guidance
(4)	Rule	Guidance
(5)	Rule	Guidance
Article 22 – Compliance (1)	Guidance	Guidance
(2)	Guidance	Guidance
(3)	Guidance	(a), (c), (d) and (e): Guidance; (b): Rule
(4)	Guidance	Guidance
Article 23 – Risk management	Guidance	Guidance
Article 24 – Internal audit	Guidance	Guidance

Provision MiFID Org Regulation	MiFID optional exemption firm	Third country firm
Article 25 – Responsibility of senior management	Guidance	(1): Rule; (2), (3) and (4): Guidance
Article 30 – Scope of critical and important operational functions	Guidance	Guidance
Article 31 – Outsourcing critical or important operational functions	(1): Rule; (2), (3), (4) and (5): Guidance	(1): Rule; (2), (3), (4) and (5): Guidance
Article 32(1) and (2) – Service providers located in third countries	Rule	Guidance
Article 72 – Retention of records	Rule	Guidance

Part 2: Articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation

UK	Article 1 - Subject-matter and scope	
	2 References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements (so far as relevant) in Chapters II to IV of this Regulation.	
UK	Article 21 - General organisational requirements	
	1	Investment firms shall comply with the following organisational requirements:
	(a)	establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;
	(b)	ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
	(c)	establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;
	(d)	employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;
	(e)	establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;
	(f)	maintain adequate and orderly records of their business and internal organisation;
	(g)	ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.

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- When complying with the requirements set out in this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.
- Investment firms shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.
- Investment firms shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.
- Investment firms shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.
- Investment firms shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and take appropriate measures to address any deficiencies.

UK

Article 22 - Compliance

- 1 Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under UK law on markets in financial instruments ("UK obligations"), as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under UK law on markets in financial instruments.
Investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.
- 2 Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
 - (a) to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies in the firm's compliance with its obligations;

	(b)	to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's UK obligations;
	(c)	to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken;
	(d)	to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities.
		In order to comply with points (a) and (b) of this paragraph, the compliance function shall conduct an assessment on the basis of which it shall establish a risk-based monitoring programme that takes into consideration all areas of the investment firm's investment services, activities and any relevant ancillary services, including relevant information gathered in relation to the monitoring of complaints handling. The monitoring programme shall establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.
3		In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, investment firms shall ensure that the following conditions are satisfied:
	(a)	the compliance function has the necessary authority, resources, expertise and access to all relevant information;
	(b)	a compliance officer is appointed and replaced by the management body and is responsible for the compliance function and for any reporting as to compliance required in relation to its UK obligations and by Article 25(2) of this Regulation;
	(c)	the compliance function reports on an ad-hoc basis directly to the management body where it detects a significant risk of failure by the firm to comply with its UK obligations;
	(d)	the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor;
	(e)	the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.

	4	An investment firm shall not be required to comply with point (d) or point (e) of paragraph 3 where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirements under point (d) or (e) are not proportionate and that its compliance function continues to be effective. In that case, the investment firm shall assess whether the effectiveness of the compliance function is compromised. The assessment shall be reviewed on a regular basis.
UK	Article 23 - Risk management	
	1	Investment firms shall take the following actions relating to risk management:
	(a)	establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm;
	(b)	adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;
	(c)	monitor the following: (i) the adequacy and effectiveness of the investment firm's risk management policies and procedures; (ii) the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b); (iii) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such pol

		icies and procedures.
2		<p>Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:</p> <ul style="list-style-type: none">(a) implementation of the policy and procedures referred to in paragraph 1;(b) provision of reports and advice to senior management in accordance with Article 25(2). <p>Where an investment firm does not establish and maintain a risk management function under the first sub-paragraph, it shall be able to demonstrate upon request that the policies and procedures which it has adopted in accordance with paragraph 1 satisfy the requirements therein.</p>
UK	Article 24 - Internal audit	<p>Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities:</p> <ul style="list-style-type: none">(a) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements;(b) issue recommendations based on the result of work carried out in accordance with point (a) and verify compliance with those recommendations;(c) report in relation to internal audit matters in accordance with Article 25(2).
UK	Article 25 - Responsibility of senior management	<p>1</p> <p>Investment firms shall, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations under UK law on markets in financial instruments ("UK obligations"). In particular, senior management and, where applicable, the supervisory function shall be required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the UK obligations and to take appropriate measures to address any deficiencies.</p> <p>The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm's organisational requirements. Records of the allocation of significant functions shall be kept up-to-date.</p> <p>2</p> <p>Investment firms shall ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23</p>

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and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

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Investment firms shall ensure that where there is a supervisory function, it receives written reports on the matters covered by Articles 22, 23 and 24 on a regular basis.

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For the purposes of this Article, the supervisory function shall be the function within an investment firm responsible for the supervision of its senior management.

UK

Article 30 - Scope of critical and important operational functions

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For the purposes of [SYSC 8.1.1R] and rule 2.1 of the Outsourcing Part of the PRA Rulebook, an operational function shall be regarded as critical or important where a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under UK law on markets in financial instruments, or its financial performance, or the soundness or the continuity of its investment services and activities.

2

Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph 1:

- (a) the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;
- (b) the purchase of standardised services, including market information services and the provision of price feeds.

UK

Article 31 - Outsourcing critical or important operational functions

1

Investment firms outsourcing critical or important operational functions shall remain fully responsible for discharging all of their obligations under UK law on markets in financial instruments and shall comply with the following conditions:

- (a) the outsourcing does not result in the delegation by senior management of its responsibility;
- (b) the relationship and obligations of the investment firm towards its clients under the terms of UK law on markets in financial instruments is not altered;
- (c) the conditions with which the investment firm must comply in order to have permission under Part 4A of FSMA to carry on a regulated activity which is any of the investment services and activities (within the meaning of regulation 2(1) of the Markets in Financial Instruments Regulations 2017), and to remain so, are not undermined;

	(d)	none of the other conditions subject to which the firm's authorisation was granted is removed or modified.
2	Investment firms shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions and shall take the necessary steps to ensure that the following conditions are satisfied:	
	(a)	the service provider has the ability, capacity, sufficient resources, appropriate organisational structure supporting the performance of the outsourced functions, and any authorisation required by law to perform the outsourced functions, reliably and professionally;
	(b)	the service provider carries out the outsourced services effectively and in compliance with applicable law and regulatory requirements, and to this end the firm has established methods and procedures for assessing the standard of performance of the service provider and for reviewing on an ongoing basis the services provided by the service provider;
	(c)	the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
	(d)	appropriate action is taken where it appears that the service provider may not be carrying out the functions effectively or in compliance with applicable laws and regulatory requirements;
	(e)	the investment firm effectively supervises the outsourced functions or services and manage the risks associated with the outsourcing and to this end the firm retains the necessary expertise and resources to supervise the outsourced functions effectively and manage those risks;
	(f)	the service provider has disclosed to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
	(g)	the investment firm is able to terminate the arrangement for outsourcing where necessary, with immediate effect when this is in the interests of its clients, without detriment to the continuity and quality of its provision of services to clients;

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	(h)	the service provider cooperates with the competent authorities of the investment firm in connection with the outsourced functions;
	(i)	the investment firm, its auditors and the relevant competent authorities have effective access to data related to the outsourced functions, as well as to the relevant business premises of the service provider, where necessary for the purpose of effective oversight in accordance with this article, and the competent authorities are able to exercise those rights of access;
	(j)	the service provider protects any confidential information relating to the investment firm and its clients;
	(k)	the investment firm and the service provider have established, implemented and maintained a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;
	(l)	the investment firm has ensured that the continuity and quality of the outsourced functions or services are maintained also in the event of termination of the outsourcing either by transferring the outsourced functions or services to another third party or by performing them itself.
3		The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement. In particular, the investment firm shall keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall ensure that outsourcing by the service provider only takes place with the consent, in writing, of the investment firm.
4		Where the investment firm and the service provider are members of the same group, the investment firm may, for the purposes of complying with this Article and Article 32, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.
5		Investment firms shall make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced functions with the requirements of UK law on markets in financial instruments.
UK		Article 32 - Service providers located in third countries
	1	In addition to the requirements set out in Article 31, where an investment firm outsources functions related to the investment service of portfolio management provided to clients to a service provider located in a third country, that investment firm ensures that the following conditions are satisfied:

		(a)	the service provider is authorised or registered in its home country to provide that service and is effectively supervised by a competent authority in that third country;
		(b)	there is an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.
2	The cooperation agreement referred to in point (b) of paragraph 1 shall ensure that the competent authorities of the investment firm are able, at least, to:		
		(a)	obtain on request the information necessary to carry out their supervisory tasks pursuant to UK law on markets in financial instruments and Regulation (EU) No 600/2014;
		(b)	obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;
		(c)	receive information from the supervisory authority in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements of UK law on markets in financial instruments and its implementing measures and Regulation (EU) No 600/2014;
		(d)	cooperate with regard to enforcement, in accordance with the national and international law applicable to the supervisory authority of the third country and the competent authorities in the United Kingdom in cases of breach of the requirements of UK law on markets in financial instruments.
3	The FCA must publish on its website a list of the supervisory authorities in third countries with which they have a cooperation agreement referred to in point (b) of paragraph 1.		
UK	Article 72 - Retention of records		
1	The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met:		
		(a)	the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;
		(b)	it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;

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- (c) it is not possible for the records otherwise to be manipulated or altered;
- (d) it allows IT or any other efficient exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and
- (e) the firm's arrangements comply with the record keeping requirements irrespective of the technology used.

2

Investment firms shall keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities.

The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.

3

Investment firms shall also keep records of any policies and procedures they are required to maintain pursuant to Regulation (EU) No 600/2014, Regulation (EU) No 596/2014 and their implementing measures (as amended under the European Union (Withdrawal) Act 2018) and the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before IP completion day to implement Directive 2014/65/EU, Directive 2014/57/EU and their implementing measures in writing.

Competent authorities may require investment firms to keep additional records to the list identified in Annex I to this Regulation.

Chapter 2

Senior management arrangements

2.1 Apportionment of Responsibilities

- 2.1.1 **R** A *firm* must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its *directors* and *senior managers* in such a way that:
- (1) it is clear who has which of those responsibilities; and
 - (2) the business and affairs of the *firm* can be adequately monitored and controlled by the *directors*, relevant *senior managers* and *governing body* of the *firm*.
- 2.1.1A **G** Firms should also consider the additional guidance on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21.
- 2.1.2 **G** The role undertaken by a *non-executive director* will vary from one *firm* to another. For example, the role of a *non-executive director* in a *friendly society* may be more extensive than in other *firms*. Where a *non-executive director* is an *approved person*, for example where the *firm* is a *body corporate*, his responsibility and therefore liability will be limited by the role that he undertakes.
- 2.1.3 **R** [deleted]
- 2.1.3A **R** [deleted]

2.1.3B	G	[deleted]
2.1.3C	R	[deleted]
2.1.3D	G	[deleted]
2.1.4	R	[deleted]
2.1.5	G	[deleted]
2.1.6	G	[deleted]
2.1.6A	R	<p>Insurance distribution activities</p> <p>A firm carrying on <i>insurance distribution activities</i> must allocate to a <i>senior manager</i> the function of ensuring the proper implementation of the policies and procedures approved in accordance with ■ SYSC 3.1.11R.</p> <p>[Note: second paragraph of article 10(8) of the <i>IDD</i>]</p>

2.2 Recording the apportionment

- 2.2.1** **R** (1) A *firm* must make a record of the arrangements it has made to satisfy ■ SYSC 2.1.1 R (apportionment) and take reasonable care to keep this up to date.
- (2) This record must be retained for six years from the date on which it was superseded by a more up-to-date record.
- 2.2.1A** **R** ■ SYSC 2.2.1R does not apply to a *firm* to whom PRA Rulebook: Solvency II firms: Insurance – Allocation of Responsibilities, 5.1 and 5.2 or PRA Rulebook: Large Non-Solvency II firms – Allocation of Responsibilities, 5.1 and 5.2, applies nor to a *large non-directive insurer*.
- 2.2.2** **G** (1) A *firm* will be able to comply with ■ SYSC 2.2.1 R by means of records which it keeps for its own purposes provided these records satisfy the requirements of ■ SYSC 2.2.1 R and provided the *firm* takes reasonable care to keep them up to date. Appropriate records might, for this purpose, include organisational charts and diagrams, project management documents, job descriptions, committee constitutions and terms of reference provided they show a clear description of the *firm's* major functions.
- (2) *Firms* should record any material change to the arrangements described in ■ SYSC 2.2.1 R as soon as reasonably practicable after that change has been made.
- 2.2.3** **G** Where responsibilities have been allocated to more than one individual, the *firm's* record should show clearly how those responsibilities are shared or divided between the individuals concerned.
- 2.2.4** **R** [deleted]
- 2.2.5** **G** [deleted]
- 2.2.6** **R** [deleted]
- 2.2.7** **G**

Chapter 3

Systems and controls

3.1 Systems and controls

- 3.1.1** **R** A *firm* must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.
- 3.1.1A** **R** [deleted]
- 3.1.2** **G**
- (1) The nature and extent of the systems and controls which a *firm* will need to maintain under ■ SYSC 3.1.1 R will depend upon a variety of factors including:
 - (a) the nature, scale and complexity of its business;
 - (b) the diversity of its operations, including geographical diversity;
 - (c) the volume and size of its transactions; and
 - (d) the degree of risk associated with each area of its operation.
 - (2) To enable it to comply with its obligation to maintain appropriate systems and controls, a *firm* should carry out a regular review of them.
 - (3) The areas typically covered by the systems and controls referred to in ■ SYSC 3.1.1 R are those identified in ■ SYSC 3.2. Detailed requirements regarding systems and controls relevant to particular business areas or particular types of *firm* are covered elsewhere in the *Handbook*.
- 3.1.2A** **G** *Firms* should also consider the additional *guidance* on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21.
- 3.1.3** **G** Where the *UK Corporate Governance Code* is relevant to a *firm*, the *appropriate regulator*, in considering whether the *firm's* obligations under ■ SYSC 3.1.1 R have been met, will give it due credit for following corresponding provisions in the code.
- 3.1.4** **G** A *firm* has specific responsibilities regarding its *appointed representatives* or, where applicable, its *tied agents* (see ■ SUP 12).
- 3.1.5** **G** ■ SYSC 2.1.3 R (2) prescribes how a *firm* must allocate the function of overseeing the establishment and maintenance of systems and controls described in ■ SYSC 3.1.1 R.

Competent employees rule	
3.1.6	R A firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
3.1.7	R When complying with the <i>competent employees rules</i> , a firm must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.
3.1.7A	G ■ SYSC 28 contains <i>rules</i> and <i>guidance</i> relating to the minimum knowledge and competence requirements in relation to <i>insurance distribution activities</i> undertaken by a firm.
3.1.8	G The Training and Competence sourcebook (TC) contains additional <i>rules</i> and <i>guidance</i> relating to specified retail activities undertaken by a firm.
3.1.9	G Firms which are carrying on activities that are not subject to TC may nevertheless wish to take TC into account in complying with the competence requirements in SYSC.
3.1.10	G If a firm requires employees who are not subject to a qualification requirement in TC to pass a relevant examination from the list of appropriate qualifications maintained by the FCA, the appropriate regulator will take that into account when assessing whether the firm has ensured that the employee satisfies the knowledge component of the <i>competent employees rule</i> .
Insurance distribution activities	
3.1.11	R A firm carrying on <i>insurance distribution activities</i> must approve, implement and regularly review its internal policies and procedures in respect of its obligations under ■ SYSC 28. [Note: first paragraph of article 10(8) of the IDD]
3.1.12	G ■ SYSC 2.1.6AR prescribes how a firm must allocate the function of ensuring the proper implementation of the policies and procedures approved in accordance with ■ SYSC 3.1.11R.

3.2 Areas covered by systems and controls

- 3.2.1** **G** This section covers some of the main issues which a *firm* is expected to consider in establishing and maintaining the systems and controls appropriate to its business, as required by ■ SYSC 3.1.1 R.
- 3.2.2** **G** A *firm's* reporting lines should be clear and appropriate having regard to the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, should be communicated as appropriate within the *firm*.
- 3.2.3** **G**
- (1) A *firm's* governing body is likely to delegate many functions and tasks for the purpose of carrying out its business. When functions or tasks are delegated, either to employees or to appointed representatives or, where applicable, its tied agents, appropriate safeguards should be put in place.
 - (2) When there is delegation, a *firm* should assess whether the recipient is suitable to carry out the delegated function or task, taking into account the degree of responsibility involved.
 - (3) The extent and limits of any delegation should be made clear to those concerned.
 - (4) There should be arrangements to supervise delegation, and to monitor the discharge of delegates functions or tasks.
 - (5) If cause for concern arises through supervision and monitoring or otherwise, there should be appropriate follow-up action at an appropriate level of seniority within the *firm*.
- 3.2.4** **G**
- (1) The guidance relevant to delegation within the *firm* is also relevant to external delegation ('outsourcing'). A *firm* cannot contract out its regulatory obligations. So, for example, under Principle 3 a *firm* should take reasonable care to supervise the discharge of outsourced functions by its contractor.
 - (2) A *firm* should take steps to obtain sufficient information from its contractor to enable it to assess the impact of outsourcing on its systems and controls.

- 3.2.5 **G** Where it is made possible and appropriate by the nature, scale and complexity of its business, a *firm* should segregate the duties of individuals and departments in such a way as to reduce opportunities for *financial crime* or contravention of requirements and standards under the *regulatory system*. For example, the duties of front-office and back-office staff should be segregated so as to prevent a single individual initiating, processing and controlling transactions.
- 3.2.5A **R** [deleted]
- 3.2.5B **G** [deleted]
- Systems and controls in relation to compliance, financial crime and money laundering**
- 3.2.6 **R** A *firm* must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.
- 3.2.6A **R** A *firm* must ensure that these systems and controls:
- (1) enable it to identify, assess, monitor and manage *money laundering* risk; and
 - (2) are comprehensive and proportionate to the nature, scale and complexity of its activities.
- 3.2.6B **G** "Money laundering risk" is the risk that a *firm* may be used to further *money laundering*. Failure by a *firm* to manage this risk effectively will increase the risk to society of crime and terrorism.
- 3.2.6C **R** A *firm* must carry out regular assessments of the adequacy of these systems and controls to ensure that it continues to comply with ■ SYSC 3.2.6A R.
- 3.2.6D **G** A *firm* may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the Money Laundering Regulations. ■ SYSC 3.2.6 R to ■ SYSC 3.2.6J G are not relevant for the purposes of regulation 76(6) or 86(2) of the Money Laundering Regulations, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.
- 3.2.6E **G** The FCA, when considering whether a breach of its *rules* on systems and controls against *money laundering* has occurred, will have regard to whether a *firm* has followed relevant provisions in the guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.

3.2.6F**G**

In identifying its *money laundering* risk and in establishing the nature of these systems and controls, a *firm* should consider a range of factors, including:

- (1) its customer, product and activity profiles;
- (2) its distribution channels;
- (3) the complexity and volume of its transactions;
- (4) its processes and systems; and
- (5) its operating environment.

3.2.6G**G**

A *firm* should ensure that the systems and controls include:

- (1) appropriate training for its employees in relation to *money laundering*;
- (2) appropriate provision of information to its *governing body* and senior management, including a report at least annually by that *firm's money laundering reporting officer (MLRO)* on the operation and effectiveness of those systems and controls;
- (3) appropriate documentation of its risk management policies and risk profile in relation to *money laundering*, including documentation of its application of those policies (see ■ SYSC 3.2.20 R to ■ SYSC 3.2.22 G);
- (4) appropriate measures to ensure that *money laundering* risk is taken into account in its day-to-day operation, including in relation to:
 - (a) the development of new products;
 - (b) the taking-on of new customers; and
 - (c) changes in its business profile; and
- (5) appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to its services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.

3.2.6H**R**

A *firm* must allocate to a *director* or *senior manager* (who may also be the *money laundering reporting officer*) overall responsibility within the *firm* for the establishment and maintenance of effective anti-*money laundering* systems and controls.

The money laundering reporting officer

3.2.6I**R**

A *firm* must:

- (1) appoint an individual as *MLRO*, with responsibility for oversight of its compliance with the *FCA's rules on systems and controls against money laundering*; and

- (2) ensure that its *MLRO* has a level of authority and independence within the *firm* and access to resources and information sufficient to enable him to carry out that responsibility.

3.2.6J G The job of the *MLRO* within a *firm* is to act as the focal point for all activity within the *firm* relating to anti-money laundering. The FCA expects that a *firm's* *MLRO* will be based in the *United Kingdom*.

3

Financial crime guidance

3.2.6K G The FCA provides *guidance* on steps that a *firm* can take to reduce the risk that it might be used to further *financial crime* in *FCG* (Financial Crime Guide: A firm's guide to countering financial crime risks) and *FCTR* (Financial Crime Thematic Reviews).

The compliance function

- 3.2.7** G
- (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate compliance function. The organisation and responsibilities of a compliance function should be documented. A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. It should be adequately resourced and should have unrestricted access to the *firm's* relevant records as well as ultimate recourse to its *governing body*.
 - (2) [deleted]
 - (3) [deleted]

- 3.2.8** R
- (1) A *firm*, other than an *UK ISPV*, must allocate to a *director* or *senior manager* the function of:
 - (a) having responsibility for oversight of the *firm's* compliance; and
 - (b) reporting to the *governing body* in respect of that responsibility.
 - (2) In (1) "compliance" means compliance with the *firm's* obligations under the *regulatory system* in relation to which the FCA has responsibility.

3.2.9 G ■ SUP 10C.6.1R uses ■ SYSC 3.2.8R to describe the *controlled function*, known as the *compliance oversight function*, of acting in the capacity of a *director* or *senior manager* to whom this function is allocated.

Conduct risk oversight (Lloyd's) function

3.2.9A R In relation to business done at Lloyd's, the *Society* must allocate to a *director* or *senior manager* the function of having responsibility for overseeing the conduct of business standards required of *managing agents* for which the *Society* has responsibility.

3.2.10

G**Risk assessment**

- (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate risk assessment function responsible for assessing the risks that the *firm* faces and advising the *governing body* and *senior managers* on them.
- (2) The organisation and responsibilities of a risk assessment function should be documented. The function should be adequately resourced and staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively.
- (3) The term 'risk assessment function' refers to the generally understood concept of risk assessment within a *firm*, that is, the function of setting and controlling risk exposure. The risk assessment function is not an *FCA controlled function* itself, but *firms* it may fall under the *PRA chief risk officer controlled function*.
- (4) Paragraphs (1) and (3) do not apply to a *Solvency II firm* and (2) only applies as if the term 'risk assessment function' was replaced by 'risk management function'.
- (5) *Solvency II firms* are subject to requirements for an effective risk management system in PRA Rulebook: Solvency II firms: Conditions Governing Business 3.
- (6) Also, PRA Rulebook: Solvency II firms: Insurance Senior Management Functions makes the chief risk function a *PRA controlled function*. The chief risk function is the function of having responsibility for overall management of the risk management system, as specified in PRA Rulebook: Solvency II firms: Conditions Governing Business 3.
- (7) The *FCA* will take the requirements in (5) and (6) into account.

3.2.11

G**Management information**

- (1) [deleted]
- (2) [deleted]

3.2.11A

G

- (1) A *firm's* arrangements should be such as to furnish its *governing body* with the information it needs to play its part in identifying, measuring, managing and controlling risks of regulatory concern. Three factors will be the relevance, reliability and timeliness of that information.
- (2) Risks of regulatory concern are those risks which relate to the fair treatment of the *firm's customers*, to the protection of *consumers*, to effective competition and to the integrity of the *UK financial system*. Risks which are relevant to the integrity of the *UK financial system* include risks which relate to its soundness, stability and resilience and to the use of the system in connection with *financial crime*.

3.2.11B

G

3.2.12	G	<p>It is the responsibility of the <i>firm</i> to decide what information is required, when, and for whom, so that it can organise and control its activities and can comply with its regulatory obligations. The detail and extent of information required will depend on the nature, scale and complexity of the business.</p>
		<h3>Employees and agents</h3>
3.2.13	G	<p>A <i>firm's</i> systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it.</p>
3.2.14	G	<p>(1) ■ SYSC 3.2.13 G includes assessing an individual's honesty, and competence. This assessment should normally be made at the point of recruitment. An individual's honesty need not normally be revisited unless something happens to make a fresh look appropriate.</p> <p>(2) Any assessment of an individual's suitability should take into account the level of responsibility that the individual will assume within the <i>firm</i>. The nature of this assessment will generally differ depending upon whether it takes place at the start of the individual's recruitment, at the end of the probationary period (if there is one) or subsequently.</p> <p>(3) [deleted]</p> <p>(4) The requirements on <i>firms</i> with respect to <i>approved persons</i> are in Part V of the <i>Act</i> (Performance of regulated activities) and ■ SUP 10C and the Senior Insurance Management Functions parts of the <i>PRA Rulebook</i></p>
		<h3>Audit committee</h3>
3.2.15	G	<p>Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to form an audit committee. An audit committee could typically examine management's process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the <i>regulatory system</i>, oversee the functioning of the internal audit function (if applicable - see ■ SYSC 3.2.16 G) and provide an interface between management and the external auditors. It should have an appropriate number of <i>non-executive directors</i> and it should have formal terms of reference.</p>
		<h3>Internal audit</h3>
3.2.16	G	<p>(1) Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to delegate much of the task of monitoring the appropriateness and effectiveness of its systems and controls to an internal audit function. An internal audit function should have clear responsibilities and reporting lines to an audit committee or appropriate <i>senior manager</i>, be adequately resourced and staffed by competent individuals, be independent of the day-to-day activities of the <i>firm</i> and have appropriate access to a <i>firm's</i> records.</p>

- (2) The term 'internal audit function' refers to the generally understood concept of internal audit within a *firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not an *FCA controlled function* itself, but for certain *firms* it may fall under the *PRA chief risk officer controlled function*.
- (3) Paragraph (1) does not apply to *Solvency II firms*.
- (4) *Solvency II firms* are subject to a requirement in PRA Rulebook: *Solvency II firms: Conditions Governing Business*, rule 5 to have an effective internal audit function.
- (5) Also, the PRA Rulebook: *Solvency II firms: Insurance Senior Management Functions* makes the chief internal audit function a *PRA controlled function*. The chief internal audit function is the function of having responsibility for management of the internal audit function specified in PRA Rulebook: *Solvency II firms: Conditions Governing Business*, rule 5.
- (6) The *FCA* will take the requirements in (4) and (5) into account.

Business strategy

3.2.17

G

A *firm* should plan its business appropriately so that it is able to identify, measure, manage and control risks of regulatory concern (see ■ SYSC 3.2.11 G (2)). In some *firms*, depending on the nature, scale and complexity of their business, it may be appropriate to have business plans or strategy plans documented and updated on a regular basis to take account of changes in the business environment.

Remuneration policies

3.2.18

G

It is possible that *firms'* remuneration policies will from time to time lead to tensions between the ability of the *firm* to meet the requirements and standards under the *regulatory system* and the personal advantage of those who act for it. Where tensions exist, these should be appropriately managed. See also *Solvency II Regulation* (Article 275) and *EIOPA Guidelines on system of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN)* (Guidelines 9 and 10).

Business continuity

3.2.19

G

A *firm*, other than a *Solvency II firm*, should have in place appropriate arrangements, having regard to the nature, scale and complexity of its business, to ensure that it can continue to function and meet its regulatory obligations in the event of unforeseen interruption. These arrangements should be regularly updated and tested to ensure their effectiveness. *Solvency II firms* are subject to the business continuity requirements in PRA Rulebook: *Solvency II firms: Conditions Governing Business*, 2.6, and the *FCA* will take those requirements into account.

Records

3.2.20

R

- (1) A *firm* must take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which

- are the subject of requirements and standards under the *regulatory system*.
- (2) Subject to (3) and to any other record-keeping *rule* in the *Handbook*, the records required by (1) or by such other *rule* must be capable of being reproduced in the English language on paper.
- (3) If a *firm's* records relate to business carried on from an establishment in a country or territory outside the *United Kingdom*, an official language of that country or territory may be used instead of the English language as required by (2).
- 3.2.21** **G** A *firm* should have appropriate systems and controls in place to fulfil the *firm's* regulatory and statutory obligations with respect to adequacy, access, periods of retention and security of records. The general principle is that records should be retained for as long as is relevant for the purposes for which they are made.
- 3.2.21A** **G** SYSC 28 contains *rules* and *guidance* relating to knowledge and competence record keeping requirements in relation to *insurance distribution activities* undertaken by a *firm*.
- 3.2.22** **G** Detailed record-keeping requirements for different types of *firm* are to be found elsewhere in the *Handbook*. Schedule 1 to the *Handbook* is a consolidated schedule of these requirements.
- 3.2.23** **G**
- (1) This *guidance* sets out the FCA's expectation on how a *firm* may take into account *ESG financial considerations* and *other financial considerations* and *non-financial matters* as part of its *investment strategy* and *investment decision making*, to demonstrate compliance with *Principles 2, 3, 6 or 8*.
- (2) This *guidance* only applies where the *firm's* *investment strategy* or *investment decision* could have a material impact on a *policyholder's* *investment returns* and relates to a product where:
- (a) the primary purpose is to provide an *investment return*; and
- (b) any *investment risk* is borne by a *policyholder* who is a natural person or a *relevant policyholder*.
- (3) As part of its *investment strategy* or *investment decision making*, a *firm* should take into account *ESG financial considerations* and *other financial considerations* over the period of time that the *firm* reasonably considers is needed to achieve the *investment objective* or *investment strategy*.
- (4) References to *other financial considerations* in (3) may include (but are not limited to) interest rate, liquidity, concentration, exchange rate, political and counterparty risks.

- (5) As part of its *investment strategy* or *investment decision making* in relation to a product, a *firm* may take into account *non-financial matters* if:
- the *firm* has good reason to consider that affected *policyholders* or *relevant policyholders* would generally share the views on which the *non-financial matters* are based; and
 - taking those matters into account would not involve a risk of a significant financial detriment to any affected *investment*.
- (6) (5) does not apply to a *firm's investment strategy* or *investment decision making* in relation to a product (other than in relation to a *relevant scheme* or a *pathway investment*), that has been deliberately designed by the *firm* to take into account *non-financial matters*, and *policyholders* or *relevant policyholders* make an active decision to select that product.

3.2.23 **R** [deleted]

3.2.24 **R** [deleted]

Operators of pensions dashboard services: security, integrity and confidentiality

3.2.24 **R** A *firm* carrying on *regulated pensions dashboard activity* must comply with the requirements set out in ■ SYSC 4.1.5AR, ■ SYSC 4.1.5BR and ■ SYSC 4.1.5CR as if those *rules* applied to *firms* to which ■ SYSC 3 applies.

3.2.25 **R** [deleted]

3.2.26 **R** [deleted]

3.2.27 **R** [deleted]

3.2.28 **R** [deleted]

3.2.29 **R** [deleted]

3.2.30 **R** [deleted]

3.2.31 **R** [deleted]

3.2.32 **R** [deleted]

3.2.33 **R** [deleted]

3.2.34 **R** [deleted]

3.2.35 **R** [deleted]

3.2.36 **R** [deleted]



3.3 Additional requirements for insurance distribution

- Application**
- 3.3.1 **R** ■ SYSC 3.3 applies to an *insurer* in the course of it carrying on any *insurance distribution activities*.
- 3.3.2 **G** [deleted]
- 3.3.3 **R** [deleted]
- 3.3.4 **G** [deleted]
- Identifying conflicts**
- 3.3.5 **R** A *firm* must take all appropriate steps to identify conflicts of interest that arise between:
- (1) the *firm*, including its managers, employees and *appointed representatives* (or where applicable, *tied agents*), or any person directly or indirectly linked to it by *control*, and a *client* of the *firm*; or
 - (2) one *client* of the *firm* and another *client*.
- [Note: article 28(1) of the *IDD*]
- 3.3.6 **R** For the purposes of identifying, in accordance with ■ SYSC 3.3.5R and ■ SYSC 3.3.13R, the types of conflicts of interest that arise in the course of carrying out any *insurance distribution activities* related to *policies* and which entail a risk of damage to the interests of a *client*, a *firm* must assess whether it, a *relevant person* or any person directly or indirectly linked to it by *control*, has an interest in the outcome of the *insurance distribution activities*, which meets the following criteria:
- (1) it is distinct from the *client's* or potential *client's* interest in the outcome of the *insurance distribution activities*;
 - (2) it has the potential to influence the outcome of the *insurance distribution activities* to the detriment of the *client*.

3.3.7**R**

A *firm* must proceed in the same way for the purposes of identifying conflicts of interest between one *client* and another.

For the purposes of the assessment in ■ SYSC 3.3.6R, a *firm* must take into account, by way of minimum criteria, the following situations:

- (1) the *firm*, a *relevant person* or any *person* directly or indirectly linked to it by *control* is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the *client*;
- (2) the *firm*, a *relevant person* or any *person* directly or indirectly linked to it by *control* has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interest of the *client*;
- (3) the *firm*, a *relevant person* or any *person* directly or indirectly linked by *control* to the *firm* is substantially involved in the management or development of *policies*, in particular where such a *person* has an influence on the pricing of those *policies* or their distribution costs.

[Note: article 3 of the *IDD Regulation*]

Managing conflicts

3.3.8**R**

A *firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest identified under ■ SYSC 3.3.5R from adversely affecting the interests of its *clients*.

[Note: article 27 of the *IDD*]

Proportionality

3.3.9**R**

The arrangements in ■ SYSC 3.3.8R must be proportionate to the activities performed, the *policies* sold and the type of *insurance distributor* the *firm* is or uses.

[Note: article 27 of the *IDD*]

Conflicts policy

3.3.10**R**

- (1) For the purposes of ■ SYSC 3.3.8R and ■ SYSC 3.3.9R, a *firm* must establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to its size and organisation and the nature, scale and complexity of its business.
- (2) Where the *firm* is a member of a group, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 4(1) of the *IDD Regulation*]

3.3.11

R

Contents of policy

The conflicts of interest policy required in ■ SYSC 3.3.10R must include the following content:

- (1) with reference to the specific *insurance distribution activities* carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more *clients*;
- (2) procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the *client*.

[Note: article 4(2) of the *IDD Regulation*]

3.3.12

R

- (1) The procedures and measures required in ■ SYSC 3.3.11R(2) must be appropriate to the size and activities of the *firm* and of the group to which it may belong, and to the risk of damage to the interests of the *client*.
- (2) The procedures to be followed and measures required in ■ SYSC 3.3.11R(2) must include, where appropriate, the following:
 - (a) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more *clients*;
 - (b) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services, to *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;
 - (c) the removal of any direct link between payments, including *remuneration*, to *relevant persons* engaged in one activity and payments, including *remuneration*, to different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - (d) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which *insurance distribution activities* are carried out by the *firm* or its managers or employees or any *person* directly or indirectly linked to it by *control*;
 - (e) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in separate *insurance distribution activities* where such involvement may impair the proper management of conflicts of interest;
 - (f) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.
- (3) Where the *firm* can demonstrate that the measures and procedures referred to in (1) and (2) are not appropriate to ensure that the *insurance distribution activities* are carried out in accordance with the

best interest of the *client* and are not biased due to conflicting interests of the *firm*, an *insurance intermediary* or another *client*, the *firm* must adopt adequate alternative measures and procedures for that purpose.

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

Disclosure of conflicts

3.3.13

R

- (1) If arrangements made under ■ SYSC 3.3.8R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must:
 - (a) clearly disclose to the *client* the general nature or sources of the conflicts of interest (or both); and
 - (b) include sufficient detail in the disclosure, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the *insurance distribution activities* in the context of which the conflict of interest arises.
- (2) The disclosure must be made:
 - (a) in a *durable medium*; and
 - (b) in good time before the conclusion of the *contract of insurance*.

[Note: article 28(2) and (3) of the *IDD*]

3.3.14

R

- (1) A *firm* must avoid over-reliance on disclosure to ensure that disclosure to *clients*, under ■ SYSC 3.3.13R is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the *firm* to prevent or manage conflicts of interest in accordance with ■ SYSC 3.3.8R and ■ SYSC 3.3.9R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.
- (2) For the purposes of a disclosure of conflicts of interest a *firm* must:
 - (a) provide a specific description of the conflict of interest in question;
 - (b) explain the general nature and sources of the conflict of interest;
 - (c) explain the risks to the *client* that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
 - (d) clearly state that the organisational and administrative arrangements established by the *firm* to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.

[Note: article 6 of the *IDD Regulation*]

Review of conflicts policy

3.3.15

R

For the purposes of ■ SYSC 3.3.8R, a *firm* must assess and periodically review, on an at least annual basis, the conflicts of interest policy established in

accordance with ■ SYSC 3.3.10R and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the *IDD Regulation*]

3

3.3.16

R

Record keeping

- (1) A firm must keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a client has arisen or, in the case of an ongoing service or activity may arise.
- (2) A firm must ensure its senior management receives on a frequent basis, and at least annually, written reports on the situations referred to in (1).

[Note: article 7(2) of the *IDD Regulation*]

3.3.17

R

A firm carrying on *insurance distribution activities* in relation to *insurance-based investment products* must retain its records relating to:

- (1) suitability (■ COBS 9A); and
- (2) appropriateness (■ COBS 10A),

for a period of at least five years.

3.3.18

G

- (1) ■ COBS 9A.4 and ■ COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) contain record keeping requirements that specify information which should be recorded by firms in relation to *insurance-based investment products* and for how long the records must be retained.
- (2) For the purposes of ■ SYSC 3.3.17R, a firm will need to consider whether the requirement in ■ COBS 9A.4.3R or ■ COBS 10A.7.2AR means that a record needs to be retained for longer than five years.

3.3.19

R

- (1) The records required under ■ COBS 9A.4 and ■ COBS 10A.7 must be retained in a medium that allows the storage of information in a way accessible for future reference by the FCA.
- (2) The FCA must be able to access the records in (1) readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the *IDD Regulation*]

3.4 SRD requirements

Application

- 3.4.1** **R** This section applies to:
- (a) a UK insurer; and
 - (b) a UK pure reinsurer,
- doing long-term insurance business.
- 3.4.2** **R** The rules in this section apply to the extent that a firm is investing (or has invested), directly or through an SRD asset manager, in shares traded on a regulated market.
- 3.4.3** **G** The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the United Kingdom.

Engagement policy and disclosure of information

- 3.4.4** **R** A firm must either:
- (1) (a) develop and publicly disclose an engagement policy that meets the requirements of ■ SYSC 3.4.5R (an "engagement policy"); and
 - (b) publicly disclose on an annual basis how its engagement policy has been implemented, in a way that meets the requirements of ■ SYSC 3.4.6R; or
 - (2) publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).
- [Note: article 3g(1) and (1)(a) of SRD]
- 3.4.5** **R** The engagement policy must describe how the firm:
- (1) integrates shareholder engagement in its investment strategy;
 - (2) monitors investee companies on relevant matters, including:
 - (a) strategy;
 - (b) financial and non-financial performance and risk;

- (c) capital structure; and
- (d) social and environmental impact and corporate governance;
- (3) conducts dialogues with investee companies;
- (4) exercises voting rights and other rights attached to *shares*;
- (5) cooperates with other shareholders;
- (6) communicates with relevant stakeholders of the investee companies; and
- (7) manages actual and potential conflicts of interests in relation to the *firm's* engagement.

[Note: article 3g(1)(a) of SRD]

3.4.6

R

- (1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and the use of the services of *proxy advisors*.
- (2) (a) Subject to (b), a *firm* must publicly disclose how it has cast votes in the general meetings of companies in which it holds *shares*.
- (b) A *firm* is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[Note: article 3g(1)(b) of SRD]

3.4.7

R

- (1) The applicable disclosures or information referred to in ■ SYSC 3.4.4R to ■ SYSC 3.4.6R must be made available free of charge on the *firm's* website.
- (2) Where an *SRD asset manager* implements the engagement policy, including voting, on behalf of a *firm*, the *firm* must make a reference as to where such voting information has been published by the *SRD asset manager*.

[Note: article 3g(2) of SRD]

Investment strategy and arrangements with SRD asset managers

3.4.8

R

A *firm* must disclose publicly how the main elements of its equity investment strategy are consistent with the profile and duration of its liabilities, in particular long-term liabilities, and how they contribute to the medium- to long-term performance of its assets.

[Note: article 3h(1) of SRD]

3.4.9

R

- (1) Where an *SRD asset manager* invests on behalf of a *firm*, whether on a discretionary client-by-client basis or through a collective investment undertaking, the *firm* must publicly disclose the following information regarding its arrangement with the *SRD asset manager*:

- (a) how the arrangement with the *SRD asset manager* incentivises the *SRD asset manager* to align its investment strategy and decisions with the profile and duration of the liabilities of the *firm*, in particular long-term liabilities;
- (b) how that arrangement incentivises the *SRD asset manager* to make investment decisions based on assessments of medium- to long-term financial and non-financial performance of the investee company, and to engage with investee companies in order to improve their performance in the medium- to long-term;
- (c) how the method and time horizon of the evaluation of the *SRD asset manager's* performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the *firm*, in particular its long-term liabilities, taking into account its absolute long-term performance;
- (d) how the *firm* monitors portfolio turnover costs incurred by the *SRD asset manager* and how it defines and monitors a targeted portfolio turnover or turnover range; and
- (e) the duration of the arrangement with the *SRD asset manager*.
- (2) Where the arrangement with the *SRD asset manager* does not contain one or more such elements, the *firm* must give a clear and reasoned explanation why this is the case.

[Note: article 3h(2) of SRD]

3.4.10

R

The information referred to in ■ SYSC 3.4.8R and ■ SYSC 3.4.9R must:

- (1) be made available, free of charge, on the *firm's* website; and
- (2) be updated annually, unless there is no material change.

[Note: article 3h(3), first paragraph of SRD]

Chapter 4

General organisational requirements

4.1 General requirements

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See <http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements>.]

Application to a common platform firm

4.1.-2**G**For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	SYSC 4.1.1R, SYSC 4.1.1CR, SYSC 4.1.2R, SYSC 4.1.2AAR
Business continuity	SYSC 4.1.6R, SYSC 4.1.7R, SYSC 4.1.8G
Audit committee	SYSC 4.1.11G, SYSC 4.1.13G, SYSC 4.1.14G
Persons who effectively direct the business	SYSC 4.2.1R, SYSC 4.2.2R, SYSC 4.2.3G, SYSC 4.2.4G, SYSC 4.2.5G, SYSC 4.2.6R
Responsibility of senior personnel	SYSC 4.3.3G
Management body	SYSC 4.3A.-1R to SYSC 4.3A.7R
Nominations committee	SYSC 4.3A.8R to SYSC 4.3A.11R

		Application to a MiFID optional exemption firm and to a third country firm
4.1.-1	G	<p>For a <i>MiFID optional exemption firm</i> and a <i>third country firm</i>:</p> <ul style="list-style-type: none">(1) the <i>rules and guidance</i> in this chapter apply to them as if they were <i>rules</i> or as <i>guidance</i> in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and(2) those articles of the <i>MiFID Org Regulation</i> in ■ SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were <i>rules</i> or as <i>guidance</i> in accordance with ■ SYSC 1 Annex 1 3.2CR(2).
4.1.1	R	<h3>General requirements</h3> <p>(1) A <i>firm</i> must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.</p> <p>(2) [deleted]</p> <p>[Note: article 74 (1) of <i>CRD</i>, article 16(5) second paragraph of <i>MiFID</i>, article 12(1)(a) of the <i>UCITS Directive</i>, and article 18(1) of <i>AIFMD</i>]</p> <p>(3) Without prejudice to the ability of the <i>FCA</i> or any other relevant <i>competent authority</i> to require access to communications in accordance with <i>MiFID</i> and <i>MiFIR</i>, a <i>common platform firm</i> must have sound security mechanisms in place for the following, while maintaining the confidentiality of the data at all times:</p> <ul style="list-style-type: none">(a) to guarantee the security and authentication of the means of transfer of information;(b) to minimise the risk of data corruption and unauthorised access; and(c) to prevent information leakage. <p>[Note: article 16(5) third paragraph of <i>MiFID</i>]</p>
4.1.1A	R	<p>A <i>full-scope UK AIFM</i> must comply with the <i>AIFM Remuneration Code</i>.</p> <p>[Note: article 13(1) of <i>AIFMD</i>]</p>
4.1.1B	R	<p>A <i>full-scope UK AIFM</i> must, in particular:</p> <ul style="list-style-type: none">(1) have rules for personal transactions by its <i>employees</i> or for the holding or management of investments it invests on its own account;(2) ensure that each transaction involving the <i>AIFs</i> may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and

		(3) ensure that the assets of the AIFs managed by the AIFM are invested in accordance with the <i>instrument constituting the fund</i> and the legal provisions in force.
		[Note: article 18(1) second paragraph of AIFMD]
4.1.1C	R	[deleted]
4.1.1D	R	A UK UCITS management company must comply with the UCITS Remuneration Code if it manages a UCITS scheme.[Note: article 14a(1) of the UCITS Directive]
4.1.1E	R	A UK UCITS management company must have appropriate procedures for its employees to report potential or actual breaches of UK provisions which implemented the UCITS Directive internally through a specific, independent and autonomous channel. [Note: article 99d(5) of the UCITS Directive]
4.1.1F	G	■ SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further guidance on the effect of the <u>Public Interest Disclosure Act 1998</u> in the context of the relationship between firms and the FCA.
4.1.2	R	For a common platform firm, the arrangements, processes and mechanisms referred to in ■ SYSC 4.1.1 R must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the common platform firm's activities and must take into account the specific technical criteria described in article 21(3) of the MiFID Org Regulation, ■ SYSC 5.1.7 R, ■ SYSC 7 and whichever of the following is applicable: [deleted]; (for a full-scope UK AIFM) ■ SYSC 19B (AIFM Remuneration Code); [deleted]; (for a firm to which ■ SYSC 19D applies) ■ SYSC 19D (Dual-regulated firms Remuneration Code); (for a firm to which the remuneration part of the PRA Rulebook applies) the remuneration part of the PRA Rulebook; or (6) (for a firm to which ■ SYSC 19G applies) ■ SYSC 19G (MiFIDPRU Remuneration Code).

4.1.2A **G** Other firms should take account of the comprehensiveness and proportionality rule (■ SYSC 4.1.2 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.1.2AA **R** [deleted]

4.1.2B **R** For a management company or a full-scope UK AIFM, the arrangements, processes and mechanisms referred to in ■ SYSC 4.1.1 R and ■ SYSC 4.1.1A R must also take account of the UCITS schemes managed by the management company or the AIFs managed by the full-scope UK AIFM.

[Note: article 12(1) second paragraph of the UCITS Directive and article 18(1) second paragraph of AIFMD]

Resources for management companies and AIFMs

4.1.2C **R** A management company and a full-scope UK AIFM must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.

[Note: articles 12(1)(a) and 14(1)(c) of the UCITS Directive and article 12(1)(c) of AIFMD]

4.1.2D **R** A full-scope UK AIFM must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs.

[Note: article 18(1) first paragraph of AIFMD]

Subordinate measures relating to provisions implementing article 12(1) of AIFMD

4.1.2E **G** Articles 16 to 29 of the AIFMD level 2 regulation provide detailed rules supplementing the UK provisions which implemented article 12(1) of AIFMD, and articles 57 to 66 of the AIFMD level 2 regulation provide detailed rules supplementing the UK provisions which implemented articles 12 and 18 of AIFMD.

Mechanisms and procedures for a firm

4.1.3 **G**

4.1.4 **R** A firm (with the exception of a common platform firm and a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the firm, and the nature and range of the financial services, claims management services and other activities undertaken in the course of that business:

- (1) (if it is a management company) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

- (2) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the *firm*;
- (3) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*; and
- (4) (if it is a *management company*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *management company* as well as effective information flows with any third party involved.

[**Note:** articles 4(1) final paragraph, 4(1)(a), 4(1)(c) and 4(1)(d) of the *UCITS implementing Directive*]

4.1.4A **G** A *firm* that is not a *common platform firm* or a *management company* should take into account the decision-making procedures and effective internal reporting *rules* (■ SYSC 4.1.4R (1), ■ (3) and ■ (4)) as if they were *guidance* (and as if "should" appeared in those *rules* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.1.5 **R** A *management company* must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[**Note:** article 4(2) of the *UCITS implementing Directive*]

Operators of pensions dashboard services: security, integrity and confidentiality

4.1.5A **R** A *firm* carrying on *regulated pensions dashboard activity* must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of any personal or pensions information held by the *firm*, taking into the account the nature of the information in question.

4.1.5B **R** A *firm* carrying on *regulated pensions dashboard activity* must keep appropriate records to demonstrate compliance with ■ SYSC 4.1.5AR.

4.1.5C **R**

- (1) If there is an incident which may compromise the security, integrity or confidentiality of any personal or pensions information held by the *firm*, the *firm* must immediately notify the FCA using the relevant form in Connect.
- (2) A notification under (1) must contain:
 - a description of the incident;
 - the time of the incident (where known); and
 - a description of the steps the *firm* is taking since being made aware of the incident (where applicable).

Business continuity		
4.1.6	R	A <i>common platform firm</i> must take reasonable steps to ensure continuity and regularity in the performance of its <i>regulated activities</i> . To this end the <i>common platform firm</i> must employ appropriate and proportionate systems, resources and procedures. [Note: article 16(4) of <i>MiFID</i>]
4.1.7	R	A <i>CRR firm</i> and a <i>management company</i> must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its <i>regulated activities</i> , or, in the case of a <i>management company</i> , its <i>collective portfolio management</i> activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities. [Note: article 4(3) of the <i>UCITS implementing Directive</i> and article 85(2) of <i>CRD</i>]
4.1.7A	G	Other <i>firms</i> should take account of the business continuity <i>rules</i> (■ SYSC 4.1.6 R and ■ 4.1.7 R) as if they were <i>guidance</i> (and as if "should" appeared in those <i>rules</i> instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1) .
4.1.8	G	The matters dealt with in a business continuity policy should include: <ol style="list-style-type: none">(1) resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;(2) the recovery priorities for the <i>firm's</i> operations;(3) communication arrangements for internal and external concerned parties (including the <i>FCA</i>, <i>clients</i> and the press);(4) escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;(5) processes to validate the integrity of information affected by the disruption; and(6) regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with ■ SYSC 4.1.10R and for a <i>common platform firm</i> with article 21(5) of the <i>MiFID Org Regulation</i>.
Operators of electronic systems in relation to lending: arrangements to administer loans in the event of platform failure		
4.1.8A	R	(1) An <i>operator of an electronic system in relation to lending</i> must have arrangements in place to ensure that <i>P2P agreements</i> facilitated by it will have a reasonable likelihood of being managed and administered, in accordance with the contract terms between the <i>firm</i>

- | | |
|------------------------|---|
| 4.1.8B R | <p>and its relevant borrower and lender customers, if at any time it ceases to manage and administer those <i>P2P agreements</i>.</p> <ol style="list-style-type: none"> (2) Under (1), and wherever the requirement in (1) is referenced in the FCA's rules and guidance, the reference to <i>P2P agreements</i> includes any <i>non-P2P agreement</i> included in a <i>P2P portfolio</i>. (3) The arrangements under (1) must not be designed to prefer any particular customers or class of customers for whom it manages and administers <i>P2P agreements</i> or <i>non-P2P agreements</i>. <p>[deleted]</p> |
| 4.1.8C G | <p>Arrangements that are required to be put in place under ■ SYSC 4.1.8AR may include any one or more of the following:</p> <ol style="list-style-type: none"> (1) entering into an arrangement with another <i>firm</i> that has the appropriate permissions to take over the management and administration of <i>P2P agreements</i> if the operator ceases to operate the electronic system in relation to lending and, where appropriate: <ol style="list-style-type: none"> (a) obtaining prior and informed consent from <i>lender clients</i> to fund the continued cost of management and administration of their respective loans, for example through increased commissions; and/or (b) obtaining prior and informed consent from <i>lender clients</i> and <i>borrower clients</i> for the transfer of the service of managing and administration of <i>P2P agreements</i> from the <i>firm</i> to that other <i>firm</i>; or (2) holding sufficient collateral to cover the cost of management and administration while the loan book is wound down, ensuring that the collateral is held through a structure that is ring-fenced in the event of the <i>firm's</i> insolvency; or (3) [deleted] (4) managing the loan book in a way that ensures that income from <i>P2P agreements</i> facilitated by the <i>firm</i> is sufficient to cover the costs of managing and administering those agreements during the winding down process, taking into account the reduction of the loan pool and fee income from it. |
| 4.1.8D G | <ol style="list-style-type: none"> (1) When designing its arrangements, a <i>firm</i> should take into account the general law to ensure that the insolvency of the <i>firm</i> does not prejudice the operation of arrangements that the <i>firm</i> has put in place. (2) A <i>firm</i> should consider the need to obtain professional advice on the adequacy of its arrangements. For example, a <i>firm</i> may benefit from obtaining legal advice or advice from a qualified insolvency practitioner on the likelihood of its arrangements securing the required outcome for continuity of management and administration of <i>P2P agreements</i>. |

- (3) In assessing the adequacy of its arrangements, a *firm* should consider, in particular:
- whether any terms included in relevant contracts as part of its arrangements are enforceable, for example terms in customer, service and supplier contracts;
 - the extent to which other practical obstacles could foreseeably prevent the implementation of the arrangements or frustrate the required outcome, including whether the *firm* will be likely to have sufficient financial resources to fund the implementation of the arrangements at the relevant time;
 - whether the arrangements make adequate provision for any activities that are ancillary to the management and administration of *P2P agreements* upon which the required outcome is, or could be, dependent;
 - whether, having regard to ■ SYSC 4.1.8AR(3), its arrangements are designed so as not to produce a better outcome for its customers who are party to *non-P2P agreements* than for customers who are party to *P2P agreements*;
 - whether its arrangements take into account any relevant security arrangements in relation to loans; and
 - whether its arrangements take into account any relevant tax arrangements for *lender clients*.
- (4) *Firms* are reminded of the disclosure requirements in ■ COBS 18.12.28R (Information concerning platform failure).
- (5) *Firms* may find it useful to refer to the FCA's Wind-down Planning Guide (*WDPG*) when designing their arrangements.

4.1.8DA

G

In line with Principle 11 and ■ SUP 15.3.8G (Communication with the appropriate regulator in accordance with Principle 11), a firm should notify the FCA in writing if it is contemplating:

- ceasing to manage and administer *P2P agreements* facilitated by it;
- implementing its arrangements under ■ SYSC 4.1.8AR; or
- implementing any other arrangements that have a similar purpose.

4.1.8DB

R

An operator of an electronic system in relation to lending must produce and keep up to date a *P2P resolution manual* which contains information about the *firm* that, in the event of the *firm*'s insolvency, would assist in resolving the *firm*'s business of management and administration of *P2P agreements* that it has facilitated. For these purposes, the reference to *P2P agreements* includes any *non-P2P agreement* included in a *P2P portfolio*. It must, as a minimum, include a written explanation of each of the following:

- how the *firm* conducts the business of management and administration of *P2P agreements* that it has facilitated, what the day-to-day operation of that business entails and what resources would be needed to continue that business if the *firm* ceased to carry it on, including a specification of:

- (a) critical staff and their respective roles;
- (b) critical premises;
- (c) the *firm's* IT systems, including details of data storage and data recovery arrangements;
- (d) the *firm's* record-keeping systems, including how records are organised;
- (e) all relevant bank accounts and payment facilities;
- (f) all relevant persons outside of the *firm*, and their respective roles, including any outsourced service providers;
- (g) all relevant legal documentation, including customer, service and supplier contracts;
- (h) the *firm's group*, using a structure chart showing:
- (i) the legal entities in the *group*;
 - (ii) the ownership structure of those entities; and
 - (iii) the jurisdiction of those entities; and
- (i) how the *firm* holds and manages any security for loans;
- (2) the steps that would need to be implemented under the arrangements in place under ■ SYSC 4.1.8AR in order for *P2P agreements* facilitated by the *firm* to continue to be managed and administered;
- (3) any terms in contracts that may need to be relied on to ensure *P2P agreements* facilitated by it will continue to be managed and administered under those arrangements; and
- (4) how the *firm's* systems can produce the detail specified in ■ COBS 18.12.31R (Ongoing disclosures) for each *P2P agreement* facilitated by it.

4.1.8DC

R

An operator of an electronic system in relation to lending must put in place arrangements to ensure that its *P2P resolution manual* would be immediately available to:

- (1) an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property; and
- the FCA, on request.

4.1.8DD

R

A operator of an electronic system in relation to lending must store its *P2P resolution manual* in the same place as its *CASS resolution pack*, if ■ CASS 10 (CASS resolution pack) applies to it.

Operators of electronic systems in relation to lending: title transfer

4.1.8E

R

- (1) An operator of an electronic system in relation to lending must not accept, take, or receive the transfer of full ownership of money relating to *P2P agreements*.

- (2) If an operator of an electronic system in relation to lending has made a client money election under ■ CASS 7.10.7AR, when it is operating an electronic system in relation to non-P2P agreements it must also not accept, take, or receive the transfer of full ownership of money relating to non-P2P agreements.

Accounting policies: management company

4.1.9 **R** A management company must establish, implement and maintain accounting policies and procedures that enable it, at the request of the FCA, to deliver in a timely manner to the FCA financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

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

Regular monitoring: management company

4.1.10 **R** A management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with ■ SYSC 4.1.4 R to ■ SYSC 4.1.9 R and take appropriate measures to address any deficiencies.

[Note: article 4(5) of the UCITS implementing Directive]

Regular monitoring: other firms

4.1.10A **G** Other firms should take account of the regular monitoring rule (■ SYSC 4.1.10 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1), but ignoring the cross-reference to ■ SYSC 4.1.5 R and ■ SYSC 4.1.9R.

Audit committee

4.1.11 **G** Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to form an audit committee. An audit committee could typically examine management's process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the regulatory system, oversee the functioning of the internal audit function (if applicable) and provide an interface between management and external auditors. It should have an appropriate number of non-executive directors and it should have formal terms of reference.

4.1.12 **G** [deleted]

Risk control: additional guidance

4.1.13 **G** Firms should also consider the additional guidance on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21.

4.1.14

G

Apportionment of responsibilities: the role of the non-executive director

The role undertaken by a *non-executive director* will vary from one *firm* to another.

4.1.15

G

Investment strategy and investment decision making of an operator of a personal pension scheme or stakeholder pension scheme

- (1) This guidance sets out the FCA's expectation on how an operator of a *personal pension scheme* or a *stakeholder pension scheme* may take into account *ESG financial considerations* and *other financial considerations* and *non-financial matters* as part of its *investment strategy* or *investment decision making*, to demonstrate compliance with *Principles 2, 3, 6 or 8*.
- (2) This guidance only applies where the *personal pension scheme* or *stakeholder pension scheme* operator's *investment strategy* or *investment decision* could have a material impact on a *client* or a *relevant policyholder's investment* returns and relates to a product where:
 - (a) the primary purpose of the product is to provide an *investment return*; and
 - (b) the *investment risk* is borne by a *client* who is a natural person or a *relevant policyholder*.
- (3) As part of its *investment strategy* or *investment decision making*, an operator of a *personal pension scheme* or a *stakeholder pension scheme* should take into account *ESG financial considerations* and *other financial considerations*, over the period of time that the *firm* reasonably considers is needed to achieve the objective of the *investment* or the *investment strategy*.
- (4) References to *other financial considerations* in (3) may include (but are not limited to) interest rates, liquidity, concentration, exchange rate, political and counterparty risks.
- (5) As part of its *investment strategy* or *investment decision making* in relation to a product, an operator of a *personal pension scheme* or a *stakeholder pension scheme* may take into account *non-financial matters* if:
 - the *firm* has good reason to consider that affected *clients* or *relevant policyholders* would generally share the views on which the *non-financial matters* are based; and
 - taking those matters into account would not involve a risk of a significant financial detriment to an affected *investment*.
- (6) (5) does not apply to a *firm's investment strategy* or *investment decision making* in relation to a product (other than in relation to a *relevant scheme* or a *pathway investment*) that has been deliberately designed by the *firm* to take into account *non-financial matters*, and *clients* or *relevant policyholders* make an active decision to select that product.

4.2 Persons who effectively direct the business

4.2.1

R

The senior personnel of a *common platform firm*, a *management company*, a *full-scope UK AIFM*, or of the *UK branch of a non-UK bank* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.

[Note: article 9(1)(4) of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and article 91(1) of *CRD*]

4.2.1A

G

Other *firms* should take account of the senior personnel rule (■ SYSC 4.2.1 R) as if it were *guidance* (and as if "should" appeared in that *rule* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.2.1B

R

For a *full-scope UK AIFM*, the senior personnel must, in complying with ■ SYSC 4.2.1 R, be sufficiently experienced in relation to the investment strategies pursued by the *AIFs* it manages.

[Note: article 8(1)(c) of *AIFMD*]

Composition of management

4.2.2

R

A *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK branch of a non-UK bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in ■ SYSC 4.2.1 R and :

- for a *full-scope UK AIFM*, ■ SYSC 4.2.7R; or
- for a *common platform firm*, ■ SYSC 4.3A.3R.

[Note: article 9(6) first paragraph of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and article 13(1) of *CRD*]

4.2.3

G

In the case of a *body corporate*, the persons referred to in SYSC 4.2.2 R should either be executive *directors* or persons granted executive powers by, and reporting immediately to, the *governing body*. In the case of a *partnership*, they should be active *partners*.

- 4.2.4** **G** At least two independent minds should be applied to the formulation and implementation of the policies of a *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK branch of a third country firm*. Where a *firm* nominates just two individuals to direct its business, the *FCA* will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence on, the way in which strategy is being implemented through day-to-day policy.
- 4.2.5** **G** Where there are more than two individuals directing the business of a *common platform firm*, a *management company*, a *full-scope UK AIFM* or the *UK branch of a third country firm*, the *FCA* does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. However, at least two individuals should be involved in all such decisions. Both individuals' judgement should be engaged so that major errors leading to difficulties for the *firm* are less likely to occur. Similarly, each individual should have sufficient experience and knowledge of the business and the necessary personal qualities and skills to detect and resist any imprudence, dishonesty or other irregularities by the other individual. Where a single individual, whether a chief executive, managing *director* or otherwise, is particularly dominant in such a *firm* this will raise doubts about whether SYSC 4.2.2 R is met.

Alternative arrangements

- 4.2.6** **R** If a *common platform firm*, (other than a *credit institution* or *AIFM investment firm*) or the *UK branch of a third country firm*, is:
- (1) a natural person; or
 - (2) a legal person managed by a single natural person;
- then:
- (3) it must have alternative arrangements in place which ensure:
 - (a) sound and prudent management of the *firm*; and
 - (b) adequate consideration of the interests of *clients* and the integrity of the market; and
 - (4) the natural persons concerned must be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

it must have alternative arrangements in place which ensure sound and prudent management of the *firm*.

[Note: article 9(6) second paragraph of *MiFID*]

- 4.2.7** **R** A full-scope UK AIFM must notify the FCA of the names of the *senior personnel* of the *firm* and of every person succeeding them in office.
[Note: article 8(1)(c) of AIFMD]
- 4.2.8** **G** Where the *senior personnel* of a full-scope UK AIFM will carry out a *FCA governing function* and the *firm* has applied for the FCA's approval under **section 59** of the Act, this will be considered sufficient to comply with
■ SYSC 4.2.7 R.

4.3 Responsibility of senior personnel

- 4.3.1** **R** A firm (with the exception of a *common platform firm* and a *sole trader* who does not employ any person who is required to be approved under ~~section 59~~ of the Act (Approval for particular arrangements)), when allocating functions internally, must ensure that *senior personnel* and, where appropriate, the *supervisory function*, are responsible for ensuring that the *firm* complies with its obligations under the *regulatory system*. In particular, *senior personnel* and, where appropriate, the *supervisory function* must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the *firm's* obligations under the *regulatory system* and take appropriate measures to address any deficiencies.
[Note: articles 9(1) and 9(3) of the *UCITS implementing Directive*]
- 4.3.2** **R** A firm that is a *management company* or an *operator of an electronic system in relation to lending* must ensure that:
- (1) its *senior personnel* receive on a frequent basis, and at least annually, written reports on the matters covered by ■ SYSC 6.1.2 R to ■ 6.1.5 R, ■ SYSC 6.2.1 R, ■ SYSC 7.1.2 R, ■ SYSC 7.1.3 R and ■ SYSC 7.1.5 R to ■ 7.1.7 R, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies; and
 - (2) the *supervisory function*, if any, receives on a regular basis written reports on the same matters.
[Note: articles 9(4) and 9(6) of the *UCITS implementing Directive*]
- 4.3.2A** **G** Other firms should take account of the written reports rule (■ SYSC 4.3.2 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).
- 4.3.3** **G** The *supervisory function* does not include a general meeting of the shareholders of a *firm*, or equivalent bodies, but could involve, for example, a separate supervisory board within a two-tier board structure or the establishment of a non-executive committee of a single-tier board structure.
- 4.3.4** **G** [deleted]

4.3A Management body and nomination committee

4.3A.-1**R**

Management body

4.3A.1**R**

A *common platform firm* must ensure that the *management body* defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the *firm*, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interests of *clients*. The *firm* must ensure that the *management body*:

- (1) has overall responsibility for the *firm*;
- (2) approves and oversees implementation of the *firm's* strategic objectives, risk strategy and internal governance;
- (3) ensures the integrity of the *firm's* accounting and financial reporting systems, including financial and operational controls and compliance with the *regulatory system*.
- (4) oversees the process of disclosure and communications;
- (5) has responsibility for providing effective oversight of *senior management*;
- (6) monitors and periodically assesses:
 - (a) the adequacy and the implementation of the *firm's* strategic objectives in the provision of *investment services and/or activities* and *ancillary services*;
 - (b) the effectiveness of the *firm's* governance arrangements; and
 - (c) the adequacy of the policies relating to the provision of services to *clients*, andtakes appropriate steps to address any deficiencies; and
- (7) has adequate access to information and documents which are needed to oversee and monitor management decision-making.

[Note: article 88(1) of CRD and articles 9(1) and 9(3) of MiFID]

- 4.3A.1A** **R** Without prejudice to ■ SYSC 4.3A.1R, a *common platform firm* must ensure that the *management body* defines, approves and oversees:
- (1) the organisation of the *firm* for the provision of *investment services and/or activities* and *ancillary services*, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the *firm* has to comply with;
 - (2) a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the *firm* and the characteristics and needs of the *firm's clients* to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate; and
 - (3) a remuneration policy of persons involved in the provision of services to *clients* aiming to encourage responsible business conduct, fair treatment of *clients* as well as avoiding conflict of interest in the relationships with *clients*.
- [Note: article 9(3) of *MiFID*]
- 4.3A.2** **R** A *common platform firm* must ensure that the chairman of the *firm's management body* does not exercise simultaneously the *PRA's Chief Executive function* (*controlled function SMF1*) or *chief executive function* within the same *firm*.
- [Note: article 88(1)(e) of *CRD* and article 9(1) of *MiFID*]
- 4.3A.2A** **G** A *firm* may apply to the *FCA* under section 138A of the *Act* to waive ■ SYSC 4.3A.2R.
- 4.3A.3** **R** A *common platform firm* must ensure that the members of the *management body* of the *firm*:
- (1) are of sufficiently good repute;
 - (2) possess sufficient knowledge, skills and experience to perform their duties;
 - (3) possess adequate collective knowledge, skills and experience to understand the *firm's* activities, including the main risks;
 - (4) reflect an adequately broad range of experiences;
 - (5) commit sufficient time to perform their functions in the *firm*; and
 - (6) act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of *senior management* where necessary and to effectively oversee and monitor management decision-making.
- [Note: article 91(1)-(2) and (7)-(8) of *CRD* and article 9(1) and 9(4) of *MiFID*]

- 4.3A.3A** G
- (1) A *firm* should have procedures for monitoring the collective adequacy of the knowledge, skills and experience of its *management body* as well as of its individual members.
- (2) A *firm* may wish to use the "Template for a matrix to assess the collective competence of members of the management body" in Annex I of the joint *ESMA* and *EBA* publication titled "Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU" when assessing collective competence.
- [Note: <https://www.esma.europa.eu/document/joint-esma-and-eba-guidelines-assessment-suitability-members-management-body-and-key-q>]
- 4.3A.4** R
- A *common platform firm* must devote adequate human and financial resources to the induction and training of members of the *management body*.
- [Note: article 91(9) of *CRD* and article 9(1) of *MiFID*]
- 4.3A.5** R
- A *common platform firm* must ensure that the members of the *management body* of the *firm* do not hold more directorships than is appropriate taking into account individual circumstances and the nature, scale and complexity of the *firm's* activities.
- [Note: article 91(3) of *CRD* and article 9(1) of *MiFID*]
- 4.3A.6** R
- (1) A *common platform firm* that is a *significant SYSC firm* must ensure that the members of the *management body* of the *firm* do not hold more than one of the following combinations of directorship in any organisation at the same time:
- (a) one executive directorship with two non-executive directorships; and
- (b) four non-executive directorships.
- (2) Paragraph (1) does not apply to members of the *management body* that represent the *United Kingdom*.
- [Note: article 91(3) of *CRD* and article 9(1) of *MiFID*]
- 4.3A.6A** G
- 4.3A.6B** G
- 4.3A.7** R
- For the purposes of ■ SYSC 4.3A.5 R and ■ SYSC 4.3A.6 R:
- (1) directorships in organisations which do not pursue predominantly commercial objectives shall not count; and
- (2) the following shall count as a single directorship:

- (a) executive or non-executive directorships held within the same group; or
- (b) executive or non-executive directorships held within:
 - (i) [deleted]
 - (ii) *undertakings* (including non-financial entities) in which the firm holds a *qualifying holding*.

[Note: article 91(4) and (5) of CRD and article 9(1) of MiFID]

Nomination Committee

- 4.3A.7A** **R** ■ SYSC 4.3A.8R does not apply to a *common platform firm* that is a *MIFIDPRU investment firm*.
- 4.3A.7B** **G** The regulatory requirement for certain *MIFIDPRU investment firms* to establish nomination committees is contained in ■ MIFIDPRU 7.3.5R. However, all *MIFIDPRU investment firms* are still subject to ■ SYSC 4.3A.9R and ■ SYSC 4.3A.10R.
- 4.3A.8** **R** A *common platform firm* that is a *significant SYSC firm* must:
- (1) establish a nomination committee composed of members of the *management body* who do not perform any executive function in the firm;
 - (2) ensure that the nomination committee is able to use any forms of resources the nomination committee deems appropriate, including external advice; and
 - (3) ensure that the nomination committee receives appropriate funding.
- [Note: article 88(2) of CRD and article 9(1) of MiFID]
- 4.3A.8A** **G**
- 4.3A.9** **R** A *common platform firm* that has a nomination committee must ensure that the nomination committee:
- (1) engages a broad set of qualities and competences when recruiting members to the *management body* and for that purpose puts in place a policy promoting diversity on the *management body*;
 - (2) identifies and recommends for approval, by the *management body* or by general meeting, candidates to fill *management body* vacancies, having evaluated the balance of knowledge, skills, diversity and experience of the *management body*;
 - (3) prepares a description of the roles and capabilities for a particular appointment, and assesses the time commitment required;

- (4) decides on a target for the representation of the underrepresented gender in the *management body* and prepares a policy on how to increase the number of the underrepresented gender in the *management body* in order to meet that target;
- (5) periodically, and at least annually, assesses the structure, size, composition and performance of the *management body* and makes recommendations to the *management body* with regard to any changes;
- (6) periodically, and at least annually, assesses the knowledge, skills and experience of individual members of the *management body* and of the *management body* collectively, and reports this to the *management body*;
- (7) periodically reviews the policy of the *management body* for selection and appointment of *senior management* and makes recommendations to the *management body*; and
- (8) in performing its duties, and to the extent possible, on an ongoing basis, takes account of the need to ensure that the *management body*'s decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interest of the *firm* as a whole.

[Note: article 88(2) and article 91(10) of CRD and article 9(1) of MiFID]

4.3A.10

R

A *common platform firm* that does not have a nomination committee must engage a broad set of qualities and competences when recruiting members to the *management body*. For that purpose a *common platform firm* that does not have a nomination committee must put in place a policy promoting diversity on the *management body*.

[Note: article 91(10) of CRD and article 9(1) of MiFID]

Website

4.3A.11

R

A *CRR firm* that maintains a website must explain on the website how it complies with the requirements of ■ SYSC 4.3A.1 R to ■ SYSC 4.3A.3 R and ■ SYSC 4.3A.4 R to ■ SYSC 4.3A.11 R.

[Note: article 96 of CRD]

4.4 Apportionment of responsibilities

4.4.1

R

4.4.1A

R

Application

- (-2) This section applies to:
- (a) a *limited scope SMCR firm* other than:
 - (i) a *firm* in ■ SUP 10C Annex 1 7.10R (Table: Limited scope SMCR firms to which no controlled functions apply); and
 - (ii) a *limited scope SMCR benchmark firm*; and
 - (b) an *authorised professional firm* that is a *core SMCR firm*.
- (-1) The application of this section is further limited by the rest of this rule.
- (1) This section applies to an authorised professional firm as follows:
- (a) it only applies in respect of its *non-mainstream regulated activities*; and
 - (b) it does not apply if the firm:
 - (i) is also conducting other *regulated activities*; and
 - (ii) has appointed *approved persons* to perform the *FCA governing functions* with equivalent responsibilities for the firm's *non-mainstream regulated activities* and other *regulated activities*.
- (2) [deleted]
- (3) [deleted]
- (4) Only ■ SYSC 4.4.5R(2) applies to an *EEA SMCR firm*. However, the limitation in this paragraph (4) does not apply to a *firm* within ■ SYSC 23 Annex 1 6.13R (claims management).
- (5) This section only applies to a *sole trader* if they:
- (a) have any *person* (other than themselves) who is required to be approved under section 59 of the Act (Approval for particular arrangements); or
 - (b) are an *authorised approved person employer* (except where they are the only *approved person* concerned); or
 - (c) have any *certification employees*.

<p>4.4.2 G</p>	<p>This section does not apply to a <i>common platform firm</i>.</p>									
<p>4.4.2A R</p>	<p>[deleted]</p>									
<p>4.4.3 R</p>	<p>Maintaining a clear and appropriate apportionment</p> <p>A <i>firm</i> must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its <i>directors</i> and <i>senior managers</i> in such a way that:</p> <ul style="list-style-type: none"> (1) it is clear who has which of those responsibilities; and (2) the business and affairs of the <i>firm</i> can be adequately monitored and controlled by the <i>directors</i>, relevant <i>senior managers</i> and <i>governing body</i> of the <i>firm</i>. 									
<p>4.4.4 G</p>	<p>[deleted]</p>									
<p>4.4.5 R</p>	<p>Allocating functions of apportionment and oversight</p> <p>A <i>firm</i> must appropriately allocate to one or more individuals, in accordance with the following table, the functions of:</p> <ul style="list-style-type: none"> (1) dealing with the apportionment of responsibilities under ■ SYSC 4.4.3 R; and (2) overseeing the establishment and maintenance of systems and controls under ■ SYSC 4.1.1 R. <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; background-color: #d9e1f2; width: 33.33%; padding: 5px;">1: Firm type</th> <th style="text-align: center; background-color: #d9e1f2; width: 33.33%; padding: 5px;">2: Allocation of both functions must be to the following individual, if any (see Note):</th> <th style="text-align: center; background-color: #d9e1f2; width: 33.33%; padding: 5px;">3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"> (1) A <i>firm</i> which is a <i>body corporate</i> and is a member of a <i>group</i>, other than a <i>firm</i> in row (2) </td><td style="padding: 5px;"> (1) the <i>firm's chief executive</i> (and all of them jointly, if more than one); or (2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of: (a) the <i>group</i>; or (b) a <i>group division</i> within which some or all of the <i>firm's regulated activities</i> fall </td><td style="padding: 5px;"> the <i>firm's</i> and its <i>group's</i>: (1) <i>directors</i>; and (2) <i>senior managers</i> </td></tr> <tr> <td style="padding: 5px;"> (2) An <i>EEA SMCR firm</i> (note: only the func- </td><td style="padding: 5px;"> (not applicable) </td><td style="padding: 5px;"> the <i>firm's</i> and its <i>group's</i>: </td></tr> </tbody> </table>	1: Firm type	2: Allocation of both functions must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:	(1) A <i>firm</i> which is a <i>body corporate</i> and is a member of a <i>group</i> , other than a <i>firm</i> in row (2)	(1) the <i>firm's chief executive</i> (and all of them jointly, if more than one); or (2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of: (a) the <i>group</i> ; or (b) a <i>group division</i> within which some or all of the <i>firm's regulated activities</i> fall	the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and (2) <i>senior managers</i>	(2) An <i>EEA SMCR firm</i> (note: only the func-	(not applicable)	the <i>firm's</i> and its <i>group's</i> :
1: Firm type	2: Allocation of both functions must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:								
(1) A <i>firm</i> which is a <i>body corporate</i> and is a member of a <i>group</i> , other than a <i>firm</i> in row (2)	(1) the <i>firm's chief executive</i> (and all of them jointly, if more than one); or (2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of: (a) the <i>group</i> ; or (b) a <i>group division</i> within which some or all of the <i>firm's regulated activities</i> fall	the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and (2) <i>senior managers</i>								
(2) An <i>EEA SMCR firm</i> (note: only the func-	(not applicable)	the <i>firm's</i> and its <i>group's</i> :								

1: Firm type	2: Allocation of both functions must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:
tions in SYSC 4.4.5R (2) must be allocated)	(1) directors; and (2) senior managers	
(3) Any other firm	the firm's chief executive (and all of them jointly, if more than one)	the firm's and its group's: (1) directors; and (2) senior managers

Note: Column 2 does not require the involvement of the *chief executive* or other executive *director* or *senior manager* in an aspect of corporate governance if that would be contrary to generally accepted principles of good corporate governance.

4.4.6



Frequently asked questions about allocation of functions in ■ SYSC 4.4.5 R

Question	Answer
1 Does an individual to whom a function is allocated under SYSC 4.4.5 R need to be an <i>approved person</i> ?	Yes. They will be performing the limited scope function. However, the <i>limited scope function</i> does not apply to an <i>EEA SMCR firm</i> (except claims management and funeral plan firms) or an <i>authorised professional firm</i> that is a <i>core SMCR firm</i> .
2 If the allocation is to more than one individual, can they perform the functions, or aspects of the functions, separately?	If the functions are allocated to joint <i>chief executives</i> under SYSC 4.4.5 R, column 2, they are expected to act jointly. If the functions are allocated to an individual under SYSC 4.4.5 R, column 2, in addition to individuals under SYSC 4.4.5 R, column 3, the former may normally be expected to perform a leading role in relation to the functions that reflects his position. Otherwise, yes.
3 What is meant by "appropriately allocate" in this context?	The allocation of functions should be compatible with delivering compliance with <i>Principle 3</i> , SYSC 4.4.3 R and SYSC 4.1.1 R. The FCA considers that allocation to one or two individuals is likely to be appropriate for most firms.
4 If a committee of management governs a <i>firm</i> or <i>group</i> , can the functions be allocated to every member of that committee?	Yes, as long as the allocation remains appropriate (see Question 3). If the <i>firm</i> also has an individual as <i>chief executive</i> , then the functions must be allocated to that individual as well under

Question	Answer
5 Does the definition of <i>chief executive</i> include the possessor of equivalent responsibilities with another title, such as a managing <i>director</i> or managing <i>partner</i> ?	<p>SYSC 4.4.5 R, column 2 (see Question 7).</p> <p>Yes.</p>
6 Is it possible for a <i>firm</i> to have more than one individual as its <i>chief executive</i> ?	<p>Although unusual, some <i>firms</i> may wish the responsibility of a <i>chief executive</i> to be held jointly by more than one individual. In that case, each of them will be a <i>chief executive</i> and the functions must be allocated to all of them under SYSC 4.4.5 R, column 2 (see also Questions 2 and 7).</p>
7 If a <i>firm</i> has an individual as <i>chief executive</i> , must the functions be allocated to that individual?	<p>Normally, yes, under SYSC 4.4.5 R, column 2.</p> <p>But if the <i>firm</i> is a <i>body corporate</i> and a member of a <i>group</i>, the functions may, instead of being allocated to the <i>firm's chief executive</i>, be allocated to a <i>director</i> or <i>senior manager</i> from the <i>group</i> responsible for the overall management of the <i>group</i> or of a relevant <i>group division</i>, so long as this is appropriate (see Question 3). Such individuals may nevertheless require approval under section 59 (see Question 1).</p> <p>If the <i>firm</i> chooses to allocate the functions to a <i>director</i> or <i>senior manager</i> responsible for the overall management of a relevant <i>group division</i>, the <i>FCA</i> would expect that individual to be of a seniority equivalent to or greater than a <i>chief executive</i> of the <i>firm</i> for the allocation to be appropriate.</p>
8 If a <i>firm</i> has a <i>chief executive</i> , can the functions be allocated to other individuals in addition to the <i>chief executive</i> ?	<p>See also Question 14.</p> <p>Yes. SYSC 4.4.5 R, column 3, permits a <i>firm</i> to allocate the functions, additionally, to the <i>firm's</i> (or where applicable the <i>group's</i>) <i>directors</i> and <i>senior managers</i> as long as this is appropriate (see Question 3).</p>
9 What if a <i>firm</i> does not have a <i>chief executive</i> ?	<p>Normally, the functions must be allocated to one or more individuals selected from the <i>firm's</i> (or where applicable the <i>group's</i>) <i>directors</i> and <i>senior managers</i> under SYSC 4.4.5 R, column 3.</p>

Question	Answer
	<p>But if the <i>firm</i>:</p> <ul style="list-style-type: none"> (1) is a <i>body corporate</i> and a member of a <i>group</i>; and (2) the <i>group</i> has a <i>director</i> or <i>senior manager</i> responsible for the overall management of the <i>group</i> or of a relevant <i>group division</i>; <p>then the functions must be allocated to that individual (together, optionally, with individuals from column 3 if appropriate) under SYSC 4.4.5 R, column 2.</p> <p>A "division" in this context should be interpreted by reference to geographical operations, product lines or any other method by which the <i>group's</i> business is divided.</p> <p>If the <i>firm's regulated activities</i> fall within more than one division and the <i>firm</i> does not wish to allocate the functions to its <i>chief executive</i>, the allocation must, under SYSC 4.4.5 R, be to:</p> <ul style="list-style-type: none"> (1) a <i>director</i> or <i>senior manager</i> responsible for the overall management of the <i>group</i>; or (2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of one of those divisions; <p>together, optionally, with individuals from column 3 if appropriate. (See also Questions 7 and 9.)</p> <p>The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 4.4.5 R, but:</p> <ul style="list-style-type: none"> (1) The responsibilities that must be apportioned and the systems and controls that must be overseen are those relating to activities carried on from a <i>UK establishment</i> with certain exceptions (see SYSC 1 Annex 1 2.15R). (2) The <i>chief executive</i> of an <i>overseas firm</i> is the <i>person</i> responsible for the conduct of the <i>firm's</i> business within the <i>United Kingdom</i> (see the definition of "<i>chief executive</i>"). This might, for example, be the <i>manager</i> of the
10 What do you mean by "group division within which some or all of the <i>firm's regulated activities</i> fall"?	
11 How does the requirement to allocate the functions in SYSC 4.4.5 R apply to an <i>overseas SMCR firm</i> which is not an <i>EEA SMCR firm</i> ?	

Question	Answer
	<p><i>firm's UK establishment, or it might be the <i>chief executive</i> of the <i>firm</i> as a whole, if he has that responsibility.</i></p> <p>(3) SYSC 4.4 does not apply to such a <i>firm</i> if it does not have a <i>branch</i> in the <i>United Kingdom</i>.</p>
12 How does the requirement to allocate the functions in SYSC 4.4.5 R apply to an EEA SMCR firm other than a claims management or funeral plan firm?	<p>(1) Such a <i>firm</i> is not required to allocate the function of dealing with apportionment in SYSC 4.4.5R (1).</p> <p>(2) Such a <i>firm</i> is required to allocate the function of oversight in SYSC 4.4.5R (2).</p> <p>(3) Such a <i>firm</i> need not allocate the function of oversight to its <i>chief executive</i>; it must allocate it to one or more <i>directors</i> and <i>senior managers</i> of the <i>firm</i> or the <i>firm's group</i> under SYSC 4.4.5 R, row (2).</p> <p>(4) SYSC 4.4 does not apply to an EEA PTV firm if it does not have a <i>branch</i> in the <i>United Kingdom</i>.</p>
13 What about a <i>firm</i> that is a <i>partnership</i> or a <i>limited liability partnership</i> ?	<p>See also Question 1.</p> <p>The FCA envisages that most if not all <i>partners</i> or <i>members</i> will be either <i>directors</i> or <i>senior managers</i>, but this will depend on the constitution of the <i>partnership</i> (particularly in the case of a <i>limited partnership</i>) or <i>limited liability partnership</i>. A <i>partnership</i> or <i>limited liability partnership</i> may also have a <i>chief executive</i> (see Question 5). A <i>limited liability partnership</i> is a <i>body corporate</i> and, if a member of a <i>group</i>, will fall within SYSC 4.4.5 R, row (1) or (2).</p>
14 What if generally accepted principles of good corporate governance recommend that the <i>chief executive</i> should not be involved in an aspect of corporate governance?	<p>The Note to SYSC 4.4.5 R provides that the <i>chief executive</i> or other <i>executive director</i> or <i>senior manager</i> need not be involved in such circumstances. For example, the <i>UK Corporate Governance Code</i> recommends that the board of a listed company should establish an audit committee of independent, non-executive directors to be responsible (among other things) for overseeing the effectiveness of the audit process and the objectivity and independence of the external auditor. That as-</p>

Question	Answer
15 [deleted]	pect of the oversight function may therefore be allocated to the members of such a committee without involving the <i>chief executive</i> . Such individuals may require approval under section 59 in relation to that function (see Question 1).

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- 4.5.1 **R** [deleted] [*Editor's note:* The text of this provision has been moved to
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- 4.5.21** **G** [deleted] *[Editor's note:* The text of this provision has been moved to
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- 4.5.22** **G** [deleted] *[Editor's note:* The text of this provision has been moved to
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4.6.22	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 25.6.7G
4.6.23	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 25.6.8G
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| <p>4.7.7</p> | <p>R [deleted] <i>[Editor's note:</i> The text of this provision has been moved to
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| <p>4.7.8</p> | <p>R</p> <ul style="list-style-type: none">(1) [deleted] <i>Editor's note:</i> The text of this provision has been moved to
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- 4.7.32** **G** [deleted] *[Editor's note:* The text of this provision has been moved to
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4 Annex 1

Chapter 5

Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

[**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See <http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements.>.]

Application to a common platform firm

5.1.-2

G

For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
Competent employees rule, knowledge and competence and segregation of functions	SYSC 5.1.2G to SYSC 5.1.5AG, SYSC 5.1.5AAR, SYSC 5.1.5ABR, SYSC 5.1.5ACG to SYSC 5.1.5AEG, SYSC 5.1.7R, SYSC 5.1.8G to SYSC 5.1.11G
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Application to an MiFID optional exemption firm and to a third country firm

5.1.-1

G

For a *MiFID optional exemption firm* and a *third country firm*:

- (a) the *rules and guidance* in this chapter apply to them as if they were *rules or as guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (b) those articles of the *MiFID Org Regulation* in ■ SYSC 1 Annex 1 2.8AR and ■ SYSC 1 Annex 1 3.2CR apply to them as if they were *rules or as guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

Competent employees rule

5.1.1

R

A *firm* (other than a *common platform firm*) must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

[**Note:** articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 5(1) of the *UCITS implementing Directive*]

5.1.2

G

A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it. This includes assessing an individual's

honesty and competence. This assessment should normally be made at the point of recruitment. An individual's honesty need not normally be revisited unless something happens to make a fresh look appropriate.

5.1.3 **G** Any assessment of an individual's suitability should take into account the level of responsibility that the individual will assume within the *firm*. The nature of this assessment will generally differ depending upon whether it takes place at the start of the individual's recruitment, at the end of the probationary period (if there is one) or subsequently.

5.1.3A **G** ■ SYSC 28 contains *rules and guidance* relating to the minimum knowledge and competence requirements in relation to *insurance distribution activities* undertaken by a *firm*.

5.1.4 **G** The Training and Competence sourcebook (TC) contains additional *rules and guidance* relating to specified retail activities undertaken by a *firm*.

5.1.4A **G** *Firms* which are carrying on activities that are not subject to TC may nevertheless wish to take TC into account in complying with the competence requirements in SYSC.

5.1.5 **G** The requirements on *firms* with respect to *approved persons* are in Part V of the Act (Performance of regulated activities) and ■ SUP 10A, ■ SUP 10C and in the corresponding parts of the PRA's Rulebook.

5.1.5A **G** If a *firm* requires *employees* who are not subject to a qualification requirement in TC to pass a relevant examination from the list of appropriate qualifications maintained by the FCA, or for the purposes of meeting its obligations under ■ SYSC 5.1.5ABR, the FCA will take that into account when assessing whether the *firm* has ensured that the *employee* satisfies the knowledge component of the *competent employees rule*.

Knowledge and competence

5.1.5AA **R** ■ SYSC 5.1.5ABR applies to a *common platform firm* and a *third country firm*:

- (1) in relation to its *MiFID* or equivalent *third country business*;
 - (2) in respect of any natural persons ("relevant individuals") who, on behalf of the *firm*:
 - (a) make *personal recommendations* to *clients* in relation to *financial instruments* or *structured deposits*; or
 - (b) provide information to *retail clients* or *professional clients* about *financial instruments*, *structured deposits*, *investment services* or *ancillary services*; or
- who are otherwise responsible for the supervision of a relevant individual who has not acquired the necessary knowledge and competence to act in a capacity prescribed in (a) or (b).

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

5.1.5AB	R	A <i>firm</i> must ensure, and be able to demonstrate to the <i>FCA</i> , at the <i>FCA's</i> request, that any relevant individuals possess the necessary knowledge and competence so as to ensure that the <i>firm</i> is able to meet its obligations under: (1) those <i>rules</i> which implement articles 24 and 25 of <i>MiFID</i> (including those <i>rules</i> which implement related provisions under the <i>MiFID Delegated Directive</i>); and (2) related provisions of the <i>MiFID Org Regulation</i> . [Note: article 25(1) of <i>MiFID</i>]
5.1.5AC	G	The <i>rules</i> which implement articles 24 and 25 of <i>MiFID</i> can be found in <i>COBS</i> and <i>PROD</i> and are identified with a 'Note':.
5.1.5AD	G	The <i>ESMA</i> "Guidelines for the assessment of knowledge and competence", 3 January 2017 (ESMA71-1154262120-153 EN (rev)), specify the criteria for the assessment of knowledge and competence for the purposes of ■ SYSC 5.1.5ABR.
5.1.5AE	G	(1) The <i>FCA</i> expects a <i>firm</i> to act consistently with the <i>ESMA</i> guidelines referred to in ■ SYSC 5.1.5ADG in relation to its <i>MiFID or equivalent third country business</i> . (2) The <i>FCA</i> is required to publish various information on its website in relation to <i>firms'</i> assessment of relevant individuals' knowledge and competence. That information can be found at https://www.fca.org.uk/firms/training-competence (3) A <i>firm</i> to which the Training and Competence sourcebook (<i>TC</i>) applies may satisfy its knowledge and competence obligations under ■ SYSC 5.1.5ABR in relation to a relevant individual by way of compliance with its obligations in <i>TC</i> .
5.1.5B	R	When complying with the <i>competent employees rule</i> , a <i>firm</i> must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.
5.1.6	R	Segregation of functions A <i>management company</i> must ensure that the performance of multiple functions by its <i>relevant persons</i> does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally. [Note: article 5(3) of the <i>UCITS implementing Directive</i>]

- 5.1.7** **R** The *senior personnel* of a *common platform firm* must define arrangements concerning the segregation of duties within the *firm* and the prevention of conflicts of interest.
[Note: article 88 of CRD and article 9(1) of MiFID]
- 5.1.7A** **G** Other *firms* should take account of the segregation of functions *rules* (**■ SYSC 5.1.6 R** and **■ SYSC 5.1.7 R**) as if they were *guidance* (and as if "should" appeared in those *rules* instead of "must") as explained in **■ SYSC 1 Annex 1 3.3 R(1)**.
- 5.1.8** **G** The effective segregation of duties is an important element in the *internal controls* of a *firm* in the *prudential context*. In particular, it helps to ensure that no one individual is completely free to commit a *firm's* assets or incur liabilities on its behalf. Segregation can also help to ensure that a *firm's governing body* receives objective and accurate information on financial performance, the risks faced by the *firm* and the adequacy of its systems.
- 5.1.9** **G** **Segregation of functions: additional guidance**
A *firm* should normally ensure that no single individual has unrestricted authority to do all of the following:
- (1) initiate a transaction;
 - (2) bind the *firm*;
 - (3) make payments; and
 - (4) account for it.
- 5.1.10** **G** Where a *firm* is unable to ensure the complete segregation of duties (for example, because it has a limited number of staff), it should ensure that there are adequate compensating controls in place (for example, frequent review of an area by relevant *senior managers*).
- 5.1.11** **G** Where a *firm* outsources its internal audit function, it should take reasonable steps to ensure that every individual involved in the performance of this service is independent from the individuals who perform its external audit. This should not prevent services from being undertaken by a *firm's* external auditors provided that:
- (1) the work is carried out under the supervision and management of the *firm's* own internal staff; and
 - (2) potential conflicts of interest between the provision of external audit services and the provision of internal audit are properly managed.

5.1.12**R****Awareness of procedures: management company**

A *management company* must ensure that its *relevant persons* are aware of the procedures which must be followed for the proper discharge of their responsibilities.

[**Note:** article 4(1)(b) of the *UCITS implementing Directive*]

5.1.12A**G****Awareness of procedures: other firms**

Other *firms* should take account of the *rule* concerning awareness of procedures (**SYSC 5.1.12 R**) as if it were *guidance* (and as if should appeared in that *rule* instead of *must*) as explained in **SYSC 1 Annex 1 3.3 R(1)**.

General**5.1.13****R**

The systems, internal control mechanisms and arrangements established by a *firm* (other than a *common platform firm*) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services, *claims management services* and other activities undertaken in the course of that business.

[**Note:** articles 4(1) final paragraph and 5(4) of the *UCITS implementing Directive*]

5.1.14**R**

A *management company* must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter, and take appropriate measures to address any deficiencies.

[**Note:** article 4(5) of the *UCITS implementing Directive*]

5.1.15**G**

Other *firms* should take account of the *rule* requiring monitoring and evaluation of the adequacy and effectiveness of systems (**SYSC 5.1.14 R**) as if it were *guidance* (and as if should appeared in that *rule* instead of *must*) as explained in **SYSC 1 Annex 1 3.3 R(1)**.

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Chapter 6

Compliance, internal audit and financial crime

6.1 Compliance

[**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See https://www.esma.europa.eu/sites/default/files/library/esma35-36-1946_final_report_guidelines_on_certain_aspects_of_the_mifid_compliance_function.pdf.]

Application to a common platform firm

6.1.-2

G

For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
Adequate policy and procedures	SYSC 6.1.1R, SYSC 6.1.1AG
Compliance function	SYSC 6.1.4-AG, SYSC 6.1.7R
Internal audit	SYSC 6.2.2G
Financial crime	SYSC 6.3.1R to SYSC 6.3.11G

Application to an MiFID optional exemption firm and to a third country firm

6.1.-1

G

For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the *rules and guidance* in this chapter apply to them as if they were *rules* or as *guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the *MiFID Org Regulation* in ■ SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

Adequate policy and procedures

6.1.1

R

A *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* (or where applicable, *tied agents*) with its obligations under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.

[**Note:** article 16(2) of *MiFID* and article 12(1)(a) of the *UCITS Directive*]

6.1.1A **G** The FCA provides *guidance* on steps that a *firm* can take to reduce the risk that it might be used to further *financial crime* in FCG (Financial Crime Guide: A firm's guide to countering financial crime risks) and FCTR (Financial Crime Thematic Reviews).

6.1.2 **R** A *firm* that is a *management company* or an *operator of an electronic system in relation to lending* must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the FCA to exercise its powers effectively under the *regulatory system*.

[Note: article 10(1) of the *UCITS implementing Directive*]

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6.1.2A **G** Other *firms* should take account of the adequate policies and procedures rule (**■ SYSC 6.1.2 R**) as if it were *guidance* (and as if it should appear in that rule instead of *must*) as explained in **■ SYSC 1 Annex 1 3.3 R(1)**.

Compliance function

6.1.3 **R** A *firm* that is a *management company* or an *operator of an electronic system in relation to lending* must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

- (1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with **■ SYSC 6.1.2 R**, and the actions taken to address any deficiencies in the *firm's* compliance with its obligations; and
- (2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm's* obligations under the *regulatory system*.

[Note: article 10(2) of the *UCITS implementing Directive*]

6.1.3A **G**
(1) Other *firms* should take account of the compliance function rule (**■ SYSC 6.1.3 R**) as if it were *guidance* (and as if it should appear in that rule instead of *must*) as explained in **■ SYSC 1 Annex 1 3.3 R(1)**.
(2) Notwithstanding **■ SYSC 6.1.3 R**, as it applies under (1), depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate compliance function. Where a *firm* has a separate compliance function the *firm* should also take into account **■ SYSC 6.1.3 R** and **■ SYSC 6.1.4 R** as *guidance*.

6.1.4 **R** In order to enable the compliance function to discharge its responsibilities properly and independently, a *firm* that is a *management company* or an *operator of an electronic system in relation to lending* must ensure that the following conditions are satisfied:

- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
- (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by ■ SYSC 4.3.2 R;
- (3) the *relevant persons* involved in the compliance functions must not be involved in the performance of the services or activities they monitor;
- (4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.

[Note: article 10(3) of the *UCITS implementing Directive*]

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6.1.4-A ■ G In setting the method of determining the *remuneration of relevant persons* involved in the compliance function:

- (1) [deleted]
- (2) [deleted]
- (3) *firms* that ■ SYSC 19D applies to will also need to comply with the *dual-regulated firms Remuneration Code*;
- (4) *firms* that the remuneration part of the *PRA Rulebook* applies to will also need to comply with it; and
- (5) *firms* that ■ SYSC 19G applies to will also need to comply with the *MIFIDPRU Remuneration Code*.

6.1.4-AA ■ G In setting the method of determining the remuneration of *relevant persons* involved in the compliance function, *full-scope UK AIFMs* will need to comply with the *AIFM Remuneration Code*.

6.1.4-AB ■ G

(1) This *guidance* is relevant to an *SMCR firm* required to appoint a compliance officer under ■ SYSC 6.1.4R or article 22(3) of the *MiFID Org Regulation* as applicable.

(2) Taking account of the nature, scale and complexity of its activities, the *firm* should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the compliance officer does not undermine the independence of the compliance function.

(3) In the *FCA's* view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the compliance officer to require the approval of a majority of the *management body*, including at least a majority of its members who do not perform any executive function in the *firm*.

<p>6.1.4A</p>	<p>R</p> <p>(1) A <i>firm</i> which is not a <i>common platform firm</i> or <i>management company</i> and which carries on <i>designated investment business</i> with or for retail clients or professional clients must allocate to a <i>director</i> or <i>senior manager</i> the function of:</p> <ul style="list-style-type: none"> (a) having responsibility for oversight of the <i>firm's</i> compliance; and (b) reporting to the <i>governing body</i> in respect of that responsibility. <p>(2) In ■ SYSC 6.1.4A R (1) compliance means compliance with the rules in:</p> <ul style="list-style-type: none"> (a) COBS (Conduct of Business sourcebook); (b) COLL (Collective Investment Schemes sourcebook); (c) CASS (Client Assets sourcebook); and (d) ICOBS (Insurance: Conduct of Business sourcebook).
<p>6.1.4C</p>	<p>G</p> <p>(1) A <i>firm</i> in (2) or (3) must appoint a compliance officer to be responsible for ensuring the <i>firm</i> meets its obligations under ■ SYSC 6.1.1R for any compliance function the <i>firm</i> has and for any reporting as to compliance which may be made under ■ SYSC 4.3.2R.</p> <p>(2) This <i>rule</i> applies to:</p> <ul style="list-style-type: none"> (a) a <i>debt management firm</i>; and (b) a <i>credit repair firm</i>. <p>(3) This <i>rule</i> also applies to a <i>firm</i> that meets the following conditions:</p> <ul style="list-style-type: none"> (a) it is a Class 1 firm as defined in ■ CMCOB 7.2.5R(1); and (b) ■ SUP 10C (FCA senior managers regime for approved persons in SMCR firms) applies the <i>compliance oversight function</i> to it.
<p>6.1.5</p>	<p>R</p> <p>A <i>firm</i> that is a <i>management company</i> or an <i>operator of an electronic system in relation to lending</i> need not comply with ■ SYSC 6.1.4 R (3) or ■ SYSC 6.1.4 R (4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of financial services and activities, the requirements under those <i>rules</i> are not proportionate and that its compliance function continues to be effective.</p> <p>[Note: article 10(3) second paragraph of the <i>UCITS implementing Directive</i>]</p>
<p>6.1.6</p>	<p>G</p> <p>Other <i>firms</i> should take account of the proportionality <i>rule</i> (■ SYSC 6.1.5 R) as if it were <i>guidance</i> (and as if it should appear in that <i>rule</i> instead of <i>must</i>) as explained in ■ SYSC 1 Annex 1 3.3R(1).</p>
<p>6.1.7</p>	<p>R</p> <p>[deleted]</p>
<p>6.1.8</p>	<p>G</p> <p>The exemptions in ■ SYSC 6.1.5R are unlikely to apply to a <i>firm</i> that is an <i>operator of an electronic system in relation to lending</i> where that <i>firm</i> offers lenders a <i>P2P portfolio</i> with a <i>target rate</i>.</p>

6.2 Internal audit

6.2.1

R

A *firm* that is a *management company* or an *operator of an electronic system in relation to lending management company* must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of its financial services and activities, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the *firm* and which has the following responsibilities:

- (1) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the *firm's* systems, internal control mechanisms and arrangements;
- (2) to issue recommendations based on the result of work carried out in accordance with (1);
- (3) to verify compliance with those recommendations;
- (4) to report in relation to internal audit matters in accordance with ■ SYSC 4.3.2 R.

[Note: article 11 of the *UCITS implementing Directive*]

6.2.1A

G

Other *firms* should take account of the internal audit *rule* (■ SYSC 6.2.1 R) as if it were *guidance* (and as if it should appear in that *rule* instead of *must*) as explained in ■ SYSC 1 Annex 1 3.3 R(1).

6.2.1B

G

- (1) This *guidance* is relevant to an *SMCR firm* required to establish and maintain an internal audit function under article 24 of the *MiFID Org Regulation*.
- (2) Taking account of the nature, scale and complexity of its activities, the *firm* should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the head of the internal audit function does not undermine the independence of the internal audit function.
- (3) In the *FCA's* view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the head of the internal audit function to require the approval of a majority of the *management body*, including at least a majority of its members who do not perform any executive function in the *firm*.

6.2.2

G

- (1) The term 'internal audit function' in ■ SYSC 6.2.1R (and ■ SYSC 4.1.11G), and for a *common platform firm* in article 24 of the *MiFID Org Regulation*, refers to the generally understood concept of internal audit within a *firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies.
- (2) [deleted]
- (3) For an *SMCR firm* that is a *PRA-authorised person*, the internal audit function is a *PRA controlled function* (SMF5). For an *enhanced scope SMCR firm* it is an *FCA controlled function* (SMF5).

6.3 Financial crime

- 6.3.1** **R** A *firm* must ensure the policies and procedures established under ■ SYSC 6.1.1 R include systems and controls that:
- (1) enable it to identify, assess, monitor and manage *money laundering* risk; and
 - (2) are comprehensive and proportionate to the nature, scale and complexity of its activities.
- 6.3.2** **G** "*Money laundering* risk" is the risk that a *firm* may be used to further *money laundering*. Failure by a *firm* to manage this risk effectively will increase the risk to society of crime and terrorism.
- 6.3.3** **R** A *firm* must carry out a regular assessment of the adequacy of these systems and controls to ensure that they continue to comply with ■ SYSC 6.3.1 R.
- 6.3.4** **G** A *firm* may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the Money Laundering Regulations. ■ SYSC 6.1.1 R and ■ SYSC 6.3.1 R to ■ SYSC 6.3.10 G are not relevant for the purposes of regulation 76(6) or 86(2) of the Money Laundering Regulations, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.
- 6.3.5** **G** The FCA, when considering whether a breach of its *rules* on systems and controls against *money laundering* has occurred, will have regard to whether a *firm* has followed relevant provisions in the guidance for the *United Kingdom* financial sector issued by the Joint Money Laundering Steering Group.
- 6.3.6** **G** In identifying its *money laundering* risk and in establishing the nature of these systems and controls, a *firm* should consider a range of factors, including:
- (1) its customer, product and activity profiles;
 - (2) its distribution channels;
 - (3) the complexity and volume of its transactions;

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- | | |
|--|---|
| 6.3.7 | <p>G A firm should ensure that the systems and controls include:</p> <ul style="list-style-type: none">(1) appropriate training for its employees in relation to <i>money laundering</i>;(2) appropriate provision of information to its <i>governing body</i> and senior management, including a report at least annually by that <i>firm's money laundering reporting officer (MLRO)</i> on the operation and effectiveness of those systems and controls;(3) appropriate documentation of its risk management policies and risk profile in relation to <i>money laundering</i>, including documentation of its application of those policies (see ■ SYSC 9);(4) appropriate measures to ensure that <i>money laundering</i> risk is taken into account in its day-to-day operation, including in relation to:<ul style="list-style-type: none">(a) the development of new products;(b) the taking-on of new customers; and(c) changes in its business profile; and(5) appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to its services to potential customers who cannot reasonably be expected to produce detailed evidence of identity. |
| 6.3.8 | <p>R (1) A firm must allocate to a <i>director or senior manager</i> (who may also be the <i>money laundering reporting officer</i>) overall responsibility within the <i>firm</i> for the establishment and maintenance of effective anti-<i>money laundering</i> systems and controls.</p> <p>(2) A firm may not allocate overall responsibility under (1) to a person who is approved to perform the <i>other overall responsibility function</i>.</p> |
| <p>The money laundering reporting officer</p> <p>6.3.9 R A firm (with the exception of a <i>sole trader</i> who has no employees) must:</p> <ul style="list-style-type: none">(1) appoint an individual as <i>MLRO</i>, with responsibility for oversight of its compliance with the FCA's <i>rules on systems and controls against money laundering</i>; and(2) ensure that its <i>MLRO</i> has a level of authority and independence within the <i>firm</i> and access to resources and information sufficient to enable him to carry out that responsibility. | |
| 6.3.10 | <p>G The job of the <i>MLRO</i> within a <i>firm</i> is to act as the focal point for all activity within the <i>firm</i> relating to anti-<i>money laundering</i>. The FCA expects that a <i>firm's MLRO</i> will be based in the <i>United Kingdom</i>.</p> |

6.3.11

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Financial crime guidance.....

The FCA provides *guidance* on steps that a *firm* can take to reduce the risk that it might be used to further *financial crime* in *FCG* (Financial Crime Guide: A firm's guide to countering financial crime risks) and *FCTR* (Financial Crime Thematic Reviews).

Chapter 7

Risk control

7.1 Risk control

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See [http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements.\]](http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements.)

Application to a common platform firm

7

7.1.-2

G

For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
Risk assessment	SYSC 7.1.1G
Risk management	SYSC 7.1.4R, SYSC 7.1.4AG
Risk control: remuneration	SYSC 7.1.7BG, SYSC 7.1.7BBG
Risk control: additional provisions	SYSC 7.1.7CG, SYSC 7.1.8G, SYSC 7.1.9R to SYSC 7.1.16R
Additional rules for CCR firms	SYSC 7.1.16CR to SYSC 7.1.22R

Application to an MiFID optional exemption firm and to a third country firm

7.1.-1

G

For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the *rules and guidance* in this chapter apply to them as if they were *rules or as guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the *MiFID Org Regulation* in ■ SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules or as guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

Risk assessment

7.1.1

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■ SYSC 4.1.1 R requires a *firm* to have effective processes to identify, manage, monitor and report the risks it is or might be exposed to.

7.1.2

R

A *firm* that is a *UCITS investment firm* or an *operator of an electronic system in relation to lending* must establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identify the risks relating to the *firm's* activities,

		processes and systems, and where appropriate, set the level of risk tolerated by the <i>firm</i> .
7.1.2A	G	Other <i>firms</i> should take account of the risk management policies and procedures <i>rule</i> (■ SYSC 7.1.2 R) as if it were <i>guidance</i> (and as if should appeared in that <i>rule</i> instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).
7.1.2B	G	A <i>management company</i> should be aware that ■ COLL 6.11 contains requirements in relation to risk control and internal reporting that will apply to it.
7.1.2C	G	<i>Full-scope UK AIFMs</i> should be aware that ■ FUND 3.7 and articles 38 to 47 of the <i>AIFMD level 2 regulation</i> contain further requirements in relation to risk management.
Risk management		
7.1.3	R	A <i>firm</i> that is a <i>UCITS investment firm</i> or an <i>operator of an electronic system in relation to lending</i> must adopt effective arrangements, processes and mechanisms to manage the risk relating to the <i>firm's</i> activities, processes and systems, in light of that level of risk tolerance.
7.1.4	R	The <i>management body</i> of a <i>common platform firm</i> or of an <i>operator of an electronic system in relation to lending</i> must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the <i>firm</i> is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. [Note: article 76(1) of CRD]
7.1.4A	G	<i>MIFIDPRU investment firms</i> should refer to ■ MIFIDPRU 7 for more specific details on risk management expectations.
7.1.4B	G	Other <i>firms</i> should take account of the risk management <i>rules</i> (■ SYSC 7.1.3 R and ■ SYSC 7.1.4 R) as if they were <i>guidance</i> (and as if "should" appeared in those <i>rules</i> instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).
7.1.5	R	A <i>firm</i> that is a <i>UCITS investment firm</i> or an <i>operator of an electronic system in relation to lending</i> must monitor the following:
		(1) the adequacy and effectiveness of the <i>firm's</i> risk management policies and procedures;
		(2) the level of compliance by the <i>firm</i> and its <i>relevant persons</i> with the arrangements, processes and mechanisms adopted in accordance with ■ SYSC 7.1.3 R;
		(3) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and

		mechanisms, including failures by the <i>relevant persons</i> to comply with such arrangements or processes and mechanisms or follow such policies and procedures.
7	7.1.6	R A firm that is a UCITS investment firm or an operator of an electronic system in relation to lending must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks: <ol style="list-style-type: none">(1) implementation of the policies and procedures referred to in ■ SYSC 7.1.2 R to ■ 7.1.5 R; and(2) provision of reports and advice to senior personnel in accordance with ■ SYSC 4.3.2 R.
	7.1.7	R Where a firm that is a UCITS investment firm or an operator of an electronic system in relation to lending is not required under ■ SYSC 7.1.6 R to maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with ■ SYSC 7.1.2 R to ■ 7.1.5 R satisfy the requirements of those rules and are consistently effective.
	7.1.7A	G Other firms should take account of the risk management rules (■ SYSC 7.1.5 R to ■ SYSC 7.1.7 R) as if they were guidance (and as if should appeared in those rules instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).
	7.1.7B	G In setting the method of determining the remuneration of employees involved in the risk management function: <ol style="list-style-type: none">(1) firms that ■ SYSC 19D applies to will also need to comply with the dual-regulated firms Remuneration Code; and(2) firms that the remuneration part of the PRA Rulebook applies to will also need to comply with it.
	7.1.7BA	G In setting the method of determining the remuneration of employees involved in the risk management function full-scope UK AIFMs will need to comply with the AIFM Remuneration Code.
	7.1.7BB	G [deleted]

7.1.7BC	G	[deleted]
7.1.7BD	G	In setting the method of determining the <i>remuneration of employees</i> involved in the risk management function, <i>firms</i> that ■ SYSC 19G applies to will also need to comply with the <i>MIFIDPRU Remuneration Code</i> .
		Risk control: additional provisions
7.1.7C	G	<i>Firms</i> should also consider the additional <i>guidance</i> on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21.
7.1.8	G	<ol style="list-style-type: none">(1) [deleted](2) The term 'risk management function' in ■ SYSC 7.1.6 R and ■ SYSC 7.1.7R, and for a <i>common platform firm</i> in article 23(2) of the <i>MiFID Org Regulation</i>, refers to the generally understood concept of risk assessment within a <i>firm</i>, that is, the function of setting and controlling risk exposure.(3) [deleted](4) For an <i>SMCR firm</i> that is a <i>PRA authorised person</i>, the risk management function is a <i>PRA controlled function</i> (SMF4). For an <i>enhanced scope SMCR firm</i> it is an <i>FCA controlled function</i>.
7.1.9	R	[deleted]
7.1.10	R	[deleted]
7.1.11	R	[deleted]
7.1.12	G	[deleted]
		Residual risk
7.1.13	R	[deleted]
		Market risk
7.1.14	R	[deleted]
		Interest rate risk
7.1.15	R	[deleted]
		Operational risk
7.1.16	R	[deleted]

7.1.16A	G	[deleted]
7.1.16B	G	[deleted]
7.1.16C	R	[deleted]
7.1.17	R	<p>Additional rules for CRR firms</p> <ul style="list-style-type: none">(1) The <i>management body</i> of a <i>CRR firm</i> has overall responsibility for risk management. It must devote sufficient time to the consideration of risk issues.(2) The <i>management body</i> of a <i>CRR firm</i> must be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in the rules implementing the <i>CRD</i> and in the <i>UK CRR</i> as well as in the valuation of assets, the use of external ratings and internal models related to those risks.(3) A <i>CRR firm</i> must establish reporting lines to the <i>management body</i> that cover all material risks and risk management policies and changes thereof.
7.1.18	R	<p>[Note: article 76(2) of <i>CRD</i>]</p> <ul style="list-style-type: none">(1) A <i>CRR firm</i> that is significant must establish a risk committee composed of members of the <i>management body</i> who do not perform any executive function in the firm. Members of the risk committee must have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the firm.

- (2) The risk committee must advise the *management body* on the institution's overall current and future risk appetite and assist the *management body* in overseeing the implementation of that strategy by *senior management*.
- (3) The risk committee must review whether prices of liabilities and assets offered to clients take fully into account the *firm's* business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the risk committee must present a remedy plan to the *management body*.

[Note: article 76(3) of CRD]

7.1.18A G

7.1.18AA G A *CRR firm* which is not a *significant SYSC firm* may combine the risk committee with the audit committee.

[Note: article 76(3) of CRD]

7.1.18B R Members of the combined risk and audit committee must have the knowledge, skills and expertise required for both committees.

[Note: article 76(3) of CRD]

7.1.19 R

(1) A *CRR firm* must ensure that the *management body* in its supervisory function and, where a risk committee has been established, the risk committee have adequate access to information on the risk profile of the *firm* and, if necessary and appropriate, to the risk management function and to external expert advice.

(2) The *management body* in its supervisory function and, where one has been established, the risk committee must determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

[Note: article 76(4) of CRD]

7.1.20 R In order to assist in the establishment of sound remuneration policies and practices, the risk committee must, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

[Note: article 76(4) of CRD]

7.1.21 R

(1) A *CRR firm's* risk management function (article 23 of the *MiFID Org Regulation*) must be independent from the operational functions and have sufficient authority, stature, resources and access to the *management body*.

- (2) The risk management function must ensure that all material risks are identified, measured and properly reported. It must be actively involved in elaborating the *firm's* risk strategy and in all material risk management decisions and it must be able to deliver a complete view of the whole range of risks of the *firm*.
- (3) A *CRR firm* must ensure that the risk management function is able to report directly to the *management body* in its supervisory function, independent from *senior management* and that it can raise concerns and warn the *management body*, where appropriate, where specific risk developments affect or may affect the *firm*, without prejudice to the responsibilities of the *management body* in its supervisory and/or managerial functions pursuant to the *CRD* and the *UK CRR*.

[Note: article 76(5) of *CRD*]

7
7.1.22

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The head of the risk management function must be an independent *senior manager* with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the *CRR firm* do not justify a specially appointed person, another senior person within the *firm* may fulfil that function, provided there is no conflict of interest. The head of the risk management function must not be removed without prior approval of the *management body* and must be able to have direct access to the *management body* where necessary.

[Note: article 76(5) of *CRD*]

7.1.23

G

- (1) This *guidance* is relevant to an *SMCR banking firm* that has appointed a head of the risk management function.
- (2) Taking account of the nature, scale and complexity of its activities, the *firm* should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the head of the risk management function does not undermine the independence of the risk management function.
- (3) It will be appropriate, in many cases, for the procedures in (2) to include that any approval for the removal of the head of the risk management function requires the approval of a majority of the *management body*, including at least a majority of its members who do not perform any executive function in the *firm*.
- (4) It will also be appropriate, in many cases, for any other disciplinary sanctioning of the head of the risk management function to require the approval of a majority of the *management body*, including at least a majority of its members who do not perform any executive function in the *firm*.

Chapter 8

Outsourcing

8.1 General outsourcing requirements

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See https://www.esma.europa.eu/sites/default/files/library/esma35-36-1946_final_report_guidelines_on_certain_aspects_of_the_mifid_ii_compliance_function.pdf.]

Application to a common platform firm

8.1.-2

G

For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	SYSC 8.1.1R, SYSC 8.1.2G, SYSC 8.1.3G, SYSC 8.1.12G

Application to an MiFID optional exemption firm and to a third country firm

8.1.-1

G

For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the *rules and guidance* in this chapter apply to them as if they were *rules or as guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the *MiFID Org Regulation* in ■ SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules or as guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

General requirements

8.1.1

R

A *common platform firm* must:

- (1) when relying on a third party for the performance of operational functions which are critical for the performance of *regulated activities, listed activities or ancillary services* (in this chapter "relevant services and activities") on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk; and
- (2) not undertake the *outsourcing* of important operational functions in such a way as to impair materially:
 - (a) the quality of its internal control; and

- (b) the ability of the FCA to monitor the *firm's* compliance with all obligations under the *regulatory system* and, if different, of a *competent authority* to monitor the *firm's* compliance with all obligations under *MiFID*.
- [Note: article 16(5) first paragraph of *MiFID*]
- 8.1.1A** **G** Other *firms* should take account of the outsourcing *rule* (**■ SYSC 8.1.1 R**) as if it were *guidance* (and as if should appeared in that *rule* instead of must) as explained in **■ SYSC 1 Annex 1 3.3R(1)**.
- 8.1.2** **G** The application of **■ SYSC 8.1** to relevant services and activities (see **■ SYSC 8.1.1 R (1)**) is limited by **■ SYSC 1 Annex 1 (Part 2)** (Application of the common platform requirements).
- 8.1.3** **G** **■ SYSC 4.1.1 R** requires a *firm* to have effective processes to identify, manage, monitor and report risks and internal control mechanisms. Except in relation to those functions described in **■ SYSC 8.1.5R** and (for a *common platform firm* in article 30(2) of the *MiFID Org Regulation*), where a *firm* relies on a third party for the performance of operational functions which are not critical or important for the performance of relevant services and activities (see **■ SYSC 8.1.1 R (1)**) on a continuous and satisfactory basis, it should take into account, in a manner that is proportionate given the nature, scale and complexity of the *outsourcing*, the *rules* in this section in complying with that requirement.
- 8.1.4** **R** For the purposes of this chapter an operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a *firm* (other than a *common platform firm*) with the conditions and obligations of its *authorisation* or its other obligations under the *regulatory system*, or its financial performance, or the soundness or the continuity of its relevant services and activities.
- 8.1.5** **R** For a *UCITS investment firm* and without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:
- (1) the provision to the *firm* of advisory services, and other services which do not form part of the relevant services and activities of the *firm*, including the provision of legal advice to the *firm*, the training of personnel of the *firm*, billing services and the security of the *firm's* premises and personnel;
 - (2) the purchase of standardised services, including market information services and the provision of price feeds;
 - (3) the recording and retention of relevant telephone conversations or electronic communications subject to SYSC 10A.
- 8.1.5A** **G** Other *firms* should take account of the critical functions *rules* (**■ SYSC 8.1.4 R** and **■ SYSC 8.1.5 R**) as if they were *guidance* (and as if should appeared in those *rules* instead of must) as explained in **■ SYSC 1 Annex 1 3.3R(1)**.

- 8.1.6** **R** If a *firm* (other than a *common platform firm*) *outsources* critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the *regulatory system* and must comply, in particular, with the following conditions:
- (1) the *outsourcing* must not result in the delegation by *senior personnel* of their responsibility;
 - (2) the relationship and obligations of the *firm* towards its *clients* under the *regulatory system* must not be altered;
 - (3) the conditions with which the *firm* must comply in order to be *authorised*, and to remain so, must not be undermined;
 - (4) none of the other conditions subject to which the *firm's authorisation* was granted must be removed or modified.
- 8.1.6A** **G** A *UCITS investment firm* should take account of the provisions that apply to a *common platform firm* in relation to its *MiFID business* in accordance with ■ SYSC 8.1.-2G.
- 8.1.7** **R** A *UCITS investment firm* must exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the *outsourcing* to a service provider of critical or important operational functions or of any relevant services and activities.
- 8.1.8** **R** A *UCITS investment firm* must in particular take the necessary steps to ensure that the following conditions are satisfied:
- (1) the service provider must have the ability, capacity, and any *authorisation* required by law to perform the *outsourced* functions, services or activities reliably and professionally;
 - (2) the service provider must carry out the *outsourced services* effectively, and to this end the *firm* must establish methods for assessing the standard of performance of the service provider;
 - (3) the service provider must properly supervise the carrying out of the *outsourced* functions, and adequately manage the risks associated with the *outsourcing*;
 - (4) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
 - (5) the *firm* must retain the necessary expertise to supervise the *outsourced* functions effectively and to manage the risks associated with the *outsourcing*, and must supervise those functions and manage those risks;
 - (6) the service provider must disclose to the *firm* any development that may have a material impact on its ability to carry out the *outsourced* functions effectively and in compliance with applicable laws and regulatory requirements;

- (7) the *firm* must be able to terminate the arrangement for the *outsourcing* where necessary without detriment to the continuity and quality of its provision of services to *clients*;
- (8) the service provider must co-operate with the *FCA* and any other relevant *competent authority* in connection with the *outsourced activities*;
- (9) the *firm*, its auditors, the *FCA* and any other relevant *competent authority* must have effective access to data related to the *outsourced activities*, as well as to the business premises of the service provider; and the *FCA* and any other relevant *competent authority* must be able to exercise those rights of access;
- (10) the service provider must protect any confidential information relating to the *firm* and its *clients*;
- (11) the *firm* and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary having regard to the function, service or activity that has been *outsourced*.

- 8.1.9** **R** A *UCITS investment firm* must ensure that the respective rights and obligations of the *firm* and of the service provider are clearly allocated and set out in a written agreement.
- 8.1.10** **R** If a *UCITS investment firm* and the service provider are members of the same group, the *firm* may, for the purpose of complying with ■ SYSC 8.1.7 R to ■ SYSC 8.1.11 R and ■ SYSC 8.2 and ■ SYSC 8.3, take into account the extent to which the *UCITS investment firm* controls the service provider or has the ability to influence its actions.
- 8.1.11** **R** A *firm* (other than a *common platform firm*) must make available on request to the *FCA* all information necessary to enable the *FCA* to supervise the compliance of the performance of the *outsourced activities* with the requirements of the *regulatory system*.
- 8.1.11A** **G** Other *firms* should take account of the outsourcing of important operational functions *rules* (■ SYSC 8.1.7 R to ■ SYSC 8.1.11 R) as if they were *guidance* (and as if should appeared in those *rules* instead of must) as explained in ■ SYSC 1 Annex 1 3.3R(1).
- 8.1.12** **G** As ■ SUP 15.3.8 G explains, a *firm* should notify the *FCA* when it intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities on a continuous and satisfactory basis.
[Note: recital 44 to the *MiFID Org Regulation*]
- 8.1.13** **R** **Additional requirements for a management company**
A *management company* must retain the necessary resources and expertise so as to monitor effectively the activities carried out by third parties on the

basis of an arrangement with the *firm*, especially with regard to the management of the risk associated with those arrangements.

[**Note:** article 5(2) of the *UCITS implementing Directive*]

8.1.14

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A *management company* should be aware that ■ SUP 15.8.6 R (Delegation by UCITS management companies) and ■ COLL 6.6.15A R (Committees and delegations) contain requirements implementing article 13 of the *UCITS Directive* in relation to delegation that will apply to it.

Chapter 9

Record-keeping

9.1 General rules on record-keeping

Application to a common platform firm

9.1.-2

G

For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	SYSC 9.1.1AR
Specific requirements for insurance distribution	SYSC 9.1.2AR, SYSC 9.1.2CR
Guidance on record-keeping	SYSC 9.1.2BG, SYSC 9.1.4G, SYSC 9.1.5G, SYSC 9.1.6G, SYSC 9.1.6AG

Application to an MiFID optional exemption firm and to a third country firm

9.1.-1

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For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the *rules and guidance* in this chapter apply to them as if they were *rules* or as *guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the *MiFID Org Regulation* in ■ SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

General requirements

9.1.1

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A *firm* (other than a *common platform firm*) must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FCA* to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

[**Note:** article 12(1)(a) of the *UCITS Directive* and article 4(1)(e) of the *UCITS implementing Directive*]

9.1.1A

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- (1) A *common platform firm* must arrange for records to be kept of all services, activities and transactions undertaken by it.

		(2) The records in (1) must be sufficient to enable the FCA to fulfil its supervisory tasks and to perform the enforcement actions under the <i>regulatory system</i> including <i>MiFID</i> , <i>MiFIR</i> and the <i>Market Abuse Regulation</i> , and in particular to ascertain that the <i>common platform firm</i> has complied with all obligations including those with respect to <i>clients</i> or potential <i>clients</i> and to the integrity of the market.
		[Note: article 16(6) of <i>MiFID</i>]
9.1.2	R	A <i>common platform firm</i> must retain all records kept by it under this chapter in relation to its <i>MiFID business</i> for a period of at least five years.
9.1.2A	R	<p>Specific requirements for the distribution of insurance-based investment products</p> <p>A <i>firm</i> carrying on <i>insurance distribution activities</i> in relation to <i>insurance-based investment products</i> must retain its records relating to:</p> <ul style="list-style-type: none"> (1) suitability (■ COBS 9A); and (2) appropriateness (■ COBS 10A), <p>for a period of at least five years.</p>
9.1.2B	G	<ul style="list-style-type: none"> (1) ■ COBS 9A.4 and ■ COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) set record keeping requirements that specify information which should be recorded by <i>firms</i> carrying on <i>insurance distribution activities</i> in relation to <i>insurance-based investment products</i> and for how long the records must be retained. (2) For the purposes of ■ SYSC 9.1.2AR, a <i>firm</i> will need to consider whether the requirement in ■ COBS 9A.4.3R or ■ COBS 10A.7.2AR means that a record needs to be retained for longer than five years.
9.1.2C	R	<ul style="list-style-type: none"> (1) The records required by ■ COBS 9A.4 or ■ COBS 10A.7 must be retained in a medium that allows the storage of information in a way accessible for future reference by the FCA. (2) For the purposes of (1), the FCA must be able to access the records readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications. <p>[Note: article 19(4) of the <i>IDD Regulation</i>]</p>
9.1.2D	R	<ul style="list-style-type: none"> (1) [deleted] (2) [deleted]
9.1.3	R	[deleted]

9.1.4

G**Guidance on record-keeping**

Subject to any other record-keeping rule in the *Handbook*, the records required under the *Handbook* should be capable of being reproduced in the English language on paper. Where a *firm* is required to retain a record of a communication that was not made in the English language, it may retain it in that language. However, it should be able to provide a translation on request. If a *firm's* records relate to business carried on from an establishment in a country or territory outside the *United Kingdom*, an official language of that country or territory may be used instead of the English language.

9.1.5

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In relation to the retention of records for non-*MiFID* business, a *firm* should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the *firm* may fulfil its regulatory and statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made.

9.1.6

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Schedule 1 to each module of the *Handbook* sets out a list summarising the record-keeping requirements of that module. A *common platform firm* should also refer to the record-keeping requirements in the *MiFID Org Regulation*.

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9.1.6A

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■ SYSC 28 contains *rules* and *guidance* relating to knowledge and competence record keeping requirements in relation to *insurance distribution activities* undertaken by the *firm*.

9.1.7

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[deleted]

9.2 Credit institutions providing account information services or payment initiation services

- 9.2.1** **R** A *credit institution* must keep records of any *account information services* and *payment initiation services* it provides in the UK.
- 9.2.2** **R** [deleted]
- 9.2.3** **R** [deleted]
- 9.2.4** **R** The records required by ■ SYSC 9.2.1R must be sufficient to enable the *credit institution* to provide to the FCA, upon request, the following information:
- (1) The number of different *payment accounts* that the *credit institution* has accessed for the purposes of providing *account information services*.
 - (2) The number of *payment service users* who have used the *account information services* provided by the *credit institution*.
 - (3) The number of different *payment accounts* that the *credit institution* has accessed for the purposes of providing *payment initiation services*.
 - (4) The number of *payment transactions* the *credit institution* has initiated when providing *payment initiation services*.
- 9.2.5** **R** The records required by ■ SYSC 9.2.1R must be sufficient to enable the *credit institution* to provide the FCA with the information specified in ■ SYSC 9.2.4R for each calendar year in the previous five years, except that there is no requirement to record this information for any period prior to 13 January 2018.
- 9.2.6** **R**
- (1) When keeping records in accordance with ■ SYSC 9.2.4R (1) and ■ (3), *credit institutions* should count each individual payment account once, even where it has been accessed multiple times.
 - (2) When keeping records in accordance with ■ SYSC 9.2.4R (2), *credit institutions* should count each customer once (including where the customer has used the *account information services* multiple times).

9.2.7

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Credit institutions providing account information services and payment initiation services are also required to notify the FCA in accordance with SUP 15.8.12R.

Chapter 10

Conflicts of interest

10.1 Application

Application to funeral plan distribution

10.1.-5 **G** This section applies to a *firm* carrying on *funeral plan distribution* in accordance with the tables in Part 3 of ■ SYSC 1 Annex 1.

Application to insurance intermediaries

- 10.1.-4** **G**
- (1) Subject to ■ SYSC 10.1.-3R, this section applies to a *firm* carrying on *insurance distribution activities* in accordance with the tables in Part 3 of ■ SYSC 1 Annex 1. Certain *rules* are disapplied where the *firm* is subject to the provisions in ■ SYSC 10.1A (see ■ SYSC 10.1.-3R).
 - (2) Where a provision in this section applies to an *insurance intermediary*, it applies in relation to the carrying on of *insurance distribution activities*.

10.1.-3 **R** The *rules and guidance* in the table below do not apply to a *firm* when carrying on *insurance distribution* in relation to *insurance-based investment products* where the *rules* in ■ SYSC 10.1A apply instead.

Subject	Rule or guidance
Types of conflict	SYSC 10.1.4R, SYSC 10.1.4AG, SYSC 10.1.4BR, SYSC 10.1.4CR(1), (2) and (5) and SYSC 10.1.5G.
Record of conflicts	SYSC 10.1.6R, SYSC 10.1.6AG, SYSC 10.1.6AAR and SYSC 10.1.6BG
Disclosure of conflicts	SYSC 10.1.8R(1)(b), (2)(b) to (2)(d) and SYSC 10.1.9AR
Conflicts policy	SYSC 10.1.10R
Contents of policy	SYSC 10.1.11R, SYSC 10.1.11AG, SYSC 10.1.11AAR and SYSC 10.1.11BG

Application to a common platform firm

- 10.1.-2** **G** For a *common platform firm*:
- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
 - (2) the *rules and guidance* in the table below apply:

Subject	Applicable rule or guidance
Provision of services	SYSC 10.1.2G
Identifying conflicts	SYSC 10.1.3R
Types of conflicts	SYSC 10.1.5G
Managing conflicts	SYSC 10.1.7R
Conflicts policy	SYSC 10.1.12G

- (3) ■ SYSC 10.1.7AR (Proportionality – insurance distribution activities), ■ SYSC 10.1.8R (Disclosure of conflicts) and ■ SYSC 10.1.11ABR (Contents of policy) also apply in relation to the carrying on of *insurance distribution activities*.

Application to a MiFID optional exemption firm and to a third-country firm

10.1.-1

G

For a *MiFID optional exemption firm* and a *third country firm*, the rules and guidance in this chapter apply to them as if they were *rules* or as *guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(1).

10.1.1

R

General application

- (1) This section applies to a *firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities* or providing *ancillary services* (but only where the *ancillary services* constitute *MiFID business*).
- (2) This section also applies to a *UK UCITS management company*.

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[Note: The provisions in ■ SYSC 10.1 also implement articles 27 and 28 of the *IDD*, articles 74(1) and 88 of *CRD* and as applied under the discretion in the third paragraph of article 95(2) of the *UK CRR*, *BCD* article 22 and *BCD Annex V* paragraph 1]

10.1.1A

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This section also applies to:

- (1) a *full-scope UK AIFM* of:
 - (a) a *UK AIF*; and
 - (b) [deleted]
 - (c) a *non-UK AIF*; and
- (2) [deleted]

Requirements only apply if a service is provided

10.1.2

G

- (1) The requirements in this section only apply where a service is provided by a *firm*. The status of the *client* to whom the service is provided (as a *retail client*, *professional client* or *eligible counterparty*) is irrelevant for this purpose.

[Note: recital 46 to the *MiFID Org Regulation*]

		<p>For the avoidance of doubt, a reference to "service" in this section includes all <i>insurance distribution activities</i>.</p>
		<p>SRD requirements</p>
10.1.2A	R	<p>The requirements in this section apply to an <i>SRD asset manager</i> with regard to its engagement activities covered by the <i>SRD</i>.</p> <p>[Note: article 3g(3) of <i>SRD</i>]</p>
		<p>Identifying conflicts</p>
10.1.3	R	<p>A <i>firm</i> must take all appropriate steps to identify and to prevent or manage conflicts of interest between:</p> <p class="list-item-l1">(1) the <i>firm</i>, including its managers, employees and <i>appointed representatives</i> (or where applicable, <i>tied agents</i>), or any person directly or indirectly linked to them by <i>control</i>, and a <i>client</i> of the <i>firm</i>; or</p> <p class="list-item-l1">(2) one <i>client</i> of the <i>firm</i> and another <i>client</i>;</p> <p>that arise or may arise in the course of the <i>firm</i> providing any service referred to in ■ SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the <i>firm's</i> own remuneration and other incentive structures.</p> <p>[Note: article 23(1) of <i>MiFID</i> and articles 27 and 28(1) of the <i>IDD</i>]</p>
		<p>Types of conflicts</p>
10.1.4	R	<p>For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may damage the interests of a <i>client</i>, a <i>management company</i> must take into account, as a minimum, whether the <i>firm</i> or a <i>relevant person</i>, or a person directly or indirectly linked by <i>control</i> to the <i>firm</i>:</p> <p class="list-item-l1">(1) is likely to make a financial gain, or avoid a financial loss, at the expense of the <i>client</i>;</p> <p class="list-item-l1">(2) has an interest in the outcome of a service provided to the <i>client</i> or of a transaction carried out on behalf of the <i>client</i>, which is distinct from the <i>client's</i> interest in that outcome;</p> <p class="list-item-l1">(2A) in the case of a <i>management company</i> providing <i>collective portfolio management</i> services for a <i>UCITS scheme</i>, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a <i>client</i> other than the <i>UCITS scheme</i>;</p> <p class="list-item-l1">(3) has a financial or other incentive to favour the interest of another <i>client</i> or group of <i>clients</i> over the interests of the <i>client</i>;</p> <p class="list-item-l1">(4) carries on the same business as the <i>client</i>; or in the case of a <i>management company</i>, carries on the same activities for the <i>UCITS scheme</i> and for another <i>client</i> or <i>clients</i> which are not <i>UCITS schemes</i>; or</p>

- (5) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service.

The conflict of interest may result from the *firm* or *person* providing a service referred to in ■ SYSC 10.1.1 R or engaging in any other activity or, in the case of a *management company*, whether as a result of providing *collective portfolio management* services or otherwise.

[Note: article 17(1) of the *UCITS implementing Directive*]

10.1.4A **G** Other *firms* (except *common platform firms*, *UCITS management companies* and *insurance intermediaries*) should take account of the *rule* on the types of conflicts (see ■ SYSC 10.1.4 R) in accordance with ■ SYSC 1 Annex 1 3.3R.

10.1.4B **R** For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of carrying on *insurance distribution activities* or *funeral plan distributions* and whose existence may damage the interests of a *client* ("A"), a *firm* must assess whether:

- (1) the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*; or
- (2) (in the case of conflicts between A and another *client*) the other *client*,

has an interest in the outcome of the *insurance distribution activities* or *funeral plan distribution*, which meets the following criteria:

- (3) it is distinct from A's interest in the outcome of the *insurance distribution activities* or *funeral plan distributions*; and
- (4) it has the potential to influence the outcome of the activities to the detriment of A.

10.1.4C **R** For the purpose of carrying out the assessment in ■ SYSC 10.1.4BR, a *firm* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:

- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;
- (2) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interest of the *client*;
- (3) carries on the same business as the *client*;
- (4) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service; or

		(5) is substantially involved in the management or development of <i>policies</i> , in particular where such a <i>person</i> has an influence on the pricing of those policies or their distribution costs.
10.1.5	G	The circumstances which should be treated as giving rise to a conflict of interest cover cases where there is a conflict between the interests of the <i>firm</i> or certain <i>persons</i> connected to the <i>firm</i> or the <i>firm's group</i> and the duty the <i>firm</i> owes to a <i>client</i> ; or between the differing interests of two or more of its <i>clients</i> , to whom the <i>firm</i> owes in each case a duty. It is not enough that the <i>firm</i> may gain a benefit if there is not also a possible disadvantage to a <i>client</i> , or that one <i>client</i> to whom the <i>firm</i> owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such <i>client</i> . [Note: recital 45 to the <i>MiFID Org Regulation</i>]
10.1.6	R	Record of conflicts A <i>management company</i> , an <i>insurance intermediary</i> and a <i>firm</i> carrying on <i>funeral plan distribution</i> must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that <i>firm</i> in which a conflict of interest entailing a material risk of damage to the interests of one or more <i>clients</i> has arisen or, in the case of an ongoing service or activity, may arise. [Note: article 20(1) of the <i>UCITS implementing Directive</i>]
10.1.6A	G	Other <i>firms</i> (other than <i>common platform firms</i> and <i>insurance intermediaries</i>) should also take account of the rule on records of conflicts (see ■ SYSC 10.1.6 R) in accordance with ■ SYSC 1 Annex 1 3.2BR, ■ SYSC 1 Annex 1 3.2CR and ■ SYSC 1 Annex 1 3.3R).
10.1.6AA	R	An <i>insurance intermediary</i> and a <i>firm</i> carrying on <i>funeral plan distribution</i> must ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in ■ SYSC 10.1.6R.
10.1.6B	G	A <i>firm</i> (other than a <i>common platform firm</i> and an <i>insurance intermediary</i>) should read ■ SYSC 10.1.6AAAR as if "should" appeared in that rule instead of "must".
10.1.7	R	Managing conflicts A <i>firm</i> must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in ■ SYSC 10.1.3 R from adversely affecting the interests of its <i>clients</i> . [Note: article 16(3) of <i>MiFID</i> and article 27 of the <i>IDD</i>]

10.1.7A

Proportionality – insurance distribution activities**R**

Where a *firm* carries on *insurance distribution activities*, the arrangements in ■ SYSC 10.1.7R must be proportionate to the activities performed, the *policies* sold and the type of *insurance distributor* the *firm* is or uses.

[Note: article 27 of the *IDD*]

10.1.8

Disclosure of conflicts**R**

- (1) If arrangements made by a *firm* under ■ SYSC 10.1.7 R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must clearly disclose the following to the *client* before undertaking business for the *client*:
- the general nature or sources of conflicts of interest, or both; and
 - the steps taken to mitigate those risks.

- (2) The disclosure must:

- be made in a *durable medium*;
- clearly state that the organisational and administrative arrangements established by the *firm* to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the *client* will be prevented;
- include specific description of the conflicts of interest that arise in the provision of *funeral plan distribution*, insurance distribution activities *investment services* or *ancillary services*;
- explain the risks to the *client* that arise as a result of the conflicts of interest; and
- include sufficient detail, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the service in the context of which the conflict of interest arises.

- (3) This *rule* does not apply to the extent that ■ SYSC 10.1.21 R applies.

[Note: 23(2) and (3) of *MiFID* and article 28(2) and (3) of the *IDD*]

10.1.8A

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[deleted]

10.1.9

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Firms should aim to identify and manage the conflicts of interest arising in relation to their various business lines and their *group's* activities under a comprehensive *conflicts of interest policy*. In particular, the disclosure of conflicts of interest by a *firm* should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements under ■ SYSC 10.1.7 R. While disclosure of specific conflicts of interest is required by ■ SYSC 10.1.8 R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

10.1.9A R A *firm* must treat disclosure of conflicts pursuant to ■ SYSC 10.1.8R as a measure of last resort to be used only where the effective organisational and administrative arrangements established by the *firm* to prevent or manage its conflicts of interest in accordance with ■ SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.

10.1.10 R Conflicts policy

- (1) A *management company*, an *insurance intermediary* and a *firm* carrying on *funeral plan distribution* must establish, implement and maintain an effective *conflicts of interest policy* that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
- (2) Where the *management company*, or *insurance intermediary* or *firm* carrying on *funeral plan distribution* is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

[Note: article 18(1) of the *UCITS implementing Directive*]

10.1.11 R Contents of policy

- (1) The *conflicts of interest policy* must include the following content:
 - (a) it must identify in accordance with ■ SYSC 10.1.3 R, ■ SYSC 10.1.4 R, ■ SYSC 10.1.4BR and ■ SYSC 10.1.4CR (as applicable), by reference to the specific services and activities carried out by or on behalf of the *management company*, *insurance intermediary* or *firm* carrying on *funeral plan distribution*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*; and
 - (b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- (2) The procedures and measures provided for in paragraph (1)(b) must:
 - (a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the *management company* and of the *group* to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of *clients*;
 - (aa) (for an *insurance intermediary* or a *firm* carrying on *funeral plan distribution*) be designed to ensure that the *insurance distribution activities* or *funeral plan distribution* are carried out in accordance with the best interests of the *client* and are not biased due to conflicting interests of the *insurance intermediary*, the *firm* carrying on *funeral plan distribution* or another *client*; and

- (b) include, for an *insurance intermediary* or a *firm* carrying on *funeral plan distribution*, where appropriate, the following, and for a *management company*, such of the following as are necessary and appropriate for the *management company* to ensure the requisite degree of independence:
- (i) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more *clients*;
 - (ii) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;
 - (iii) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - (iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant person* carries out services or activities;
 - (v) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in separate services or activities where such involvement may impair the proper management of conflicts of interest; and
 - (vi) (for *insurance intermediaries* or *firms* carrying on *funeral plan distribution*) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.
- (3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a *management company* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).
- (4) If one or more of the measures and procedures in paragraph (2) is not appropriate for the purposes of paragraph (2)(aa), an *insurance intermediary* or a *firm* carrying on *funeral plan distribution* must adopt such alternative measures and procedures as are necessary and appropriate.
- (5) The procedures and measures provided for in paragraph (1)(b) must be appropriate to the size and activities of an *insurance intermediary* or a *firm* carrying on *funeral plan distribution*, the group to which it may belong and to the risk of damage to the interests of the *client*.

[Note: articles 18(2), 19(1) and 19(2) of the *UCITS implementing Directive*]

10	<p>10.1.11A G</p> <p>Other <i>firms</i> (except <i>common platform firms</i>, <i>UCITS management companies</i> and <i>insurance intermediaries</i> and <i>firms</i> carrying on <i>funeral plan distribution</i>) should take account of the <i>rules</i> relating to <i>conflicts of interest policies</i> (see ■ SYSC 10.1.10 R and ■ SYSC 10.1.11 R) in accordance with ■ SYSC 1 Annex 1 3.2BR, ■ SYSC 1 Annex 1 3.2CR and ■ SYSC 1 Annex 1 3.3R.</p>
	<p>10.1.11AA R</p> <p>An <i>insurance intermediary</i> and a <i>firm</i> carrying on <i>funeral plan distribution</i> must assess and periodically review, on at least an annual basis, the <i>conflicts of interest policy</i> established in accordance with ■ SYSC 10.1.10R and ■ SYSC 10.1.11R and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).</p>
	<p>10.1.11AB R</p> <p>A <i>common platform firm</i>, in relation to its <i>insurance distribution activities</i>, must:</p> <p style="margin-left: 20px;">take into account the factors set out in ■ SYSC 10.1.4BR(4) and ■ SYSC 10.1.4CR(5) when complying with article 33 of the <i>MiFID Org Regulation</i> (as applied as a <i>rule</i> by ■ SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)); and</p> <p style="margin-left: 20px;">include the measure set out in ■ SYSC 10.1.11R(2)(b)(vi) in the list of measures to be adopted, where necessary, when complying with article 34 (3) of the <i>MiFID Org Regulation</i> (as applied as a rule by ■ SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)).</p>
	<p>10.1.11B G</p> <p>A <i>firm</i> (other than a <i>common platform firm</i>, an <i>insurance intermediary</i> and a <i>firm</i> carrying on <i>funeral plan distribution</i>) should read ■ SYSC 10.1.11AAR as if "should" appeared in that rule instead of "must".</p>
	<p>10.1.12 G</p> <p>In drawing up a <i>conflicts of interest policy</i> which identifies circumstances which constitute or may give rise to a conflict of interest, a <i>firm</i> should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the <i>firm</i> or a <i>person</i> directly or indirectly linked by <i>control</i> to the <i>firm</i> performs a combination of two or more of those activities.</p> <p>[Note: recital 47 to the <i>MiFID Org Regulation</i>]</p>
	<p>10.1.13 G</p> <p>[deleted]</p>
	<p>10.1.14 G</p> <p>[deleted]</p>
	<p>10.1.15 G</p> <p>[deleted]</p>

10.1.16

Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research

The *rules* relating to:

- (1) types of conflict (see ■ SYSC 10.1.4 R);
- (2) records of conflicts (see ■ SYSC 10.1.6 R); and
- (3) *conflicts of interest policies* (see ■ SYSC 10.1.10 R and ■ SYSC 10.1.11 R);

also apply to a *firm* which is not a *common platform firm* when it produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, and when it produces or disseminates *non-independent research*, in accordance with ■ COBS 12.2.

10.1.17

Additional requirements for a management company

A UK UCITS *management company*, when identifying the types of conflict of interests for the purposes of ■ SYSC 10.1.4 R, must take into account:

- (1) the interests of the *firm*, including those deriving from its belonging to a *group* or from the performance of services and activities, the interests of the *clients* and the duty of the *firm* towards the UCITS *scheme* it manages; and
- (2) where it manages two or more UCITS *schemes*, the interests of all of them.

[Note: article 17(2) of the UCITS *implementing Directive*]

10.1.18

For a UK UCITS *management company*, references to *client* in ■ SYSC 10.1.4 R and in the other *rules* in this section should be construed as referring to any UCITS *scheme* managed by that *firm* or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

10.1.19

Structure and organisation of a management company

A UK UCITS *management company* must be structured and organised in such a way as to minimise the risk of a UCITS *scheme's* or *client's* interests being prejudiced by conflicts of interest between the UK UCITS *management company* and its *clients*, between two of its *clients*, between one of its *clients* and a UCITS *scheme*, or between two such *schemes*.

[Note: articles 12(1)(b) and 14(1)(d) of the UCITS *Directive*]

10.1.20

Avoidance of conflicts of interest for a management company

A UK UCITS *management company* must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS *schemes* it manages are fairly treated.

[Note: articles 12(1)(b) and 14(1)(d) of the UCITS *Directive*]

10.1.21

R**Disclosure of conflicts of interest for a management company**

- (1) Where the organisational or administrative arrangements made by a *UK UCITS management company* for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *UCITS scheme* it manages or of its *Unitholders* will be prevented, the *senior personnel* or other competent internal body of the *firm* must be promptly informed in order for them to take any necessary decision to ensure that in all cases the *firm* acts in the best interests of the *scheme* and of its *Unitholders*.
- (2) A *UK UCITS management company* must report situations referred to in (1) to the *Unitholders* of the *UCITS scheme* it manages by any appropriate *durable medium* and give reasons for its decision.

[Note: articles 20(2) and 20(3) of the *UCITS implementing Directive*]

10.1.22

R**Collective portfolio management investment firms**

A *collective portfolio management investment firm* which manages investments other than for an *AIF* or *UCITS* for which it has been appointed as manager, must obtain approval from its *client* before it invests all or part of the *client's* portfolio in *units* or *shares* of an *AIF* or *UCITS* it manages.

[Note: article 12(2)(a) of the *UCITS Directive* and article 12(2)(a) of *AIFMD*]

10.1.23

R**Additional requirements for an AIFM**

An *AIFM* must take all reasonable steps to identify conflicts of interest that arise, in the course of managing *AIFs*, between:

- (1) the *AIFM*, including its managers, *employees* or any person directly or indirectly linked to the *AIFM* by *control*, and an *AIF* managed by the *AIFM* or the investors in that *AIF*; or
- (2) an *AIF* or the investors in that *AIF*, and another *AIF* or the investors in that *AIF*; or
- (3) an *AIF* or the investors in that *AIF*, and another *client* of the *AIFM*; or
- (4) an *AIF* or the investors in that *AIF*, and a *UCITS* managed by the *AIFM* or the investors in that *UCITS*; or
- (5) two *clients* of the *AIFM*.

[Note: article 14(1) first paragraph of *AIFMD*]

10.1.24

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An *AIFM* must take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, manage, monitor and (where applicable) disclose those conflicts of interest in order to prevent them from adversely affecting the interests of the *AIFs* and their investors, and to ensure that the *AIFs* it manages are fairly treated.

[Note: article 12(1)d of *AIFMD*]

10.1.25

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An AIFM must:

- (1) maintain and operate effective organisational and administrative arrangements, with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors;
- (2) segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest; and
- (3) assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the AIF's investors.

[Note: article 14(1) second and third paragraphs of AIFMD]

10.1.26

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If the organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the AIFM must:

- (1) clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf; and
- (2) develop appropriate policies and procedures.

[Note: article 14(2) of AIFMD]

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Subordinate measures for alternative investment fund managers.....

10.1.27

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Articles 30 to 37 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions of article 14 of AIFMD.



10.1A Insurance-based investment products – Conflicts of interest

Application

10.1A.1 G This section applies, in addition to *rules* in ■ SYSC 10.1, to a *firm* when carrying on *insurance distribution* in relation to *insurance-based investment products*. Where a *firm* carries on other *insurance distribution activities* in relation to a *life policy* or *non-investment insurance contract*, the requirements in ■ SYSC 10.1 will apply.

Identifying conflicts

- 10.1A.2 R**
- (1) For the purposes of identifying, in accordance with ■ SYSC 10.1.3R and ■ SYSC 10.1.8R, the types of conflicts of interest that arise in the course of carrying out any *insurance distribution activities* related to *insurance-based investment products* and which entail a risk of damage to the interests of a *client*, a *firm* must assess whether it, a *relevant person* or any *person* directly or indirectly linked to it by *control*, has an interest in the outcome of the *insurance distribution activities*, which meets the following criteria:
 - (a) it is distinct from the *client's* interest in the outcome of the *insurance distribution activities*;
 - (b) it has the potential to influence the outcome of the *insurance distribution activities* to the detriment of the *client*.
 - (2) A *firm* must proceed in the same way for the purposes of identifying conflicts of interest between one *client* and another.
 - (3) For the purposes of the assessment in (1), a *firm* must take into account, by way of minimum criteria, the following situations:
 - (a) the *firm*, a *relevant person* or any *person* directly or indirectly linked to it by *control* is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the *client*;
 - (b) the *firm*, a *relevant person* or any *person* directly or indirectly linked to it by *control* has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interest of the *client*;
 - (c) the *firm*, a *relevant person* or any *person* directly or indirectly linked by *control* to the *firm* is substantially involved in the management or development of *insurance-based investment products*, in particular where such a *person* has an influence on the pricing of those *policies* or their distribution costs.

[Note: article 3 of the *IDD Regulation*]

10.1A.3

Conflicts policy**R**

- (1) For the purposes of ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR, in so far as those *rules* apply to *insurance-based investment products*, a *firm* must establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to its size and organisation and the nature, scale and complexity of its business.
- (2) Where the *firm* is a member of a group, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 4(1) of the *IDD Regulation*]

10.1A.4

Contents of policy**R**

The conflicts of interest policy required in ■ SYSC 10.1A.3R must include the following content:

- (1) with reference to the specific *insurance distribution activities* carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more *clients*;
- (2) procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the *client*.

10.1A.4

EU

10.1A.5

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- (1) The procedures and measures required in ■ SYSC 10.1A.4R(2) must be appropriate to the size and activities of the *firm* and of the group to which it may belong, and to the risk of damage to the interests of the *client*.
- (2) The procedures to be followed and measures required in ■ SYSC 10.1A.4R(2) must include, where appropriate, the following:
 - (a) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more *clients*;
 - (b) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services, to *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;
 - (c) the removal of any direct link between payments, including *remuneration*, to *relevant persons* engaged in one activity and payments, including *remuneration*, to different *relevant persons*

- principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- (d) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which *insurance distribution activities* are carried out by the *firm* or its managers or employees or any *person* directly or indirectly linked to it by control;
 - (e) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in separate *insurance distribution activities* where such involvement may impair the proper management of conflicts of interest;
 - (f) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.
- (3) Where the *firm* can demonstrate that the measures and procedures referred to in (1) and (2) are not appropriate to ensure that the *insurance distribution activities* are carried out in accordance with the best interest of the *client* and are not biased due to conflicting interests of the *firm*, an *insurance undertaking* or another *client*, the *firm* must adopt adequate alternative measures and procedures for that purpose.

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

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10.1A.6

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Disclosure of conflicts

- (1) A *firm* must avoid over-reliance on disclosure to ensure that disclosure to *clients* under ■ SYSC 10.1.8R, in so far as those *rules* apply to *insurance-based investment products*, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the *firm* to prevent or manage conflicts of interest in accordance with ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR, in so far as those *rules* apply to *insurance-based investment products* are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.
- (2) For the purposes of a disclosure of conflicts of interest a *firm* must:
 - (a) provide a specific description of the conflict of interest in question;
 - (b) explain the general nature and sources of the conflict of interest;
 - (c) explain the risks to the *client* that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
 - (d) clearly state that the organisational and administrative arrangements established by the *firm* to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.

[Note: article 6 of the *IDD Regulation*]

Review of conflicts policy**10.1A.7****R**

For the purposes of SYSC 10.1.3R, SYSC 10.1.7R and SYSC 10.1.7AR a firm must assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with SYSC 10.1A.3R and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the *IDD Regulation*]

Record keeping**10.1A.8****R**

- (1) A firm must keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a client has arisen or, in the case of an ongoing service or activity may arise.
- (2) A firm must ensure its senior management receives on a frequent basis, and at least annually, written reports on the situations referred to in (1).

[Note: article 7(2) of the *IDD Regulation*]

10.2 Chinese walls

- Application**
- 10.2.1 R** This section applies to any *firm*.
- Control of information**
- 10.2.2 R**
- (1) When a *firm* establishes and maintains a *Chinese wall* (that is, an arrangement that requires information held by a *person* in the course of carrying on one part of the business to be withheld from, or not to be used for, *persons* with or for whom it acts in the course of carrying on another part of its business) it may:
 - (a) withhold or not use the information held; and
 - (b) for that purpose, permit *persons* employed in the first part of its business to withhold the information held from those employed in that other part of the business;but only to the extent that the business of one of those parts involves the carrying on of *regulated activities*, *ancillary activities* or, in the case of *MiFID business*, the provision of *ancillary services*.
 - (2) Information may also be withheld or not used by a *firm* when this is required by an established arrangement maintained between different parts of the business (of any kind) in the same *group*. This provision does not affect any requirement to transmit or use information that may arise apart from the *rules* in *COBS*.
 - (3) For the purpose of this *rule*, "maintains" includes taking reasonable steps to ensure that the arrangements remain effective and are adequately monitored, and must be interpreted accordingly.
 - (4) [deleted]
- Effect of rules**
- 10.2.3 G** ■ SYSC 10.2.2 R is made under section 137P of the Act (Control of information rules). It has the following effect:
- (1) acting in conformity with ■ SYSC 10.2.2 R (1) provides a defence against proceedings brought under sections 89(2), 90(1) and 91(1) of the Financial Services Act 2012 (Misleading statements, Misleading impressions and Misleading statements etc. in relation to benchmarks) - see sections 89(3)(b), 90(9)(c) and 91(3)(b); and
 - (2) [deleted]

- (3) acting in conformity with ■ SYSC 10.2.2 R (1) provides a defence for a firm against FCA enforcement action, or an action for damages under section 138D of the Act, based on a breach of a relevant requirement to disclose or use this information.

Attribution of knowledge

10.2.4

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When any of the *rules* of COBS or CASS apply to a *firm* that acts with knowledge, the *firm* will not be taken to act with knowledge for the purposes of that *rule* if none of the relevant individuals involved on behalf of the *firm* acts with that knowledge as a result of arrangements established under ■ SYSC 10.2.2 R.

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When a *firm* manages a conflict of interest using the arrangements in ■ SYSC 10.2.2 R which take the form of a *Chinese wall*, individuals on the other side of the wall will not be regarded as being in possession of knowledge denied to them as a result of the *Chinese wall*.

Chapter 10A

Recording telephone conversations and electronic communications

10A.1 Application

Application

10A.1.1

R

Subject to the exemptions in ■ SYSC 10A.1.4R, this chapter applies to a *firm*:

- (1) that is a:
 - (a) *MiFID investment firm*; or
 - (b) *full-scope UK AIFM*; or
 - (c) *small authorised UK AIFM or residual CIS operator*; or
 - (d) [deleted]
 - (e) *UCITS management company*; or
 - (f) *MiFID optional exemption firm*, performing activities covered by the exemption; or
 - (g) [deleted]
 - (h) *third country investment firm*; or
 - (i) that carries on activities referred to in the *general application rule* related to:
 - (i) *commodity futures*; or
 - (ii) *commodity options*; or
 - (iii) *contracts for differences* related to an underlying *commodity*; or
 - (iv) other *futures* or *contracts for differences* which are not related to *commodities*, *financial instruments* or *cash*, which are not *MiFID* or equivalent *third country business* and *energy market activity* or *oil market activity*, but excluding the following *firms*:
 - (v) a *depositary* when acting as such; and
 - (vi) an *authorised professional firm* with respect to its *non-mainstream regulated activities*; or
- (j) that carries on *energy market activity* or *oil market activity*; or

- (k) is an *OPS firm*; and
- (2) that carries out any of the following activities, in *investments* that are *financial instruments*:
- (a) *arranging (bringing about) deals in investments*;
 - (b) *dealing in investments as agent*;
 - (c) *dealing in investments as principal*;
 - (d) *managing investments*;
 - (e) *managing a UK UCITS* to the extent that this comprises the function of investment management referred to in Annex II of the *UCITS Directive*;
 - (f) *managing an AIF* to the extent that this comprises the function of portfolio management referred to in Annex I of the *AIFMD*;
 - (g) *establishing, operating or winding up a collective investment scheme* to the extent that this comprises *scheme management activity*,
- only with respect to a *firm's* activities carried on from an establishment (including a *branch*) maintained by the *firm* in the *United Kingdom*.

[Note: article 16(7) and 16(11) of *MiFID*]

10A.1.2

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Where this chapter applies to a *third country investment firm*, it applies in conjunction with ■ GEN 2.2.22AR, to ensure that such *firms* are not treated in a more favourable way than a *UK firm*.

10A.1.3

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For a *firm* in ■ SYSC 10A.1.1R(1) (other than a *MiFID investment firm* or a *third country investment firm*) *MiFIR*, and any *EU Regulation* adopted under *MiFIR* or *MiFID* which is an *onshored regulation*, apply to the extent relevant to the subject matter of this chapter as if the *firm* were a *MiFID investment firm* providing *investment services* or performing *investment activities* in accordance with article 16(7) of *MiFID*.

10A.1.4

R

This chapter does not apply to the carrying on of:

- (1) activities between *operators* and *depositaries*, of the same fund (when acting in that capacity); or
- (2) *energy market activity* and *oil market activity* which is not *MiFID* or equivalent *third country business* but which, if the *firm* carrying it on were not authorised, would not be a *regulated activity* because of article 16 of the *Regulated Activities Order* (Dealing in contractually based investments) or article 22 of the *Regulated Activities Order* (Deals with or through authorised persons etc.); or
- (3) any activity referred to in ■ SYSC 10A.1.1R(2), to the extent that it is carried out by a *firm* that is not a *MiFID investment firm*, *MiFID optional exemption firm* or *third country investment firm*, in *financial instruments* that are not:
 - (a) admitted to trading on a *trading venue*; or

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- (b) traded on a *trading venue*; or
- (c) instruments for which a request has been made for admission to trading on a *trading venue*; or
- (d) instruments covered by paragraph (a), (b) or (c), but the price or value of which depends on, or has an effect on, the price or value of a *financial instrument* referred to in those paragraphs; or
- (3A) the activities referred to in ■ SYSC 10A.1.1R(2)(d) to (g), to the extent that they are carried out by a *MiFID investment firm* or *third country investment firm* in *financial instruments* that are not:
- (a) admitted to trading on a *trading venue*; or
- (b) traded on a *trading venue*; or
- (c) instruments for which a request has been made for admission to trading on a *trading venue*; or
- (d) instruments covered by paragraph (a), (b) or (c), but the price or value of which depends on, or has an effect on, the price or value of a *financial instrument* referred to in those paragraphs; or
- activities which comprise:
- (a) underwriting of *financial instruments* on a firm commitment basis; or
- (b) placing of *financial instruments* with or without a firm commitment basis,
- within the meaning of section A(6) or A(7) of Annex 1 of *MiFID*.
- ancillary services.*

10A.1.5 **G** Firms should refer to article 76 of the *MiFID Org Regulation*, which contains additional requirements on recording of telephone conversations or electronic communications, in addition to this chapter.

Obligations for telephone and electronic communications

10A.1.6 **R** A firm must take all reasonable steps to record telephone conversations, and keep a copy of electronic communications, that relate to the activities in *financial instruments* referred to in ■ SYSC 10A.1.1R(2) (and that are not excluded by ■ SYSC 10A.1.4R), and that are made with, sent from, or received on, equipment:

- (1) provided by the firm to an employee or contractor; or
- (2) the use of which by an employee or contractor has been accepted or permitted by the firm.

[**Note:** article 16(7) of *MiFID*, third subparagraph]

10A.1.7 **R** A firm must take all reasonable steps to prevent an employee or contractor from making, sending, or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the firm is unable to record or copy.

[**Note:** article 16(7) of *MiFID*, eighth subparagraph]

- 10A.1.8 R** The telephone conversations and electronic communications referred to in ■ SYSC 10A.1.6R include those that are intended to result in the performance of the activities in *financial instruments* referred to in ■ SYSC 10A.1.1R(2), even if those conversations or communications do not in fact result in the performance of such activities.
- [Note: article 16(7) of *MiFID*, second subparagraph]
- 10A.1.9 R** A *MiFID optional exemption firm* that provides services solely or mainly to *retail clients* is not required to comply with the requirements of ■ SYSC 10A.1.6R, ■ SYSC 10A.1.7R and ■ SYSC 10A.1.11R in relation to telephone conversations, subject to compliance with the following requirements:
- (1) a telephone conversation that would be subject to ■ SYSC 10A.1.6R must be recorded instead using a written minute or note; and
 - (2) the minute or note must include all relevant, and at least the following, information:
 - (a) date and time of the conversation;
 - (b) identity of the individual participants in the conversation;
 - (c) initiator of the conversation; and
 - (d) relevant information about the client order, including the price, volume, type of order and when it will be transmitted or executed.
- 10A.1.10 G** A *MiFID optional exemption firm* that chooses to take advantage of the provisions in ■ SYSC 10A.1.9R should set out its decision in its recording policy. Further, any minute or note made in accordance with ■ SYSC 10A.1.9R should contain all relevant substantive details of the conversation, as well as the information set out in ■ SYSC 10A.1.9R(4)(a)-(d). *MiFID optional exemption firms* should note that the effect of ■ SYSC 10A.1.3R is to require their compliance, as relevant, with article 76 of the *MiFID Org Regulation*, including that records must be:
- (1) stored in a *durable medium* which allows them to be replayed or copied; and
 - (2) retained in a format that does not allow the original record to be altered or deleted.
- Notification**
- 10A.1.11 R** A *firm* must notify new and existing *clients* that telephone communications or conversations between the *firm* and its *clients* that result or may result in activities in *financial instruments* referred to in ■ SYSC 10A.1.1R(2) (and that are not excluded by ■ SYSC 10A.1.4R) will be recorded. The notification must be made before the provision of any *investment services* to new and existing *clients*.
- [Note: article 16(7) of *MiFID*, fourth subparagraph]
- 10A.1.12 G** A notification referred to in ■ SYSC 10A.1.11R is only required to be made by the *firm* once, at the following times:

- (1) to a new *client* prior to the provision of any *investment services*; and
- (2) to an existing *client* prior to the provision of any *investment services* following:
- (a) the commencement of these *rules*; or
- (b) the *firm* otherwise becoming subject to these *rules*, after the date of commencement.

[**Note:** article 16(7) of *MiFID*, fifth subparagraph]

Obligation for other communications

10A.1.13 R

Client instructions given otherwise than by telephone must be made in a *durable medium* such as by mail, faxes, emails or documentation of *client* instructions issued at meetings. In particular, the content of relevant face-to-face conversations with a *client* may be recorded by using written minutes or notes.

[**Note:** article 16(7) of *MiFID*, seventh subparagraph]

Record-keeping

10A.1.14 R

The records kept in accordance with this chapter must be:

- (1) provided by the *firm* to the *client* involved upon request; and
- (2) kept for a period of five years and, where requested by the *FCA*, for a period of up to seven years.

[**Note:** article 16(7) of *MiFID*, ninth subparagraph]

Chapter 11

Liquidity risk systems and controls

			11.1 Application
	11.1.2	R	[deleted]
	11.1.3	R	[deleted]
	11.1.4	R	[deleted]
	11.1.5	G	(1) [deleted] (2) [deleted]
			Purpose
11	11.1.10	G	[deleted]
	11.1.11	R	[deleted]
	11.1.12	R	[deleted]
	11.1.14	G	[deleted]
	11.1.15	G	[deleted]
	11.1.16	G	[deleted]
	11.1.26	G	[deleted]
	11.1.27	G	[deleted]
	11.1.28	G	[deleted]

11.1.29 **G** [deleted]

11.1.30 **G** [deleted]

11.1.31 **G** [deleted]

11.1.32 **G** [deleted]

Chapter 12

Group risk systems and controls requirements

12.1 Application

- 12.1.1 R** Subject to ■ SYSC 12.1.2 R to ■ SYSC 12.1.4 R, this section applies to each of the following which is a member of a *group*:
- (1) a *firm* that falls into any one or more of the following categories:
 - (a) an *investment firm* that is not a *designated investment firm*;
 - (b) [deleted]
 - (c) an *insurer*;
 - (ca) a *UK ISPV*;
 - (d) [deleted]
 - (e) a *UK parent entity* of an *investment firm group* that is subject to prudential consolidation under *MIFIDPRU 2.5* or to the *group capital test* under ■ MIFIDPRU 2.6; and
 - (f) a *firm* subject to the *rules* in *IPRU(INV)* Chapter 14.
 - (2) a *UCITS firm*, but only if its *group* contains a *firm* falling into (1); and
 - (3) the *Society*.
- 12.1.2 R** Except as set out in ■ SYSC 12.1.4 R, this section applies with respect to different types of *group* as follows:
- (1) ■ SYSC 12.1.8 R and ■ SYSC 12.1.10 R apply with respect to all *groups*, including *financial conglomerates* and *groups* dealt with in ■ SYSC 12.1.13 R to ■ SYSC 12.1.15 R;
 - (2) the additional requirements set out in ■ SYSC 12.1.11 R and ■ SYSC 12.1.12 R only apply with respect to a *financial conglomerate* of which notification has been made that it has been identified as a *financial conglomerate* as contemplated by regulation 2 of the *Financial Groups Directive Regulations*; and
 - (3) the additional requirements set out in ■ SYSC 12.1.13 R to ■ SYSC 12.1.15 R only apply with respect to *groups* of the kind dealt with by whichever of those *rules* apply.

12.1.3	R	This section does not apply to an IVC.
12.1.4	R	<p>(1) This rule applies in respect of the following rules:</p> <ul style="list-style-type: none">(a) SYSC 12.1.8R (2);(b) SYSC 12.1.10R (1), so far as it relates to SYSC 12.1.8R (2);(c) SYSC 12.1.10R (2); and(d) SYSC 12.1.11 R to SYSC 12.1.15 R. <p>(2) The rules referred to in (1):</p> <ul style="list-style-type: none">(a) only apply with respect to a <i>financial conglomerate</i> if it is a <i>financial conglomerate</i> of which notification has been made that it has been identified as a <i>financial conglomerate</i> as contemplated by regulation 2 of the <i>Financial Groups Directive Regulations</i>;(b) [deleted](c) (so far as they apply with respect to a <i>financial conglomerate</i>) do not apply to a <i>firm</i> with respect to a <i>financial conglomerate</i> of which it is a member if the interest of the <i>financial conglomerate</i> in that <i>firm</i> is no more than a <i>participation</i>;(d) (so far as they apply with respect to other <i>groups</i>) do not apply to a <i>firm</i> with respect to a <i>group</i> of which it is a member if the only relationship of the kind set out in paragraph (3) of the definition of <i>group</i> between it and the other members of the <i>group</i> is nothing more than a <i>participation</i>; and(e) do not apply with respect to a <i>third-country group</i>.
12.1.5	G	For the purpose of this section, a <i>group</i> is defined in the <i>Glossary</i> , and includes the whole of a <i>firm's</i> group, including financial and non-financial undertakings. It also covers undertakings with other links to <i>group</i> members if their omission from the scope of <i>group</i> risk systems and controls would be misleading. The scope of the <i>group</i> systems and controls requirements may therefore differ from the scope of the quantitative requirements for <i>groups</i> .
		Purpose
12.1.6	G	The purpose of this chapter is to set out how the systems and control requirements imposed by SYSC (Senior Management Arrangements, Systems and Controls) apply where a <i>firm</i> is part of a <i>group</i> . If a <i>firm</i> is a member of a <i>group</i> , it should be able to assess the potential impact of risks arising from other parts of its <i>group</i> as well as from its own activities.
12.1.7	G	[deleted]
		General rules
12.1.8	R	A <i>firm</i> must:
		<p>(1) have adequate, sound and appropriate risk management processes and internal control mechanisms for the purpose of assessing and</p>

		managing its own exposure to <i>group</i> risk, including sound administrative and accounting procedures; and
		(2) ensure that its <i>group</i> has adequate, sound and appropriate risk management processes and internal control mechanisms at the level of the <i>group</i> , including sound administrative and accounting procedures.
12.1.9	G	For the purposes of ■ SYSC 12.1.8 R, the question of whether the risk management processes and internal control mechanisms are adequate, sound and appropriate should be judged in the light of the nature, scale and complexity of the <i>group</i> 's business and of the risks that the <i>group</i> bears.
12.1.10	R	The internal control mechanisms referred to in ■ SYSC 12.1.8 R must include: (1) mechanisms that are adequate for the purpose of producing any data and information which would be relevant for the purpose of monitoring compliance with any prudential requirements (including any reporting requirements and any requirements relating to capital adequacy, solvency, systems and controls and large exposures): (a) to which the <i>firm</i> is subject with respect to its membership of a <i>group</i> ; or (b) that apply to or with respect to that <i>group</i> or part of it; and (2) mechanisms that are adequate to monitor funding within the <i>group</i> .
12.1.10A	G	■ SYSC 1.1A.2 G sets out the general principle that the FCA will apply provisions to the extent of its powers and regulatory responsibilities. ■ SYSC 12.1.10 R will, therefore, have limited application to a Solvency II firm.
12.1.11	R	Financial conglomerates Where this section applies with respect to a <i>financial conglomerate</i> , the risk management processes referred to in ■ SYSC 12.1.8R (2) or, for a <i>Solvency II firm</i> , the risk management system referred to in the PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3, must include: (1) sound governance and management processes, which must include the approval and periodic review by the appropriate managing bodies within the <i>financial conglomerate</i> of the strategies and policies of the <i>financial conglomerate</i> in respect of all the risks

assumed by the *financial conglomerate*, such review and approval being carried out at the level of the *financial conglomerate*;

- (2) adequate capital adequacy policies at the level of the *financial conglomerate*, one of the purposes of which must be to anticipate the impact of the business strategy of the *financial conglomerate* on its risk profile and on the capital adequacy requirements to which it and its members are subject;
- (3) adequate procedures for the purpose of ensuring that the risk monitoring systems of the *financial conglomerate* and its members are well integrated into their organisation;
- (4) adequate procedures for the purpose of ensuring that the systems and controls of the members of the *financial conglomerate* are consistent and that the risks can be measured, monitored and controlled at the level of the *financial conglomerate*; and
- (5) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans; a *firm* must update these arrangements regularly.

[Note: article 9(2) of the *Financial Groups Directive*]

12.1.12

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Where this section applies with respect to a *financial conglomerate*, the internal control mechanisms referred to in ■ SYSC 12.1.8R (2) or, for a *Solvency II firm*, the internal control system referred to in the PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3, must include:

- (1) mechanisms that are adequate to identify and measure all material risks incurred by members of the *financial conglomerate* and appropriately relate capital in the *financial conglomerate* to risks; and
- (2) sound reporting and accounting procedures for the purpose of identifying, measuring, monitoring and controlling *intra-group transactions* and *risk concentrations*.

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CRR firms and non-CRR firms that are parent financial holding companies in the United Kingdom or UK parent financial holding companies

12.1.13

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If this rule applies under ■ SYSC 12.1.14 R to a *firm*, the *firm* must:

- (1) comply with ■ SYSC 12.1.8R (2) in relation to any *UK consolidation group* of which it is a member, as well as in relation to its *group*; and
- (2) ensure that the risk management processes and internal control mechanisms at the level of any *consolidation group* of which it is a member comply with the obligations set out in the following provisions on a consolidated (or sub-consolidated) basis:
 - (a) ■ SYSC 4.1.1 R and ■ SYSC 4.1.2 R;
 - (b) ■ SYSC 4.1.7 R;
 - (bA) ■ SYSC 4.3A;
 - (c) ■ SYSC 5.1.7 R;

		<p>(d) ■ SYSC 7;</p> <p>(dA) the <i>dual-regulated firms Remuneration Code</i>, if applicable;</p> <p>(e) [deleted];</p> <p>(f) [deleted];</p> <p>(g) [deleted];</p> <p>(h) [deleted];</p> <p>[Note: article 109(2) of CRD]</p> <p>(3) ensure that compliance with the obligations in (2) enables the consolidation group to have arrangements, processes and mechanisms that are consistent and well integrated and that any data relevant to the purpose of supervision can be produced.</p> <p>[Note: article 109(2) of CRD]</p>
12.1.14	R	■ SYSC 12.1.13 R applies to a <i>firm</i> that is:
		<p>(1) [deleted]</p> <p>(2) a <i>CRR firm</i>; or</p> <p>(3) an <i>anon-CRR firm</i> that is a <i>parent financial holding company in the United Kingdom</i> or a <i>UK parent financial holding company</i>.</p>
12.1.15	R	In the case of a <i>firm</i> that:
		<p>(1) is a <i>CRR firm</i>; and</p> <p>(2) has a <i>mixed-activity holding company</i> as a <i>parent undertaking</i>;</p> <p>the risk management processes and internal control mechanisms referred to in ■ SYSC 12.1.8 R must include sound reporting and accounting procedures and other mechanisms that are adequate to identify, measure, monitor and control transactions between the <i>firm's parent undertaking mixed-activity holding company</i> and any of the <i>mixed-activity holding company's subsidiary undertakings</i>.</p>
12.1.15A	R	[deleted]
		Nature and extent of requirements and allocation of responsibilities within the group
12.1.18	G	Assessment of the adequacy of a <i>group's</i> systems and controls required by this section will form part of the FCA's risk management process.

- 12.1.19 **G** The nature and extent of the systems and controls necessary under ■ SYSC 12.1.8R (1) to address *group* risk will vary according to the materiality of those risks to the *firm* and the position of the *firm* within the *group*.
- 12.1.20 **G** In some cases the management of the systems and controls used to address the risks described in ■ SYSC 12.1.8R (1) may be organised on a *group-wide* basis. If the *firm* is not carrying out those functions itself, it should delegate them to the *group* members that are carrying them out. However, this does not relieve the *firm* of responsibility for complying with its obligations under ■ SYSC 12.1.8R (1). A *firm* cannot absolve itself of such a responsibility by claiming that any breach of that *rule* is caused by the actions of another member of the *group* to whom the *firm* has delegated tasks. The risk management arrangements are still those of the *firm*, even though personnel elsewhere in the *firm's group* are carrying out these functions on its behalf.
- 12.1.21 **G** ■ SYSC 12.1.8R (1) deals with the systems and controls that a *firm* should have in respect of the exposure it has to the rest of the *group*. On the other hand, the purpose of ■ SYSC 12.1.8R (2) and the *rules* in this section that amplify it is to require *groups* to have adequate systems and controls. However a *group* is not a single legal entity on which obligations can be imposed. Therefore the obligations have to be placed on individual *firms*. The purpose of imposing the obligations on each *firm* in the *group* is to make sure that the FCA can take supervisory action against any *firm* in a *group* whose systems and controls do not meet the standards in this section. Thus responsibility for compliance with the *rules* for *group* systems and controls is a joint one.
- 12.1.22 **G** If both a *firm* and its *parent undertaking* are subject to ■ SYSC 12.1.8R (2), the FCA would not expect systems and controls to be duplicated. In this case, the *firm* should assess whether and to what extent it can rely on its parent's *group* risk systems and controls.

Chapter 13

Operational risk: systems and controls for insurers

13.1 Application

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|---------------|----------|---|
| 13.1.1 | G | ■ SYSC 13 applies to an <i>insurer</i> unless it is a <i>non-directive friendly society</i> . |
|
 | | |
| 13.1.2 | G | ■ SYSC 13 applies a <i>Swiss general insurer</i> only in respect of the activities of the <i>firm</i> carried on from a <i>branch</i> in the <i>United Kingdom</i> .

only in respect of the activities of the <i>firm</i> carried on from a <i>branch</i> in the <i>United Kingdom</i> . |
|
 | | |
| 13.1.3 | G | ■ SYSC 13 applies to a <i>UK ISPV</i> . |
|
 | | |
| 13.1.4 | G | ■ SYSC 13 does not apply to an <i>incoming ECA provider</i> acting as such. |

13.2 Purpose

- 13.2.1 **G** ■ SYSC 13 provides *guidance* on how to interpret ■ SYSC 3.1.1 R and ■ SYSC 3.2.6 R, which deal with the establishment and maintenance of systems and controls, in relation to the management of operational risk. Operational risk has been described by the Basel Committee on Banking Supervision as "the risk of loss, resulting from inadequate or failed internal processes, people and systems, or from external events". This chapter covers systems and controls for managing risks concerning any of a *firm's* operations, such as its IT systems and *outsourcing* arrangements. It does not cover systems and controls for managing credit, market, liquidity and insurance risk.
- 13.2.2 **G** Operational risk is a concept that can have a different application for different *firms*. A *firm* should assess the appropriateness of the *guidance* in this chapter in the light of the scale, nature and complexity of its activities as well as its obligations as set out in *Principle 3*, to organise and control its affairs responsibly and effectively.
- 13.2.3 **G** A *firm* should take steps to understand the types of operational risk that are relevant to its particular circumstances, and the operational losses to which they expose the *firm*. This should include considering the potential sources of operational risk addressed in this chapter: people; processes and systems; external events.
- 13.2.4 **G** [deleted]
- 13.2.4A **G** Operational risk can, amongst other things, lead to unfair treatment of consumers or lead to financial crime. A *firm* should consider all operational risk events that may affect these matters in establishing and maintaining its systems and controls.
- 13.2.4B **G**

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13.3 Other related Handbook sections

13.3.1 G [deleted]

13.3.1A G The following is a non-exhaustive list of *rules* and *guidance* in the *Handbook* that are relevant to a *firm's* management of operational risk:

- (1) COBS contains *rules* and *guidance* that can relate to the management of operational risk; for example, ■ COBS 2 (Conduct of business obligations), ■ COBS 4 (Communicating with clients, including financial promotions), ■ COBS 6 (Information about the firm, its services and remuneration), ■ COBS 7 (Insurance distribution), ■ COBS 9 (Suitability (including basic advice)(other than MiFID and insurance-based investment products)), ■ COBS 9A (Suitability (MiFID and insurance-based investment products provisions)), ■ COBS 10A (Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions), ■ COBS 11 (Dealing and managing), ■ COBS 12 (Investment research), ■ COBS 14 (Providing product information to clients) and ■ COBS 19 (Pensions: supplementary provisions).

13.3.1B G

13.4 Requirements to notify the appropriate regulator

13.4.1

G

Under *Principle 11* and ■ SUP 15.3.1 R, a *firm* must notify the FCA immediately of any operational risk matter of which the FCA would reasonably expect notice. ■ SUP 15.3.8 G provides *guidance* on the occurrences that this requirement covers, which include a significant failure in systems and controls and a significant operational loss.

13.4.2

G

Regarding operational risk, matters of which the FCA would expect notice under *Principle 11* include:

- (1) any significant operational exposures that a *firm* has identified;
- (2) the *firm's* invocation of a business continuity plan; and
- (3) any other significant change to a *firm's* organisation, infrastructure or business operating environment.

13.5 Risk management terms

13.5.1

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In this chapter, the following interpretations of risk management terms apply:

- (1) a *firm's* risk culture encompasses the general awareness, attitude and behaviour of its *employees* and *appointed representatives* or, where applicable, its *tied agents*, to risk and the management of risk within the organisation;
- (2) operational exposure means the degree of operational risk faced by a *firm* and is usually expressed in terms of the likelihood and impact of a particular type of operational loss occurring (for example, fraud, damage to physical assets);
- (3) a *firm's* operational risk profile describes the types of operational risks that it faces, including those operational risks within a *firm* that may have an adverse impact upon the quality of service afforded to its *clients*, and its exposure to these risks.

13.6 People

13.6.1**G**

A firm should consult ■ SYSC 3.2.2 G to ■ SYSC 3.2.5 G for guidance on reporting lines and delegation of functions within a firm and ■ SYSC 3.2.13 G to ■ SYSC 3.2.14 G for guidance on the suitability of employees and appointed representatives or, where applicable, its tied agents. This section provides additional guidance on management of employees and other human resources in the context of operational risk.

13.6.2**G**

A firm should establish and maintain appropriate systems and controls for the management of operational risks that can arise from employees. In doing so, a firm should have regard to:

- (1) its operational risk culture, and any variations in this or its human resource management practices, across its operations (including, for example, the extent to which the compliance culture is extended to in-house IT staff);
- (2) whether the way employees are remunerated exposes the firm to the risk that it will not be able to meet its regulatory obligations (see ■ SYSC 3.2.18 G). For example, a firm should consider how well remuneration and performance indicators reflect the firm's tolerance for operational risk, and the adequacy of these indicators for measuring performance;
- (3) whether inadequate or inappropriate training of client-facing services exposes clients to risk of loss or unfair treatment including by not enabling effective communication with the firm;
- (4) the extent of its compliance with applicable regulatory and other requirements that relate to the welfare and conduct of employees;
- (5) its arrangements for the continuity of operations in the event of employee unavailability or loss;
- (6) the relationship between indicators of 'people risk' (such as overtime, sickness, and employee turnover levels) and exposure to operational losses; and
- (7) the relevance of all the above to employees of a third party supplier who are involved in performing an outsourcing arrangement. As necessary, a firm should review and consider the adequacy of the staffing arrangements and policies of a service provider.

13.6.3

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Employee responsibilities.....

A firm should ensure that all employees are capable of performing, and aware of, their operational risk management responsibilities, including by establishing and maintaining:

- (1) appropriate segregation of employees' duties and appropriate supervision of employees in the performance of their responsibilities (see ■ SYSC 3.2.5 G);
- (2) appropriate recruitment and subsequent processes to review the fitness and propriety of employees (see ■ SYSC 3.2.13 G and ■ SYSC 3.2.14 G);
- (3) clear policy statements and appropriate systems and procedures manuals that are effectively communicated to employees and available for employees to refer to as required. These should cover, for example, compliance, IT security and health and safety issues;
- (4) training processes that enable employees to attain and maintain appropriate competence; and
- (5) appropriate and properly enforced disciplinary and employment termination policies and procedures.

13.6.4

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A firm should have regard to ■ SYSC 13.6.3 G in relation to *approved persons*, people occupying positions of high personal trust (for example, security administration, payment and settlement functions); and people occupying positions requiring significant technical competence (for example, derivatives trading and technical security administration). A firm should also consider the rules and guidance for approved persons in other parts of the Handbook (including APER, COCON and SUP) and the rules and guidance on senior manager responsibilities in ■ SYSC 2.1 (Apportionment of Responsibilities).

13.7 Processes and systems

13.7.1**G**

A *firm* should establish and maintain appropriate systems and controls for managing operational risks that can arise from inadequacies or failures in its processes and systems (and, as appropriate, the systems and processes of third party suppliers, agents and others). In doing so a *firm* should have regard to:

- (1) the importance and complexity of processes and systems used in the end-to-end operating cycle for products and activities (for example, the level of integration of systems);
- (2) controls that will help it to prevent system and process failures or identify them to permit prompt rectification (including pre-approval or reconciliation processes);
- (3) whether the design and use of its processes and systems allow it to comply adequately with regulatory and other requirements;
- (4) its arrangements for the continuity of operations in the event that a significant process or system becomes unavailable or is destroyed; and
- (5) the importance of monitoring indicators of process or system risk (including reconciliation exceptions, compensation payments for *client* losses and documentation errors) and experience of operational losses and exposures.

13

Internal documentation

13.7.2**G**

Internal documentation may enhance understanding and aid continuity of operations, so a *firm* should ensure the adequacy of its internal documentation of processes and systems (including how documentation is developed, maintained and distributed) in managing operational risk.

External documentation

13.7.3**G**

A *firm* may use external documentation (including contracts, transaction statements or advertising brochures) to define or clarify terms and conditions for its products or activities, its business strategy (for example, including through press statements), or its brand. Inappropriate or inaccurate information in external documents can lead to significant operational exposure.

13.7.4**G**

A *firm* should ensure the adequacy of its processes and systems to review external documentation prior to issue (including review by its compliance,

13.7.5**G**

legal and marketing departments or by appropriately qualified external advisers). In doing so, a *firm* should have regard to:

- (1) compliance with applicable regulatory and other requirements;
- (2) the extent to which its documentation uses standard terms (that are widely recognised, and have been tested in the courts) or non-standard terms (whose meaning may not yet be settled or whose effectiveness may be uncertain);
- (3) the manner in which its documentation is issued; and
- (4) the extent to which confirmation of acceptance is required (including by *customer* signature or counterparty confirmation).

IT systems**13.7.6****G**

A *firm* should establish and maintain appropriate systems and controls for the management of its IT system risks, having regard to:

- (1) its organisation and reporting structure for technology operations (including the adequacy of senior management oversight);
- (2) the extent to which technology requirements are addressed in its business strategy;
- (3) the appropriateness of its systems acquisition, development and maintenance activities (including the allocation of responsibilities between IT development and operational areas, processes for embedding security requirements into systems); and
- (4) the appropriateness of its activities supporting the operation of IT systems (including the allocation of responsibilities between business and technology areas).

Information security**13.7.7****G**

Failures in processing information (whether physical, electronic or known by *employees* but not recorded) or of the security of the systems that maintain it can lead to significant operational losses. A *firm* should establish and maintain appropriate systems and controls to manage its information security risks. In doing so, a *firm* should have regard to:

- (1) confidentiality: information should be accessible only to *persons* or systems with appropriate authority, which may require firewalls within a system, as well as entry restrictions;
- (2) integrity: safeguarding the accuracy and completeness of information and its processing;

- (3) availability and authentication: ensuring that appropriately authorised *persons* or systems have access to the information when required and that their identity is verified;
- (4) non-repudiation and accountability: ensuring that the *person* or system that processed the information cannot deny their actions.

13.7.8**G**

A *firm* should ensure the adequacy of the systems and controls used to protect the processing and security of its information, and should have regard to established security standards such as ISO17799 (Information Security Management).

13.7.9**G**

Operating processes and systems at separate geographic locations may alter a *firm's* operational risk profile (including by allowing alternative sites for the continuity of operations). A *firm* should understand the effect of any differences in processes and systems at each of its locations, particularly if they are in different countries, having regard to:

- (1) the business operating environment of each country (for example, the likelihood and impact of political disruptions or cultural differences on the provision of services);
- (2) relevant local regulatory and other requirements regarding data protection and transfer;
- (3) the extent to which local regulatory and other requirements may restrict its ability to meet regulatory obligations in the *United Kingdom* (for example, access to information by the *FCA* and local restrictions on internal or external audit); and
- (4) the timeliness of information flows to and from its headquarters and whether the level of delegated authority and the risk management structures of the overseas operation are compatible with the *firm's* head office arrangements.

13.8 External events and other changes

13.8.1

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The exposure of a *firm* to operational risk may increase during times of significant change to its organisation, infrastructure and business operating environment (for example, following a corporate restructure or changes in regulatory requirements). Before, during, and after expected changes, a *firm* should assess and monitor their effect on its risk profile, including with regard to:

- (1) untrained or de-motivated *employees* or a significant loss of *employees* during the period of change, or subsequently;
- (2) inadequate human resources or inexperienced *employees* carrying out routine business activities owing to the prioritisation of resources to the programme or project;
- (3) process or system instability and poor management information due to failures in integration or increased demand; and
- (4) inadequate or inappropriate processes following business re-engineering.

13.8.2

G

A *firm* should establish and maintain appropriate systems and controls for the management of the risks involved in expected changes, such as by ensuring:

- (1) the adequacy of its organisation and reporting structure for managing the change (including the adequacy of senior management oversight);
- (2) the adequacy of the management processes and systems for managing the change (including planning, approval, implementation and review processes); and
- (3) the adequacy of its strategy for communicating changes in systems and controls to its *employees*.

Unexpected changes and business continuity management

13.8.3

G

■ SYSC 3.2.19 G provides high level *guidance* on business continuity. This section provides additional *guidance* on managing business continuity in the context of operational risk.

- 13.8.4** **G** The high level requirement for appropriate systems and controls at **SYSC 3.1.1 R** applies at all times, including when a business continuity plan is invoked. However, the *FCA* recognises that, in an emergency, a *firm* may be unable to comply with a particular *rule* and the conditions for relief are outlined in **GEN 1.3 (Emergency)**.
- 13.8.5** **G** A *firm* should consider the likelihood and impact of a disruption to the continuity of its operations from unexpected events. This should include assessing the disruptions to which it is particularly susceptible (and the likely timescale of those disruptions) including through:
- (1) loss or failure of internal and external resources (such as people, systems and other assets);
 - (2) the loss or corruption of its information; and
 - (3) external events (such as vandalism, war and "acts of God").
- 13.8.6** **G** A *firm* should implement appropriate arrangements to maintain the continuity of its operations. A *firm* should act to reduce both the likelihood of a disruption (including by succession planning, systems resilience and dual processing); and the impact of a disruption (including by contingency arrangements and insurance).
- 13.8.7** **G** A *firm* should document its strategy for maintaining continuity of its operations, and its plans for communicating and regularly testing the adequacy and effectiveness of this strategy. A *firm* should establish:
- (1) formal business continuity plans that outline arrangements to reduce the impact of a short, medium or long-term disruption, including:
 - (a) resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;
 - (b) the recovery priorities for the *firm's* operations; and
 - (c) communication arrangements for internal and external concerned parties (including the *FCA*, *clients* and the press);
 - (2) escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;
 - (3) processes to validate the integrity of information affected by the disruption; and
 - (4) processes to review and update (1) to (3) following changes to the *firm's* operations or risk profile (including changes identified through testing).
- 13.8.8** **G** The use of an alternative site for recovery of operations is common practice in business continuity management. A *firm* that uses an alternative site should assess the appropriateness of the site, particularly for location, speed of recovery and adequacy of resources. Where a site is shared, a *firm* should

evaluate the risk of multiple calls on shared resources and adjust its plans accordingly.

13.9 Outsourcing

- 13.9.1** **G** As ■ SYSC 3.2.4 G explains, a *firm* cannot contract out its regulatory obligations and should take reasonable care to supervise the discharge of outsourced functions. This section provides additional *guidance* on managing *outsourcing* arrangements (and will be relevant, to some extent, to other forms of third party dependency) in relation to operational risk. *Outsourcing* may affect a *firm's* exposure to operational risk through significant changes to, and reduced control over, people, processes and systems used in outsourced activities.
- 13.9.2** **G** *Firms* should take particular care to manage *material outsourcing* arrangements and, as ■ SUP 15.3.8 G (1)(e) explains, a *firm* should notify the FCA when it intends to enter into a *material outsourcing* arrangement.
- 13.9.3** **G** A *firm* should not assume that because a service provider is either a regulated *firm* or an intra-group entity an *outsourcing* arrangement with that provider will, in itself, necessarily imply a reduction in operational risk.
- 13.9.4** **G** Before entering into, or significantly changing, an *outsourcing* arrangement, a *firm* should:
- (1) analyse how the arrangement will fit with its organisation and reporting structure; business strategy; overall risk profile; and ability to meet its regulatory obligations;
 - (2) consider whether the agreements establishing the arrangement will allow it to monitor and control its operational risk exposure relating to the *outsourcing*;
 - (3) conduct appropriate due diligence of the service provider's financial stability and expertise;
 - (4) consider how it will ensure a smooth transition of its operations from its current arrangements to a new or changed *outsourcing* arrangement (including what will happen on the termination of the contract); and
 - (5) consider any concentration risk implications such as the business continuity implications that may arise if a single service provider is used by several *firms*.

- 13.9.5** **G** In negotiating its contract with a service provider, a *firm* should have regard to:
- (1) reporting or notification requirements it may wish to impose on the service provider;
 - (2) whether sufficient access will be available to its internal auditors, external auditors or *actuaries* (see [Section 341](#) of the Act) and to the FCA (see ■ SUP 2.3.5 R (Access to premises) and ■ SUP 2.3.7 R (Suppliers under material outsourcing arrangements));
 - (3) information ownership rights, confidentiality agreements and *Chinese walls* to protect *client* and other information (including arrangements at the termination of the contract);
 - (4) the adequacy of any guarantees and indemnities;
 - (5) the extent to which the service provider must comply with the *firm's* policies and procedures (covering, for example, information security);
 - (6) the extent to which a service provider will provide business continuity for outsourced operations, and whether exclusive access to its resources is agreed;
 - (7) the need for continued availability of software following difficulty at a third party supplier;
 - (8) the processes for making changes to the *outsourcing* arrangement (for example, changes in processing volumes, activities and other contractual terms) and the conditions under which the *firm* or service provider can choose to change or terminate the *outsourcing* arrangement, such as where there is:
 - (a) a change of ownership or *control* (including insolvency or receivership) of the service provider or *firm*; or
 - (b) significant change in the business operations (including sub-contracting) of the service provider or *firm*; or
 - (c) inadequate provision of services that may lead to the *firm* being unable to meet its regulatory obligations.

- 13.9.6** **G** In implementing a relationship management framework, and drafting the service level agreement with the service provider, a *firm* should have regard to:
- (1) the identification of qualitative and quantitative performance targets to assess the adequacy of service provision, to both the *firm* and its *clients*, where appropriate;
 - (2) the evaluation of performance through service delivery reports and periodic self certification or independent review by internal or external auditors; and
 - (3) remedial action and escalation processes for dealing with inadequate performance.

- 13.9.7** **G** In some circumstances, a *firm* may find it beneficial to use externally validated reports commissioned by the service provider, to seek comfort as to the adequacy and effectiveness of its systems and controls. The use of such reports does not absolve the *firm* of responsibility to maintain other oversight. In addition, the *firm* should not normally have to forfeit its right to access, for itself or its agents, to the service provider's premises.
- 13.9.8** **G** A *firm* should ensure that it has appropriate contingency arrangements to allow business continuity in the event of a significant loss of services from the service provider. Particular issues to consider include a significant loss of resources at, or financial failure of, the service provider, and unexpected termination of the *outsourcing* arrangement.
- 13.9.9** **G**
- (1) Parts of the *guidance* in ■ SYSC 13.9 do not apply to a *Solvency II firm*. They are ■ SYSC 13.9.3G, ■ SYSC 13.9.4G(1), (2), (4) and (5) and ■ SYSC 13.9.5G(6).
 - (2) A *Solvency II firm* is subject to the outsourcing requirements in PRA Rulebook: Solvency II firms: Conditions Governing Business 7.
 - (3) The *Solvency II Regulation (EU)* 2015/35 of 10 October 2014 (article 274) also imposes specific requirements on *firms* which outsource, or propose to outsource, functions or insurance activities.
 - (4) *EIOPA* guidelines on systems of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN) include guidelines on, or relating to, outsourcing.
 - (5) The *FCA* will take the requirements and guidelines in (2) to (4) into account when considering a *firm*'s outsourcing arrangements.

13.10 Insurance

- 13.10.1** **G** Whilst a *firm* may take out insurance with the aim of reducing the monetary impact of operational risk events, non-monetary impacts may remain (including impact on the *firm's* reputation). A *firm* should not assume that insurance alone can replace robust systems and controls.
- 13.10.2** **G** When considering utilising insurance, a *firm* should consider:
- (1) the time taken for the *insurer* to pay claims (including the potential time taken in disputing cover) and the *firm's* funding of operations whilst awaiting payment of claims;
 - (2) the financial strength of the *insurer*, which may determine its ability to pay claims, particularly where large or numerous small claims are made at the same time; and
 - (3) the effect of any limiting conditions and exclusion clauses that may restrict cover to a small number of specific operational losses and may exclude larger or hard to quantify indirect losses (such as lost business or reputational costs).

Chapter 14

Risk management and associated systems and controls for insurers

14.1 Application

- 14.1.1** **R** This section applies to an *insurer* unless it is a *non-directive friendly society*.
- 14.1.2** **R** This section applies to a *Swiss general insurer* only in respect of the activities of the *firm* carried on from a *branch* in the *United Kingdom*.
- 14.1.2A** **R** This section does not apply to:
- (1) an *incoming ECA provider* acting as such; or
 - (2) a *firm* in relation to *benchmark activities*.
- 14.1.2AA** **R** This section applies to a *UK ISPV*.
- 14.1.27** **R** A *firm* must take reasonable steps to establish and maintain adequate *internal controls*.
- 14.1.28** **G** The precise role and organisation of *internal controls* can vary from *firm* to *firm*. However, a *firm's internal controls* should normally be concerned with assisting its *governing body* and relevant *senior managers* to participate in ensuring that it meets the following objectives:
- (1) safeguarding both the assets of the *firm* and its *customers*, as well as identifying and managing liabilities;
 - (2) maintaining the efficiency and effectiveness of its operations;
 - (3) ensuring the reliability and completeness of all accounting, financial and management information; and
 - (4) ensuring compliance with its internal policies and procedures as well as all applicable laws and regulations.

14.1.29A G

When determining the adequacy of its *internal controls*, a *firm* should consider both the potential risks that might hinder the achievement of the objectives listed in ■ SYSC 14.1.28 G, and the extent to which it needs to control these risks. More specifically, this should normally include consideration of:

- (1) the appropriateness of its reporting and communication lines (see ■ SYSC 3.2.2 G);
- (2) how the delegation or contracting of functions or activities to *employees, appointed representatives* or, where applicable, its *tied agents* or other third parties (for example *outsourcing*) is to be monitored and controlled (see ■ SYSC 3.2.3 G to ■ SYSC 3.2.4 G and the additional guidance on the management of *outsourcing* arrangements is also provided in ■ SYSC 13.9);
- (3) the risk that a *firm's employees* or contractors might accidentally or deliberately breach a *firm's policies* and procedures (see ■ SYSC 13.6.3 G);
- (4) the need for adequate segregation of duties (see ■ SYSC 3.2.5 G);
- (5) the establishment and control of risk management committees;
- (6) the need for risk assessment and the establishment of a risk assessment function (see ■ SYSC 3.2.10 G);
- (7) the need for internal audit and the establishment of an internal audit function and audit committee (see ■ SYSC 3.2.15 G to ■ SYSC 3.2.16 G).

14.1.29B G

- (1) ■ SYSC 14.1.29G(6) does not apply to a *Solvency II firm*.
- (2) ■ SYSC 14.1.29G(7) does not apply to a *Solvency II firm*, but only in relation to references to the internal audit function. It does apply to a *Solvency II firm* in relation to references to the internal audit committee.
- (3) For *Solvency II firms*, the PRA has made rules implementing the governance provisions of the *Solvency II Directive* relating to internal controls (article 46), see PRA Rulebook: Solvency II firms: Conditions Governing Business.
- (4) The *Solvency II Regulation* (EU) 2015/35 of 10 October 2014 also imposes specific requirements (see articles 266, 267 and 270).
- (5) The FCA will take the rules and requirements in (3) and (4) into account when considering a *Solvency II firm's* internal controls.

Chapter 15

Credit risk management systems and controls for insurers

Chapter 15A

Operational resilience

15A.1 Application

Application

- 15A.1.1** **R** This chapter applies to:
- (1) a *firm* that is:
 - (a) an *enhanced scope SMCR firm*;
 - (b) a *bank*;
 - (c) a *designated investment firm*;
 - (d) a *building society*;
 - (e) a *Solvency II firm*,
 - (2) a *UK RIE*;
 - (3) an *electronic money institution*, a *payment institution* or a *registered account information service provider*; and
 - (4) a *consolidated tape provider*.
- 15A.1.2** **R** In this chapter, a reference to a *firm* includes a *UK RIE*, an *electronic money institution*, a *payment institution*, a *registered account information service provider* and a *consolidated tape provider*.
- 15A.1.3** **R** This chapter does not apply to a *TP firm*, a *TA PI firm*, *TA RAISP firm* or a *TA EMI firm*.
- 15A.1.4** **R** This chapter does not apply to a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom*.
- 15A.1.5** **R** In this chapter, a reference to a *client* in relation to a *UK RIE* includes a person who is entitled, under an arrangement or agreement between them and that *UK RIE*, to use the *UK RIE's facilities*.
- 15A.1.5A** **R** This chapter applies in relation to a *consolidated tape provider* as if a reference to a *client* includes a person who purchases a *consolidated tape for bonds* from:

- (a) a *consolidated tape provider*; or
- (b) a *data vendor*.
- 15A.1.6 R** In this chapter, a reference to a *client* in relation to a *firm* carrying on the activity of *managing a UK UCITS* or *managing an AIF* includes:
- (1) a *unitholder*; and
 - (2) an investor in an *AIF*.
- 15A.1.7 R** The requirements in this chapter apply with respect to:
- (1) *regulated activities*;
 - (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in **article 15** of the *Regulated Activities Order* (Absence of holding out etc.);
 - (3) *ancillary activities*;
 - (4) in relation to *MiFID* or equivalent third country business, *ancillary services*;
 - (5) *collective portfolio management*;
 - (6) the provision of *payment services* and the issuance of *electronic money*, and activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of issuing *electronic money* is specified in **article 9B** of the *Regulated Activities Order*);
 - (7) any other *unregulated activities*, but only in a *prudential context*; and
 - (8) *data reporting services* provided by a *consolidated tape provider*.
- 15A.1.8 R** Notwithstanding **SYSC 15A.1.7R**, where the requirements in this chapter apply to a *firm* only as a result of **SYSC 15A.1.1R(3)**, the requirements only apply to the provision of *payment services* and the issuance of *electronic money* by the *firm*, and activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of issuing *electronic money* is specified in **article 9B** of the *Regulated Activities Order*).
- 15A.1.9 R** There is no territorial limitation on the application of this chapter.



15A.2 Operational resilience requirements

Important business services

- 15A.2.1** **R** A firm must identify its *important business services*.
- 15A.2.2** **R** A firm must keep its compliance with **SYSC 15A.2.1R** under review and, in particular, consider its compliance in the following circumstances:
- (1) if there is a material change to the firm's business or the market in which it operates; and
 - (2) in any event, no later than 1 year after it last carried out the relevant assessment.
- 15A.2.3** **G** In the course of identifying its *important business services* under **SYSC 15A.2.1R**, a firm should treat each distinct relevant service separately, and should not identify a collection of services as a single *important business service*.
- 15A.2.4** **G** The factors that a firm should consider when identifying its *important business services* include, but are not limited to:
- (1) the nature of the *client* base, including any vulnerabilities that would make the *person* more susceptible to harm from a disruption;
 - (2) the ability of *clients* to obtain the service from other providers (substitutability, availability and accessibility);
 - (3) the time criticality for *clients* receiving the service;
 - (4) the number of *clients* to whom the service is provided;
 - (5) the sensitivity of data held;
 - (6) potential to inhibit the functioning of the *UK financial system*;
 - (7) the firm's potential to impact the soundness, stability or resilience of the *UK financial system*;
 - (8) the possible impact on the firm's financial position and potential to threaten the firm's viability where this could harm the firm's *clients* or

- pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets;
- (9) the potential to cause reputational damage to the *firm*, where this could harm the *firm's clients* or pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets;
 - (10) whether disruption to the services could amount to a breach of a legal or regulatory obligation;
 - (11) the level of inherent conduct and market risk;
 - (12) the potential to cause knock-on effects for other market participants, particularly those that provide financial market infrastructure or critical national infrastructure; and
 - (13) the importance of that service to the *UK financial system*, which may include market share, *client concentration* and sensitive *clients* (for example, governments or pension funds).

Impact tolerances

- 15A.2.5** **R** A *firm* must, for each of its *important business services*, set an *impact tolerance*.
- 15A.2.6** **R** A *firm* must keep its compliance with ■ SYSC 15A.2.5R under review and, in particular, consider its compliance in the following circumstances:
- (1) if there is a material change to the *firm's business* or the market in which it operates; and
 - (2) in any event, no later than 1 year after it last carried out the relevant assessment.
- 15A.2.7** **G** The factors that a *firm* should consider when setting its *impact tolerance* include, but are not limited to:
- (1) the nature of the *client base*, including any vulnerabilities that would make the *person* more susceptible to harm from a disruption;
 - (2) the number of *clients* that may be adversely impacted and the nature of the impact;
 - (3) the potential financial loss to *clients*;
 - (4) the potential financial loss to the *firm* where this could harm the *firm's clients* or pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets;
 - (5) the potential level of reputational damage to the *firm* where this could harm the *firm's clients* or pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets;

		<ul style="list-style-type: none">(6) the potential impact on market or consumer confidence;(7) potential spread of risks to their other business services, other <i>firms</i> or the <i>UK financial system</i>;(8) the potential loss of functionality or access for <i>clients</i>;(9) any potential loss of confidentiality, integrity or availability of data;(10) the potential aggregate impact of disruptions to multiple <i>important business services</i>, in particular where such services rely on common operational resources as identified by the <i>firm's</i> mapping exercise under ■ SYSC 15A.4.1R.	
15A.2.8	G	When setting its <i>impact tolerance</i> , a <i>firm</i> should take account of the fluctuations in demand for its <i>important business service</i> at different times of the day and throughout the year in order to ensure that its <i>impact tolerance</i> reflects these fluctuations and is appropriate in light of the peak demand for the <i>important business service</i> .	
15A.2.9	R	A <i>firm</i> must ensure it can remain within its <i>impact tolerance</i> for each <i>important business service</i> in the event of a severe but plausible disruption to its operations.	
15A.2.10	G	While under ■ SYSC 15A.2.9R a <i>firm</i> must ensure it is able to remain within its <i>impact tolerance</i> , it should generally not do so if this would put the <i>firm</i> in breach of another regulatory obligation, conflict with the proper exercise of a discretion granted to it under any <i>rule</i> or regulation, or result in increased risk of harm to its <i>clients</i> or the soundness, stability or resilience of the <i>UK financial system</i> or the orderly operation of the financial markets. Under certain circumstances, a <i>firm</i> may wish to resume a degraded service. This is usually only appropriate if having regard to the interest of the <i>firm's clients</i> , the soundness, stability and resilience of the <i>UK financial system</i> and the orderly operation of the financial markets, the benefits of resuming a degraded service outweigh the negatives of keeping the service unavailable until the issues have been fully remediated and the service is able to be fully restored to its pre-disruption levels.	
15A	15A.2.11	G	Under <i>Principle 11</i> (Relations with regulators), the FCA expects to be notified of any failure by a <i>firm</i> to meet an <i>impact tolerance</i> .
	15A.2.12	G	When setting <i>impact tolerances</i> under ■ SYSC 15A.2.5R a <i>payment services provider</i> should have regard to its obligations under the EBA Guidelines on ICT and security risk management.
	15A.2.13	G	<i>Payment service providers</i> should have regard to the <i>impact tolerance</i> set under ■ SYSC 15A.2.5R when complying with the EBA Guidelines on ICT and security risk management. In particular, they should, as part of their continuity planning and testing, consider their ability to remain within their <i>impact tolerance</i> through a range of severe but plausible disruption scenarios.

15A.3 Strategies, processes and systems

- 15A.3.1 R** A *firm* must have in place sound, effective and comprehensive strategies, processes and systems to enable it to comply with its obligations under this chapter.
- 15A.3.2 R** The strategies, processes and systems required under ■ SYSC 15A.3.1R must be comprehensive and proportionate to the nature, scale and complexity of the *firm's* activities.

15A.4 Mapping

- 15A.4.1 R** A *firm* must identify and document the people, processes, technology, facilities and information necessary to deliver each of its *important business services*. This must be sufficient to allow the *firm* to identify vulnerabilities and remedy these as appropriate.
- 15A.4.2 G** Where a *firm* relies on a third party for the delivery of an *important business service*, we would expect the *firm* to have sufficient understanding of the people, processes, technology, facilities, and information that support the provision by the third party of its services to or on behalf of the *firm* so as to allow the *firm* to comply with its obligations under ■ SYSC 15A.4.1R.
- 15A.4.3 R** A *firm* must keep its compliance with ■ SYSC 15A.4.1R under review and, in particular, review its compliance in the following circumstances:
- (1) if there is a material change to the *firm's* business, the *important business services* identified in accordance with ■ SYSC 15A.2.1R or *impact tolerances* set in accordance with ■ SYSC 15A.2.5R; and
 - (2) in any event, no later than 1 year after it last carried out the relevant assessment.

15A.5 Scenario testing

Testing plan

15A.5.1**R**

A firm must develop and keep up to date a testing plan that appropriately details how it will gain assurance that it can remain within the *impact tolerances* for each of its *important business services*.

15A.5.2**G**

Firms should ensure that the testing plan takes account of a number of factors, including but not limited to:

- (1) the type of scenario testing undertaken. For example, whether it is paper based, simulations or through the use of live-systems;
- (2) the scenarios which the firm expects to be able to remain within their *impact tolerances* and which ones they may not;
- (3) the frequency of the testing;
- (4) the number of *important business services* tested;
- (5) the availability and integrity of supporting assets;
- (6) how the firm would communicate with internal and external stakeholders effectively to reduce the harm caused by operational disruptions.

Testing

15A.5.3**R**

A firm must carry out scenario testing, to assess its ability to remain within its *impact tolerance* for each of its *important business services* in the event of a severe but plausible disruption of its operations.

15A.5.4**R**

In carrying out the scenario testing, a firm must identify an appropriate range of adverse circumstances of varying nature, severity and duration relevant to its business and risk profile and consider the risks to the delivery of the firm's *important business services* in those circumstances.

15A.5.5**G**

Where a firm relies on a third party for the delivery of its *important business services*, we would expect the firm to work with the third party to ensure the validity of the firm's scenario testing under ■ SYSC 15A.5.3R. To the extent that the firm relies on the third party to carry out testing of the services provided by the third party to or on behalf of the firm, the firm should ensure the suitability of the methodologies, scenarios and considerations

15A

15A.5.6**G**

adopted by the third party in carrying out testing. The *firm* is ultimately responsible for the quality and accuracy of any testing carried out, whether by the *firm* or by a third party.

15A.5.7**R**

A *firm* must carry out the scenario testing:

- (1) if there is a material change to the *firm's* business, the *important business services* identified in accordance with ■ SYSC 15A.2.1R or impact tolerances set in accordance with ■ SYSC 15A.2.5R;
- (2) following improvements made by the *firm* in response to a previous test; and
- (3) in any event, on a regular basis.

Lessons learned

15A.5.8**R**

A *firm* must, following scenario testing or, in the event of an operational disruption, after such event, conduct a lessons learned exercise that allows the *firm* to identify weaknesses and take action to improve its ability to effectively respond and recover from future disruptions.

15A.5.9**R**

Following the lessons learned exercise, a *firm* must make necessary improvements to address weaknesses identified to ensure that it can remain within its *impact tolerances* in accordance with ■ SYSC 15A.2.9R.

15A.6 Self-assessment and lessons learned exercise documentation

15A.6.1**R**

A *firm* must make, and keep up to date, a written record of its assessment of its compliance with the requirements in this chapter, including, but not limited to, a written record of:

- (1) *important business services* identified by the *firm* and the justification for the determination made;
- (2) the *firm's impact tolerances* and the justification for the level at which they have been set by the *firm*;
- (3) the *firm's approach* to mapping under ■ SYSC 15A.4.1R, including how the *firm* has used mapping to:
 - (a) identify the people, processes, technology, facilities and information necessary to deliver each of its *important business services*;
 - (b) identify vulnerabilities; and
 - (c) support scenario testing;
- (4) the *firm's testing plan* and a justification for the plan adopted;
- (5) details of the scenario testing carried out as part of its obligations under ■ SYSC 15A.5, including a description and justification of the assumptions made in relation to scenario design and any identified risks to the *firm's ability* to meet its *impact tolerances*;
- (6) any lessons learned exercise conducted under ■ SYSC 15A.5.8R;
- (7) an identification of the vulnerabilities that threaten the *firm's ability* to deliver its *important business services* within the *impact tolerances* set, including the actions taken or planned and justifications for their completion time;
- (8) its communication strategy under ■ SYSC 15A.8.1R and an explanation of how it will enable it to reduce the anticipated harm caused by operational disruptions; and
- (9) the methodologies used to undertake the above activities.

15A.6.2**R**

A *firm* must retain each version of the records referred to in ■ SYSC 15A.6.1R for at least 6 years and, on request, provide these to the FCA.

15A.7 Governance

- 15A.7.1 R** A *firm* must ensure that its *governing body* approves and regularly reviews the written records required under ■ SYSC 15A.6 (Self-assessment and lessons learned exercise documentation).

15A.8 Communications

15A.8.1 R A *firm* must maintain an internal and external communication strategy to act quickly and effectively to reduce the anticipated harm caused by operational disruptions.

15A.8.2 G As part of a *firm's* communications strategy, the *FCA* expects the *firm* to:

- (1) consider, in advance of a disruption, how it would provide important warnings or advice quickly to *clients* and other stakeholders, including where there is no direct line of communication;
- (2) use effective communication to gather information about the cause, extent, and impact of operational incidents; and
- (3) ensure that their choice of communication method takes account of the circumstances, needs and vulnerabilities of their *clients* and other stakeholders.

15A.8.3 R A *firm* must provide clear, timely and relevant communications to stakeholders in the event of an operational disruption.

15A.9 Supervisory review and feedback

- 15A.9.1** **G** The *FCA* may provide individual *guidance* as to whether a *firm's* compliance with this chapter is adequate and, if necessary, require a *firm* to take the necessary actions or steps to address any failure to meet the requirements in this chapter.
- 15A.9.2** **G** A *firm* should have regard to the views provided by the *FCA* in relation to the *firm's* compliance. If a *firm* considers that any individual *guidance* given to it is inappropriate to its circumstances it should, consistent with *Principle 11* (Relations with regulators), inform the *FCA* that it disagrees with that *guidance*. The *FCA* may reissue the individual *guidance* if, after discussion with the *firm*, the *FCA* concludes that the appropriate actions or steps a *firm* should take is different from that initially suggested by the *FCA*.
- 15A.9.3** **G** If, after discussion, the *FCA* and a *firm* still do not agree, the *FCA* may consider other tools available to it, including its powers under *Sections 55J* and *55L* of the *Act* on its own initiative to require the *firm* to take specific steps in line with the *FCA's* view to comply with the requirements in this chapter.

Chapter 16

Market risk management systems and controls for insurers

Chapter 17

Insurance risk systems and controls

Chapter 18

Whistleblowing

18.1 Application and purpose

Application

18.1.1 **G**

[deleted]

18.1.1A **R**

This chapter applies to:

- (1) a *firm*;
- (2) in relation to the *guidance* in ■ SYSC 18.3.9G, every *firm*;
- (3) in relation to ■ SYSC 18.3.6R and ■ SYSC 18.3.10R, *EEA SMCR banking firms* and *overseas SMCR banking firms* only in relation to a *branch* maintained by them in the *United Kingdom*; and
- (4) in relation to ■ SYSC 18.6.1R to ■ SYSC 18.6.3G (Whistleblowing obligations under MiFID):
 - (a) a *UK MiFID investment firm*, except a *collective portfolio management firm*; and
 - (b) a *third country investment firm*; and
- (5) in relation to ■ SYSC 18.6.4G to ■ SYSC 18.6.5G (Whistleblowing obligations under other EU legislation), a *person* within the scope of the identified *EU sectoral and cross-sectoral legislation*.

18.1.1AA **G**

Firms are reminded that for the purpose of ■ SYSC 18 (except for ■ SYSC 18.3.9G) "firm" has the specific meaning set out in paragraph (8) of that definition in the *Glossary*, namely:

- (a) "(8) (in ■ SYSC 18, with the exception of the *guidance* in ■ SYSC 18.3.9G):
 - (a) a *UK SMCR banking firm* except a *small deposit taker*; and
 - (b) a firm as referred to in Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing Instrument 2015."

18.1.1B **R**

In this chapter, a reference to a provision of the Employment Rights Act 1996 includes a reference to the corresponding provision of the Employment Rights (Northern Ireland) Order 1996.

18.1.1C **G** A firm not referred to in ■ SYSC 18.1.1AR may adopt the *rules and guidance* in this chapter as best practice. If so, it may tailor its approach in a manner that reflects its size, structure and headcount.

Purpose.....

- 18.1.2** **G**
- (1) The purposes of this chapter are to:
- (a) set out the requirements on *firms* in relation to the adoption, and communication to *UK-based employees*, of appropriate internal procedures for handling *reportable concerns* made by *whistleblowers* as part of an effective risk management system (■ SYSC 18.3);
 - (b) set out the role of the *whistleblowers' champion* (■ SYSC 18.4);
 - (c) require *firms* to ensure that *settlement agreements* expressly state that *workers* may make *protected disclosures* (■ SYSC 18.5) and do not include warranties related to *protected disclosures*;
 - (ca) set out the requirements which implemented the whistleblowing obligation under article 73(2) of *MiFID*, which requires *MiFID investment firms* (except *collective portfolio management firms*) to have in place appropriate procedures for their employees to report potential or actual infringements of the *MiFID* regime (■ SYSC 18.6);
 - (cb) outline other *EU*-derived whistleblowing obligations similar to those in article 73(2) of *MiFID*, some of which may also be applicable to *MiFID investment firms* (■ SYSC 18.6);
 - (d) outline best practice for *firms* which are not required to apply the measures set out in this chapter but which wish to do so; and
 - (e) outline the link between effective whistleblowing measures and fitness and propriety.
- (2) [deleted]

18.1.3 **G** [deleted]

18.3 Internal arrangements

Arrangements to be appropriate and effective

18.3.1

R

- (1) A *firm* must establish, implement and maintain appropriate and effective arrangements for the disclosure of *reportable concerns* by *whistleblowers*.
- (2) The arrangements in (1) must at least:
 - (a) be able effectively to handle disclosures of *reportable concerns* including:
 - (i) where the *whistleblower* has requested confidentiality or has chosen not to reveal their identity; and
 - (ii) allowing for disclosures to be made through a range of communication methods;
 - (b) ensure the effective assessment and escalation of *reportable concerns* by *whistleblowers* where appropriate, including to the *FCA* or *PRA*;
 - (c) include reasonable measures to ensure that if a *reportable concern* is made by a *whistleblower* no person under the control of the *firm* engages in victimisation of that *whistleblower*;
 - (d) provide feedback to a *whistleblower* about a *reportable concern* made to the *firm* by that *whistleblower*, where this is feasible and appropriate;
 - (e) include the preparation and maintenance of:
 - (i) appropriate records of *reportable concerns* made by *whistleblowers* and the *firm's* treatment of these reports including the outcome; and
 - (ii) up-to-date written procedures that are readily available to the *firm's* UK-based employees outlining the *firm's* processes for complying with this chapter;
 - (f) include the preparation of the following reports:
 - (i) a report made at least annually to the *firm's* governing body on the operation and effectiveness of its systems and controls in relation to whistleblowing (see ■ SYSC 18.3.1R); this report must maintain the confidentiality of individual *whistleblowers*; and
 - (ii) prompt reports to the *FCA* about each case the *firm* contested but lost before an employment tribunal where the claimant successfully based all or part of their claim on either detriment suffered as a result of making a protected

		<p>disclosure in breach of section 47B of the Employment Rights Act 1996 or being unfairly dismissed under section 103A of the Employment Rights Act 1996;</p> <p>(g) include appropriate training for:</p> <ul style="list-style-type: none">(i) <i>UK-based employees</i>;(ii) <i>managers of UK-based employees</i> wherever the <i>manager</i> is based; and(iii) <i>employees responsible for operating the firms' internal arrangements</i>.
18.3.2	G	<p>(1) When establishing internal arrangements in line with SYSC 18.3.1R a <i>firm</i> may:</p> <ul style="list-style-type: none">(a) draw upon relevant resources prepared by whistleblowing charities or other recognised standards setting organisations; and(b) consult with its <i>UK-based employees</i> or those representing these <i>employees</i>. <p>(2) In considering if a <i>firm</i> has complied with SYSC 18.3.1R the <i>FCA</i> will take into account whether the <i>firm</i> has applied the measures in (1).</p> <p>(3) A <i>firm</i> may wish to clarify in its written procedures for the purposes of SYSC 18.3.1R(2)(e)(ii), that:</p> <ul style="list-style-type: none">(a) there may be other appropriate routes for some issues, such as employee grievances or consumer complaints, but internal arrangements as set out in SYSC 18.3.1R(2) can be used to blow the whistle after alternative routes have been exhausted, in relation to the effectiveness or efficiency of the routes; and(b) nothing prevents <i>firms</i> taking action against those who have made false and malicious disclosures.
18.3.3	G	<p>(1) A <i>firm</i> may wish to operate its arrangements under SYSC 18.3.1R internally, within its <i>group</i> or through a third party.</p> <p>(2) <i>Firms</i> will have to consider how to manage any conflicts of interest.</p> <p>(3) If the <i>firm</i> uses another member of its group or a third party to operate its arrangements under SYSC 18.3.1R it will continue to be responsible for complying with that <i>rule</i>.</p>
18.3.4	G	<p>Training and development</p> <p>A <i>firm's</i> training and development in line with SYSC 18.3.1R(2)(g) should include:</p> <p>(1) for all <i>UK-based employees</i>:</p> <ul style="list-style-type: none">(a) a statement that the <i>firm</i> takes the making of <i>reportable concerns</i> seriously;(b) a reference to the ability to report <i>reportable concerns</i> to the <i>firm</i> and the methods for doing so;

- (c) examples of events that might prompt the making of a *reportable concern*;
 - (d) examples of action that might be taken by the *firm* after receiving a *reportable concern* by a *whistleblower*, including measures to protect the *whistleblower's* confidentiality; and information about sources of external support such as whistleblowing charities;
- (2) for all managers of *UK-based employees* wherever the *manager* is based:
- (a) how to recognise when there has been a disclosure of a *reportable concern* by a *whistleblower*;
 - (b) how to protect *whistleblowers* and ensure their confidentiality is preserved;
 - (c) how to provide feedback to a *whistleblower*, where appropriate;
 - (d) steps to ensure fair treatment of any *person* accused of wrongdoing by a *whistleblower*; and
 - (e) sources of internal and external advice and support on the matters referred to in (a) to (d);
- (3) all *employees* of the *firm*, wherever they are based, responsible for operating the *firm's* arrangements under ■ SYSC 18.3.1R, how to:
- (a) protect a *whistleblower's* confidentiality;
 - (b) assess and grade the significance of information provided by *whistleblowers*; and
 - (c) assist the *whistleblowers' champion* (see ■ SYSC 18.4) when asked to do so.

18.3.5 **G** Where a *firm* operates its arrangements under ■ SYSC 18.3.1R through another member of its *group* or a third party it should consider providing the training referred to in ■ SYSC 18.3.4G(3) to the *persons* operating the arrangements by the *group* member or third party.

Reporting of concerns by employees to regulators

18.3.6 **R** This *rule* applies to an *EEA SMCR banking firm* and an *overseas SMCR banking firm*.

- (1) A *person* subject to this *rule* ('P') must, in the manner described in (2), communicate to its *UK-based employees* that they may disclose *reportable concerns* to the *PRA* or the *FCA* and the methods for doing so. P must make clear that:
 - (a) reporting to the *PRA* or to the *FCA* is not conditional on a report first being made using P's internal arrangements;
 - (b) it is possible to report using P's internal arrangements and also to the *PRA* or *FCA*; these routes may be used simultaneously or consecutively; and
 - (c) it is not necessary for a disclosure to be made to P in the first instance.
- (2) The communication in (1) must be included in the *firm's* employee handbook or other equivalent document.

18.3.6A	<input checked="" type="checkbox"/> G	[deleted]
18.3.7	<input checked="" type="checkbox"/> R	<p><i>Firms must ensure that their appointed representatives or, where applicable, their tied agents, inform any of their UK-based employees who are workers that, as workers, they may make protected disclosures to the FCA.</i></p>
18.3.8	<input checked="" type="checkbox"/> G	<p>Appointed representatives and tied agents</p> <p><i>Firms are encouraged to invite their appointed representatives or, where applicable, their tied agents to consider adopting appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the FCA or PRA.</i></p>
18.3.9	<input checked="" type="checkbox"/> G	<p>Link to fitness and propriety</p> <p>The FCA would regard as a serious matter any evidence that a firm had acted to the detriment of a whistleblower. Such evidence could call into question the fitness and propriety of the firm or relevant members of its staff, and could therefore, if relevant, affect the firm's continuing satisfaction of threshold condition 5 (Suitability) or, for an approved person or a certification employee, their status as such.</p>
18.3.10	<input checked="" type="checkbox"/> R	<p>Additional rules for UK branches</p> <p>(1) This rule applies where an EEA SMCR banking firm or an overseas SMCR banking firm has:</p> <ul style="list-style-type: none">(a) a branch in the United Kingdom; and(b) a group entity which is a UK SMCR banking firm. <p>(2) An EEA SMCR banking firm and an overseas SMCR banking firm must, in the manner described in (3), communicate to the UK-based employees of its UK branch:</p> <ul style="list-style-type: none">(a) the whistleblowing arrangements of the group entity that is a UK SMCR banking firm; and(b) indicate that these arrangements may be used by employees of its UK branch. <p>(3) The communication in (2) must be included in the branch's employee handbook or other equivalent document.</p>

18.4 The whistleblowers' champion

- 18.4.1** **G** (1) A UK SMCR banking firm is required under ■ SYSC 24.2.1R to allocate the FCA-prescribed senior management responsibility for acting as the firm's whistleblowers' champion.
- (2) ■ SYSC 18.4.2R requires the appointment by an insurer of a director or senior manager as its whistleblowers' champion.
- (3) This section sets out the role of the whistleblowers' champion.
- (4) The FCA expects that a firm will appoint a non-executive director as its whistleblowers' champion. A firm that does not have a non-executive director would not be expected to appoint one just for this purpose.
- 18.4.2** **R** An insurer must appoint a director or senior manager as its whistleblowers' champion.
- 18.4.3** **R** A firm must assign the responsibilities set out in ■ SYSC 18.4.4R to its whistleblowers' champion.
- 18.4.4** **R** A firm must allocate to the whistleblowers' champion the responsibility for ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing (see ■ SYSC 18.3 (Internal Arrangements)) including those policies and procedures intended to protect whistleblowers from being victimised because they have disclosed reportable concerns.
- 18.4.5** **G** The whistleblowers' champion:
- (1) should have a level of authority and independence within the firm and access to resources (including access to independent legal advice and training) and information sufficient to enable him to carry out that responsibility;
- (2) need not have a day-to-day operational role handling disclosures from whistleblowers; and
- (3) may be based anywhere provided he can perform his function effectively.

18.4.6**G**

The role of a *whistleblowers' champion*, before the introduction of his or her responsibilities under those provisions of ■ SYSC 18 which are to come into force on 7 September 2016, includes oversight of the *firm's* transition to its new arrangements for whistleblowing.

18.5 Settlement agreements with workers

- 18.5.1** **R** A *firm* must include a term in any *settlement agreement* with a *worker* that makes clear that nothing in such an agreement prevents a *worker* from making a *protected disclosure*.
- 18.5.2** **E**
- (1) *Firms* may use the following wording, or alternative wording which has substantively the same meaning, in any *settlement agreement*:
"For the avoidance of doubt, nothing precludes [name of worker] from making a "protected disclosure" within the meaning of Part 4A (Protected Disclosures) of the Employment Rights Act 1996. This includes protected disclosures made about matters previously disclosed to another recipient."
 - (2) Compliance with (1) may be relied on as tending to establish compliance with ■ SYSC 18.5.1R.
- 18.5.3** **R**
- (1) *Firms* must not request that *workers* enter into warranties which require them to disclose to the *firm* that:
 - (a) they have made a *protected disclosure*; or
 - (b) they know of no information which could form the basis of a *protected disclosure*.
 - (2) *Firms* must not use measures intended to prevent *workers* from making *protected disclosures*.

18.6 Whistleblowing obligations under the MiFID regime and other sectoral legislation

Whistleblowing obligations under the MiFID regime

18.6.1

R

- (1) A *MiFID investment firm* (except a *collective portfolio management investment firm*) must have appropriate procedures in place for its employees to report a potential or actual breach of:
 - (a) any rule which implemented *MiFID*; or
 - (b) a requirement imposed by *MiFIR* or any *onshored regulation* which was previously an *EU regulation* adopted under *MiFID* or *MiFIR*.
- (2) The procedures in (1) must enable employees to report internally through a specific, independent and autonomous channel.
- (3) The channel referred to in (2) may be provided through arrangements made by social partners, subject to the Public Interest Disclosure Act 1998 and the Employment Rights Act 1996 to the extent that they apply.

[Note: article 73(2) of *MiFID*]

18.6.2

R

■ SYSC 18.6.1R applies to a *third country investment firm* as if it were a *MiFID investment firm* (unless it is a *collective portfolio management investment firm*) when the following conditions are met:

- (1) it carries on *MiFID* or equivalent *third country business*; and
- (2) it carries on the business in (1) from an establishment in the *United Kingdom*.

18.6.3

G

When considering what procedures may be appropriate for the purposes of ■ SYSC 18.6.1R(1), a *UK MiFID investment firm* or a *third country investment firm* may wish to consider the arrangements in ■ SYSC 18.3.1R(2).

Whistleblowing obligations under other sectoral legislation

18.6.4

G

In addition to obligations under the *MiFID* regime, similar whistleblowing obligations apply to miscellaneous persons subject to regulation by the *FCA* under the following non-exhaustive list of legislation:

- (1) article 32(3) of the *Market Abuse Regulation*, as implemented in **section 131AA** of the Act;
- (2) [deleted]
- (3) the UK provisions which implemented article 99d(5) of the *UCITS Directive* (see ■ SYSC 4.1.1ER in respect of UK UCITS management companies, and ■ COLL 6.6B.30R in respect of depositaries);
- (4) article 24(3) of the *securities financing transactions regulation*; and
- (5) **section 97A** of the Act, as regards obligations under the *Prospectus Regulation*, the *PR Regulation*, and the *Prospectus RTS Regulation*.

18.6.5

G

Depending on the nature of its business, in addition to ■ SYSC 18.6.1R, a *MiFID investment firm* may, for example, be subject to one or more of the requirements in ■ SYSC 18.6.4G.

Chapter 19A

IFPRU Remuneration Code [deleted]

Chapter 19B

AIFM Remuneration Code

19B.1 Application

19B.1.1

R

The *AIFM Remuneration Code* applies to a *full-scope UK AIFM* of:

- (1) a *UK AIF*; and
- (2) a non-*UK AIF*.
- (3) [deleted]

19B.1.1A

G

- (1) *Full-scope UK AIFMs* are advised that *ESMA published Guidelines on sound remuneration policies under the AIFMD* on 3 July 2013 (*Guidelines on sound remuneration policies under the AIFMD, 03.07.2013|ESMA/2013/232*), which *full-scope UK AIFMs* should comply with in applying the *rules* in this section.
- (2) The *FCA* has provided additional *guidance* on the application of principles of proportionality to remuneration policies of *AIFM*. The *guidance* also addresses several other aspects of the *AIFM Remuneration Code* and the *Guidelines*. The *guidance* can be found at: [<http://www.fca.org.uk/your-fca/documents/finalised-guidance>] [fg14-02]

Remuneration policies and practices

19B.1.2

R

An *AIFM* must establish, implement and maintain *remuneration policies and practices* for *AIFM Remuneration Code staff* that are consistent with, and promote, sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profile of the *instrument constituting the fund* of the *AIFs* it manages.

[**Note:** article 13(1) of *AIFMD*]

19B.1.3

R

AIFM Remuneration Code staff comprise those categories of staff whose professional activities have a material impact on the risk profiles of the *AIFMs* or of the *AIFs* the *AIFM* manages. This includes senior management, risk takers, control functions, and any *employees* receiving total *remuneration* that takes them into the same *remuneration bracket* as senior management and risk takers.

[**Note:** article 13(1) of *AIFMD*]

19B.1.4

R

- (1) When establishing and applying the total *remuneration policies* for *AIFM Remuneration Code staff* (inclusive of salaries and discretionary

		<p>pension benefits), an <i>AIFM</i> must comply with the <i>AIFM remuneration principles</i> in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities.</p> <p>(2) Paragraph (1) does not apply to the requirement for significant <i>AIFMs</i> to have a <i>remuneration committee</i> (■ SYSC 19B.1.9 R).</p> <p>(3) The <i>AIFM remuneration principles</i> apply to remuneration of any type paid by the <i>AIFM</i>, to any amount paid directly by the <i>AIF</i> itself, including <i>carried interest</i>, and to any transfer of <i>units</i> or <i>shares</i> of the <i>AIF</i> made to the benefits of <i>AIFM Remuneration Code staff</i>.</p>
		<p>[Note: paragraph 1 and 2 of Annex II of <i>AIFMD</i>]</p>
		<p>AIFM Remuneration Principle 1: Risk management</p>
19B.1.5	R	<p>An <i>AIFM</i> must ensure that its <i>remuneration policy</i> is consistent with, and promotes, sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles of the <i>instrument constituting the fund</i> of the <i>AIFs</i> it manages.</p> <p>[Note: paragraph 1(a) of Annex II of <i>AIFMD</i>]</p>
		<p>AIFM Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interest</p>
19B.1.6	R	<p>An <i>AIFM</i> must ensure that its <i>remuneration policy</i> is in line with the business strategy, objectives, values and interests of the <i>AIFM</i> and the <i>AIFs</i> it manages or the investors of such <i>AIFs</i>, and includes measures to avoid conflicts of interest.</p> <p>[Note: paragraph 1(b) of Annex II of <i>AIFMD</i>]</p>
		<p>AIFM Remuneration Principle 3: Governance</p>
19B.1.7	R	<p>An <i>AIFM</i> must ensure that the <i>governing body</i> of the <i>AIFM</i>, in its supervisory function, adopts and periodically reviews the general principles of the <i>remuneration policy</i> and is responsible for its implementation.</p> <p>[Note: paragraph 1(c) of Annex II of <i>AIFMD</i>]</p>
19B.1.8	R	<p>An <i>AIFM</i> must ensure the implementation of the <i>remuneration policy</i> is, at least annually, subject to central and independent internal review for compliance with policies and procedures for <i>remuneration</i> adopted by the <i>governing body</i> in its supervisory function.</p> <p>[Note: paragraph 1(d) of Annex II of <i>AIFMD</i>]</p>
19B.1.9	R	<p>(1) An <i>AIFM</i> that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a <i>remuneration committee</i>.</p> <p>(2) The <i>remuneration committee</i> must be constituted in a way that enables it to exercise competent and independent judgment on</p>

remuneration policies and practices, and the incentives created for managing risk.

- (3) The chairman and the members of the *remuneration* committee must be members of the *governing body* who do not perform any executive function in the *AIFM*.
- (4) The *remuneration* committee must be responsible for the preparation of decisions regarding *remuneration*, including those which have implications for the risk and risk management of the *AIFM* or the *AIF* concerned and which are taken by the *governing body* in its supervisory function.

[Note: paragraph 3 of Annex II of *AIFMD*]

AIFM Remuneration Principle 4: Control functions

19B.1.10 R

An *AIFM* must ensure that *employees* engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[Note: paragraph 1(e) of Annex II of *AIFMD*]

19B.1.11 R

An *AIFM* must ensure the *remuneration* of the senior officers in the risk management and compliance functions is directly overseen by the *remuneration* committee, or, if such a committee has not been established, by the *governing body* in its supervisory function.

[Note: paragraph 1(f) of Annex II of *AIFMD*]

AIFM Remuneration Principle 5(a): Remuneration structures - assessment of performance

19B.1.12 R

An *AIFM* must ensure that, where *remuneration* is performance related, the total amount of *remuneration* is based on a combination of the assessment of the performance of the individual and of the business unit or *AIF* concerned and of the overall results of the *AIFM*. When assessing individual performance, financial and non-financial criteria are taken into account.

[Note: paragraph 1(g) of Annex II of *AIFMD*]

19B.1.13 R

An *AIFM* must ensure that the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the *AIFs* managed by the *AIFM* to ensure that:

- (1) the assessment process is based on longer term performance; and
- (2) the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the *AIFs* it manages and their investment risks.

[Note: paragraph 1(h) of Annex II of *AIFMD*]

19B.1.13A G

- (1) Taking account of the remuneration principles proportionality *rule* in ■ SYSC 19B.1.4 R, the FCA does not generally consider it necessary for a firm to apply the *rules* referred to in (2) where, in relation to an individual ("X"), both of the following conditions are satisfied:
- Condition 1 is that X's variable *remuneration* is no more than 33% of total *remuneration*; and
 - Condition 2 is that X's total *remuneration* is no more than £500,000.
- (2) The *rules* referred to in (1) are those relating to:
- guaranteed variable *remuneration* (■ SYSC 19B.1.14 R);
 - retained *units*, *shares* or other instruments (■ SYSC 19B.1.17 R);
 - deferral (■ SYSC 19B.1.18 R); and
 - performance adjustment (■ SYSC 19B.1.19 R).

AIFM Remuneration Principle 5(b): Remuneration structures - guaranteed variable remuneration**19B.1.14 R**

An AIFM must not award, pay or provide guaranteed variable remuneration unless it;

- is exceptional;
- occurs only in the context of hiring new staff; and
- is limited to the first year of service.

[Note: paragraph 1(i) of Annex II of AIFMD]

AIFM Remuneration Principle 5(c): Remuneration structures - fixed and variable components of total remuneration**19B.1.15 R**

An AIFM must ensure that:

- fixed and variable components of total *remuneration* are appropriately balanced; and
- the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component.

[Note: paragraph 1(j) of Annex II of AIFMD]

AIFM Remuneration Principle 5(d): Remuneration structures - payments related to early termination**19B.1.16 R**

An AIFM must ensure that payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

[Note: paragraph 1(k) of Annex II of AIFMD]

19B.1.17 R

AIFM Remuneration Principle 5(e): Remuneration structures - retained units, shares or other instruments

- (1) Subject to the legal structure of the *AIF* and the *instrument constituting the fund*, an *AIFM* must ensure that a substantial portion, and in any event at least 50% of any variable *remuneration*, consists of *units* or *shares* of the *AIF* concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments. However, if the management of *AIFs* accounts for less than 50% of the total portfolio managed by the *AIFM*, the minimum of 50 % does not apply.
- (2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the long-term interests of the *AIFM* and the *AIFs* it manages and the investors of such *AIFs*.
- (3) This *rule* applies to the portion of the variable *remuneration* component deferred in line with ■ SYSC 19B.1.18R (1) and the portion not deferred.

[Note: paragraph 1(m) of Annex II of *AIFMD*]

19B.1.18 R

AIFM Remuneration Principle 5(f): Remuneration structures - deferral

- (1) An *AIFM* must not award, pay or provide a variable *remuneration* component unless a substantial portion, and in any event at least 40%, of the variable *remuneration* component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the *AIF* concerned and is correctly aligned with the nature of the risks of the *AIF* in question
- (2) The period referred to in (1) must be at least three to five years, unless the life cycle of the *AIF* concerned is shorter.
- (3) *Remuneration* payable under (1) must vest no faster than on a pro-rata basis.
- (4) In the case of a variable *remuneration* component of a particularly high amount, at least 60 % of the amount must be deferred.

[Note: paragraph 1(n) of Annex II of *AIFMD*]

19B.1.18A G

- (1) £500,000 is a particularly high amount for the purpose of ■ SYSC 19B.1.18R (4).
- (2) Paragraph (1) is without prejudice to the possibility of lower sums being considered a particularly high amount.
- (3) Whilst any variable *remuneration* component of £500,000 or more paid to *AIFM Remuneration Code staff* should be subject to 60% deferral, *firms* should also consider whether lesser amounts should be considered to be 'particularly high', taking account, for example, of whether there are significant differences within *AIFM Remuneration Code staff* in the levels of variable *remuneration* paid.

19B.1.19 R**AIFM Remuneration Principle 5(g): Remuneration structures - performance adjustment, etc.**

An AIFM must ensure that any variable *remuneration*, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole and justified according to the performance of the AIF, the business unit and the individual concerned.

[Note: paragraph 1(o) first sub-paragraph of Annex II of AIFMD]

19B.1.20 G

The total variable *remuneration* should generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: paragraph 1(o) second sub-paragraph of Annex II of AIFMD]

19B.1.21 R**AIFM Remuneration Principle 6: Measurement of performance**

An AIFM must ensure the measurement of performance used to calculate variable *remuneration* components, or pools of variable *remuneration* components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.

[Note: paragraph 1(l) of Annex II of AIFMD]

19B.1.22 R**AIFM Remuneration Principle 7: Pension policy**

An AIFM must ensure that:

- (1) its pension policy is in line with its business strategy, objectives, values and long-term interests of the AIFs it manages;
- (2) when an *employee* leaves the *firm* before retirement, any *discretionary pension benefits* are held by the *firm* for a period of five years in the form of instruments in ■ SYSC 19B.1.17R (1); and
- (3) in the case of an *employee* reaching retirement, *discretionary pension benefits* are paid to the *employee* in the form of instruments referred to in ■ SYSC 19B.1.17R (1) and subject to a five-year retention period.

[Note: paragraph 1(p) of Annex II of AIFMD]

19B.1.23 R**AIFM Remuneration Principle 8: Personal investment strategies**

An AIFM must ensure that its *employees* undertake not to use personal hedging strategies or *remuneration-* and liability-related insurance to undermine the risk alignment effects embedded in their *remuneration* arrangements.

[Note: paragraph 1(q) of Annex II of AIFMD]

19B.1.24 R

**AIFM Remuneration Principle 9: Avoidance of the
remuneration code**

An AIFM must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the *AIFM Remuneration Code*.

[**Note:** paragraph 1(r) of Annex II of *AIFMD*]

Chapter 19C

BIPRU Remuneration Code [deleted]

Chapter 19D

Dual-regulated firms Remuneration Code

19D.1 Application and purpose

Who? What? Where?

19D.1.1

R

- (1) The *dual-regulated firms Remuneration Code* applies to:
 - (a) a *building society*;
 - (b) a *UK bank*;
 - (c) a *UK designated investment firm*;
 - (d) an *overseas firm* that would be a *firm* in (a), (b) or (c) if it had been a *UK domestic firm*, had carried on all of its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*.
- (2) For a *firm* which falls under (1)(a), (1)(b) or (1)(c), the *dual-regulated firms Remuneration Code* applies in relation to:
 - (a) its *UK activities*; and
 - (b) [deleted]
 - (c) a *UK domestic firm's* activities wherever they are carried on.

For a *firm* that falls under (1)(d), the *dual-regulated firms Remuneration Code* applies only in relation to activities carried on from an establishment in the *United Kingdom*.
- (4) Otherwise, the *dual-regulated firms Remuneration Code* applies to a *firm* within (1) in the same way as ■ SYSC 4.1.1R (General requirements).

19D.1.1A

G

■ SYSC 19D.1.1R(2) is applied to the extent of the FCA's powers and regulatory responsibilities.

19D.1.2

R

Under Part 2 of ■ SYSC 1 Annex 1 in relation to ■ SYSC 4.1.1R (General requirements), and subject to the provisions on group risk systems and controls requirements in ■ SYSC 12 (Group risk systems and controls requirements), the *dual-regulated firms Remuneration Code*:

- (1) applies in relation to *regulated activities*, activities that constitute *dealing in investments as principal* (disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc)), *ancillary activities* and (in relation to *MiFID business*) *ancillary services*;

- (2) applies in relation to the carrying on of *unregulated activities* in a *prudential context*; and
- (3) takes into account activities of other *group members*.

When?**19D.1.3** **R**

Except as set out in (3), a *firm* must apply the *remuneration requirements* in ■ SYSC 19D.3 (Remuneration principles) in relation to:

- (a) *remuneration awarded*, whether pursuant to a contract or otherwise, on or after 1 January 2011;
- (b) *remuneration due on the basis of contracts concluded before 1 January 2011 which is awarded or paid on or after 1 January 2011*; and
- (c) *remuneration awarded, but not yet paid, before 1 January 2011, for services provided in 2010*.

[**Note:** article 3(2) of Directive 2010/76/EU]

(2) [deleted]

(3) A *firm* must apply the *remuneration requirements* in
■ SYSC 19D.3.59R(1)(b), ■ SYSC 19D.3.61R(2), ■ SYSC 19D.3.61R(3),
■ SYSC 19D.3.61R(4), ■ SYSC 19D.3.61R(5), ■ SYSC 19D.3.64R and
■ SYSC 19D.3.67R(1)(c) in relation to variable *remuneration awarded in relation to the performance year starting on or after 1 January 2016*.

19D.1.4 **G**

Subject to ■ SYSC 19D.1.5R, ■ SYSC 19D.1.3R does not require a *firm* to breach requirements of applicable contract or employment law.

[**Note:** recital 14 of Directive 2010/76/EU]

Conflict with other obligations**19D.1.5** **R**

- (1) Where a *firm* is unable to comply with the *dual-regulated firms Remuneration Code* because to do so would breach a provision of a prior contract (including a provision in a contract with a *dual-regulated firms Remuneration Code staff member*), it must take reasonable steps to amend or to terminate the provision in question in a way which enables it to comply with the *dual-regulated firms Remuneration Code* at the earliest opportunity.
- (2) Until the provision in (1) ceases to prevent the *firm* from complying with the *dual-regulated firms Remuneration Code*, it must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the provision.

Purpose**19D.1.6** **G**

- (1) The aim of the *dual-regulated firms Remuneration Code* is to ensure that *firms* have risk-focused *remuneration policies*, which are consistent with and promote effective risk management and do not expose them to excessive risk. It expands upon the general organisational requirements in ■ SYSC 4.

- (2) The *dual-regulated firms Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. In applying the rules in the *dual-regulated firms Remuneration Code*, *firms* should comply with the *EBA* "Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013", 21 December 2015 (EBA/GL/2015/22).

Notifications to the FCA

19D.1.7 G

- (1) In addition to the notification requirements in the *dual-regulated firms Remuneration Code*, general circumstances in which the *FCA* expects to be notified by *firms* of matters relating to their compliance with requirements under the *regulatory system* are set out in ■ SUP 15.3 (General notification requirements).
- (2) For *remuneration* matters in particular, those circumstances should take into account *unregulated activities*, as well as *regulated activities* and the activities of other members of a *group*, and would include each of the following:
- (a) significant breaches of the *dual-regulated firms Remuneration Code*, including any breach of a *rule* to which the provisions on voiding and recovery in ■ SYSC 19D Annex 1 apply;
 - (b) any proposed *remuneration* policies, procedures or practices which could:
 - (i) have a significant adverse impact on the *firm's* reputation; or
 - (ii) affect the *firm's* ability to continue to provide adequate services to its *customers* and which could result in serious detriment to a *customer* of the *firm*; or
 - (iii) result in serious financial consequences to the *financial system* or to other *firms*;
 - (c) any proposed changes to *remuneration* policies, practices or procedures which could have a significant impact on the *firm's* risk profile or resources;
 - (d) fraud, errors and other irregularities described in ■ SUP 15.3.17R (notification of fraud, errors and other irregularities) which may suggest weaknesses in, or be motivated by, the *firm's* *remuneration* policies, procedures or practices.

- (3) Notifications should be made immediately as the *firm* becomes aware or has information which reasonably suggests that those circumstances have occurred, may have occurred or may occur in the foreseeable future.

Individual guidance

19D.1.8

G

The FCA's policy on individual *guidance* is set out in ■ SUP 9. *Firms* should particularly note the policy on what the FCA considers to be a reasonable request for guidance (see ■ SUP 9.2.5G). For example, where a *firm* is seeking *guidance* on a proposed *remuneration* structure, the FCA will expect the *firm* to provide a detailed analysis of how the structure complies with the *dual-regulated firms Remuneration Code*, including the general requirement for *remuneration* policies, procedures and practices to be consistent with, and promote, sound and effective risk management.

Interpretation

19D.1.9

G

Except as provided in the *Glossary*, any expression used in, or for the purpose of, this chapter which is defined or used in UK CRR has the meaning given by, or used in, those Regulations.

19D.2 General requirement

Remuneration policies must promote effective risk management

- 19D.2.1 R** A firm must establish, implement and maintain remuneration policies, procedures and practices that are consistent with, and promote, sound and effective risk management.
- [Note: article 74(1) of CRD]
- 19D.2.2 G**
- (1) The *dual-regulated firms Remuneration Code* covers all aspects of remuneration that could have a bearing on effective risk management, including salaries, bonuses, long-term incentive plans, options, hiring bonuses, severance packages and pension arrangements.
 - (2) As with other aspects of a firm's systems and controls, in accordance with ■ SYSC 4.1.2R (general organisational requirements) remuneration policies, procedures and practices must be comprehensive and proportionate to the nature, scale and complexity of the common platform firm's activities. What a firm must do in order to comply with the *dual-regulated firms Remuneration Code* will therefore vary. For example, while the *dual-regulated firms Remuneration Code* refers to a firm's remuneration committee and risk management function, it may be appropriate for the governing body of a smaller firm to act as the remuneration committee and for the firm not to have a separate risk management function.
 - (3) The FCA may also ask remuneration committees to provide it with evidence of how well the firm's remuneration policies meet the *dual-regulated firms Remuneration Code*'s principles, together with plans for improvement where there is a shortfall.
 - (4) The FCA would also expect firms to apply, on a firm-wide basis, at least the following principles relating to:
 - (a) risk management and risk tolerance (Remuneration Principle 1);
 - (b) supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2);
 - (c) avoiding conflicts of interest (Remuneration Principle 3);
 - (d) governance (Remuneration Principle 4);

- (e) risk adjustment (Remuneration Principle 8);
- (f) pension policy (Remuneration Principle 9);
- (g) personal investment strategies (Remuneration Principle 10);
- (h) payments related to early termination (Remuneration Principle 12(e)); and
- (i) deferral (Remuneration Principle 12(g)).

Gender neutral policies and practices

19D.2.2A R

A firm must ensure that its *remuneration* policy is a *gender neutral remuneration policy* and the practices referred to in ■ SYSC 19D.2.1R are gender neutral.

[Note: articles 74(1) and 92(2)(aa) of CRD V]

19D.2.2B G

Firms are reminded that the **Equality Act 2010** prohibits discrimination on the basis of an individual's protected characteristics both before and after employment is offered. The Act applies to pay and all other contractual terms, including variable *remuneration*. A firm should ensure that its *remuneration* policy complies with the **Equality Act 2010**.

19D.2.2C G

Firms should ensure that when they assess individual performance, the assessment process and any variable *remuneration* awarded in accordance with ■ SYSC 19D.3.39R does not discriminate on the basis of the protected characteristics of an individual.

Record keeping

19D.2.3 R

In line with the record-keeping requirements in ■ SYSC 9, a firm must ensure that its *remuneration* policies, practices and procedures, including performance appraisals processes and decisions, are clear and documented.

Interpretation of references to remuneration

19D.2.4 R

- (1) In this chapter, references to *remuneration* include *remuneration* paid, provided or awarded by any person to the extent that it is paid, provided or awarded in connection with *employment* by a firm.
- (2) Paragraph (1) is without prejudice to the meaning of *remuneration* elsewhere in the *Handbook*.

19D.2.5 G

For example, *remuneration* includes payments made by a seconding organisation which is not subject to the *dual-regulated firms Remuneration Code* to a secondee in respect of their *employment* by a firm which is subject to the *dual-regulated firms Remuneration Code*.

19D.3 Remuneration principles

Application: groups

19D.3.1

R

- (1) A *firm* that is a member of a *group* must:
- (a) comply with this section on an individual basis; and
 - (b) comply, and ensure that the other members of the *group* comply, with this section on a *consolidated basis* or *sub-consolidated basis*, including in respect of those *subsidiaries* established in a country or territory which is outside the *United Kingdom*.
- (2) Paragraph (1) does not limit ■ SYSC 12.1.13R(2)(dA) (which relates to the application of the *dual-regulated firms Remuneration Code* within *UK consolidation groups*).

19D.3.1A

G

- (1) Where the *dual-regulated firms Remuneration Code* applies on a *consolidated basis*, this means treating the *firms* in the- *UK consolidation group* as if they formed a single *firm*.
- (2) Where the *dual-regulated firms Remuneration Code* applies on a *sub-consolidated basis*, this means treating the *firms* in the *UK consolidation group* to which sub-consolidation applies as if they formed a single *firm*.

19D.3.2

G

■ SYSC 12.1.13R(2)(dA) requires the *firm* to ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or *non-UK sub-group* of which a *firm* is a member, comply with the obligations in this section on a consolidated basis (or sub-consolidated basis). In the FCA's view, the application of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels in ■ SYSC 19D.3.1R(1) is in line with the application of systems and controls requirements to *groups* (as in ■ SYSC 12.1.13R).

19D.3.2A

G

Firms should refer to ■ SYSC 12 (Group risk systems and controls requirements), which sets out how the systems and control requirements imposed by SYSC (Senior Management Arrangements, Systems and Controls) apply where a *firm* is part of a *group*.

19D.3.2B

R

- (1) For a *firm* within the scope of ■ SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), the provisions in (3) do not apply if:
- (a) [deleted]

- (b) the *firm*:
- (i) has average *total assets* of less than or equal to £4 billion; or
 - (ii) has average *total assets* of less than or equal to £20 billion, and meets the conditions set out in Chapter 2A.1 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time); and
- .
- (c) where the *firm* is part of a *group* that contains any other *firm* which is subject to these *rules* on an individual basis, the requirements of (1A) are met.
- (1A) The requirements of this paragraph are met where:
- (a) both of the following criteria are satisfied:
 - (i) each *firm* in the *group* to which these *rules* apply on an individual basis has average *total assets* less than or equal to £4 billion; and
 - (ii) where any *firm* in the *group* to which these *rules* apply on an individual basis is a member of a *UK consolidation group*, the *UK consolidation group* has average *total assets* less than or equal to £4 billion on a *consolidated basis*; or
 - (b) all of the following criteria are satisfied:
 - (i) each *firm* in the *group* to which these *rules* apply on an individual basis has average *total assets* that are less than or equal to £20 billion;
 - (ii) where any *firm* in the *group* to which these *rules* apply on an individual basis is a member of a *UK consolidation group*, the *UK consolidation group* has average *total assets* that are less than or equal to £20 billion on a *consolidated basis*;
 - (iii) each *firm* in the *group* to which these *rules* apply on an individual basis meets the following conditions in the Remuneration Part of the *PRA Rulebook* (as amended from time to time):
 - (A) for a *firm* within the scope of ■ SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), the conditions in Chapter 2A.1; or
 - (B) for a *firm* within the scope of ■ SYSC 19D.1.1R(1)(d), the conditions in Chapter 2B.1; and
 - (iv) where any *firm* in the *group* to which these *rules* apply on an individual basis is a member of a *UK consolidation group*, the *UK consolidation group* meets the conditions in (1), (2) and (3) of Chapter 2A.1 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time) on a *consolidated basis*.
- (1B) References in (1A) to a *firm's average total assets* are, for any *firm* within the scope of ■ SYSC 19D.1.1R(1)(d), to be read as references to the *average total assets* that relate to the activities of the *UK branch*.
- (2) For a *firm* within the scope of ■ SYSC 19D.1.1R(1)(d), the provisions in (3) do not apply if:
- (a) either:

- (i) the *average total assets* that relate to the activities of the *UK branch* are less than or equal to £4 billion; or
 - (ii) the *average total assets* that relate to the activities of the *UK branch* are less than or equal to £20 billion and the conditions set out in Chapter 2B.1 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time) are met; and
 - (b) where the *firm* is part of a *group* that contains any other *firm* which is subject to these *rules* on an individual basis, the requirements of (1A) are met.
- (3) The provisions referred to in (1) and (2) are:
- (a) ■ SYSC 19D.3.31R(2) and (3) (pension policy);
 - (b) ■ SYSC 19D.3.56R (retained *shares* or other instruments);
 - (c) ■ SYSC 19D.3.59R (deferral); and
 - (d) ■ SYSC 19D.3.61R(2), (3), (3A), (4) and (5), ■ SYSC 19D.3.62R, ■ SYSC 19D.3.63E and ■ SYSC 19D.3.64R (performance adjustment (affordability, malus, clawback)).
- (4) If a *firm* has not yet been required to report its total assets, the calculations in respect of *average total assets* shall instead be done on the basis of the *firm's* reasonable forecast of its total assets as at the first occasion on which it will be required to report them.

19D.3.2C R

[deleted]

Application: categories of staff and proportionality

19D.3.3 R

- (1) This section applies in relation to *dual-regulated firms Remuneration Code staff*, except as set out in (3).
- (2) When establishing and applying the total *remuneration* policies for *dual-regulated firms Remuneration Code staff*, a *firm* must comply with this section in a way that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities (the *dual-regulated firms remuneration principles proportionality rule*).
- (3) Paragraphs (1) and (2) do not apply to the requirement for significant *firms* to have a *remuneration committee* (■ SYSC 19D.3.12R).

[Note: article 92(2) of CRD]

[Note: In addition to the *guidance* in this section about the *dual-regulated firms remuneration principles proportionality rule*, the FCA provides guidance on the division of *firms* into categories for the purpose of providing a framework for the operation of the *dual-regulated firms remuneration principles proportionality rule*. This *guidance* is available on the FCA website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes>.]

19D

19D.3.4 R

[deleted]

- (3) [deleted]

19D.3.4A G (1) *Dual-regulated firms Remuneration Code staff* is a term defined in the *Handbook Glossary* by reference to the requirements of Chapter 3 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time).

(2) Expectations in relation to the identification of *dual-regulated firms Remuneration Code staff* are considered further in non-*Handbook* guidance at <https://www.fca.org.uk/publication/finalised-guidance/fq23-4.pdf>.

19D.3.5 G [deleted]

19D.3.6 R A *firm* must:

- (1) maintain a record of its *dual-regulated firms Remuneration Code staff* under the general record-keeping requirements (G SYSC 9); and
- (2) take reasonable steps to ensure that its *dual-regulated firms Remuneration Code staff* understand the implications of their status as such, including the potential for *remuneration* which does not comply with certain requirements of the *dual-regulated firms Remuneration Code* to be rendered void and recoverable by the *firm*.

Remuneration Principle 1: Risk management and risk tolerance

19D.3.7 R A *firm* must ensure that its *remuneration policy* is consistent with, and promotes, sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the *firm*.

[Note: article 92(2)(a) of CRD]

Remuneration Principle 2: Supporting business strategy, objectives, values and long-term interests of the firm

19D.3.8 R A *firm* must ensure that its *remuneration policy* is in line with the business strategy, objectives, values and long-term interests of the *firm*.

[Note: article 92(2)(b) of CRD]

Remuneration Principle 3: Avoiding conflicts of interest

19D.3.9 R A *firm* must ensure that its *remuneration policy* includes measures to avoid conflicts of interest.

[Note: article 92(2)(b) of CRD]

Remuneration Principle 4: Governance

19D.3.10 R A *firm* must ensure that its *management body* in its *supervisory function* adopts and periodically reviews the general principles of the *remuneration policy* and is responsible for overseeing its implementation.

[Note: article 92(2)(c) of CRD and Standard 1 of the FSB Compensation Standards]

19D.3.11 R A *firm* must ensure that the implementation of the *remuneration policy* is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *management body* in its *supervisory function*.

[**Note:** article 92(2)(d) of *CRD* and Standard 1 of the *FSB Compensation Standards*]

- 19D.3.12 R**
- (1) A *significant firm* must establish a *remuneration committee*.
 - (2) A *firm* in (1) must ensure that:
 - (a) the *remuneration committee* is constituted in a way that enables it to exercise competent and independent judgement on *remuneration* policies and practices and the incentives created for managing risk, capital and liquidity;
 - (b) the chairman and the members of the *remuneration committee* must be members of the *management body* who do not perform any executive function in the *firm*;
 - (c) the *remuneration committee* is responsible for the preparation of decisions regarding *remuneration*, including those which have implications for the risk and risk management of the *firm* and which are to be taken by the *management body*; and
 - (d) when preparing those decisions, the *remuneration committee* must take into account the long-term interests of shareholders, investors and other stakeholders in the *firm* and the public interest.

[**Note:** article 95 of *CRD* and Standard 1 of the *FSB Compensation Standards*]

19D.3.13 R A *firm* that maintains a website must explain on the website how it complies with the *dual-regulated firms Remuneration Code*.

[**Note:** article 96 of the *CRD*]

- 19D.3.14 G**
- (1) A *firm* should be able to demonstrate that its decisions are consistent with an assessment of its financial condition and future prospects. In particular, practices by which *remuneration* is paid for potential future revenues whose timing and likelihood remain uncertain should be evaluated carefully and the *governing body* or *remuneration committee* (or both) should work closely with the *firm's* risk function in evaluating the incentives created by its *remuneration system*.
 - (2) The *governing body* and any *remuneration committee* are responsible for ensuring that the *firm's* *remuneration policy* complies with the *dual-regulated firms Remuneration Code* and, where relevant, should take into account relevant guidance, such as that issued by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO).
 - (3) Guidance on what the *supervisory function* might involve is set out in ■ SYSC 4.3.3G (responsibility of senior personnel, in particular, the *supervisory function*).

19D.3.15 R

Remuneration Principle 5: Control functions

A firm must ensure that employees engaged in control functions:

- (1) are independent from the business units they oversee;
- (2) have appropriate authority; and
- (3) are *remunerated*:
 - (a) adequately to attract qualified and experienced employees; and
 - (b) in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[Note: article 92(2)(e) of CRD and Standard 2 of the FSB Compensation Standards]

19D.3.16 E

- (1) A firm's risk management and compliance functions should have appropriate input into setting the *remuneration* policy for other business areas. The procedures for setting *remuneration* should allow risk and compliance functions to have significant input into the setting of individual *remuneration* awards where those functions have concerns about the behaviour of the individuals concerned or the riskiness of the business undertaken.
- (2) Contravention of (1) may be relied on as tending to establish contravention of the rule on employees engaged in control functions having appropriate authority (■ SYSC 19D.3.15R(2)).

19D.3.17 R

A firm must ensure that the *remuneration* of the senior officers in risk management and compliance functions is directly overseen by the *remuneration committee* referred to in ■ SYSC 19D.3.12R or, if such a committee has not been established, by the *governing body* in its *supervisory function*.

[Note: article 92(2)(f) of CRD]

19D.3.18 G

- (1) This Remuneration Principle is designed to manage the conflicts of interest which might arise if other business areas had undue influence over the *remuneration* of employees within control functions. Conflicts of interest can easily arise when employees are involved in the determination of *remuneration* for their own business area. Where these could arise, they need to be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. It is good practice to seek input from a firm's human resources function when setting *remuneration* for other business areas.
- (2) [deleted]
- (3) [deleted]

19D.3.19 R	<p>Remuneration Principle 6: Remuneration and capital</p> <p>A <i>firm</i> must ensure that total variable <i>remuneration</i> does not limit the <i>firm's</i> ability to strengthen its capital base.</p> <p>[Note: article 94(1)(c) of the <i>CRD</i> and Standard 3 of the <i>FSB Compensation Standards</i>]</p>
19D.3.20 G	<p>[deleted]</p>
19D.3.21 R	<p>Remuneration Principle 7: Exceptional government intervention</p> <p>A <i>firm</i> that benefits from exceptional government intervention must ensure that:</p> <ul style="list-style-type: none"> (1) variable <i>remuneration</i> is strictly limited as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base and timely exit from government support; (2) it restructures <i>remuneration</i> in a manner aligned with sound risk management and long-term growth, including (when appropriate) establishing limits to the <i>remuneration</i> of members of its <i>management body</i>; and (3) no variable or discretionary <i>remuneration</i> of any kind is paid to members of its <i>management body</i> unless this is justified. <p>[Note: article 93 of the <i>CRD</i> and Standard 10 of the <i>FSB Compensation Standards</i>]</p>
19D.3.22 G	<p>The <i>FCA</i> would normally expect it to be appropriate for the ban on paying variable <i>remuneration</i> to members of the <i>management body</i> of a <i>firm</i> that benefits from exceptional government intervention to apply only to members of the <i>management body</i> who were in office at the time that the intervention was required.</p>
19D.3.23 R	<p>Remuneration Principle 8: Profit-based measurement and risk adjustment</p> <ul style="list-style-type: none"> (1) A <i>firm</i> must ensure that any measurement of performance used to calculate variable <i>remuneration</i> components or pools of variable <i>remuneration</i> components: <ul style="list-style-type: none"> (a) includes adjustments for all types of current and future risks and takes into account the cost and quantity of the capital and the liquidity required; and (b) takes into account the need for consistency with the timing and likelihood of the <i>firm</i> receiving potential future revenues incorporated into current earnings. (2) A <i>firm</i> must ensure that the allocation of variable <i>remuneration</i> components within the <i>firm</i> also takes into account all types of current and future risks.

[**Note:** article 94(1)(j), (k) of the *CRD* and Standard 4 of the *FSB Compensation Standards*]

19D.3.24 G

- (1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance within that process of applying judgment and common sense. The *FCA* expects that a *firm* will apply qualitative judgements and common sense in the final decision about the performance-related components of variable *remuneration pools*.
- (2) [deleted]
- (3) We consider good practice in this area to be represented by those *firms* who provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered, including non-financial risks such as reputation, conduct, *client outcomes*, values and strategy.
- (4) The *FCA* expects a *firm* to be able to provide it with details of all adjustments that the *firm* has made whether through application of formulae or the exercise of discretion. This will enable the *FCA* to consider whether the *firm's* risk adjustment framework is sufficiently robust. Where discretion has been applied, the *firm* should be able to provide a clear explanation for, and quantification of such adjustments.
- (5) A *firm* should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the *governing body* or *remuneration committee* for this purpose.

19D.3.25 R

A *firm* must have a clear and verifiable mechanism for measuring performance, with risk adjustment applied thereafter in a clear and transparent manner.

19D.3.26 G

A *firm* may apply discretionary factors to the extent that is appropriate and consistent with the overall aims of the risk adjustment exercise. Where such further adjustments have been made, *firms* should provide clear quantification and explanation to ensure their risk adjustment frameworks are sufficiently transparent.

19D.3.27 R

A *firm* must base assessments of financial performance used to calculate variable *remuneration components* or pools of variable *remuneration components* principally on profits.

19D.3.28 G

- (1) Performance measures based primarily on revenues or turnover are unlikely to pay sufficient regard to the quality of business undertaken or services provided. Profits are a better measure provided they are

		adjusted for risk, including future risks not adequately captured by accounting profits.
	(2) [deleted]	
19D.3.29	R	<ul style="list-style-type: none">(1) A <i>firm's</i> risk-adjustment approach must reflect both ex-ante adjustment (which adjusts remuneration for intrinsic risks that are inherent in its business activities) and ex-post adjustment (which adjusts remuneration for crystallisation of specific risks events).(2) A <i>firm</i> must ensure that its total variable <i>remuneration</i> is generally considerably contracted where subdued or negative financial performance of the <i>firm</i> occurs, taking into account both current <i>remuneration</i> and reductions in payouts of amounts previously earned, including through malus or clawback arrangements. <p>[Note: article 94(1)(n) of CRD and Standard 5 of the FSB Compensation Standards]</p>
19D.3.30	G	[deleted]
19D.3.31	R	<p>Remuneration Principle 9: Pension policy</p> <p>A <i>firm</i> must ensure that:</p> <ul style="list-style-type: none">(1) its pension policy is in line with its business strategy, objectives, values and long-term interests;(2) when an <i>employee</i> leaves the <i>firm</i> before retirement, any <i>discretionary pension benefits</i> are held by the <i>firm</i> for a period of five years in the form of instruments referred to in ■ SYSC 19D.3.56R(1); and(3) when an <i>employee</i> reaches retirement, <i>discretionary pension benefits</i> are paid to the <i>employee</i> in the form of instruments referred to in ■ SYSC 19D.3.56R(1) and subject to a five-year retention period. <p>[Note: article 94(1)(o) of the CRD]</p>
19D.3.32	R	<p>Remuneration Principle 10: Personal investment strategies</p> <ul style="list-style-type: none">(1) A <i>firm</i> must ensure that its <i>employees</i> undertake not to use personal hedging strategies to undermine the risk alignment effects embedded in their <i>remuneration</i> arrangements.(2) A <i>firm</i> must ensure that its <i>employees</i> do not use <i>remuneration-</i> or liability-related <i>contracts of insurance</i> to undermine the risk alignment effects embedded in their <i>remuneration</i> arrangements.(3) A <i>firm</i> must maintain effective arrangements designed to ensure that <i>employees</i> comply with their undertaking. <p>[Note: article 94(1)(p) of the CRD and Standard 14 of the FSB Compensation Standards]</p>

19D.3.33 G In the *FCA's view*, circumstances in which a *person* will be using a personal hedging strategy include (and are not limited to) entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to that *person* that are linked to or commensurate with the amounts by which the *person's remuneration* is subject to reductions.

Remuneration Principle 11: Non-compliance with the dual-regulated firms Remuneration Code

19D.3.34 R A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate non-compliance with obligations arising from the *Dual-regulated Remuneration Code*, the *UK CRR* or the *UK* legislation that implemented the *CRD*.

[**Note:** article 94(1)(q) of the *CRD*]

Remuneration Principle 12: Remuneration structures - introduction

19D.3.35 R (1) The *rules* in (2) do not apply to a *firm* in relation to an individual (X), where both the following conditions are satisfied:

- Condition 1 is that X's annual variable *remuneration* is no more than one third of X's total annual *remuneration*; and
- Condition 2 is that X's total annual variable *remuneration* is no more than £44,000.

(2) The *rules* referred to in (1) are those relating to:

- pension policy (**SYSC 19D.3.31R(2)** and (3));
- retained shares or other instruments (**SYSC 19D.3.56R**);
- deferral (**SYSC 19D.3.59R**); and
- [deleted]

[**Note:** article 94(3)(b) of *CRD V*]

Remuneration Principle 12(a): Remuneration structures - general requirement

19D.3.36 R A *firm* must ensure that the structure of an *employee's remuneration* is consistent with, and promotes, effective risk management.

19D.3.37 R A *firm* must ensure that the *remuneration* policy makes a clear distinction between criteria for setting:

- basic fixed *remuneration* that primarily reflects an *employee's professional experience and organisational responsibility*, as set out in the *employee's job description and terms of employment*; and
- variable *remuneration* that reflects performance in excess of that required to fulfil the *employee's job description and terms of*

		<p><i>employment</i> and that is subject to performance adjustment in accordance with the <i>dual-regulated firms Remuneration Code</i>.</p>
		<p>[Note: article 92(2)(g) of the CRD]</p>
19D.3.38	R	<p>A <i>firm</i> must not award variable <i>remuneration</i> to a <i>non-executive director</i> acting as such.</p>
19D.3.39	R	<p>Remuneration Principle 12(b): Remuneration structures - assessment of performance</p> <p>(1) A <i>firm</i> must ensure that where <i>remuneration</i> is performance-related:</p> <ul style="list-style-type: none">(a) the total amount of <i>remuneration</i> is based on a combination of the assessment of the performance of:<ul style="list-style-type: none">(i) the individual;(ii) the business unit concerned; and(iii) the overall results of the <i>firm</i>; and(b) when assessing individual performance, financial as well as non-financial criteria are taken into account. <p>[Note: article 94(1)(a) of the CRD and Standard 6 of the FSB Compensation Standards]</p>
19D.3.40	G	<p>(1) The non-financial criteria in ■ SYSC 19D.3.39R(1)(b) should include:</p> <ul style="list-style-type: none">(a) the extent of the <i>employee's</i> adherence to effective risk management, and compliance with the <i>regulatory system</i> and with relevant overseas regulatory requirements; and(b) metrics relating to conduct, which should comprise a substantial portion of the non-financial criteria. <p>(2) Aligning variable awards to sustainable financial performance requires <i>firms</i> to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance measures commonly used (such as earnings per share (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer-term risk factors and have a tendency to incentive highly leveraged activities.</p>
19D.3.41	G	<p>Poor performance, such as poor risk management or other behaviours contrary to <i>firm</i> values, can pose significant risks for a <i>firm</i> and non-financial metrics should override metrics of financial performance where appropriate.</p>
19D.3.41A	G	<p>A <i>firm</i> should note that the requirement in ■ SYSC 19D.3.39R(1)(b) for financial and non-financial criteria to be taken into account applies wherever <i>remuneration</i> is performance-related including within any assessment of future performance.</p>
19D.3.42	R	<p>A <i>firm</i> must clearly explain the performance assessment process in ■ SYSC 19D.3.39 to relevant <i>employees</i>.</p>

19D.3.43 R A *firm* must ensure that the assessment of performance is set in a multi-year framework in order to ensure that:

- (1) the assessment process is based on longer-term performance; and
- (2) the actual payment of performance-based components of *remuneration* is spread over a period which takes account of the underlying business cycle of the *firm* and its business risks.

[**Note:** article 94(1)(b) of *CRD*]

Remuneration Principle 12(c): Remuneration structures - guaranteed variable remuneration, buy-outs and retention awards

19D.3.44 R (1) A *firm* must ensure that guaranteed variable *remuneration* is not part of prospective *remuneration* plans.

- (2) A *firm* must not award, pay or provide guaranteed variable *remuneration* unless:
 - (a) it is exceptional;
 - (b) it occurs in the context of hiring new *dual-regulated firms Remuneration Code staff*;
 - (c) the *firm* has a sound and strong capital base; and
 - (d) it is limited to the first year of service.

[**Note:** article 94(1)(d) and (e) of the *CRD* and Standard 11 of the *FSB Compensation Standards*]

19D.3.45 R A *firm* must ensure that *remuneration* packages relating to compensation for, or buy out from, an *employee's* contracts in previous *employment* align with its long-term interests including appropriate retention, deferral and performance and clawback arrangements.

[**Note:** article 94(1)(i) of *CRD*]

19D.3.46 G (1) Guaranteed variable *remuneration* should be subject to the same requirements applicable to variable *remuneration* awarded by the *firm* including deferral, malus and clawback.

(2) The *FCA* expects that guaranteed variable awards and retention awards should not be common practice for *dual-regulated firms Remuneration Code staff* and should be limited to rare, infrequent occurrences. The *FCA* expects a *firm* to provide prior notification to the *FCA* of any proposed retention awards.

19D.3.47 G Retention awards should form part of variable *remuneration* for the purpose of **SYSC 19D.3.48R**.

19D.3.48 R

Remuneration Principle 12(d): Remuneration structures - ratios between fixed and variable components of total remuneration

- A *firm* must set an appropriate ratio between the fixed and variable components of total *remuneration* and ensure that:
- (1) fixed and variable components of total *remuneration* are appropriately balanced; and
 - (2) the level of the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component.
 - (3) [deleted]

[Note: article 94(1)(f) of the CRD]

19D.3.48A G

- (1) When determining what is an appropriate balance and an appropriate ratio for the purposes of ■ SYSC 19D.3.48R, a *firm* should consider all relevant factors, including:
 - (a) the *firm's* business activities and associated prudential and conduct risks; and
 - (b) the role of the *individual* in the *firm* and, in the case of *dual-regulated firms Remuneration Code staff*, the impact that different categories of staff have on the risk profile of the *firm*.
- (2) A *firm* may set different ratios for different categories of staff. For example, the *FCA* considers that it will usually be appropriate to set a lower ratio of variable to fixed *remuneration* for control functions than for the business units they control.
- (3) Ratios may differ from one performance period to the next.
- (4) When setting a ratio, a *firm* should consider all potential scenarios, including that a *firm* exceeds its financial objectives. The ratio should reflect the highest amount of variable *remuneration* that can be awarded in the most positive scenario. A *firm* should be satisfied that it has considered all relevant factors and should be able to explain its decision to the *FCA* if requested.

19D.3.49 R

[deleted]

19D.3.50 R

[deleted]

19D.3.51	R [deleted]
19D.3.52	R [deleted]
19D.3.53	R [deleted]
19D.3.54	R Remuneration Principle 12(e): Remuneration structures - payments related to early termination <i>A firm must ensure that payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure or misconduct.</i> [Note: article 94(1)(h) of the CRD and Standard 12 of the FSB Compensation Standards]
19D.3.55	G [deleted]
19D.3.56	R Remuneration Principle 12(f): Remuneration structures - retained shares or other instruments (1) <i>A firm must ensure that a substantial portion, which is at least 50%, of any variable remuneration consists of an appropriate balance of:</i> (a) <i>subject to the legal structure of the firm concerned: shares or equivalent ownership interests; or share-linked instruments or equivalent non-cash instruments; and</i> (b) <i>where possible, other instruments that in each case adequately reflect the credit quality of the firm as a going concern and are appropriate for use as variable remuneration, such as:</i> (i) <i>those which are eligible as additional tier 1 instruments or tier 2 instruments; or</i> (ii) <i>those that can be fully converted to common equity tier 1 instruments or written down;</i> <i>(where the expressions in italics are defined, with the conditions for eligibility, in the Definition of the Capital part of the PRA Rulebook).</i> (2) <i>The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the firm.</i> (3) <i>This rule applies to both the portion of the variable remuneration component deferred in accordance with SYSC 19D.3.59R and the portion not deferred.</i> [Note: article 94(1)(l) of the CRD and Standard 8 of the FSB Compensation Standards]
19D.3.57	G [deleted]

19D.3.58 G [deleted]

Remuneration Principle 12(g): Remuneration structures - deferral

19D.3.59 R

- (1) In relation to *higher paid material risk takers* a firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:
- (a) for *dual-regulated firms Remuneration Code staff* who perform a *FCA-designated senior management function*, five years, and vesting no faster than on a pro-rata basis;
 - (b) for *dual-regulated firms Remuneration Code staff* who perform a *PRA-designated senior management function*, seven years, with no vesting taking place until three years after the award, and vesting no faster than on a pro-rata basis; and
 - (c) for any other *dual-regulated firms Remuneration Code staff* who do not fall within (a) or (b) above, four years, and vesting no faster than on a pro-rata basis.
- (1A) In relation to *dual-regulated firms Remuneration Code staff* who are not *higher paid material risk takers*, a firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:
- (a) for *dual-regulated firms Remuneration Code staff* who perform a *FCA-designated senior management function* at a *significant firm*, five years, and vesting no faster than on a pro-rata basis;
 - (b) for *dual-regulated firms Remuneration Code staff* who perform a *PRA-designated senior management function* at a *significant firm*, five years, and vesting no faster than on a pro-rata basis;
 - (c) for any other *dual-regulated firms Remuneration Code staff* who do not fall within (a) or (b) above, four years, and vesting no faster than on a pro-rata basis.
- (2) In the case of a variable remuneration component:
- (a) of £500,000 or more, or
 - (b) payable to a *director of a significant firm*;
- at least 60% of the amount must be deferred on the basis set out in ■ SYSC 19D.3.59R(1) and vesting no faster than on a pro-rata basis.

- (3) Subject to (1), the length of the deferral period must be established in accordance with the business cycle, the nature of the business, its risks and the activities of the *employee* in question.

[**Note:** article 94(1)(m) of the CRD and Standards 6 and 7 of the FSB Compensation Standards]

19D.3.60 G

- (1) Deferred *remuneration* paid in:
- (a) *shares* or *share-linked instruments* should be made under a scheme which meets appropriate criteria, including risk adjustment of the performance measure used to determine the initial allocation of *shares*;
 - (b) cash should also be subject to performance criteria.
- (2) The FCA would generally expect a *firm* to have a *firm-wide policy* (and *group-wide policy*, where appropriate) on deferral. The proportion deferred should generally rise with the ratio of variable *remuneration* to fixed *remuneration* and with the amount of variable *remuneration*. While any variable remuneration component of £500,000 or more paid to *dual-regulated firms Remuneration Code staff* must be subject to 60% deferral, *firms* should also consider whether lesser amounts should be considered to be 'particularly high' taking account, for example, of whether there are significant differences within *dual-regulated firms Remuneration Code staff* in the levels of variable *remuneration* paid.

Remuneration Principle 12(h): Remuneration structures - performance adjustment (affordability, malus, clawback)

19D.3.61 R

A *firm* must ensure that:

- (1) any variable *remuneration*, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the *firm* as a whole, and justified on the basis of the performance of the *firm*, the business unit and the individual concerned;
- (2) any variable *remuneration* is subject to clawback, such that it is only awarded if an amount corresponding to it can be recovered from the individual by the *firm* if the recovery is justified on the basis of the circumstances described in ■ SYSC 19D.3.62R(2) and ■ SYSC 19D.3.64R;
- (3) for *higher paid material risk takers*, variable *remuneration* is subject to clawback for a period of at least seven years from the date on which the variable *remuneration* is awarded;
- (3A) for *dual-regulated firms Remuneration Code staff* who are not *higher paid material risk takers*:
 - (a) who are *PRA-designated senior management function holders* at a *significant firm*, the deferred component of variable *remuneration* is subject to clawback for a period of at least six years from the date on which the variable *remuneration* is awarded;
 - (b) who are *FCA-designated senior management function holders* at a *significant firm*, the deferred component of variable

- remuneration* is subject to clawback for a period of at least six years from the date on which the variable *remuneration* is awarded;
- (c) who do not fall within (a) or (b) above, the deferred component of variable *remuneration* is subject to clawback for a period of at least five years from the date on which the variable *remuneration* is awarded;
 - (d) the undeferred component of variable *remuneration* is subject to clawback for a period of at least one year from the date on which the variable *remuneration* is awarded; and
- (4) for *dual-regulated firms Remuneration Code staff* whose total annual *remuneration* is greater than £500,000 and who perform either a *PRA-designated senior management function* or *FCA-designated senior management function*, it can, by notice to the *employee* to be given no later than seven years after the variable *remuneration* was awarded, extend the period during which variable *remuneration* is subject to clawback to at least ten years from the date on which the variable *remuneration* is awarded, where:
- (a) the *firm* has commenced an investigation into facts or events which it considers could potentially lead to the application of clawback were it not for the expiry of the clawback period; or
 - (b) the *firm* has been notified by a regulatory authority (including an overseas regulatory authority) that an investigation has been commenced into facts or events which the *firm* considers could potentially lead to the application of clawback by the *firm* were it not for the expiry of the clawback period; and
- (5) it considers on an ongoing basis whether to use the power in (4).

[**Note:** article 94(1)(n) of the CRD and Standards 6 and 9 of the FSB Compensation Standards]

19D.3.62 R A *firm* must:

- (1) set specific criteria for the application of malus and clawback; and
- (2) ensure that the criteria for the application of malus and clawback in particular cover situations where the *employee*:
 - (a) participated in, or was responsible for, conduct which resulted in significant losses to the *firm*; or
 - (b) failed to meet appropriate standards of fitness and propriety.

[**Note:** article 94(1)(n) of the CRD and Standards 6 and 9 of the FSB Compensation Standards]

[**Note:** The FSA also gave guidance on the application of the requirements on risk adjustments. This guidance is available on the FCA website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes>.]

19D.3.63 E (1) A *firm* should reduce unvested deferred variable remuneration when, as a minimum:

19D.3.64 R

- (a) there is reasonable evidence of *employee* misbehaviour or material error; or
 - (b) the *firm* or the relevant business unit suffers a material downturn in its financial performance; or
 - (c) the *firm* or the relevant business unit suffers a material failure of risk management.
- (2) For performance adjustment purposes, awards of deferred variable *remuneration* made in shares or other non-cash instruments should provide the ability for the *firm* to reduce the number of shares or other non-cash instruments.
- (3) Contravention of any of (1) or (2) may be relied on as tending to establish contravention of ■ SYSC 19D.3.61R(1) on performance adjustment.

19D.3.65 G

The *governing body* (or, where appropriate, the *remuneration committee*) should approve performance adjustment policies, including the triggers under which adjustment would take place. The FCA may ask *firms* to provide a copy of their policies and expects *firms* to make adequate records of material decisions to operate the adjustments.

Effect of breaches of the Remuneration Principles**19D.3.66 G**

■ SYSC 19D Annex 1 makes provision about voiding and recovery.

19D.3.67 R

- (1) Subject to (2) to (7), the *rules* in ■ SYSC 19D Annex 1.1R to 1.6R apply in relation to the prohibitions on *dual-regulated firms Remuneration Code staff* being *remunerated* in the ways specified in:
- (a) ■ SYSC 19D.3.44R (guaranteed variable *remuneration*);
 - (b) ■ SYSC 19D.3.59R (deferred variable *remuneration*);
 - (c) ■ SYSC 19D.3.61R(2) (performance adjustment – clawback); and

- (d) ■ SYSC 19D Annex 1.10R (replacing payments recovered or property transferred).
- (2) Paragraph (1) applies only to those prohibitions as they apply in relation to a *firm* that satisfies either Condition 1 or Condition 2 as set out in (3) and (4).
- (3) Condition 1 is that the *firm* is a *UK bank*, a *building society*, or a *UK designated investment firm*, that has relevant total assets exceeding £50 billion.
- (4) Condition 2 is that the *firm*:
- (a) is either a *full credit institution* or a *UK designated investment firm*; and
 - (b) is part of a *group* containing a *firm* that has relevant total assets exceeding £50 billion and that is a *UK bank*, a *building society* or a *UK designated investment firm*.
- (5) For the purposes of this *rule*, 'relevant total assets' means the arithmetic mean of the *firm's* total assets as set out in its balance sheet on its last three *accounting reference dates*.
- (6) This *rule* does not apply in relation to the prohibition on *dual-regulated firms Remuneration Code staff* being remunerated in the way specified in ■ SYSC 19D.3.44R (guaranteed variable remuneration) if both the conditions in paragraphs (2)(b) and (2)(c) of that *rule* are met.
- (7) This *rule* does not apply to a *firm* in relation to an individual (X), where both the following conditions are satisfied:
- (a) Condition 1 is that X's annual variable *remuneration* is no more than one third of X's total annual *remuneration*; and
 - (b) Condition 2 is that X's total annual variable *remuneration* is no more than £44,000.
- (8) In relation to (7):
- (a) references to *remuneration* are to *remuneration* awarded or paid in respect of the relevant performance year;
 - (b) the amount of any *remuneration* is:
 - (i) if it is money, its amount when awarded;
 - (ii) otherwise, whichever of the following is greatest:
 - (A) its value to the recipient when awarded;
 - (B) its market value when awarded; and
 - (C) the cost of providing it at the time of the award;
 - (l) where *remuneration* is, when awarded, subject to any condition, restriction or other similar provision which causes the amount of the *remuneration* to be less than it otherwise would be, that condition, restriction or provision is to be ignored in arriving at its value; and

19D.3.68 G

- (1) **Sections 137H** and **137I** of the *Act* enable the *FCA* to make *rules* that render void any provision of an agreement that contravenes specified prohibitions in the *dual-regulated firms Remuneration Code*, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision.
- (2) ■ SYSC 19D.3.66R and ■ SYSC 19D.3.67R (together with ■ SYSC 19D Annex 1) are:
- (a) *rules* referred to in (1) that render void provisions of an agreement that contravene the specified prohibitions on guaranteed variable *remuneration*, non-deferred variable *remuneration* and replacing payments recovered or property transferred; and
 - (b) the exception to the general position set out in **section 138E(2)** of the *Act* that a contravention of a *rule* does not make any transaction void or unenforceable.

Detailed provisions on voiding and recovery (SYSC 19D.3.66R and SYSC 19D.3.67R)

Rendering contravening provisions of agreements void		
1	R	Any provision of an agreement that contravenes a prohibition on persons being remunerated in a way specified in a rule to which this rule applies (a 'contravening provision') is void.
2	R	A contravening provision does not cease to be void because: <ul style="list-style-type: none"> (1) the firm concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); or (2) the member of dual-regulated firms Remuneration Code staff concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).
3	R	A contravening provision that, at the time a rule to which this rule applies was first made (including any previous rules in the FCA Handbook), is contained in an agreement made before that time is not rendered void by SYSC 19D Annex 1.1R, unless it is subsequently amended so as to contravene such a rule.
4	G	The effect of SYSC 19D Annex 1.3R, in accordance with sections 137H and 137I of the Act, is to prevent contravening provisions being rendered void retrospectively. However, contravening provisions may be rendered void if they are contained in an agreement made after the rule containing the prohibition is made by the FCA but before the rule comes into effect.
5	R	<ul style="list-style-type: none"> (1) A pre-existing provision is not rendered void by SYSC 19D Annex 1.1R. (2) In this Annex, a pre-existing provision is any provision of an agreement that would (but for this rule) be rendered void by SYSC 19D Annex 1.1R that was agreed at a time when either: <ul style="list-style-type: none"> (a) the firm concerned did not satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); or (b) the member of dual-regulated firms Remuneration Code staff concerned satisfied both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b). (3) But an amendment to, or in relation to, a pre-existing provision is not to be treated as a pre-existing provision where the amendment is agreed at a time when both: <ul style="list-style-type: none"> (a) the firm concerned satisfies at least one of the conditions set out in SYSC 19D.3.67R(3) to (4); and (b) the member of dual-regulated firms Remuneration Code staff concerned does not satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).
6	R	For the purposes of this annex, it is immaterial whether the law which (apart from this annex) governs a contravening provision is the law of the United Kingdom, or of a part of the United Kingdom.
Recovery of payments made or property transferred pursuant to a void contravening provision		

Rendering contravening provisions of agreements void		
7	R	In relation to any payment made or other property transferred in pursuance of a contravening provision other than a pre-existing provision, a <i>firm</i> must take reasonable steps to: <ol style="list-style-type: none"> (1) recover any such payment made or other property transferred by the <i>firm</i>; and (2) ensure that any other person (P) recovers any such payment made or other property transferred by that person.
8	R	SYSC 19D Annex 1.7R continues to apply in one or both of the following cases: <ol style="list-style-type: none"> (1) the <i>firm</i> concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); (2) the member of <i>dual-regulated firms Remuneration Code staff</i> concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).
9	G	The <i>rule</i> in SYSC 19D Annex 1.7R(2) would, for example, apply in the context of a secondment. Where a <i>group</i> member seconds an individual to a <i>firm</i> and continues to be responsible for the individual's <i>remuneration</i> in respect of services provided to the <i>firm</i> , the <i>firm</i> would need to take reasonable steps to ensure that the <i>group</i> member recovers from the secondee any <i>remuneration</i> paid in pursuance of a contravening provision.
Replacing payments recovered or property transferred		
10	R	<ol style="list-style-type: none"> (1) A <i>firm</i> must not award, pay or provide variable <i>remuneration</i> to a <i>person</i> who has received <i>remuneration</i> in pursuance of a contravening provision other than a pre-existing provision (the 'contravening <i>remuneration</i>') unless the <i>firm</i> has obtained a legal opinion stating that the award, payment or provision of the <i>remuneration</i> complies with the <i>dual-regulated firms Remuneration Code</i>. (2) This <i>rule</i> applies only to variable <i>remuneration</i> relating to a performance year to which the contravening <i>remuneration</i> related. (3) The legal opinion in (1) must be properly reasoned and be provided by an appropriately qualified independent individual. (4) Paragraph (1) continues to apply in one or both of the following cases: <ol style="list-style-type: none"> (a) the <i>firm</i> concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); (b) the member of <i>dual-regulated firms Remuneration Code staff</i> concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).
Notification to the FCA		
11	G	The <i>FCA</i> considers any breach of a <i>rule</i> to which this annex applies to be a significant breach which should be notified to the <i>FCA</i> in accordance with SUP 15.3.11R (Breaches of rules and other requirements in or under the Act). Such a notification should include information on the steps which a <i>firm</i> or other <i>person</i> has taken or intends to take to recover payments or property in accordance with SYSC 19D Annex 1.7R.

Chapter 19E

UCITS Remuneration Code

19E.1 Application

19E.1.1 R

- (1) The *UCITS Remuneration Code* applies to a *UK UCITS management company* that manages a *UCITS scheme*.
- (2) [deleted]
- (3) In this section, a *firm* under (1) above, is referred to as a *management company*.

19E.1.2 R

- (1) This chapter applies to a *UK UCITS management company* in relation to *remuneration* paid, provided or awarded by any *person* to the extent that it is paid, provided or awarded in connection with *employment* by a *management company*.
- (2) Paragraph (1) is without prejudice to the meaning of *remuneration* elsewhere in the *Handbook*.

19E.1.3 G

Remuneration includes payments made by a seconding organisation, which is not subject to the *UCITS Remuneration Code*, to a secondee in respect of their employment by a *management company* which is subject to the *UCITS Remuneration Code*.

19E.2 Remuneration policies and practices

19E.2.1 R A *management company* must establish and apply *remuneration policies and practices* for *UCITS Remuneration Code staff* that:

- (1) are consistent with and promote sound and effective risk management;
- (2) do not encourage risk taking which is inconsistent with the risk profiles or the *instrument constituting the fund or the prospectus*, as applicable, of the *UCITS* it manages;
- (3) do not impair the *management company's* compliance with its duty to act in the best interests of the *UCITS* it manages; and
- (4) include fixed and variable components of *remuneration*, including salaries and discretionary pension benefits.

[Note: article 14a(1) and (2) of the *UCITS Directive*]

19E.2.2 R (1) *UCITS Remuneration Code staff* comprise those categories of staff whose professional activities have a material impact on the risk profiles of:

- (a) the *management company*; or
- (b) the *UCITS* that the *management company* manages.

- (2) *UCITS Remuneration Code staff* must comprise:
 - (a) senior management;
 - (b) risk takers;
 - (c) staff engaged in control functions; and
 - (d) any employees receiving total *remuneration* that takes them into the same *remuneration bracket* as senior management and risk takers.

[Note: article 14a(3) of the *UCITS Directive*]

19E.2.3 G A *management company* need not treat a person in **SYSC 19E.2.R(2)** as *UCITS Remuneration Code staff* if it can demonstrate that the person's professional activities do not have a material impact on the risk profiles of:

19E.2.4

- (1) the *management company*; or
(2) the *UCITS* that the *management company* manages.

Proportionality

R

- (1) When establishing and applying the *remuneration policies* for *UCITS Remuneration Code staff*, a *management company* must comply with the *UCITS remuneration principles* in a way and to the extent that is appropriate to:
- (a) its size;
 - (b) internal organisation; and
 - (c) the nature, scope and complexity of its activities.
- (2) Paragraph (1) does not apply to the requirement for significant *management companies* to have a *remuneration committee* (■ SYSC 19E.2.9R).
- (3) The *UCITS remuneration principles* apply to:
- (a) any benefit of any type paid by the *management company*;
 - (b) any amount paid directly by the *UCITS* itself, including performance fees, for the benefit of *UCITS Remuneration Code staff*; and
 - (c) any transfer of *units* or *shares* of the *UCITS* made for the benefit of *UCITS Remuneration Code staff*.

[Note: article 14b(1), (3) and (4) of the *UCITS Directive*]

UCITS Remuneration Principle 1: Risk management

19E.2.5

R

A *management company* must ensure that its *remuneration policy*:

- (1) is consistent with, and promotes sound and effective risk management; and
- (2) does not encourage risk taking which is inconsistent with the risk profiles or the *instrument constituting the fund* of the *UCITS* it manages.

[Note: article 14b(1)(a) of the *UCITS Directive*]

UCITS Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interests

19E.2.6

R

A *management company* must ensure that its *remuneration policy*:

- (1) is in line with the business strategy, objectives, values and interests of:
 - (a) the *management company*;
 - (b) the *UCITS* it manages; and
 - (c) the investors in such *UCITS*; and

- (2) includes measures to avoid conflicts of interest.

[Note: article 14b(1)(b) of the *UCITS Directive*]

UCITS Remuneration Principle 3: Governance**19E.2.7****R**

- (1) A *management company* must ensure that its *management body in its supervisory function*:
- adopts and reviews at least annually the general principles of the *remuneration policy*; and
 - is responsible for the implementation of the general principles of the *remuneration policy*.
- (2) The tasks in (1) must be undertaken only by members of the *management body* who:
- do not perform any executive functions in the *management company* concerned; and
 - have expertise in risk management and *remuneration*.

[Note: article 14b(1)(c) of the *UCITS Directive*]

19E.2.8**R**

A *management company* must ensure the implementation of the *remuneration policy* is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *management body in its supervisory function*.

[Note: article 14b(1)(d) of the *UCITS Directive*]

19E.2.9**R**

- (1) A *management company* must establish a *remuneration committee* if it is significant in terms of:
- its size, or the size of the *UCITS* that it manages;
 - [deleted]
 - the complexity of its internal organisation; and
 - the nature, the scope and the complexity of its activities.
- (2) The *remuneration committee* must be constituted in a way that enables it to exercise competent and independent judgment on:
- remuneration* policies and practices; and
 - the incentives created for managing risk.
- (3) The *remuneration committee* must be responsible for the preparation of decisions regarding *remuneration*, including those which:
- have implications for the risk and risk management of the *management company* or the *UCITS* concerned; and
 - are taken by the *management body in its supervisory function*.
- (4) The chairman and the members of the *remuneration committee* must be members of the *management body* who do not perform any executive function in the *management company*.

- (5) When preparing its decisions, the *remuneration committee* must take into account the long-term interest of investors and other stakeholders and the public interest.

[**Note:** article 14b(4) of the *UCITS Directive*]

UCITS Remuneration Principle 4: Control functions

19E.2.10 R

A *management company* must ensure that employees engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas that are within their remit.

[**Note:** article 14b(1)(e) of the *UCITS Directive*]

19E.2.11 R

A *management company* must ensure the *remuneration* of the senior officers in the risk management and compliance functions is directly overseen by:

- (1) the *remuneration committee*; or
- (2) if such a committee has not been established, the *management body in its supervisory function*.

[**Note:** article 14b(1)(f) of the *UCITS Directive*]

UCITS Remuneration Principle 5(a): Remuneration structures – assessment of performance

19E.2.12 R

- (1) A *management company* must ensure that, where *remuneration* is performance related, the total amount of *remuneration* is based on a combination of:
 - (a) the assessment of the performance of the individual and of the business unit or *UCITS* concerned, and of their risks; and
 - (b) the overall results of the *management company*.

- (2) When assessing individual performance, financial and non-financial criteria must be taken into account.

[**Note:** article 14b(1)(g) of the *UCITS Directive*]

19E.2.13 R

A *management company* must ensure that the assessment of performance is set in a multi-year framework appropriate to any holding period recommended to the investors of the *UCITS* managed by the *management company* to ensure that the:

- (1) assessment process is based on the long-term performance of the *UCITS* and its investment risks; and
- (2) actual payment of the performance-based components of *remuneration* is spread over the same period.

[**Note:** article 14b(1)(h) of the *UCITS Directive*]

UCITS Remuneration Principle 5(b): Remuneration structures – guaranteed variable remuneration**19E.2.14 R**

A *management company* must not award, pay or provide guaranteed variable *remuneration* unless it:

- (1) is exceptional;
- (2) occurs only in the context of hiring new staff; and
- (3) is limited to the first year of engagement.

[Note: article 14b(1)(i) of the *UCITS Directive*]

UCITS Remuneration Principle 5(c): Remuneration structures – fixed and variable components of total remuneration**19E.2.15 R**

A *management company* must ensure that:

- (1) fixed and variable components of total *remuneration* are appropriately balanced; and
- (2) the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component.

[Note: article 14b(1)(j) of the *UCITS Directive*]

UCITS Remuneration Principle 5(d): Remuneration structures – payments related to early termination**19E.2.16 R**

A *management company* must ensure that payments related to the early termination of a contract:

- (1) reflect performance achieved over time; and
- (2) are designed in a way that does not reward failure.

[Note: article 14b(1)(k) of the *UCITS Directive*]

19E.2.17 G

- (1) Taking account of the *remuneration* principles proportionality rule in ■ SYSC 19E.2.4R, the FCA does not generally consider it necessary for a *management company* to apply the rules referred to in (2) where, in relation to an individual ("X"), both the following conditions are satisfied:
 - (a) Condition 1 is that X's variable *remuneration* is no more than 33% of total *remuneration*; and
 - (b) Condition 2 is that X's total *remuneration* is no more than £500,000.
- (2) The rules to which (1) applies are those relating to:
 - (a) retained units, shares or other instruments (■ SYSC 19E.2.18R);

- (b) deferral (■ SYSC 19E.2.20R); and
(c) performance adjustment (■ SYSC 19E.2.22R).

**UCITS Remuneration Principle 5(e): Remuneration structures –
retained units, shares or other instruments**

19E.2.18 R

- (1) Subject to the legal structure of the *UCITS* and the *instrument constituting the fund*, a *management company* must ensure that a substantial portion, and in any event at least 50%, of any variable *remuneration component* consists of:
- (a) *units or shares* of the *UCITS* concerned; or
- (b) equivalent ownership interests in the *UCITS* concerned; or
- (c) share-linked instruments relating to the *UCITS* concerned; or
- (d) equivalent non-cash instruments relating to the *UCITS* concerned with incentives that are equally as effective as any of the instruments referred to in (a) to (c).
- (2) However, if the management of *UCITS* accounts for less than 50% of the total portfolio managed by the *management company*, the minimum of 50% does not apply.
- (3) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives for the *UCITS Remuneration Code staff* with the long-term interests of:
- (a) the *management company*;
- (b) the *UCITS* it manages; and
- (c) the investors of such *UCITS*.
- (4) This *rule* applies to:
- (a) the portion of the variable *remuneration component* deferred in line with ■ SYSC 19E.2.20R(1); and
- (b) the portion not deferred.

[Note: article 14b(1)(m) of the *UCITS Directive*]

19E.2.19 G

- (1) If the management of *UCITS* accounts for less than 50% of the total portfolio managed by the *management company*, the minimum of 50% in ■ SYSC 19E.2.18R(1) does not apply.
- (2) However, in the circumstances in (1) the *management company* is still required to ensure that a substantial portion of any variable *remuneration component* consists of the instruments in ■ SYSC 19E.2.18R(1) and appropriately reflects the extent of the management of *UCITS* by the *management company*.
- (3) In the circumstances in (1), the *management company* may consider the additional use of instruments other than those in ■ SYSC 19E.2.18R(1) that achieve the alignment of interest referred to in ■ SYSC 19E.2.18R(3).

19E.2.20 R**UCITS Remuneration Principle 5(f): Remuneration structures – deferral**

A management company must not award, pay or provide a variable remuneration component unless a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is:

- (a) appropriate in view of any holding period recommended to the investors of the UCITS concerned; and
 - (b) correctly aligned with the nature of the risks of the UCITS in question.
- (2) The period referred to in (1) must be at least three years.
- (3) Remuneration payable under (1) must vest no faster than on a pro-rata basis.
- (4) For a variable remuneration component of a particularly high amount, at least 60% of the amount must be deferred.

[Note: article 14b(1)(n) of the UCITS Directive]

19E.2.21 G

- (1) £500,000 should be considered a particularly high amount for the purpose of ■ SYSC 19E.2.20R(4).
- (2) While any variable remuneration component of £500,000 or more paid to UCITS Remuneration code staff should be subject to 60% deferral, management companies should also consider whether lesser amounts should be considered to be 'particularly high'.
- (3) Management companies should take into account, for example, whether there are significant differences within UCITS Remuneration Code staff in the levels of variable remuneration paid.

UCITS Remuneration Principle 5(g): Remuneration structures – performance adjustment, etc.**19E.2.22 R**

A management company must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is:

- (1) sustainable according to the financial situation of the management company as a whole; and
- (2) justified according to the performance of:
 - (a) the UCITS;
 - (b) the business unit; and
 - (c) the individual concerned.

[Note: first sub-paragraph of article 14b(1)(o) of the UCITS Directive]

19E.2.23 G

- (1) The total variable remuneration should generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs.

- (2) When considering (1), *management companies* should take into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: second sub-paragraph of article 14b(1)(o) of the *UCITS Directive*]

UCITS Remuneration Principle 6: Measurement of performance

19E.2.24 R

A *management company* must ensure that the measurement of performance used to calculate variable *remuneration* components, or pools of variable *remuneration* components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.

[Note: article 14b(1)(l) of the *UCITS Directive*]

UCITS Remuneration Principle 7: Pension Policy

19E.2.25 R

A *management company* must ensure that:

- (1) its pension policy is in line with the business strategy, objectives, values and long-term interests of:
 - (a) the *management company*; and
 - (b) the *UCITS* it manages;
- (2) when an employee leaves the *management company* before retirement, any discretionary pension benefits are held by the *management company* for a period of five years in the form of the instruments referred to in ■ SYSC 19E.2.18R(1); and
- (3) for an *employee* reaching retirement, discretionary pension benefits are:
 - (a) paid to the employee in the form of instruments referred to in ■ SYSC 19E.2.18R(1); and
 - (b) subject to a five-year retention period.

[Note: article 14b(1)(p) of the *UCITS Directive*]

UCITS Remuneration Principle 8: Personal investment strategies

19E.2.26 R

A *management company* must ensure that its *employees* undertake not to use any of the following to undermine the risk alignment effects embedded in their *remuneration* arrangements:

- (1) personal hedging strategies; or
- (2) *remuneration*-related insurance; or
- (3) liability-related insurance.

[Note: article 14b(1)(q) of the *UCITS Directive*]

19E.2.27 R

**UCITS Remuneration Principle 9: Avoidance of the
remuneration code**

A *management company* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate the avoidance of the requirements of the *UCITS Remuneration Code*.

[Note: article 14b(1)(r) of the *UCITS Directive*]

Chapter 19F

Remuneration and performance management

19F.1 MiFID remuneration incentives**Application**

- 19F.1.1 R** (1) ■ SYSC 19F.1 applies to:
- (a) a *common platform firm*, unless it is a *collective portfolio management investment firm*;
 - (b) a *MiFID optional exemption firm*; and
 - (c) a *third country firm*.
 - (d) [deleted]
- (2) In relation to a *firm* that falls under (1)(c), ■ SYSC 19F.1 applies only in relation to activities carried on from an establishment in the *United Kingdom*.

Purpose

- 19F.1.2 G** This chapter contains *rules* implementing article 24(10) of *MiFID* and on remuneration policies and practices.

MiFID requirement on remuneration incentives

- 19F.1.3 R** A *firm* which provides *investment services* to *clients* must ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its *clients*. In particular, a *firm* must not make any arrangement by way of *remuneration*, sales targets or otherwise that could provide an incentive to its staff to recommend a particular *financial instrument* to a *retail client* when the *firm* could offer a different *financial instrument* which would better meet that *client's* needs.
- [**Note:** article 24(10) of *MiFID*]

Remuneration policies and practices

- 19F.1.4 R** (1) A *dormant account fund operator* in respect of its *investment services* and *ancillary services*, a *MiFID optional exemption firm* in respect of its *investment services* and *ancillary services* and a *third country firm* in respect of its *MiFID or equivalent third country business* must:
- (a) define and implement *remuneration* policies and practices under appropriate internal procedures taking into account the interests of all the *clients* of the *firm*, with a view to ensuring that *clients* are treated fairly and their interests are not impaired by the *remuneration* practices adopted by the *firm* in the short, medium

or long term. *Remuneration* policies and practices must be designed in such a way so as not to create a conflict of interest or incentive that may lead *relevant persons* to favour their own interests or the *firm's* interests to the potential detriment of any *client*;

- (b) ensure that their *remuneration* policies and practices apply to all *relevant persons* with an impact, directly or indirectly, on *investment services* and *ancillary services* provided by the *firm* or on its corporate behaviour, regardless of the type of *clients*, to the extent that the *remuneration* of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the *firm's clients*; and
 - (c) ensure that its *management body* approves, after taking advice from the compliance function, the *firm's remuneration* policy. The *senior management* of the *firm* must be responsible for the day-to-day implementation of the *remuneration* policy and the monitoring of compliance risks related to the policy.
- (2) (a) *Remuneration* and similar incentives must not be solely or predominantly based on quantitative commercial criteria, and must take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of *clients* and the quality of services provided to *clients*.
- (b) A balance between fixed and variable components of *remuneration* must be maintained at all times, so that the *remuneration* structure does not favour the interests of the *firm* or its *relevant persons* against the interests of any *client*.

19F.1.5

G

A *firm* should also be aware of:

- (1) in the case of a *common platform firm* (but excluding a *collective portfolio management investment firm*), the requirements on *remuneration* in article 27 of the *MiFID Org Regulation* applying to it;
- (2) the requirements in relation to remuneration policies (**SYSC 4.3A.1AR**) and conflicts of interest (**SYSC 10.1.7R**);
- (3) the Finalised Guidance 13/01 entitled 'Risks to customers from financial incentives' published in January 2013; and
- (4) the Finalised Guidance 15/10 entitled 'Risks to customers from performance management at firms' published in July 2015.

19F.2 IDD remuneration incentives**Application**

- 19F.2.1** **R** This section applies to *insurance distributors* carrying on *insurance distribution activities* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.
- [**Note:** article 7(2) of the *IDD*]
- 19F.2.1A** **R** This section does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* if:
- (1) the *firm's designated professional body* has made rules which implemented article 17(3) of the *IDD*;
 - (2) those rules have been approved by the *FCA* under [section 332\(5\)](#) of the *Act*; and
 - (3) the *firm* is subject to the rules in the form in which they were approved.

Remuneration and the customer's best interests

- 19F.2.2** **R** (1) *Insurance distributors* must not:
- (a) be *remunerated*; or
 - (b) *remunerate* or assess the performance of their *employees*, in a way that conflicts with their duty to comply with the customer's best interests rules (**I**ICOBS 2.5.-1R, in relation to a *non-investment insurance contract*, or **C**OBS 2.1.1R, in relation to a *life policy*).
- (2) In particular, an *insurance distributor* must not make any arrangements by way of *remuneration*, sales target or otherwise that could provide an incentive to itself or its *employees* to recommend a particular *contract of insurance* to a *customer* in contact with the *firm* when the *insurance distributor* could offer a different *insurance contract* which would better meet the *customer's needs*.

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

- (3) In relation to a *non-investment insurance contract*, an *insurance distributor* must not make any arrangements by way of *remuneration* or incentive to any *person*, including itself, its *employees* or any third party, that could lead:

- (a) the *firm* or its *employees* to arrange a particular *contract of insurance*; or
- (b) the *customer* to take out a particular *insurance contract*, where that would not be consistent with the interests of all *customers* of the *policy*, including prospective or actual *policyholders* or *policy stakeholders* including *leaseholders* (as the case may be).

19F.2.2A G

- (1) When assessing whether it complies with ■ SYSC 19F.2.2R, an *insurance distributor* should consider all of the *remuneration* it receives in connection with a *non-investment insurance contract*, whether or not it intends to retain that *remuneration* or make payments out of that amount to another *person*. A *firm* should consider whether the gross amount of any sum it receives by way of *remuneration*, whether in the form of *commission* or of any other type, is consistent with ■ ICOBS 2.5.-1R, rather than the net amount that the *firm* intends to retain.
- (2) Where a *firm* has arrangements to provide incentives, including partial *premium* refunds or commission-like payments, to third parties (including the *customer* taking out the *policy*), this may encourage those *persons* to use the services of the *firm*. Where that is the case, those arrangements would be expected to lead to the *firm* receiving a financial or non-financial benefit or other incentive in respect of the *insurance distribution activities* to which it relates and so would be *remuneration* to which ■ SYSC 19F.2.2R(1) applies.

Retail premium finance

19F.2.3 R

The requirement in ■ SYSC 19F.2.2R applies to *remuneration* an *insurance distributor* receives in relation to *retail premium finance*.

19F.2.4 G

■ ICOBS 6A.5 includes further *guidance* on *remuneration* in relation to *retail premium finance*.



19F.3 Funeral plan remuneration incentives

Application

- 19F.3.1** **R** This section applies to a *firm* carrying on *regulated funeral plan activities*.
Remuneration and the customer's best interests
- 19F.3.2** **R**
- (1) A *firm* must not:
 - (a) be *remunerated*; or
 - (b) *remunerate* or assess the performance of its *employees*, in a way that conflicts with its duty to comply with the *customer's best interests rule*.
 - (2) In particular, a *firm* must not make any arrangements by way of *remuneration*, sales target or otherwise that could provide an incentive to itself or its *employees* to recommend or offer a particular *funeral plan contract* to a *customer* when the *firm* could offer a different *funeral plan contract* which would better meet the *customer's needs*.
- 19F.3.3** **G**
- (1) A *firm* should consider ■ FPCOB 6.4R and ■ FPCOB 6.5R when making arrangements which concern *remuneration* or performance incentives.
 - (2) Examples of *remuneration* arrangements which may conflict with the *customer's best interests rule* include:
 - (a) arrangements which provide for higher levels of *remuneration* based on the price of the plan that is recommended or offered (i.e. higher *remuneration* for selling a more expensive plan);
 - (b) arrangements for *remuneration* or performance management which are based primarily on the number of plans sold, or the price of plans sold; and
 - (c) arrangements which do not have adequate provision for *remuneration* to be taken back if the customer cancels the plan.

Chapter 19G

MIFIDPRU Remuneration Code

19G.1 General application

Application: non-SNI MIFIDPRU investment firms

19G.1.1

R

- (1) Subject to (2), the *MIFIDPRU Remuneration Code* applies to a *non-SNI MIFIDPRU investment firm*.
- (2) The provisions in (4) do not apply to a *non-SNI MIFIDPRU investment firm*:
 - (a) where the value of the *firm's on-balance sheet assets and off-balance sheet items* over the preceding 4-year period is a rolling average of £100 million or less; or
 - (b) where:
 - (i) the value of the *firm's on-balance sheet assets and off-balance sheet items* over the preceding 4-year period is a rolling average of £300 million or less; and
 - (ii) the conditions in (3) are (where they are relevant to a *firm*) satisfied.
- (3) The conditions referred to in (2)(b)(ii) are:
 - (a) that the exposure value of the *firm's on- and off-balance sheet trading book business* is equal to or less than £150 million; and
 - (b) that the exposure value of the *firm's on- and off-balance sheet derivatives business* is equal to or less than £100 million.
- (4) The provisions referred to in (2) are:
 - (a) ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
 - (b) ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy);
 - (c) ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and
 - (d) ■ SYSC 19G.6.35R(2) (Discretionary pension benefits).

- (5) For the purposes of paragraph (2), paragraph (6) applies where a *non-SNI MIFIDPRU investment firm* does not have monthly data covering the 4-year period referred to in that paragraph.
- (6) Where this paragraph applies, a *non-SNI MIFIDPRU investment firm* must calculate the rolling averages referred to in paragraph (2) using the data points that it does have.
- 19G.1.2** G
- (1) For the purposes of ■ SYSC 19G.1.1R(5), the FCA expects a *non-SNI MIFIDPRU investment firm* to have insufficient data for a period only where it did not carry on any *MiFID business* during that period, or where (for periods prior to the application of the *MIFIDPRU Remuneration Code*) the *firm* did not record the relevant data on a monthly basis.
- (2) Where a *firm* doesn't have all the monthly data points, the *firm* should use the data points it has in the way that paints the most representative picture of the period in question. For example, if a *firm* has monthly data for 2 years of the 4-year period, but prior to that only recorded the relevant data on a quarterly basis, the *firm* could sensibly calculate its rolling average by using the quarterly figure for each of the 3 monthly data points in each quarter.
- 19G.1.3** R
- (1) The amounts referred to in ■ SYSC 19G.1.1R must be calculated on an individual basis, and:
- (a) in the case of *on-balance sheet assets*, in accordance with the applicable accounting framework;
- (b) in the case of *off-balance sheet items*, using the full nominal value.
- (2) The value of the *on-balance sheet assets* and *off-balance sheet items* in ■ SYSC 19G.1.1R(2)(a) and ■ (b) must be an arithmetic mean of the assets and items over the preceding 4 years, based on monthly data points.
- (3) A *firm* may choose the day of the *month* that it uses for the data points in (2), but once that day has been chosen the *firm* may only change it for genuine business reasons.
- 19G.1.4** R
- (1) When calculating the amounts referred to in ■ SYSC 19G.1.1R(2)(a) and ■ (b), a *firm* must use the total amount of its *on-balance sheet assets* and *off-balance sheet items*.
- (2) A *firm* must calculate the exposure values referred to in ■ SYSC 19G.1.1R(3)(a) and ■ (b) by adding together the following items:
- (a) the positive excess of the *firm's long positions* over its *short positions* in all *trading book financial instruments*, using the approach specified for K-NPR in ■ MIFIDPRU 4.12.2R to calculate the net position for each instrument; and
- (b) the exposure value of contracts and transactions referred to in ■ MIFIDPRU 4.14.3R, calculated using the approach specified for K-TCD in ■ MIFIDPRU 4.14.8R.

		<ul style="list-style-type: none"> (3) Any amounts in foreign currencies must be converted into pound sterling using the relevant conversion rate. (4) A firm must determine the relevant conversion rate referred to in (3) by reference to an appropriate market rate and must record which rate was chosen. 								
19G.1.5	G	The FCA considers that an example of an appropriate market rate for the purposes of ■ SYSC 19G.1.4R(4) is the relevant daily spot exchange rate against pound sterling published by the Bank of England.								
Application: SNI MIFIDPRU investment firms										
19G.1.6	R	<ul style="list-style-type: none"> (1) The provisions in (2) apply to a <i>SNI MIFIDPRU investment firm</i>. (2) The provisions referred to in (1) are: <ul style="list-style-type: none"> (a) ■ SYSC 19G.2 (Remuneration policies and practices); (b) ■ SYSC 19G.3.1R to ■ SYSC 19G.3.3R (Oversight of remuneration policies and practices); (c) ■ SYSC 19G.3.6R to ■ SYSC 19G.3.8G (Control functions); (d) ■ SYSC 19G.4.1R to ■ SYSC 19G.4.5R and ■ SYSC 19G.4.7G(1) and ■ (2) (Fixed and variable components of remuneration); (e) ■ SYSC 19G.6.1R (Remuneration and capital); (f) ■ SYSC 19G.6.2R (Exceptional government intervention); and (g) ■ SYSC 19G.6.5R to ■ SYSC 19G.6.6G (Assessment of performance). 								
Application: summary of application to MIFIDPRU investment firms										
19G.1.7	G	<p>The effect of the application provisions in ■ SYSC 19G.1.1R to ■ 19G.1.6R is summarised in the following table.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 5px;">Type of firm</th> <th style="text-align: left; padding: 5px;">Applicable sections</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><i>Non-SNI MIFID-PRU investment firm not falling within SYSC 19G.1.1R(2)</i></td> <td style="padding: 5px;">The <i>MIFIDPRU Remuneration Code</i></td> </tr> <tr> <td style="padding: 5px;"><i>Non-SNI MIFID-PRU investment firm falling within SYSC 19G.1.1R(2)</i></td> <td style="padding: 5px;">The <i>MIFIDPRU Remuneration Code</i> except for: ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements); ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy); ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and ■ SYSC 19G.6.35R(2) (Discretionary pension benefits)</td> </tr> <tr> <td style="padding: 5px;"><i>SNI MIFIDPRU investment firm</i></td> <td style="padding: 5px;">■ SYSC 19G.2 (Remuneration policies and practices); ■ SYSC 19G.3.1R to ■ SYSC 19G.3.3R (Oversight of remuneration policies and practices); ■ SYSC 19G.3.6R to ■ SYSC 19G.3.8G (Control functions);</td> </tr> </tbody> </table>	Type of firm	Applicable sections	<i>Non-SNI MIFID-PRU investment firm not falling within SYSC 19G.1.1R(2)</i>	The <i>MIFIDPRU Remuneration Code</i>	<i>Non-SNI MIFID-PRU investment firm falling within SYSC 19G.1.1R(2)</i>	The <i>MIFIDPRU Remuneration Code</i> except for: ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements); ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy); ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and ■ SYSC 19G.6.35R(2) (Discretionary pension benefits)	<i>SNI MIFIDPRU investment firm</i>	■ SYSC 19G.2 (Remuneration policies and practices); ■ SYSC 19G.3.1R to ■ SYSC 19G.3.3R (Oversight of remuneration policies and practices); ■ SYSC 19G.3.6R to ■ SYSC 19G.3.8G (Control functions);
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<i>SNI MIFIDPRU investment firm</i>	■ SYSC 19G.2 (Remuneration policies and practices); ■ SYSC 19G.3.1R to ■ SYSC 19G.3.3R (Oversight of remuneration policies and practices); ■ SYSC 19G.3.6R to ■ SYSC 19G.3.8G (Control functions);									

SYSC 19G.4.1R to SYSC 19G.4.5R and SYSC 19G.4.7G(1) and SYSC 19G.4.7G(2) (Fixed and variable components of remuneration);
SYSC 19G.6.1R (Remuneration and capital);
SYSC 19G.6.2R (Exceptional government intervention); and
SYSC 19G.6.5R to SYSC 19G.6.6G (Assessment of performance)

■ MIFIDPRU 1.2 contains provisions regarding the classification of a *firm* as a *SNI MIFIDPRU investment firm* and *non-SNI MIFIDPRU investment firm*.

Application: where the application of SYSC 19G.1.1R changes in relation to a firm

19G.1.8 R

- (1) This rule applies to a *non-SNI MIFIDPRU investment firm* that did not meet either condition in ■ SYSC 19G.1.1R(2)(a) or ■ (b) but subsequently does.
- (2) The provisions referred to in ■ SYSC 19G.1.1R(2) cease to apply to the *firm* in (1) if:
 - (a) the *firm* has met the conditions in either ■ SYSC 19G.1.1R(2)(a) or ■ (b) for a continuous period of at least 6 months (or such longer period as may have elapsed before the firm submits the notification in (b)); and
 - (b) it has notified the FCA that it has met the conditions in (a).
- (3) The notification in (2)(b) must be submitted through the *online notification and application system* using the form in ■ MIFIDPRU 7 Annex 3R.

19G.1.9 G

The effect of ■ SYSC 19G.1.8R(2)(a) is that a *firm* may move between meeting the conditions in ■ SYSC 19G.1.1R(2)(a) and ■ (b) during the 6-month period.

19G.1.10 R

Where a *non-SNI MIFIDPRU investment firm* has met the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b) but then ceases to do so, it must comply with the provisions referred to in ■ SYSC 19G.1.1R(2) within 12 months from the date on which the *firm* ceased to meet the conditions.

19G.1.11 R

- (1) Where a *non-SNI MIFIDPRU investment firm* ceases to meet the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b), it must promptly notify the FCA.
- (2) The notification in (1) must be submitted through the *online notification and application system* using the form in ■ MIFIDPRU 7 Annex 3R.

19G.1.12 G

Where a *firm* ceases to meet the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b), but subsequently meets the conditions again within a period of 6 months, the *firm* will still be subject to the provisions referred to in ■ SYSC 19G.1.1R(2)

		<p>for 12 months after the date on which it first ceased to meet the conditions. The firm only ceases to be subject to the provisions referred to in ■ SYSC 19G.1.1R(2) where it meets the conditions in ■ SYSC 19G.1.8R(2).</p>
19G.1.13	R	<p>The requirements in ■ SYSC 19G.1.8R(2)(b) and ■ SYSC 19G.1.11R(1) do not apply where a <i>non-SNI MIFIDPRU investment firm</i> has notified the FCA in accordance with the requirements of ■ MIFIDPRU 7.1.9R(2)(b) or ■ MIFIDPRU 7.1.12R(1) of the same event.</p>
		<p>Application: collective portfolio management investment firms</p>
19G.1.14	G	<p>The <i>MIFIDPRU Remuneration Code</i> applies to a <i>collective portfolio management investment firm</i>.</p>
19G.1.15	G	<ol style="list-style-type: none">(1) A <i>collective portfolio management investment firm</i> must assess the thresholds in ■ SYSC 19G.1.1R(2) and ■ (3) on the basis of the total of both its <i>MiFID business</i> and <i>non-MiFID business</i>.(2) ■ SYSC 19G.1.20R to ■ SYSC 19G.1.23G explain the position for <i>firms</i> subject to the <i>MIFIDPRU Remuneration Code</i> and another FCA remuneration code.
		<p>Application: levels of application</p>
19G.1.16	G	<p>■ SYSC 19G.1.1R to ■ SYSC 19G.1.15R and ■ SYSC 19G.1.17R explain when the <i>MIFIDPRU Remuneration Code</i> applies to a <i>firm</i> on an individual basis. ■ SYSC 19G.1.18R and ■ 19G.1.19R explain when the <i>MIFIDPRU Remuneration Code</i> applies on a consolidated basis, and what that means.</p>
19G.1.17	R	<p>The <i>MIFIDPRU Remuneration Code</i> applies to a <i>firm</i> on an individual basis where the FCA has granted a firm permission under ■ MIFIDPRU 2.4.17R and ■ MIFIDPRU 2.4.18R to apply the <i>group capital test</i>.</p>
19G.1.18	R	<ol style="list-style-type: none">(1) Subject to (3), where ■ MIFIDPRU 2.5 applies to a <i>UK parent entity</i>, the <i>MIFIDPRU Remuneration Code</i> applies to that <i>UK parent entity</i> on a consolidated basis.(2) A <i>UK parent entity</i> that is treated as an <i>SNI MIFIDPRU investment firm</i> in accordance with ■ MIFIDPRU 2.5.21R is also treated as an <i>SNI MIFIDPRU investment firm</i> when applying the <i>MIFIDPRU Remuneration Code</i> on a consolidated basis.(3) A <i>UK parent entity</i> that is treated as a <i>non-SNI MIFIDPRU investment firm</i> in accordance with ■ MIFIDPRU 2.5.21R is also treated as a <i>non-SNI MIFIDPRU investment firm</i> when applying the <i>MIFIDPRU Remuneration Code</i> on a consolidated basis.(4) The following provisions only apply to a <i>firm</i> on an individual basis:<ol style="list-style-type: none">(a) ■ SYSC 19G.1.1R(2), ■ (3), ■ (5) and ■ (6);(b) The provisions listed in ■ SYSC 19G.1.1R(4);(c) ■ SYSC 19G.1.2G to ■ 19G.1.5G; and

- (d) ■ SYSC 19G.1.8G to ■ 19G.1.13G.
- (5) For the purposes of the *MIFIDPRU Remuneration Code*, application on a consolidated basis means on the basis of the situation that results from applying the requirements in the *MIFIDPRU Remuneration Code* to a *UK parent entity* as if that *undertaking*, together with all the *investment firms*, *financial institutions*, *ancillary services undertakings* and *tied agents* in the *investment firm group*, formed a single *MIFIDPRU investment firm*.
- (6) For the purposes of (5), the terms *investment firm*, *financial institution*, *ancillary services undertaking* and *tied agent* apply to *undertakings* established in *third countries*, which, if established in the *UK*, would satisfy the definitions of those terms.
- (7) Where an *undertaking* in a *third country* is included in the consolidated situation of a *UK parent entity* as a result of (6), the *MIFIDPRU Remuneration Code* only applies in relation to *material risk takers* at that *undertaking* who oversee or are responsible for business activities that take place in the *UK*.

19G.1.19 G

Where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the effect of ■ SYSC 19G.1.18R(5) is that the *UK parent entity* and all the *investment firms*, *financial institutions*, *ancillary services undertakings* and *tied agents* in the *investment firm group* are treated for these purposes as a single *MIFIDPRU investment firm*. This means, for example, treating a staff member of an *undertaking* within the *investment firm group* as if they were a staff member of the *UK parent entity*.

- (2) When considering which rules in the *MIFIDPRU Remuneration Code* apply on a consolidated basis, a *UK parent entity* must consider whether it is treated as an *SNI MIFIDPRU investment firm* or a *non-SNI MIFIDPRU investment firm* under ■ MIFIDPRU 2.5.21R (which, as ■ SYSC 19G.1.18R(2) and ■ (3) explain, also determines its categorisation under the *MIFIDPRU Remuneration Code*).
- (3) The effect of ■ SYSC 19G.1.18R(4)(b) is that a *UK parent entity* need not comply with the provisions listed in ■ SYSC 19G.1.1R(4) on a consolidated basis. These provisions apply on an individual basis where a *firm* exceeds the thresholds in ■ SYSC 19G.1.1R(2)(a) or ■ (b). As these thresholds are not relevant where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the provisions concerning them are also disapplied.

Application: firms subject to different remuneration requirements**19G.1.20** R

- (1) Where a *firm* is subject to the *MIFIDPRU Remuneration Code* and, as a result of the application of any of the requirements listed in (2), to provisions imposing different *remuneration requirements*, only one of which can be complied with, it must comply with the most stringent of the relevant provisions.
- (2) The requirements referred to in (1) are:
- (a) different requirements in the *MIFIDPRU Remuneration Code*;

- (b) the *AIFM Remuneration Code*;
- (c) the *Dual-regulated firms Remuneration Code*; and
- (d) the *UCITS Remuneration Code*.
- 19G.1.21** G ■ SYSC 19G.1.20R states that where different *remuneration requirements* apply to a *firm* it must comply with the most stringent of the relevant provisions. Some non-exhaustive examples follow.
- Example 1: A *firm* may be subject to different requirements under the *MIFIDPRU Remuneration Code* on an individual basis and on a consolidated basis. This scenario may arise because a *firm* is an *SNI MIFIDPRU investment firm* on an individual basis but a *non-SNI MIFIDPRU investment firm* on a consolidated basis.
- Example 2: Different *remuneration requirements* may apply to a *firm* when an *investment firm group* contains both a *PRA-designated investment firm* and an *FCA investment firm* (but not a *credit institution*). This may lead to a *firm* being subject to both the *MIFIDPRU Remuneration Code* and the *Dual-regulated firms Remuneration Code*.
- Example 3: A staff member at a *collective portfolio management investment firm* may be a *material risk taker* and also *AIFM Remuneration Code Staff* or *UCITS Remuneration Code Staff*. In this case the *material risk taker* will be subject to the *MIFIDPRU Remuneration Code* and the requirements of the *AIFM Remuneration Code* or the *UCITS Remuneration Code*.
- 19G.1.22** G The effect of ■ SYSC 19G.1.20R is that a *firm* must consider which requirement is the most stringent on a provision by provision basis.
- 19G.1.23** G ■ SYSC 19G.1.20R is not relevant where a *firm* can comply with both sets of *remuneration requirements*, for example requirements to establish, implement and maintain *remuneration policies and practices* on both an individual basis and a consolidated basis.
- Application: staff**
- 19G.1.24** G The term 'staff' should be interpreted broadly in the *MIFIDPRU Remuneration Code* to include, for example, employees of the *firm* itself, *partners* or *members* (in the case of partnership structures), *employees* of other entities in the *group*, *employees* of joint service companies, and *secondees*.
- Application: performance periods**
- 19G.1.25** G The rules in the *MIFIDPRU Remuneration Code* apply to each performance period, regardless of whether it is annual, quarterly, or another frequency. A *firm* must comply with the rules on performance assessment and risk adjustment in relation to each such performance period.

19G.1.26 R**Application: proportionality**

A firm must comply with the *MIFIDPRU Remuneration Code* in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities.

19G.1.27 R**Application: carried interest**

- (1) The *MIFIDPRU Remuneration Code* applies to *remuneration*, including carried interest (which represents a share in the profits of a *fund* managed by the *firm's* staff, as compensation for the management of the *fund*).
- (2) Where arrangements concerning carried interest meet the conditions in (3), the following provisions do not apply:
 - (a) ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
 - (b) ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy);
 - (c) ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and
 - (d) ■ SYSC 19G.6.30R to ■ SYSC 19G.6.34G (Performance adjustment).
- (3) The conditions referred to in (2) are that:
 - (a) the value of the carried interest must be determined by the performance of the *fund* in which the carried interest is held;
 - (b) the period between the award of the carried interest and any payment under it must be at least 4 years; and
 - (c) there are provisions for the forfeiture or cancellation of carried interest that include at least the circumstances set out in ■ SYSC 19G.6.31R(3)(a) and ■ SYSC 19G.6.31R(3)(b).

19G.1.28 R

For the purposes of the *MIFIDPRU Remuneration Code*, a carried interest must be valued at the time of its award.

Application: general**19G.1.29 G**

While the rules in the *MIFIDPRU Remuneration Code* set out the minimum regulatory requirements that a *MIFIDPRU investment firm* must comply with, the FCA considers it good practice for a *firm* to assess whether going beyond those regulatory requirements would contribute to sound risk management or a healthy firm culture.

When?**19G.1.30 R**

A firm must apply the *MIFIDPRU Remuneration Code* from the start of its first performance period that begins on or after 1 January 2022.

19G.2 Remuneration policies and practices

General requirements

- 19G.2.1 R** A *MIFIDPRU investment firm* must establish, implement and maintain remuneration policies and practices.
- 19G.2.2 G** The *remuneration policies and practices* referred to in ■ SYSC 19G.2.1R should cover all aspects of *remuneration* within the scope of the *MIFIDPRU Remuneration Code*, and all staff.
- 19G.2.3 G** In line with the record-keeping requirements in ■ SYSC 9, a *firm* should ensure that its *remuneration policies and practices* (including performance assessment processes and decisions) are clear and documented.
- ### **Proportionality**
- 19G.2.4 R** A *firm's remuneration policies and practices* must be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the *firm*.
- 19G.2.5 G** The proportionality principle in ■ SYSC 19G.2.4R means that the content and level of detail of a *firm's remuneration policy* may depend on a number of factors. These may include the number of staff it employs, the different types of roles, the activities it carries out, and whether the *firm* is part of a *group* with a *group-wide remuneration policy*.
- ### **Gender neutral remuneration policies and practices**
- 19G.2.6 R** A *firm* must ensure that its *remuneration policy* is a *gender neutral remuneration policy* and the practices referred to in ■ SYSC 19G.2.1R are gender neutral.
- 19G.2.7 G** *Firms* are reminded that the Equality Act 2010 prohibits discrimination on the basis of an *individual's* protected characteristics both before and after employment is offered. The Act applies to pay and all other contractual terms, including variable *remuneration*. A *firm* must ensure that its *remuneration policy* complies with the Equality Act 2010.

		Risk management, business strategy and avoiding conflicts of interest
19G.2.8	R	A firm must ensure that its <i>remuneration</i> policies and practices are consistent with, and promote sound and effective, risk management.
19G.2.9	R	A firm must ensure that its <i>remuneration</i> policies and practices are in line with the business strategy, objectives and long-term interests of the firm.
19G.2.10	G	For the purposes of ■ SYSC 19G.2.9R, the business strategy, objectives and long-term interests of the firm should include consideration of: <ol style="list-style-type: none">(1) the firm's risk appetite and strategy, including environmental, social and governance risk factors;(2) the firm's culture and values; and(3) the long-term effects of the investment decisions taken.
19G.2.11	R	A firm must ensure that its <i>remuneration</i> policy: <ol style="list-style-type: none">(1) contains measures to avoid conflicts of interest;(2) encourages responsible business conduct; and(3) promotes risk awareness and prudent risk taking.
19G.2.12	R	A MIFIDPRU investment firm must not pay variable remuneration to members of the management body who do not perform any executive function in the firm.

19G.3 Governance and oversight

Oversight of remuneration policies and practices

- 19G.3.1** **R** A *MIFIDPRU investment firm* must ensure that its *management body in its supervisory function* adopts and periodically reviews the *remuneration policy* and has overall responsibility for overseeing its implementation.
- 19G.3.2** **G**
- (1) Each *firm* should assess the most appropriate frequency for the periodic reviews referred to in ■ SYSC 19G.3.1R, taking into account all relevant factors.
 - (2) The development and review of the *remuneration policy* should be supported by the *control functions*, including (where they exist) risk management, compliance, internal audit and human resources, and by *business units*.
 - (3) The processes and decision-making around the development, review and amendment of *remuneration policies and practices* are subject to the general record-keeping requirements set out in ■ SYSC 9.
- 19G.3.3** **R** A *firm's remuneration committee*, where it has one, must oversee the implementation of the *firm's remuneration policies and practices* established under ■ SYSC 19G.2.1R.
- 19G.3.4** **R** A *non-SNI MIFIDPRU investment firm* must, at least annually, conduct a central and independent internal review of whether the implementation of its *remuneration policies and practices* complies with the *remuneration policy and practices* adopted by the *management body in its supervisory function*.
- 19G.3.5** **G**
- (1) The *FCA* would expect the central and independent internal review to assess whether the implementation of the *remuneration policies and practices*:
 - (a) results in *remuneration awards* that are in line with the *firm's business strategy*;
 - (b) reflects the risk profile, long-term objectives and other relevant goals of the *firm*; and
 - (c) complies with all relevant legal requirements.
 - (2) A *non-SNI MIFIDPRU investment firm* may outsource part or all of the independent review in ■ SYSC 19G.3.4R. The *management body in its supervisory function* must remain responsible for the review.

19G.3.6

R

Control functions

A *MIFIDPRU investment firm* must ensure that staff engaged in *control functions*:

- (1) are independent from the *business units* they oversee;
- (2) have appropriate authority; and
- (3) are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

19G.3.7

R

A *MIFIDPRU investment firm* must ensure that the *remuneration* of the senior officers in risk management and compliance functions is directly overseen by the *remuneration committee*, or, if such a committee has not been established, by the *management body in its supervisory function*.

19G.3.8

G

■ SYSC 19G.3.6R and ■ SYSC 19G.3.7R are designed to manage the conflicts of interest which may arise if other business areas had undue influence over the *remuneration* of staff in *control functions*. Conflicts of interest can easily arise when staff members are involved in the determination of *remuneration* for their own business area. Where these could arise, they need to be managed by having in place independent *control functions* (in particular risk management, compliance and human resources functions).

19G.4 Fixed and variable components of remuneration

- Categorising fixed and variable remuneration**
- 19G.4.1 R** A *MIFIDPRU investment firm* must ensure that the *remuneration policy* makes a clear distinction between criteria for setting fixed and variable *remuneration*.
- 19G.4.2 G**
- (1) The effect of ■ SYSC 19G.4.1R is that all *remuneration* paid to a staff member must be clearly categorised as either fixed or variable *remuneration*.
 - (2) In allocating individual *remuneration* components to fixed or variable *remuneration*, it is the quality and purpose of the component that is decisive, not the label applied to it.
 - (3) The *FCA* considers that:
 - (a) *fixed remuneration*:
 - (i) should primarily reflect a staff member's professional experience and organisational responsibility as set out in the staff member's job description and terms of employment; and
 - (ii) should be permanent, pre-determined, non-discretionary, non-revocable and not dependent on performance; and
 - (b) *variable remuneration*:
 - (i) should be based on performance or, in exceptional cases, other conditions;
 - (ii) where based on performance, should reflect the long-term performance of the staff member as well as performance in excess of the staff member's job description and terms of employment;
 - (iii) includes *discretionary pension benefits*; and
 - (iv) includes carried interest, as referred to in ■ SYSC 19G.1.27R.
- 19G.4.3 G** Returns made by staff on co-investment arrangements are shares in the profits as a pro rata return on an investment. The *FCA* does not usually consider these returns to be *remuneration* for the purposes of the *MIFIDPRU Remuneration Code*. However, the *FCA* considers these returns will be *remuneration* if the investment was made using a loan provided by the *firm* or by an *undertaking* in the same group as the *firm*, and if the loan was

either not provided on commercial terms or had not been repaid in full by the date on which the returns on investment were paid.

19G.4.4 G

- (1) In relation to *remuneration* received by a *partner* or a member in a *limited liability partnership*, the *FCA's* view on how to categorise certain payments received by those *individuals* is as follows:
 - (a) at the end of each year, the residual profits of a *partnership* or *limited liability partnership* are distributed among the *partners* or members. The level of ownership of each *partner* or member is reflected in the number of ownership shares they have. Residual profits are distributed according to the ownership shares, so are not linked to work or performance. In the *FCA's* view, payments on this basis are not *remuneration*;
 - (b) a *partner* or member may receive an amount fixed at the beginning of the year and subject only to the *firm* making a profit. These are often called fixed profit shares. A *partner* or member usually takes drawings on it throughout the year, often monthly. If profits at year-end are insufficient, drawings may have to be paid back. The *FCA* considers that drawings on fixed profit shares are usually fixed *remuneration*;
 - (c) a *partner* or member may receive a discretionary share of the profit at the end of the year. These may be distributed to all *partners* or members but are usually dependent on the performance of the *individual* or their *business unit*. Awards may be at the discretion of the *remuneration committee*. The *FCA* considers that payments made on this basis are usually variable *remuneration*.
- (2) A *firm* that is a *partnership* or *limited liability partnership* may use a benchmarking approach instead of, or in addition to, the approach in (1) to categorise payments made to *partners* or members of *limited liability partnerships*. For example, it may take into account:
 - (a) the *remuneration structures* of other *individuals* performing similar tasks or working in similar businesses as the *partner* or member in question; or
 - (b) the return expected in a similar investment context where the *partner* or member has invested in a *fund* or *firm*.
- (3) Where a *partner* or member of a *limited liability partnership* works full-time for a *firm* the *FCA* would expect a reasonable portion of the *partner's* or *member's* profit share to be categorised as *remuneration*. Where a *partner* or member works part-time and receives less *remuneration* than a *partner* or member who works full-time, the *FCA* would expect a smaller proportion of the part-time *partner* or member's profit share to be classed as *remuneration*.

Balance of fixed and variable components of total remuneration**19G.4.5 R**

A *MIFIDPRU investment firm* must ensure that:

- (1) the fixed and variable components of the total *remuneration* are appropriately balanced; and

		(2) the fixed component represents a sufficiently high proportion of the total <i>remuneration</i> to enable the operation of a fully flexible policy on variable <i>remuneration</i> , including the possibility of paying no variable <i>remuneration</i> component.
19G.4.6	R	For the purposes of ■ SYSC 19G.4.5R, a <i>non-SNI MIFIDPRU investment firm</i> must set an appropriate ratio between the variable component and the fixed component of the total <i>remuneration</i> in their <i>remuneration</i> policies.
19G.4.7	G	<p>(1) When determining what is an appropriate balance and an appropriate ratio for the purposes of ■ SYSC 19G.4.5R and ■ SYSC 19G.4.6R respectively, a <i>firm</i> should consider all relevant factors, including:</p> <p>(a) the <i>firm's</i> business activities and associated prudential and conduct risks; and</p> <p>(b) the role of the <i>individual</i> in the <i>firm</i> and, in the case of <i>material risk takers</i>, the impact that different categories of staff have on the risk profile of the <i>non-SNI MIFIDPRU investment firm</i> or of the assets it manages.</p> <p>(2) It may be appropriate for some staff to receive only fixed <i>remuneration</i>. The <i>FCA</i> does not consider it would be an appropriate balance for any <i>individual</i> to receive only variable <i>remuneration</i>.</p>
19G.4.8	G	A <i>non-SNI MIFIDPRU investment firm</i> may set different ratios for different categories of staff. For example, the <i>FCA</i> considers that it will usually be appropriate to set a lower ratio of variable to fixed <i>remuneration</i> for <i>control functions</i> than for the <i>business units</i> they control.
19G.4.9	G	Ratios may differ from one performance period to the next.
19G.4.10	G	When setting a ratio, a <i>firm</i> should consider all potential scenarios, including that a <i>firm</i> exceeds its financial objectives. The ratio should reflect the highest amount of variable <i>remuneration</i> that can be awarded in the most positive scenario. A <i>firm</i> should be satisfied that it has considered all relevant factors and should be able to explain its decision to the <i>FCA</i> if requested.
19G.4.11	R	<p>When a <i>firm</i> is assessing whether the award of variable <i>remuneration</i> is consistent with the ratio set in accordance with ■ SYSC 19G.4.6R, it may exclude from that calculation any amount of severance pay that:</p> <p>(1) exceeds the maximum amount of severance pay that can be paid under the <i>firm's</i> <i>remuneration policy</i> (in accordance with ■ SYSC 19G.6.12R(2)); and</p> <p>(2) the <i>firm</i> has become obliged to pay as a result of a legal obligation that has arisen after the date on which the <i>firm</i> adopted the relevant version of its <i>remuneration policy</i>.</p>

19G.4.12**G**

As explained in ■ SYSC 19.6.12R(2), where severance pay is payable a *firm's remuneration* policy must set out the maximum level of severance pay or the criteria for determining the amount. *Firms* should therefore take these policies into account when establishing the ratio between variable and fixed *remuneration* in accordance with ■ SYSC 19G.4.6R. The FCA accepts that in rare circumstances, for reasons that wouldn't have been clear to a *firm* when setting its *remuneration* policy, a *firm* may become legally obliged to pay a higher amount of severance pay, for example as a result of legal proceedings. In these situations, ■ SYSC 19G.4.11 states that the difference between the maximum severance pay permitted under the *firm's remuneration* policy and the higher amount the *firm* is legally obliged to pay may be excluded from an assessment of whether an award of variable *remuneration* is consistent with the ratio set in accordance with ■ SYSC 19G.4.6R.

19G.5 Application of remuneration requirements to material risk takers

Identifying material risk takers

- 19G.5.1 R** A *material risk taker* is a staff member at a *non-SNI MIFIDPRU investment firm* whose professional activities have a material impact on the risk profile of the *firm* or of the assets that the *firm* manages.
- 19G.5.2 R** A *non-SNI MIFIDPRU investment firm* must assess at least once a year which of its staff members are *material risk takers*.
- 19G.5.3 R** For the purposes of ■ SYSC 19G.5.1R, a staff member's professional activities are deemed to have a material impact on a *firm's* risk profile or the assets the *firm* manages if one or more of the following criteria are met:
- (1) the staff member is a *member of the management body* in its *management function*;
 - (2) the staff member is a *member of the management body* in respect of the *management body in its supervisory function*;
 - (3) the staff member is a member of the *senior management*;
 - (4) the staff member has *managerial responsibility* for *business units* that are carrying on at least one of the following *regulated activities*:
 - (a) *arranging (bringing about) deals in investments*;
 - (b) *dealing in investments as agent*;
 - (c) *dealing in investments as principal*;
 - (d) *managing investments*;
 - (e) *making investments with a view to transactions in investments*;
 - (f) *advising on investments (except P2P agreements)*; and/or
 - (g) *operating an organised trading facility*;
 - (5) the staff member has *managerial responsibilities* for the activities of a *control function*;
 - (6) the staff member has *managerial responsibilities* for the prevention of *money laundering* and *terrorist financing*;

19G.5.4**G**

The FCA considers the following are key indicators that the professional activities of a staff member (X) have a material impact on the risk profile of the firm or of the assets that the firm manages for the purposes of

■ SYSC 19G.5.1R:

- (1) there is no sufficiently senior and experienced *material risk taker* who supervises X on a day-to-day basis or to whom X reports;
- (2) X is responsible for key strategic decisions; and
- (3) X is responsible for significant revenue, material assets under management or for approving transactions.

19G.5.5**G**

The FCA expects *individuals* in the following roles would usually be categorised as *material risk takers*:

- (1) in relation to portfolio management business, heads of key areas including equities, fixed income, alternatives, private equity;
- (2) heads of investment research;
- (3) *individuals* responsible for a high proportion of revenue;
- (4) senior advisors where they can exert key strategic influence;
- (5) chief market strategists, where media profile is linked to reputational risk and risk to market integrity;
- (6) heads of a trading or broking desk; and
- (7) all *individuals* with responsibility for information technology, information security and outsourcing where there is not a single person with responsibility for all three areas. For example, if there is a chief operating officer and a chief information technology officer who are both equally senior and have shared responsibility for these areas, then both should be identified as *material risk takers*.

19G.5.6**G**

- (1) A firm should update its assessment under ■ SYSC 19G.5.2R as necessary throughout the year.

(2) It is important that *firms* consider all types of roles that may have a material impact on the *firm's* risk profile or on the assets it manages. The categories of staff referred to in ■ SYSC 19G.5.3R are intended to be a starting point only. A *firm* should develop its own additional criteria to identify further *individuals* based on the specific types of activities and risks relevant to the *firm*.

(3) In identifying its *material risk takers*, a *firm* should consider all types of risks involved in its professional activities. These may include prudential, operational, market, conduct and reputational risks.

(4) The decisive factor when identifying *material risk takers* is not the name of the function or role, but the authority and responsibility held by the *individual*.

19G.5.7 R

(1) If a *non-SNI MIFIDPRU investment firm* is part of an *FCA investment firm group* to which prudential consolidation applies, its *material risk takers* must be identified at both *individual* and consolidated level.

(2) The *UK parent entity* of a *firm* is responsible for the *material risk taker* identification process at a consolidated level and must identify as *material risk takers*:

(a) all staff members whose professional activities have a material impact on the risk profile of the *investment firm group*; and

(b) all staff members of an *undertaking* in the *investment firm group* ('*undertaking A*') whose professional activities have a material impact on:

(i) the risk profile of another *undertaking* within the *investment firm group* to whom the *MIFIDPRU Remuneration Code* applies on an individual basis ('*undertaking B*'); or

(ii) the risk profile of any assets managed by *undertaking B*.

19G.5.8 G

It may be helpful for the *UK parent entity* to coordinate the process for identifying *material risk takers* across the *group entities*.

Exemption for individuals

19G.5.9 R

(1) The provisions in (2) do not apply in relation to a *material risk taker* (X), where X's annual variable *remuneration*:

(a) does not exceed £167,000; and

(b) does not represent more than one-third of X's total annual *remuneration*.

(2) The provisions referred to in (1) are:

(a) ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements);

(b) ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy);

(c) ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and

(d) ■ SYSC 19G.6.35R(2) (Discretionary pension benefits).

19G.5.10 G

- (1) ■ SYSC 19G.5.9R applies only to *material risk takers* of *non-SNI MIFIDPRU investment firms* that do not fall within ■ SYSC 19G.1.1R(2).
- (2) A *non-SNI MIFIDPRU investment firm* not falling within ■ SYSC 19G.1.1R(2) should therefore assess whether staff members are *material risk takers* before applying the thresholds in ■ SYSC 19G.5.9R.
- (3) As the provisions listed in ■ SYSC 19G.5.9R(2) don't apply on a consolidated basis (see ■ 19G.1.18R(4)(b)), the exemption for *individuals* in ■ SYSC 19G.5.9R(1) will not be relevant on a consolidated basis.

19G.5.11 R

When considering whether an *individual* that becomes a *material risk taker* at a point during the *firm's* performance period falls within ■ SYSC 19G.5.9R, a *firm* must:

- (1) apply the full £167,000 variable *remuneration* threshold;
- (2) apply the requirement that the variable *remuneration* must not be more than one-third of the *individual's* total *remuneration* to the relevant portion of the total *remuneration* paid for the part of the performance period that the *individual* is a *material risk taker* at that *firm*; and
- (3) include any guaranteed variable *remuneration*, for example a 'sign-on bonus', in the *individual's* variable *remuneration* for the part of the performance period that the *individual* is a *material risk taker* at that *firm*.

19G.5.12 G

- (1) An *individual* may become a *material risk taker* at any point during the *firm's* performance period, either by changing role within the *firm* or by joining the *firm*.
- (2) The effect of ■ SYSC 19G.5.11R is illustrated by the following example:

An *individual* ('X'), becomes a *material risk taker* 6 months into the *firm's* performance period. X receives annual fixed *remuneration* of £900,000. This means X will receive £450,000 for the 6 months of the performance period for which X is a *material risk taker*. X receives variable *remuneration* of £100,000 in respect of the first 6 months. X falls below the thresholds in ■ SYSC 19G.5.9R because X's variable *remuneration* of £100,000 is:

- (a) less than the £167,000 threshold in ■ SYSC 19G.5.9R(1)(a), and
- (b) less than one-third of the £450,000 fixed *remuneration* received (which would be £150,000) for the purposes of ■ SYSC 19G.5.9R(1)(b).

19G.5.13 G

The FCA considers it good practice for a *firm* to consider whether applying any of the rules applicable to *material risk takers* to other members of *staff* would contribute to sound risk management or a healthy firm culture.

19G.6 Variable remuneration

Remuneration and capital

19G.6.1 R A *MIFIDPRU investment firm* must ensure that variable remuneration does not affect the *firm's* ability to ensure a sound capital base.

Exceptional government intervention

19G.6.2 R A *MIFIDPRU investment firm* that benefits from exceptional government intervention must ensure that:

- (1) no variable remuneration is paid to members of its *management body*, unless it is justified to do so; and
- (2) variable remuneration is limited to a portion of net revenue when its payment to staff that are not members of its *management body* would be inconsistent with:
 - (a) the maintenance of the *firm's* sound capital base; and
 - (b) its timely exit from exceptional government intervention.

19G.6.3 G An example of where it may be justifiable to pay variable remuneration to a member of the *management body* of a *MIFIDPRU investment firm* that benefits from exceptional government intervention is where that *person* was not in office at the time the exceptional government intervention was first required.

Assessment of performance

19G.6.4 R A *non-SNI MIFIDPRU investment firm* must ensure that where variable remuneration is performance-related:

- (1) the total amount of the variable remuneration is based on a combination of the assessment of the performance of:
 - (a) the *material risk taker*;
 - (b) the *business unit* concerned; and
 - (c) the overall results of the *firm*;
- (2) the assessment of performance is part of a multi-year framework that ensures:
 - (a) the assessment of performance is based on longer-term performance; and

		(b) the payment of performance-based <i>remuneration</i> is spread over a period that takes account of the business cycle of the <i>firm</i> and its business risks.
19G.6.5	R	When assessing individual performance to determine the amount of variable <i>remuneration</i> to be paid to an <i>individual</i> , a <i>MIFIDPRU investment firm</i> must take into account financial as well as non-financial criteria.
19G.6.6	G	<p>(1) For some <i>firms</i> it may be appropriate to give equal weight to financial and non-financial criteria for the purposes of ■ SYSC 19G.6.5R. For other <i>firms</i> a slightly different split may be appropriate.</p> <p>(2) Non-financial criteria under ■ SYSC 19G.6.5R should:</p> <ul style="list-style-type: none"> (a) form a significant part of the performance assessment process; (b) override financial criteria, where appropriate; (c) include metrics on conduct, which should make up a substantial portion of the non-financial criteria; and (d) include how far the <i>individual</i> adheres to effective risk management and complies with relevant regulatory requirements. <p>(3) Examples of non-financial criteria under ■ SYSC 19G.6.5R include:</p> <ul style="list-style-type: none"> (a) measures relating to building and maintaining positive customer relationships and outcomes, such as positive customer feedback; (b) performance in line with firm strategy or values, for example by displaying leadership, teamwork or creativity; (c) adherence to the <i>firm's</i> risk management and compliance policies; (d) achieving targets relating to: <ul style="list-style-type: none"> (i) environmental, social and governance factors; and (ii) diversity and inclusion. <p>(4) A <i>firm</i> should ensure that when it assesses individual performance, the assessment process and any variable <i>remuneration</i> awarded in accordance with ■ SYSC 19G.6.4R does not discriminate on the basis of the protected characteristics of an <i>individual</i> in accordance with the Equality Act 2010.</p>
19G.6.7	R	<p>General requirements for awards of non-standard forms of variable remuneration</p> <p>(1) A <i>non-SNI MIFIDPRU investment firm</i> must ensure that all guaranteed variable <i>remuneration</i>, retention awards, severance pay and buy-out awards falling under ■ SYSC 19G.6.8R to ■ SYSC 19G.6.14G are:</p> <ul style="list-style-type: none"> (a) subject to malus and clawback; (b) in the case of <i>non-SNI MIFIDPRU investment firms</i> to which those rules apply: <ul style="list-style-type: none"> (i) subject to the requirements in ■ SYSC 19G.6.19R and ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements), ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G

		(Retention policy), and ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and
		(ii) included in the variable component of the variable to fixed ratio for the performance period in which the award is made.
		(2) A <i>non-SNI MIFIDPRU investment firm</i> must ensure that each decision it makes to award variable <i>remuneration</i> falling within the scope of (1) is appropriate, taking all relevant circumstances into account.
		Guaranteed variable remuneration
19G.6.8	R	A <i>non-SNI MIFIDPRU investment firm</i> must not award, pay or provide guaranteed variable <i>remuneration</i> to a <i>material risk taker</i> unless:
		(1) it occurs in the context of hiring a new <i>material risk taker</i> ;
		(2) it is limited to the first year of service; and
		(3) the <i>firm</i> has a strong capital base.
19G.6.9	G	(1) Guaranteed variable <i>remuneration</i> is sometimes referred to as a 'sign-on bonus' or 'golden handshake'. (2) Guaranteed variable <i>remuneration</i> can be used as a way to compensate new staff members where they have lost the opportunity to receive variable <i>remuneration</i> by leaving their previous employment during the performance period. These awards may be called 'lost opportunity bonuses'. (3) The <i>FCA</i> expects <i>non-SNI MIFIDPRU investment firms</i> to award guaranteed <i>remuneration</i> only rarely and not as common practice.
		Retention awards
19G.6.10	R	Retention awards must only be paid to <i>material risk takers</i> :
		(1) after a defined event; or (2) at a specified point in time.
19G.6.11	G	(1) Retention awards are bonuses which are dependent on an <i>individual</i> remaining in a role until a defined event or for a set period of time. For example, retention bonuses can be used under restructurings, in wind-down or in the context of specific projects within a <i>firm</i> . (2) The payment of a retention award may be made dependent on the <i>material risk taker</i> meeting certain performance criteria that have been defined in advance. (3) The <i>FCA</i> expects <i>non-SNI MIFIDPRU investment firms</i> to make retention awards to <i>material risk takers</i> only rarely and not as common practice.

19G.6.12 R

- Severance pay**
- (1) A *non-SNI MIFIDPRU investment firm* must ensure that payments to *material risk takers* relating to the early termination of an employment contract reflect the *individual's* performance over time and do not reward failure or misconduct.
 - (2) A *non-SNI MIFIDPRU investment firm* must set out in its *remuneration policy* whether severance payments may be paid, and any maximum amount or criteria for determining the amount.

19G.6.13 R

Buy-out awards

A *non-SNI MIFIDPRU investment firm* must ensure that *remuneration packages* relating to compensation for, or buy out from, a *material risk taker's* contracts in previous employment:

- (1) align with the long term interests of the *firm*; and
- (2) contain provisions on periods of retention, deferral, vesting and ex post risk adjustment that are no shorter than any corresponding periods that applied to unvested variable *remuneration* under the previous contract of employment, and which remained outstanding.

19G.6.14 G

Buy-out awards involve a *firm* compensating a new staff member, or 'buying out' their previous contract with another employer, where the deferred variable *remuneration* of the staff member was reduced, revoked or cancelled by the previous employer. This could be because they terminated their contract or because the *individual* has to pay back some money, for example where the employer has paid for a training course or qualification for the *individual* that was attached to a retention clause.

Risk adjustment

19G.6.15 R

A *non-SNI MIFIDPRU investment firm* must ensure that any measurement of performance used as a basis to calculate pools of variable *remuneration* takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with *MIFIDPRU*.

19G.6.16 R

A *non-SNI MIFIDPRU investment firm* must ensure that the allocation of variable *remuneration components* within the *firm* takes into account all types of current and future risks.

19G.6.17 R

For the purposes of ■ SYSC 19G.6.15R and ■ SYSC 19G.6.16R, a *non-SNI MIFIDPRU investment firm* must:

- (1) determine at what level the adjustments should be applied (for example at *business unit*, trading desk or individual level), which risks are relevant, and which risk adjustment techniques and measures are most appropriate; and
- (2) in considering all types of current and future risks, include both financial risks (for example economic profit or economic capital) and

non-financial risks (for example reputation, conduct and customer outcomes, values and strategy).

- 19G.6.18 R** A *non-SNI MIFIDPRU investment firm* must ensure that its total variable remuneration is generally considerably contracted, including through malus or clawback arrangements, where the financial performance of the *firm* is subdued or negative.

Shares, instruments and alternative arrangements

- 19G.6.19 R** A *non-SNI MIFIDPRU investment firm* to which this rule applies must ensure that at least 50% of the variable remuneration paid to a *material risk taker* in relation to a performance period consists of any of the following *eligible instruments*:

- (1) shares, or subject to the *firm's* legal structure, equivalent ownership interests;
- (2) share-linked instruments, or subject to the *firm's* legal structure, equivalent non-cash instruments;
- (3) instruments that comply with the requirements in ■ SYSC 19G Annex 1R; or
- (4) non-cash instruments (including those settled in cash) which reflect the instruments of the portfolios managed.

- 19G.6.20 R** Where an *eligible instrument* that falls within the scope of ■ SYSC 19G.6.19R(1) or ■ (2) relates to an ownership interest in a *parent undertaking* of the *MIFIDPRU investment firm*, it will only satisfy the requirements of ■ SYSC 19G.6.19R where its value moves in line with the value of an equivalent ownership interest in the *MIFIDPRU investment firm*.

- 19G.6.21 G**
- (1) Where a *MIFIDPRU investment firm* is unable to issue *eligible instruments*, the *firm* may apply to the *FCA* for a modification under section 138A of the *Act* to permit the *firm* to use alternative arrangements. The *firm* will need to provide a detailed explanation in its application of the alternative arrangements it is proposing to operate.
 - (2) The *FCA* may grant a modification under section 138A of the *Act* for these purposes only where it is satisfied that:
 - (a) compliance by the *firm* with the requirement to issue variable remuneration in *eligible instruments* would be unduly burdensome or would not achieve the purpose for which the rules were made; and
 - (b) granting the modification would not adversely affect the advancement of any of the *FCA's* objectives.
 - (3) As part of its assessment of whether the modification would adversely affect the advancement of its objectives, the *FCA* will consider whether the proposed alternative arrangements for variable remuneration achieve similar outcomes to the standard requirements

- applicable to *eligible instruments*. In particular, the FCA will normally consider the following non-exhaustive list of factors:
- (a) whether the proposed alternative arrangement ensures suitable alignment between the interests of the staff member and the long-term interests of the *firm*, its *clients* and creditors;
 - (b) whether the proposed alternative arrangement is subject to a retention policy that is of sufficient length to align the incentives of the staff member with the long-term interests of the *firm*, its *clients* and creditors;
 - (c) whether the proposed alternative arrangement is clear and transparent to the staff member and contains sufficient detail on the applicable conditions;
 - (d) whether the *firm* will ensure that any amounts that are subject to deferral and retention arrangements cannot be accessed, transferred or redeemed by the staff member during the deferral and retention periods;
 - (e) whether the proposed alternative arrangement would facilitate the appropriate application of malus and clawback requirements;
 - (f) whether the proposed alternative arrangements adequately ensure that the value of the variable *remuneration* received does not increase during the deferral period through distributions or other payments on the instrument; and
 - (g) where the proposed alternative arrangements allow for predetermined changes of the value received as variable *remuneration* during deferral and retention periods, based on the performance of the *firm* or the managed assets, whether the following conditions would be met:
 - (i) the change of the value is based on predefined performance indicators that are based on the credit quality of the *firm* or the performance of the managed assets;
 - (ii) where deferral and retention must be applied, value changes are calculated at least annually and at the end of the retention period;
 - (iii) the rate of possible positive and negative value changes is equally based on the level of positive or negative credit quality changes or performance measured;
 - (iv) where the value change under (i) is based on the performance of assets managed, the percentage of value change should be limited to the percentage of value change of the managed assets;
 - (v) where the value change under (i) is based on the credit quality of the *firm*, the percentage of value change should be limited to the percentage of the annual total gross revenue in relation to the *firm*'s total own funds.
- (4) If a *firm* cannot issue *eligible instruments* because of its legal structure, that is likely to be a reason for the FCA to conclude that requiring the *firm* to comply with ■ SYSC 19G.6.19R would not achieve the purpose for which that rule was made.

		Retention policy
19G.6.22	R	A <i>non-SNI MIFIDPRU investment firm</i> to which this <i>rule</i> applies must establish an appropriate retention policy for <i>eligible instruments</i> that is designed to align the interests of the staff member with the longer-term interests of the <i>firm</i> , its creditors and clients.
19G.6.23	G	<p>(1) In considering what is an appropriate retention policy for the purposes of ■ SYSC 19G.6.22R, a <i>firm</i> should consider at least the following:</p> <p class="list-item-l1">(a) the length of the deferral period referred to in ■ SYSC 19G.6.24R(1);</p> <p class="list-item-l1">(b) the length of the <i>firm's</i> business cycle;</p> <p class="list-item-l1">(c) the types of risks relevant to the role of the staff member; and</p> <p class="list-item-l1">(d) how long it could take for the risks underlying the staff member's performance to crystallise.</p> <p>(2) The greater the impact of the <i>material risk taker</i> on the risk profile of the <i>firm</i> and of the assets managed, the longer the retention period should be. Different retention periods for different <i>material risk takers</i> may be appropriate, particularly where the applicable deferral periods differ.</p>
		Deferral
19G.6.24	R	<p>(1) A <i>non-SNI MIFIDPRU investment firm</i> to which this <i>rule</i> applies must not award, pay or provide a <i>variable remuneration</i> component unless at least 40% is deferred over a period which is at least 3 years.</p> <p>(2) Where the <i>variable remuneration</i> is a particularly high amount, and in all cases where the <i>variable remuneration</i> is £500,000 or more, at least 60% of the amount must be deferred.</p> <p>(3) Deferred <i>variable remuneration</i> must vest no faster than on a <i>pro-rata</i> basis.</p> <p>(4) The first deferred portion of the <i>variable remuneration</i> must not vest sooner than a year after the start of the deferral period.</p>
19G.6.25	R	<p>(1) A <i>non-SNI MIFIDPRU investment firm</i> must take into account the factors in (2) when determining:</p> <p class="list-item-l1">(a) the amount of <i>variable remuneration</i> to be deferred under ■ SYSC 19G.6.24R(1) and ■ (2);</p> <p class="list-item-l1">(b) the length of the deferral period under ■ SYSC 19G.6.24R(1); and</p> <p class="list-item-l1">(c) the speed of vesting of the <i>variable remuneration</i> for the purposes of ■ SYSC 19G.6.24R(3).</p> <p>(2) The factors referred to in (1) are:</p> <p class="list-item-l1">(a) the <i>firm's</i> business cycle, the nature of its business and its risk profile;</p>

- (b) the activities and responsibilities of the staff member in question and how these may impact the risk profile of the *firm* or the assets the *firm* manages;
- (c) whether the deferred variable *remuneration* is paid out in instruments or cash;
- (d) the amount of the variable *remuneration*; and
- (e) the ratio of variable to fixed *remuneration*.
- 19G.6.26 G**
- (1) Where appropriate, a *firm* should tailor the proportion of deferred variable *remuneration*, the deferral period and the speed of vesting in different ways for different categories of *material risk taker*.
- (2) The FCA considers that it may be appropriate for the most senior *material risk takers* at a *firm* (for example members of the *management body*), to be subject to a deferral period longer than the 3-year minimum.
- (3) It may be appropriate for *firms* to apply different proportions of deferred variable *remuneration*, deferral periods or vesting arrangements to the portion of variable *remuneration* paid out in cash and the portion paid out in instruments.
- (4) In the FCA's view, the higher the amount of the variable *remuneration*, and the higher the ratio of variable to fixed *remuneration*, the more appropriate it is likely to be to defer a greater proportion of the variable *remuneration*.
- (5) In certain circumstances variable *remuneration* below £500,000 may still be considered 'particularly high' and so subject to 60% deferral. A *firm* should take into account the average *remuneration* at the *firm*, the ratio of the variable to fixed *remuneration* of the *material risk taker*, and the amount of variable *remuneration* compared to that of other staff at the *firm*.
- (6) After the first deferred portion of the variable *remuneration* vests in accordance with ■ SYSC 19G.6.24R(4), the FCA does not expect vesting to take place more often than once a year.
- 19G.6.27 R**
- A *non-SNI MIFIDPRU investment firm* must pay out at least 50% of the variable *remuneration* deferred under ■ SYSC 19G.6.24R in instruments falling within ■ SYSC 19G.6.19R.
- 19G.6.28 G**
- The FCA considers it good practice for the deferred portion to contain a higher proportion of instruments than the non-deferred portion.
- 19G.6.29 R**
- A *non-SNI MIFIDPRU investment firm* may only pay to a *material risk taker* interest or dividends on an instrument which is subject to deferral under SYSC 19G.24R where:

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| | | <ul style="list-style-type: none">(1) the rate of interest or level of dividends paid on that instrument is no higher than would have been paid to an ordinary holder of such an instrument; and(2) payment is not made before the date on which the instrument vests. |
| | | Performance adjustment |
| 19G.6.30 | R | A <i>non-SNI MIFIDPRU investment firm</i> must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the <i>firm</i> as a whole, and justified on the basis of the performance of the <i>firm</i> , the <i>business unit</i> and the <i>material risk taker</i> concerned. |
| 19G.6.31 | R | A <i>non-SNI MIFIDPRU investment firm</i> must: <ul style="list-style-type: none">(1) ensure that all of the total variable <i>remuneration</i> is subject to in-year adjustments, malus or clawback arrangements;(2) set specific criteria for the application of malus and clawback; and(3) ensure that the criteria for the application of malus and clawback in particular cover situations where the <i>material risk taker</i>:<ul style="list-style-type: none">(a) participated in or was responsible for conduct which resulted in significant losses to the <i>firm</i>; and/or(b) failed to meet appropriate standards of fitness and propriety. |
| 19G.6.32 | R | A <i>non-SNI MIFIDPRU investment firm</i> must: <ul style="list-style-type: none">set minimum malus and clawback periods as part of its <i>remuneration</i> policies;ensure that malus can be applied until the award has vested in its entirety; andensure that the clawback period spans at least the combined length of any deferral and retention periods. |
| 19G.6.33 | G | <ul style="list-style-type: none">(1) The effect of ■ SYSC 19G.6.31R(1) is that (save in the circumstances explained in (2)) a <i>non-SNI MIFIDPRU investment firm</i> must include in its <i>remuneration</i> policy the possibility of applying in-year adjustments, malus and clawback to the variable <i>remuneration</i> of its <i>material risk takers</i>. Where performance adjustment is required, the appropriate tool or tools (in-year adjustments, malus or clawback) should then be applied.(2) A <i>non-SNI MIFIDPRU investment firm</i> that is not required by ■ SYSC 19G.6.24R to apply deferral will not be able to apply malus, so should foresee the use of in-year adjustments and clawback arrangements only. Alternatively, the <i>firm</i> may choose to use deferral, which would enable the use of malus arrangements in addition to in-year adjustments and clawback. |

- (3) A *non-SNI MIFIDPRU investment firm* should ensure that the malus and clawback periods it sets and applies allow sufficient time for any potential risks to crystallise. This may mean that different periods are set for different categories of *material risk takers*.
- (4) In setting appropriate malus and clawback periods, a *non-SNI MIFIDPRU investment firm* should take into account all relevant factors, including:
- the nature of the *material risk taker's* activities;
 - the *material risk taker's* impact on the risk profile of the *firm* or of the assets it manages; and
 - the length of the business cycle that is relevant for the *material risk taker's* role.
- (5) For a *non-SNI MIFIDPRU investment firm* that satisfies the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b), the *FCA* considers that 3 years will generally be an appropriate starting point for the *firm's* consideration of the appropriate clawback period.
- (6) The *FCA's* 'General guidance on the application of ex-post risk adjustment to variable remuneration' provides further detail of the *FCA's* expectations on *firms'* use of malus and clawback arrangements.

19G.6.34 ■ G

- (1) In the *FCA's* view, malus should be applied when, as a minimum:
- (a) there is reasonable evidence of staff member misbehaviour or material error;
 - (b) the *firm* or the relevant *business unit* suffers a material downturn in its financial performance; or
 - (c) the *firm* or the relevant *business unit* suffers a material failure of risk management.
- (2) In the *FCA's* view, clawback should, in particular, be applied in cases of fraud or other conduct with intent or severe negligence which led to significant losses.

Discretionary pension benefits

19G.6.35 ■ R

- (1) A *non-SNI MIFIDPRU investment firm* must ensure that:
- (a) any *discretionary pension benefits* it awards or pays to *material risk takers* are:
 - (i) in line with its business strategy, objectives, values and long-term interests; and
 - (ii) paid only in *eligible instruments*;
 - (b) it applies malus and clawback arrangements to *discretionary pension benefits* in the same way as to other elements of variable remuneration.
- (2) A *non-SNI MIFIDPRU investment firm* to which this paragraph applies must ensure that:

19G.6.36 R

- (a) where a *material risk taker* leaves the *firm* before retirement age, any *discretionary pension benefits* are held by the *firm* for a period of 5 years; and
- (b) where a *material risk taker* reaches retirement age, any *discretionary pension benefits* are subject to a 5-year retention period by that *individual*.

Personal investment strategies

19G.6.37 G

A *non-SNI MIFIDPRU investment firm* must take all reasonable steps to ensure that *material risk takers* do not use personal hedging strategies or remuneration- and liability-related contracts of insurance to undermine the remuneration rules in the *MIFIDPRU Remuneration Code*.

19G.6.38 R

Avoidance of the MIFIDPRU Remuneration Code

A *non-SNI MIFIDPRU investment firm* must not pay variable remuneration through financial vehicles or methods that facilitate non-compliance with the *MIFIDPRU Remuneration Code* or *MIFIDPRU*.

19G.7 Remuneration committee

19G.7.1

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- (1) ■ MIFIDPRU 7.3.3R(1) requires a *non-SNI MIFIDPRU investment firm* to establish a *remuneration committee*, unless ■ MIFIDPRU 7.3.3R(2) applies.
- (2) The FCA encourages *non-SNI MIFIDPRU investment firms* that are not required to establish a *remuneration committee* under ■ MIFIDPRU 7.3.3R(1) to consider whether establishing and maintaining a *remuneration committee* would contribute to the better alignment of risk and individual reward across the *firm*.

Other instruments for use in variable remuneration

Purpose		
1.1	G	<p>SYSC 19G.6.19R requires that at least 50% of variable remuneration must be paid in <i>eligible instruments</i>. Under SYSC 19G.6.19R(3), <i>eligible instruments</i> include instruments that meet the requirements set out in this Annex. The instruments within the scope of this Annex include <i>additional tier 1 instruments</i>, <i>tier 2 instruments</i> and other instruments which can be fully converted to <i>common equity tier 1 instruments</i>, or written down, and that adequately reflect the <i>firm's credit quality</i>.</p>
Requirements for instruments		
1.2	R	<p>An instrument under SYSC 19G.6.19R(3) must satisfy the following requirements</p> <ul style="list-style-type: none">(1) the instrument must be issued by the <i>firm</i>;(2) the instrument must not be secured or subject to a guarantee or any other arrangement that enhances the seniority of the claims of its holder in insolvency;(3) the terms of the instrument must provide that any distributions on the instrument will be paid on at least an annual basis and will be paid to the holder;(4) the instrument must be priced at its value at the time of issuance under the accounting framework applicable to the <i>firm</i>;(5) the valuation of the instrument in (4) must be subject to independent review;(6) if the instrument is part of an issuance which has the sole purpose of being used for variable remuneration, the price at which the instrument is redeemed, called, repurchased or converted must be subject to an independent valuation in accordance with the accounting framework applicable to the <i>firm</i>;(7) if the instrument is not perpetual, at the time at which it is awarded as variable remuneration, the remaining period before the maturity of the instrument must be at least equal to the sum of any deferral and retention periods that would apply to the staff member to whom the instrument is awarded;(8) the instrument must not be subject to redemption, call or repurchase during any deferral and retention periods that would apply to the <i>material risk taker</i> to whom the instrument is awarded;(9) any right to redeem, call or repurchase the instrument must be exercisable only at the sole discretion of the <i>firm</i>;(10) the holder of the instrument must have no rights to accelerate the future scheduled payment of interest or principal, except in the insolvency or liquidation of the <i>firm</i>;(11) the terms of the instrument must provide that the claim on the principal amount of the instrument is wholly subordinated to the claim of all non-subordinated creditors;(12) one of the requirements in SYSC 19G Annex 1.3R must be satisfied; and(13) the instrument must be either:

				(a) a <i>convertible instrument</i> , in which case the requirements in SYSC 19 Annex 1.4R and SYSC 19 Annex 1.5R must be satisfied; or (b) a <i>write-down instrument</i> , in which case the requirements in SYSC 19 Annex 1.6R must be satisfied.
1.3	R	(1)		An instrument under SYSC 19G.6.19R(3) must meet either the conditions in (2) or the conditions in (4).
		(2)		The first set of conditions is as follows: (a) the instrument must be part of an issuance which has the sole purpose of being used as variable <i>remuneration</i> ; and (b) the terms of the instrument must ensure that any distributions payable on the instrument are paid at a rate which is: (i) consistent with market rates for similar issuances issued by other <i>firms</i> with comparable credit quality; and (ii) subject to (3), no higher than 8% above the Consumer Price Index 12-month rate as published by the UK Office of National Statistics from time to time.
		(3)		If the instrument has been awarded to a member of staff whose professional duties are predominantly performed outside the UK and the instruments are denominated in a currency other than pound sterling, a <i>firm</i> may substitute another similar independently-calculated consumer price index for a relevant <i>third country</i> in place of the rate specified in (2)(b)(ii).
		(4)		The second set of conditions is that, at the time at which the instrument was awarded as variable <i>remuneration</i> , at least 60% of that class of instrument in issuance was: (1) issued other than for use as variable <i>remuneration</i> ; and (2) not held by any <i>person</i> who has close links to: (i) the <i>firm</i> ; (ii) the <i>firm's group</i> ; or (iii) a <i>connected undertaking</i> included within the <i>firm's investment firm group</i> .
				Additional requirements for convertible instruments
1.4	R			A <i>firm</i> must satisfy the following requirements in relation to an instrument referred to SYSC 19G.6.19R(3) that is a <i>convertible instrument</i> : (1) the instrument must contain a trigger event which, if it occurs, results in the full principal amount of the instrument being converted into <i>common equity tier 1 capital</i> of the <i>firm</i> ; (2) the trigger event in (1) must occur where the <i>common equity tier 1 capital</i> of the <i>firm</i> falls below a specified level that is no lower than 64% of the <i>firm's own funds requirement</i> ; (3) the <i>firm</i> issuing the instrument must ensure the following to the extent necessary to give full effect to the required conversion following the trigger event in (1): (a) where applicable, the <i>firm</i> has sufficient authorised share capital; (b) the <i>firm</i> has all necessary permissions, authorisations and corporate authorities; and

			(c) there are no other restrictions in the <i>firm's constitutional documents, contractual arrangements or applicable national law</i> that would prevent the <i>firm</i> from issuing the required <i>common equity tier 1 capital instruments</i> .
1.5	R	The rate of conversion of the principal amount into <i>common equity tier capital</i> of the <i>firm</i> specified in the terms governing an instrument under SYSC 19G.6.19R(3) that is a <i>convertible instrument</i> must be set at a level that ensures that the value of the <i>common equity tier 1 capital</i> received by the holder upon conversion:	
<ul style="list-style-type: none"> (1) would not be higher than the value of the instrument at the time that it was originally awarded as <i>variable remuneration</i>; and (2) if the <i>convertible instrument</i> is part of an issuance which has the sole purpose of being used as <i>variable remuneration</i>, would not be higher than the value of the instrument at the time of conversion. 			
<p>Additional requirements for write-down instruments</p>			
1.6	R	A <i>firm</i> must satisfy the following requirements in relation to an instrument under SYSC 19G.6.19R(3) that is a <i>write-down instrument</i> :	
<ul style="list-style-type: none"> (1) the instrument must contain a trigger event which, if it occurs, results in the principal amount of the instrument being written down; (2) the trigger event in (1) must occur where the <i>common equity tier 1 capital</i> of the <i>firm</i> falls below a specified level that is no lower than 64% of the <i>firm's own funds requirement</i>; (3) the aggregate principal amount of <i>write-down instruments</i> that must be written down following the trigger event in (1) must be at least equal to the lower of the following: <ul style="list-style-type: none"> (a) the amount required to ensure that the <i>common equity tier 1 capital</i> of the <i>firm</i> referenced in the trigger event is restored to a level that is higher than the specified trigger; or (b) the full principal amount of the instrument; (4) any write-down in the principal amount of the instrument following the trigger event in (1) must: <ul style="list-style-type: none"> (a) apply on a pro rata basis across all <i>write-down instruments</i> that contain the same trigger event; (b) generate items that, under the accounting framework applicable to the <i>firm</i>, qualify as <i>common equity tier 1 capital</i>; (c) result in a proportional reduction in the holder's entitlement to receive: <ul style="list-style-type: none"> (i) distributions paid in connection with the instrument; (ii) payment if the instrument is called or redeemed; and (iii) repayment in the insolvency or liquidation of the <i>firm</i>; (5) any write-down in the principal amount of the instrument following the trigger event in (1) may be permanent or temporary, but if it is temporary, any subsequent write-up must comply with the following requirements: <ul style="list-style-type: none"> (a) it cannot increase the principal amount of the instrument beyond its level before the write-down occurred; (b) it must be at the absolute discretion of the <i>firm</i>; (c) the <i>firm</i> must have a reasonable basis to conclude that the write-up is appropriate, having regard to the following factors, among others: 			

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| | <p>(i) the importance of effectively aligning the interests of the recipient with the longer-term interests of the <i>firm</i>, its clients and its creditors;</p> <p>(ii) the financial position of the <i>firm</i> and the effect of the write-up on the <i>firm's own funds</i>; and</p> <p>(iii) if the <i>firm</i> or any member of its <i>group</i> has been subject to exceptional government intervention, whether the write-up is consistent with the objective of ensuring the timely exit from that support;</p> |
| (d) | it must be applied on a pro rata basis between all recipients of instruments falling under SYSC 19G.6.19R(3) that are <i>write-down instruments</i> where those instruments have previously been subject to a write-down. |

Chapter 20

Reverse stress testing [deleted]

Chapter 21

Risk control: additional guidance

21.1 Risk control: guidance on governance arrangements

21.1.1

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Additional guidance on governance arrangements

- (1) This chapter provides additional guidance on risk-centric governance arrangements for effective risk management. It expands upon the general organisational requirements in ■ SYSC 2, ■ SYSC 3, ■ SYSC 4, ■ SYSC 7 and ■ FUND 3.7, and so applies to the same extent as ■ SYSC 3.1.1 R (for *insurers, managing agents and the Society*), ■ SYSC 4.1.1 R (for every other *firm*) and ■ FUND 3.7 (for a *full-scope UK AIFM* of an *authorised AIF*).
- (2) *Firms* should, taking account of their size, nature and complexity, consider whether in order to fulfil the general organisational requirements in ■ SYSC 2, ■ SYSC 3, ■ SYSC 4, ■ SYSC 7 and (for a *full-scope UK AIFM* of an *authorised AIF*) ■ FUND 3.7 their risk control arrangements should include:
 - (a) appointing a Chief Risk Officer; and
 - (b) establishing a *governing body* risk committee.The functions of a Chief Risk Officer and *governing body* risk committee are explained further in this section.
- (3) The *FCA* considers that *banks* and *insurers* that are included in the FTSE 100 Index are examples of the types of *firm* that should structure their risk control arrangements in this way. However, this guidance will also be relevant to some similar sized *firms* (whether or not *listed*) and some smaller *firms*, by virtue of their risk profile or complexity.
- (4) For *Solvency II firms*, the PRA Rulebook: Solvency II firms: Senior Insurance Management Functions makes the chief risk function a *PRA controlled function*.
- (5) The chief risk function is having responsibility for overall management of the risk management system specified in PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3.
- (6) *Solvency II firms* may read references to Chief Risk Officer in ■ SYSC 21 as if it were a reference to the risk management function in the PRA Rulebook.

21.1.2

G**21****Chief Risk Officer**

- (1) A Chief Risk Officer should:
- (a) be accountable to the *firm's governing body* for oversight of *firm-wide risk management*;
 - (b) be fully independent of a *firm's individual business units*;
 - (c) have sufficient authority, stature and resources for the effective execution of his responsibilities;
 - (d) have unfettered access to any parts of the *firm's business* capable of having an impact on the *firm's risk profile*;
 - (e) ensure that the data used by the *firm* to assess its risks are fit for purpose in terms of quality, quantity and breadth;
 - (f) provide oversight and challenge of the *firm's systems and controls* in respect of risk management;
 - (g) provide oversight and validation of the *firm's external reporting of risk*;
 - (h) ensure the adequacy of risk information, risk analysis and risk training provided to members of the *firm's governing body*;
 - (i) report to the *firm's governing body* on the *firm's risk exposures relative to its risk appetite and tolerance, and the extent to which the risks inherent in any proposed business strategy and plans are consistent with the governing body's risk appetite and tolerance*. The Chief Risk Officer should also alert the *firm's governing body* to and provide challenge on, any business strategy or plans that exceed the *firm's risk appetite and tolerance*;
 - (j) provide risk-focused advice and information into the setting and individual application of the *firm's remuneration policy* (Where the *MIFIDPRU Remuneration Code* applies, see in particular **■ SYSC 19G.3.2G (2)**. Where the *dual-regulated firms Remuneration Code* applies, see in particular **■ SYSC 19D.3.16E**. Where the remuneration part of the *PRA Rulebook* applies, see the *PRA's Supervisory Statement on Remuneration*).

[**Note:** The *PRA's Supervisory Statement on remuneration* is available on the *PRA website* at <http://www.bankofengland.co.uk/pru/Pages/default.aspx>.]

- (2) *Firms* will need to seek the *FCA's* or *PRA's* (as appropriate) approval for a Chief Risk Officer to perform:
- (a) (for an *SMCR firm* that is a *PRA-authorised person*) the *PRA's Chief Risk Function controlled function*; or
 - (b) (for an *enhanced scope SMCR firm*) the *chief risk officer function*.
- (3) The *FCA* expects that where a *firm* is part of a *group* it will structure its arrangements so that a Chief Risk Officer at an appropriate level within the *group* will exercise functions in (1) taking into account *group-wide risks*.

- 21.1.3** **G** **Reporting lines of Chief Risk Officer**
- (1) The Chief Risk Officer should be accountable to a *firm's governing body*.
- (2) The FCA recognises that in addition to the Chief Risk Officers primary accountability to the *governing body*, an executive reporting line will be necessary for operational purposes. Accordingly, to the extent necessary for effective operational management, the Chief Risk Officer should report into a very senior executive level in the *firm*. In practice, the FCA expects this will be to the *chief executive*, the chief finance officer or to another executive *director*.
- 21.1.4** **G** **Appointment of Chief Risk Officer**
- (1) *Firms* should ensure that a Chief Risk Officers *remuneration* is subject to approval by the *firm's governing body*, or an appropriate sub-committee.
- (2) *Firms* should also ensure that the Chief Risk Officer may not be removed from that role without the approval of the *firm's governing body*.
- 21.1.4A** **G**
- (1) This *guidance* is relevant to an *SMCR banking firm* that has appointed a chief risk officer.
- (2) Taking account of the nature, scale and complexity of its activities, the *firm* should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the chief risk officer does not undermine the independence of the chief risk officer.
- (3) It will be appropriate, in many cases, for the procedures in (2) to include that any approval for the removal of the chief risk officer requires the approval of a majority of the *governing body*, including at least a majority of its members who do not perform any executive function in the *firm*.
- (4) Similarly, it will also be appropriate, in many cases, for any other disciplinary sanctioning of the chief risk officer to require the approval of a majority of the *governing body*, including at least a majority of its members who do not perform any executive function in the *firm*.
- 21.1.5** **G** **Governing body risk committee**
- (1) The FCA considers that, while the *firm's governing body* is ultimately responsible for risk governance throughout the business, *firms* should consider establishing a *governing body* risk committee to provide focused support and advice on risk governance.
- (2) Where a *firm* has established a *governing body* risk committee, its responsibilities will typically include:
- (a) providing advice to the *firm's governing body* on risk strategy, including the oversight of current risk exposures of the *firm*, with particular, but not exclusive, emphasis on prudential risks;

- (b) development of proposals for consideration by the *governing body* in respect of overall risk appetite and tolerance, as well as the metrics to be used to monitor the *firm's* risk management performance;
 - (c) oversight and challenge of the design and execution of stress and scenario testing;
 - (d) oversight and challenge of the day-to-day risk management and oversight arrangements of the executive;
 - (e) oversight and challenge of due diligence on risk issues relating to material transactions and strategic proposals that are subject to approval by the *governing body*;
 - (f) provide advice to the *firm's remuneration committee* on risk weightings to be applied to performance objectives incorporated in the incentive structure for the executive;
 - (g) providing advice, oversight and challenge necessary to embed and maintain a supportive risk culture throughout the *firm*.
- (3) Where a *governing body* risk committee is established, its chairman should be a *non-executive director*, and while its membership should predominantly be non-executive it may be appropriate to include senior executives such as the chief finance officer.

21.1.6**G**

In carrying out their risk governance responsibilities, a *firm's governing body* and *governing body* risk committee should have regard to any relevant advice from its audit committee or internal audit function concerning the effectiveness of its current control framework. In addition, they should remain alert to the possible need for expert advice and support on any risk issue, taking action to ensure that they receive such advice and support as may be necessary to meet their responsibilities effectively.

Chapter 22

Regulatory references

22.1 Application

- General application**
- 22.1.1** **R** This chapter applies to all *SMCR firms*.
- 22.1.1A** **G** **SYSC TP 8.5.1R** applies this chapter to certain claims management *firms* that are not *SMCR firms*.
- Activities covered**
- 22.1.2** **G** This chapter is not limited to *regulated activities* or other specific types of activities.
- Territorial scope and overseas firms**
- 22.1.3** **R** There is no territorial limitation on the application of this chapter, subject to **SYSC 22.1.6R**.
- 22.1.4** **G** One effect of **SYSC 22.1.3R** is that the obligation to provide a reference can apply even if the *employee* worked in an overseas office of the *employer*.
- 22.1.5** **R** [deleted]
- 22.1.6** **R** For an *overseas firm*, **SYSC 22.2.2R** (Obligation to give references) only applies if the current or former *employee* in question (defined as "P" in **SYSC 22.2.2R**) is or was an *employee* of its *branch* in the *United Kingdom* and only relates to their activities as such.
- 22.1.7** **R**
- (1) In order to decide whether someone is an *employee* of a *branch*, the *Glossary* definition of *employee* is applied to the *branch* as if the *branch* and the *firm* of which it forms part were separate *firms*.
 - (2) For the purpose of (1), paragraph (4A)(c) of the definition of *employee* (someone employed elsewhere in the *group*) does not apply.

22.2 Getting, giving and updating references: the main rules

22

22.2.1

R

Obligation to obtain references

- (1) If a *firm* (A) is considering:
 - (a) permitting or appointing someone (P) to perform a *controlled function*;
 - (b) issuing a certificate under the certification regime for P; or
 - (ba) appointing a *board director*;
(as explained in more detail in rows (A) and (B) of the table in ■ SYSC 22.2.3R), A must take reasonable steps to obtain appropriate references from:
 - (c) P's current *employer*; and
 - (d) anyone who has been P's *employer* in the past six years.
- (2) A must take reasonable steps to obtain the reference before the time in column two of the applicable row in the table in ■ SYSC 22.2.3R. If A does not obtain it within that time it must take reasonable steps to obtain it as soon as possible thereafter.
- (3) A must in particular request:
 - (a) the information in ■ SYSC 22.2.2R(1) to (3); and
 - (b) (if P's current or previous *employer* is also an *SMCR firm*) the information in ■ SYSC 22.2.2R(4) (questions (A) to (F) of Part One of ■ SYSC 22 Annex 1R).
- (4) When deciding what information to request under (1), A must have regard to the factors in ■ SYSC 22.2.2R(5) (Factors set out in ■ SYSC 22 Annex 2R).

Obligation to give references

22.2.2

R

- (1) A *firm* (B) must provide a reference to another *firm* (A) as soon as reasonably practicable if:
 - (a) A is considering:
 - (i) permitting or appointing someone (P) to perform a *controlled function*; or
 - (ii) issuing a certificate under the certification regime for P; or
 - (iii) appointing P to another position in the table in ■ SYSC 22.2.3R;

- (as explained in more detail in the table in ■ SYSC 22.2.3R);
- (b) A makes a request, for a reference or other information in respect of P from B, in B's capacity as P's current or former employer;
 - (c) B:
 - (i) is P's current employer; or
 - (ii) has been P's employer at any time in the six year period preceding the request in (1)(b); and
 - (d) A indicates to B the purpose of the request.
- (2) B must disclose to A in the reference all information of which B is aware that B reasonably considers to be relevant to A's assessment of whether P is fit and proper.
- (3) B is only required to disclose under (1) and (2) something that occurred or existed:
- (a) in the six years before the request for a reference; or
 - (b) between the date of the request for the reference and the date B gives the reference; or
 - (c) (in the case of serious misconduct) at any time.
- [**Note:** See ■ SYSC 22.5.10G and ■ SYSC 22.5.11G for guidance on the meaning of serious misconduct]
- (4) B must in addition disclose the information in questions (A) to (F) of Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).
 - (5) When deciding what information to give to A under (1) to (3), B must have regard to the factors in ■ SYSC 22 Annex 2R (Factors to take into account when asking for and giving regulatory references).

22.2.3

R

Table: What positions need a reference

Position	When to obtain reference	Comments
(A) Permitting or appointing someone to perform an FCA controlled function or a PRA controlled function.	One month before the end of the application period Where a request for a reference would require: <ul style="list-style-type: none"> (a) the firm requesting the reference; (b) the employer giving the reference; or (c) any other person; 	

Position	When to obtain reference	Comments
	to make a mandatory disclosure prior to P disclosing to its current employer that such application has been made, the date is the end of the application period.	
(B) Issuing a certificate under section 63F of the Act (Certification of employees by authorised persons).	Before the certificate is issued	This includes renewing an existing certificate.
(C) Appointing someone to any of the following positions (as defined in the PRA Rulebook): <ul style="list-style-type: none"> (a) a notified non-executive director; (b) a credit union non-executive director; or (c) a key function holder. 	Not applicable	SYSC 22.2.1R (obligation to obtain a reference) does not apply to a firm appointing someone to the position in column (1).
(D) A firm appointing someone to be a non-SMF board director subject to competence requirements of itself.	Before appointment	However SYSC 22.2.2R does apply to a firm asked to give a reference to a firm appointing someone to the position in column (1). Only applies where the appointment is by a UK SMCR firm that is: <ul style="list-style-type: none"> (a) a core SMCR firm; or (b) an enhanced scope SMCR firm.
Note 1: Mandatory disclosure means an obligation in any applicable laws, regulations or rules to declare or disclose information to the public.		
Note 2: P refers to the employee or ex-employee about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.R.		
Note 3: The application period means the period for consideration referred to in section 61 of the Act (Determination of application).		

Obligation to revise references: The main rule

22.2.4

R

If at any time:

- (1) a firm (B) has given a reference under SYSC 22.2.2R to another firm (A) about an employee or ex-employee of B (P);
- (2) B was also an SMCR firm when it gave the reference in (1);
- (3) either of the following applies:
 - (a) B is aware of matters or circumstances that mean that if B had been aware of them when giving that reference, this chapter would have required B to draft the reference differently; or

22.2.5**R**

B does not need to update A if:

- (1) A is no longer a *firm*;
- (2) P has not yet been *employed* by A (because, for example, P is still working their notice period with B) and it is no longer intended for A to *employ* P;
- (3) A is no longer P's *employer*; or
- (4) despite making reasonable enquiries under ■ SYSC 22.2.4R, B does not know whether P is still *employed* by A.

22.2.6**R**

This rule sets out time limits about the obligation to update a reference in ■ SYSC 22.2.4R.

- (1) If B still *employs* P, ■ SYSC 22.2.4R applies throughout the period B remains *employed*.
- (2) If B no longer *employs* P, the obligation to update ends six years after P ceased to be *employed* by B.
- (3) If B no longer *employs* P and the matters or circumstances are not serious misconduct by P, B does not have to disclose something if it did not occur or exist in the six year period ending on the date B gave the original reference. This limitation applies in addition to the one in (2).

[**Note:** See ■ SYSC 22.5.10G and ■ SYSC 22.5.11G for guidance on the meaning of serious misconduct]

22.2.7

R**Obligation to revise references: Finding out who the current employer is**

If at any time:

- (1) a *firm* (B) has given a reference under ■ SYSC 22.2.2R to another *firm* (A) about an *employee* or *ex-employee* of B (P);
- (2) B asks A whether P is still an *employee* of A; and
- (3) B gave A the reference no more than six years ago;

A must answer that question as soon as reasonably practicable, even if B does not tell A why it wants to know that information.

22

Sole traders

22.2.8

R

The obligation in ■ SYSC 22.2.1R (Obligation to obtain references) does not apply if A and P (as referred to in that rule) are the same person.

22.2.9

G

An example of ■ SYSC 22.2.8R is this. Say that P works at a *firm* (B) and leaves to become a *firm* and a *sole trader*. P appoints themselves to perform the *compliance oversight function*. P does not need to get a regulatory reference from B about themselves.

22.2.10

G

- (1) If a *firm* is appointing someone who was a *sole trader* to a position that would normally require a regulatory reference under ■ SYSC 22.2.1R, it does not have to request a reference from the *sole trader* themselves. That is because ■ SYSC 22.2.1R only requires a *firm* to request a reference from a previous *employer* and a *sole trader* is not their own *employer*.
- (2) An example of (1) is this. Say that P was a *firm* and a *sole trader* and performed the *compliance oversight function* themselves. P goes to work for another *firm* (A). A does not need to request a regulatory reference from P about P.

22.3 Drafting the reference and the request for a reference

- 22.3.1** **G** [deleted]
- 22.3.2** **G** [deleted]
- 22.3.3** **G**
- (1) A *firm* (A) asking another *firm* (B) for a reference should give B sufficient information to let B know that the requirements in this chapter apply to the reference it is being asked to give and which requirements apply.
 - (2) As long as it complies with (1), A does not have to set out specifically the information this chapter requires it to obtain. This is because B should include that information even though B is not specifically asked to include it.
- 22.3.4** **G** A *firm* asking for a reference under this chapter from a current or former employer that is not a *firm* will normally need to specify what information it would like.
- 22.3.5** **G**
- (1) [deleted] [*Editor's note*: The text of this provision has been moved to **■ SYSC 22.4.6G(-1)**]
 - (2) [deleted] [*Editor's note*: The text of this provision has been moved to **■ SYSC 22.4.7G**]
- 22.3.6** **G** [deleted] [*Editor's note*: The text of this provision has been moved to **■ SYSC 22.4.8G**]

22.4 Drafting the reference: detailed requirements

22.4.1

G

Drafting the reference: detailed requirements for SMCR firms

■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) has two purposes:

- (1) to set out what information a *firm* should disclose under ■ SYSC 22.2.2R(4); and
- (2) to provide a template that a *firm* should use when giving a reference under this chapter.

How to draft the reference

22.4.2

R

- (1) A *firm* must use the template in Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) when giving a reference under this chapter to another *firm* (A).
- (2) A *firm* may make minor changes to the format of the template in Part One of ■ SYSC 22 Annex 1R when giving a reference under this chapter, provided that the reference includes all the information required by ■ SYSC 22 Annex 1R.
- (3) This *rule* applies even if A is not an *SMCR firm*.

22.4.3

G

- (1) [deleted] [*Editor's note*: The text of this provision has been moved to ■ SYSC 22.4.6G(1)]
- (2) [deleted] [*Editor's note*: The text of this provision has been moved to ■ SYSC 22.4.6G(2)]
- (3) [deleted] [*Editor's note*: The text of this provision has been moved to ■ SYSC 22.4.6G(3)]

22.4.4

G

A *firm* should use the template in ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) even if the *firm* asking for the reference does not specifically ask it to.

		PRA requirements
22.4.5	R	B may combine in a single reference what the <i>PRA's rules</i> require and what this chapter requires.
		Inclusion of additional material
22.4.6	G	<ul style="list-style-type: none">(-1) This chapter sets out minimum requirements for a reference. It does not prevent a <i>firm</i> from including more than is required by this chapter.(1) Therefore ■ SYSC 22.4.2R does not stop a <i>firm</i> including matters in the reference not required by the template in ■ SYSC 22 Annex 1R.(2) A <i>firm</i> may include the material required by the template and additional material in the same document.(3) Any additional material should not alter the scope of any of the questions in the templates.
22.4.7	G	If a <i>firm</i> does disclose more than is required by this chapter the reference should still meet its duties under general law to its former <i>employee</i> and the recipient (see ■ SYSC 22.5.3G to ■ SYSC 22.5.5G).
		Time limits
22.4.8	G	Nothing in this chapter prevents a <i>firm</i> from disclosing material outside the time limits under this chapter.

22.5 Giving references: additional rules and guidance for all firms

22

22.5.1

R

This chapter does not require a *firm* to disclose information that has not been properly verified.

22.5.2

G

- (1) For example, this chapter does not necessarily require a *firm* to include in a reference the fact that an ex-employee left while disciplinary proceedings were pending or had started. Including such information is likely to imply that there is cause for concern about the ex-employee but the *firm* may not have established that the ex-employee was actually responsible for misconduct.
- (2) However, a *firm* may include such information in a reference if it wishes to (see ■ SYSC 22.3.5G).

22.5.3

G

A *firm* should, when giving a reference under this chapter, provide as complete a picture of an *employee*'s conduct record as possible to new employers.

22.5.4

G

- (1) A *firm* supplying a reference in accordance with this chapter owes a duty under the general law to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference.
- (2) The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed.
- (3) References should be true, accurate, fair and based on documented fact.

22.5.5

G

- (1) An example of the general duty described in ■ SYSC 22.5.4G is that fairness will normally require a *firm* to have given an *employee* an opportunity to comment on information in a reference. The *firm* might do this through, for example, disciplinary proceedings.

- (2) Paragraph (1) does not mean that the *firm* should provide an opportunity to comment on the reference itself, as opposed to the allegations on which it is based.
- (3) A *firm* may have given the *employee* an opportunity to comment on allegations that are later included in a reference even though, at the time that the *firm* is giving that opportunity, no reference is being contemplated. That may mean that the *firm* gives the *employee* their opportunity to comment on the allegations some time before the reference is prepared.
- (4) Paragraph (1) does not mean that a *firm* will be unable to include an allegation in a reference if it has offered the *employee* an opportunity to comment on the allegation but the *employee* has unreasonably refused to do so.
- (5) Where a *firm* should have given an *employee* an opportunity to comment on an allegation if the allegation is to be included in a reference, this chapter requires the *firm* to give the *employee* that opportunity rather than merely to leave the allegation out of the reference.
- (6) Paragraph (5) may mean that where the *firm* has not given its *employee* an opportunity to comment on a matter at the time it first arose, it will have to give the *employee* the opportunity around the time that the *firm* is preparing the reference.
- (7) The obligation to give an *employee* an opportunity to comment does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see ■ SYSC 22.5.18G).
- (8) This chapter does not require the *employee*'s views to be included in the reference. Instead the *firm* should take those views into account so far as appropriate when deciding whether something should be disclosed and how the disclosure is drafted.

Outsourcing

22.5.6

G

The requirements in this chapter for a *firm* (B) to give a *firm* (A) a reference also apply where A has outsourced the collection of that information to another (unregulated) third party, where B has been made aware that the unregulated third party is acting on behalf of A.

Circumstances in which the ex-employee left

22.5.7

G

The obligation to give a reference for an *employee* or ex-*employee* applies however the *employment* ended or is going to end. For example, it applies whether it ended through resignation, redundancy, dismissal or fixed term work, a secondment or temporary work coming to an end.

Missing or incomplete information

22.5.8

G

- (1) If a *firm*'s records do not cover the maximum periods contemplated by ■ SYSC 22.2.2R or ■ SYSC 22 Annex 1R (Template for regulatory

references given by SMCR firms and disclosure requirements), the *firm* should note that in the reference.

- (2) A *firm* should not include a warning of the type described in (1) as a matter of routine. It should only be included if there is a genuine need to include it.

All relevant information: Calculation of six year period for disclosure

22.5.9

G

- (1) In general there is a six year limit on what should be disclosed under ■ SYSC 22.2.2R(1) to (3).
- (2) Where the matter to be disclosed consists of a single course of conduct (such as market manipulation) the six year period does not begin until that course of conduct has come to an end. This means that individual events that occurred more than six years ago may still be within the six year limit.
- (3) This *guidance* is also relevant to the six year time limits for updating references in ■ SYSC 22.2.6R.

All relevant information: Removal of six year period

22.5.10

G

- (1) ■ SYSC 22.2.2R(1) to (3) normally has a six year time limit. ■ SYSC 22.2.2R(3)(c) removes that time limit for serious matters. This paragraph (■ SYSC 22.5.10G) and ■ SYSC 22.5.11G have *guidance* about this. This *guidance* is also relevant to the time limits for updating references in ■ SYSC 22.2.6R.
- (2) The removal of the time limit does not mean that the time that has elapsed since the matter occurred is irrelevant. The length of time that has elapsed is relevant to deciding whether the matter is serious. In general, the longer ago the matter occurred, the less likely it is still to be serious for these purposes.
- (3) In determining whether something is serious for these purposes, the key question is how important the information still is for the requesting *firm*'s assessment of the *employee*'s fitness for the function that they are going to perform.
- (4) In considering what is relevant, a *firm* should, in particular, have regard to ■ SYSC 22.5.4G (Fairness).
- (5) The table in ■ SYSC 22.5.11G provides *guidance* on some of the factors which a *firm* should take into account when determining whether a matter is serious.
- (6) The *guidance* in this paragraph and in the table in ■ SYSC 22.5.11G is only designed for the purposes of this chapter. It does not, for example, apply for the purposes of ■ SUP 15 (Notifications to the FCA), DEPP or ENFG.

22.5.11

G

Table: Examples of factors to take into account when deciding whether old misconduct is sufficiently serious to disclose

Factors to take into account	Comments
(A) Whether P has committed a serious breach of individual conduct requirements.	Individual conduct requirements has the same meaning as in Part Two of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).
	Factors to take into account in deciding whether the breach is serious include the following.
	(1) The extent to which the conduct was deliberate or reckless.
	(2) The extent to which the conduct was dishonest.
	(3) Whether the breaches are frequent or whether they have continued over a long period of time. The fact that breaches were frequent or repeated may increase the likelihood that they should be disclosed since the breaches may show a pattern of non-compliance.
	(4) The extent of loss, or risk of loss, caused to existing, past or potential investors, depositors, policyholders or other counterparties or customers.
	(5) The reasons for the breach. For example, where the breach was caused by lack of experience which has been remedied by training or further experience, it is less likely that the breach will still be relevant.
(B) Whether the conduct caused B to breach requirements of the <i>regulatory system</i> or P was concerned in a contravention of such a requirement by B and, in each case, whether P's conduct was itself serious.	(1) The factors in (A) are relevant to whether P's conduct was serious.
	(2) The seriousness of the breach by B is relevant. The factors in (A) are also relevant to this.
	(3) A breach by B of certain requirements is always likely to be serious under (2). Breach of the <i>threshold conditions</i> is an example. However that does not mean that P's involvement will automatically be serious.
(C) Whether P's conduct involved dishonesty (whether or not also involving a criminal act).	Dishonesty is an important factor but it is not automatically decisive in every case. For instance, a small one-off case of dishonesty many years ago may not be sufficiently serious to require disclosure.
(D) Whether the conduct would have resulted in B's dismissing P, had P still been working for B, based on B's disciplinary policies and the requirements of the law about unfair dismissal.	

		Factors to take into account	Comments
		(E) Whether the conduct was such that, if B was considering P for a role today and became aware of the historical conduct, B would not employ P today notwithstanding the time that has passed. Note 1: P refers to the <i>employee</i> about whom the reference is being written. Note 2: B refers to the <i>firm</i> giving the reference.	
22.5.12	G	(1) [deleted] [<i>Editor's note</i> : The text of this provision has been moved to ■ SYSC 22.8.10G(2)] (2) [deleted] [<i>Editor's note</i> : The text of this provision has been moved to ■ SYSC 22.8.10G(1)]	
		Agreements not to disclose information	
22.5.13	R	A <i>firm</i> must not enter into any arrangements or agreements with any <i>person</i> that limit its ability to disclose information under this chapter.	
22.5.14	G	■ SYSC 22.5.13R covers all types of agreements and arrangements. For example: (1) it is not limited to an agreement or arrangement entered into when the <i>employee</i> leaves; (2) it applies however the <i>employment</i> ends (see ■ SYSC 22.5.7G); and (3) it covers a "COT 3" Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS).	
22.5.15	G	A <i>firm</i> should not give any undertakings to suppress or omit relevant information in order to secure a negotiated release.	
22.5.16	G	The obligation to supply information to another <i>firm</i> under this chapter will apply notwithstanding any agreement prohibited by ■ SYSC 22.5.13R.	
		Time in which to respond to reference requests	
22.5.17	G	The FCA expects that normally a <i>firm</i> should issue a reference under this chapter within six weeks of being asked to.	
		Duty to investigate allegations	
22.5.18	G	(1) A <i>firm</i> should, wherever feasible, conclude investigative procedures before the <i>employee</i> departs. (2) However, this chapter does not create a duty to investigate alleged misconduct by an <i>employee</i> or former <i>employee</i> .	

- (3) There are several reasons why a *firm* may find it appropriate to investigate potential misconduct by an *employee* or former *employee*, including:
- assessing the actual and potential damage resulting from misconduct;
 - identifying other individuals potentially culpable or accountable for the breach;
 - satisfying itself that the *SMF manager* responsible for the areas where the misconduct occurred took reasonable steps to prevent or stop it; and
 - (where the *employee* has *remuneration* susceptible to malus or clawback) enabling it to consider whether any adjustments are justified.

Criminal record checks

22.5.19

G

A *firm* giving a reference need not include information from a criminal records check it has carried out under **Part V** of the Police Act 1997 (Certificates of Criminal Records, &c). The recruiting *firm* should carry out a criminal records check itself if necessary. The main *FCA Handbook* requirements on a recruiting *firm* to carry out a criminal records check are:

- SUP 10C.10.16R** a *firm* should carry out such a check when appointing an *SMF manager*); and
- SYSC 23.4** (Criminal record checks for certain directors).

22.6 Giving and updating references: additional rules and guidance

22

22.6.1

G

Omitting or supplementing mandatory disclosures

- (1) A *firm* may have concluded that an *employee* is unfit or has breached COCON or APER (as described in questions (E) to (F) of Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)). The *firm* may later become aware of facts or matters causing it to revise its original conclusions.
- (2) If so, the *firm* may decide not to disclose in a reference its conclusion or may qualify its conclusion with supplementary information.

22.6.2

G

- (1) A *firm* may have concluded that an *employee* is unfit or has breached COCON or APER (as described in questions (E) to (F) of Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)). However the *firm* may consider that the disclosure is incomplete without including mitigating circumstances.
- (2) For example, if the *firm* is reporting a breach of COCON it may consider that the breach is very uncharacteristic of the *employee* and that they have had an exemplary record since then. In that case, the *firm* should include those views.

Requirement to consider whether there has been a conduct breach

22.6.3

G

- (1) If a *firm* has taken disciplinary action of the type referred to in question (F) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) against an *employee* and is asked to give a reference about that *employee*, the *firm* should (if it has not already done so) consider whether the basis on which it took that action amounts to a breach of any individual conduct requirements covered by question (F).
- (2) If the *firm* decides that the basis on which it took that action does amount to a breach of those requirements, it should include that disciplinary action in the reference under question (F).
- (3) Paragraph (2) applies even if the grounds of the disciplinary action did not include such a breach of individual conduct requirements.
- (4) The requirement in (1) is disapplied for disciplinary action taken before certain specified dates, where a *firm's* records do not record

whether previous conduct subject to disciplinary action amounted to a breach. The date differs between different types of *firms*. ■ SYSC TP 5 and ■ SYSC TP 7 set out those specified dates and other details.

- (5) The obligation to consider whether there was a conduct breach does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see ■ SYSC 22.5.18G).

All relevant information: Interaction with mandatory disclosures

22.6.4**G**

- (1) ■ SYSC 22.2.2R(1) to (3) may require a *firm* to disclose information that goes beyond the mandatory minimum information in Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).
- (2) This may mean, for instance, that a *firm* should in some cases disclose a conclusion that an *employee* or former *employee* has breached COCON or APER where that conclusion was reached outside the time limits in Part One of ■ SYSC 22 Annex 1R.

Updating references fairly

22.6.5**G**

- (1) ■ SYSC 22.5.1R to ■ SYSC 22.5.5G (Verification, accuracy and fairness) also apply to updating a reference under ■ SYSC 22.2.4R.
- (2) Therefore fairness may require a *firm* to have given an *employee* an opportunity to comment on an allegation if it is included in an update to a reference.

22.7 Getting references: additional rules and guidance for SMCR firms

22

22.7.1 **R** (1) [deleted] [*Editor's note*: The text of this provision has been moved to ■ SYSC 22.8A.1R]

22.7.2 **G** [deleted] [*Editor's note*: The text of this provision has been moved to ■ SYSC 22.8A.2G]

Who should be asked to give a reference

22.7.3 **G** The *Glossary* definition of *employer* covers more than just a conventional employer and so it may not always be obvious who a *person's employer* is. Therefore a *firm* appointing someone to a position that requires a reference may have to get the *employee's* help in identifying their previous *employers*.

22.7.4 **G** (1) ■ SYSC 22.2.1R (Obligation to obtain a reference) applies even if the ex-*employer* is not a *firm*.
(2) A *firm* should take all reasonable steps to try to obtain the reference in these circumstances. However, the *FCA* accepts that the previous *employer* may not be willing to give sufficient information.

Asking for a reference to be updated

22.7.5 **G** (1) ■ SYSC 22.2.1R (Obligation to obtain references) applies even if the *employer* has already got a reference for the *employee*. For example:
(a) a *firm* should have a reference whenever it renews the certificate of a *certification employee*; and
(b) changing jobs within the same *firm* may require a reference.
(2) However, the *firm* does not necessarily need to obtain a new reference each time (a) or (b) above occurs. That is because an existing reference will very often still be appropriate for the purpose (see ■ SYSC 22.7.6G to ■ SYSC 22.7.8G).

22.7.6 **G** If a *firm* (A):
(1) appoints someone (P) to a *certification function* position;
(2) obtains a reference from an ex-*employer*; and

22

22.7.7

G

(3) later wishes to renew P's certificate under the certification regime;

it is unlikely that A will need to ask for another reference from that ex-employer or ask for it to be reissued unless there is a change in P's role of the type described in ■ SYSC 27.2.15G (major changes in role).

(1) If a *firm* (A):

- (a) appoints someone (P) to a *certification function* or an *approved person* position;
- (b) obtains a reference from an *ex-employer* (B); and
- (c) later wishes to:
 - (i) appoint P to another *certification function* or *approved person* position; or
 - (ii) keep P in the same *certification function* but make a change in P's role of the type described in ■ SYSC 27.2.15G (major changes in role), whether that change is made at a time when the certificate has not yet come up for renewal or at the time it is being reissued; or
 - (iii) move P from a *certification function* to an *approved person* position or vice versa;

	A should consider whether to ask B to reissue or amend its reference.
	(2) A may decide that it is not necessary to ask B to reissue or amend its reference. For example, A may decide that: (a) the existing reference already covers everything necessary; or (b) (where B is not a <i>firm</i>) B will not give any further information.
22.7.8	<input type="checkbox"/> [deleted] [<i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 22.8A.3G]
22.7.9	<input type="checkbox"/> If a <i>firm</i> is unable to obtain a reference by the time in column two of the table in ■ SYSC 22.2.3R, it should still try to obtain the reference as soon as possible afterwards.
22.7.10	<input type="checkbox"/> (1) Where a <i>firm</i> needs to fill a vacancy for a <i>certification function</i> which could not have reasonably been foreseen, the FCA recognises that it may not be reasonable to expect the <i>firm</i> to obtain references prior to issuing a certificate. (2) In such cases, the <i>SMCR firm</i> should take up the reference as soon as reasonably possible. (3) If a reference obtained later raises concerns about the person's fitness and propriety, the <i>firm</i> should revisit its decision to issue the person with a certificate.
22.7.11	<input type="checkbox"/> (1) Although this chapter (see ■ SYSC 22.2.3R) only requires a <i>firm</i> to try to get a reference for a <i>person</i> it is recruiting to perform an <i>FCA controlled function</i> or a <i>PRA controlled function</i> towards the end of the application process, the FCA would normally expect a <i>firm</i> to have obtained the reference before the application for approval is made. (2) The main examples of circumstances in which it would be reasonable for a <i>firm</i> to delay getting a reference are where asking for a reference earlier will create a serious risk of: (a) breaching the confidentiality of a wider commercial or corporate transaction; (b) prematurely triggering the need for a public announcement; or (c) the <i>candidate</i> not applying for the position in the first place because it would reveal to the <i>candidate's</i> current <i>employer</i> the proposed move too soon. (3) The FCA may consider that it needs to see the information in a reference before it reaches a decision. If so, it may formally ask for that information and extend the time period in which it has to make its decision until it gets the reference. ■ SUP 10C.10.28G gives additional details about requests for further information and the effect they have on the period of time the FCA has to make a decision about an application.

-
- (4) *Firms* are reminded that the *Act* itself requires a *firm* to be satisfied that a *candidate* is fit and proper before it makes an application for approval (see ■ SUP 10C.10.14G for more detail). ■ SYSC 22.7.11G(2) does not affect that obligation.

22.8 Policies and appointed representatives

22

22.8.1

R

A firm must establish, implement and maintain policies and procedures that are adequate for the purpose of complying with the obligations in this chapter.

22.8.2

G

- (1) SYSC 22.8.1R does not require a firm to create or keep records that are not required under SYSC 22.9.1R (General record keeping rules) or another rule.
- (2) (1) applies to a firm whether or not SYSC 22.9.1R applies to it.

Appointed representatives

22.8.3

R

This chapter applies to a firm's appointed representatives as well as to the firm.

22.8.4

R

When SYSC 22.8.3R applies to an SMCR firm, the requirements of this chapter for firms that are not SMCR firms apply in place of the requirements that only apply to SMCR firms. In particular, the following requirements do not apply in relation to an appointed representative:

- (1) SYSC 22.2.1R (Obligation to obtain references);
- (2) SYSC 22.2.2R(4) (Obligation to give references);
- (3) SYSC 22.2.4R to SYSC 22.2.6R (Obligation to revise references);
- (4) SYSC 22.4.2R (How to draft the reference);
- (5) SYSC 22.8A.1R (Intra-group transfers); and
- (6) SYSC 22.9.1R (General record keeping rules).

22.8.4A

R

- (1) The approved person's authorised approved person employer is responsible for compliance with SYSC 22.8.3R in the case of a requirement:
 - (a) to give a reference about an approved person whose approval is under SUP 10A (FCA Approved Persons in Appointed Representatives); and

		<p>(b) [deleted]</p> <p>(c) under ■ SYSC 22.2.7R in relation to any such <i>person</i>.</p> <p>(2) In any other case, each <i>principal</i> of the <i>appointed representative</i> in question is responsible for compliance with ■ SYSC 22.8.3R.</p> <p>(3) If another <i>principal</i> of the <i>appointed representative</i> has accepted responsibility for the obligation in ■ SYSC 22.8.3R, that <i>principal</i> is responsible in place of the other <i>firms</i> in (1) or (2).</p>
22.8.5	G	<p>One effect of ■ SYSC 22.8.4R is that when an <i>appointed representative</i> appoints an <i>approved person</i> under ■ SUP 10A (FCA Approved Persons in Appointed Representatives) there is no requirement for the <i>appointed representative</i> or its <i>principal</i> to request a reference.</p>
22.8.5A	G	<p>This chapter does not apply in relation to an <i>appointed representative</i> of a <i>firm</i> that is not an <i>SMCR firm</i>.</p>
22.8.6	G	<p>(1) A <i>firm</i> should ensure that its <i>appointed representative</i> gives a reference when another <i>firm</i> (or its <i>appointed representative</i>) asks that <i>appointed representative</i> to give a reference in accordance with this chapter.</p> <p>(2) A <i>firm</i> is not responsible for its <i>appointed representative's</i> giving references if another <i>principal</i> has accepted responsibility for this.</p> <p>(3) The <i>appointed representative</i> need not give the reference using the template in ■ SYSC 22 Annex 1 (Template for regulatory references given by SMCR firms and disclosure requirements).</p>
22.8.6A	G	<p>If an <i>appointed representative</i> asks a <i>firm</i> for a reference, the <i>firm</i> should give one. The requirements of this chapter apply to the <i>firm</i> in the same way as they would if the <i>appointed representative</i> were a <i>firm</i>.</p>
22.8.7	G	<p>[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 22.8A.4G]</p>
22.8.8	G	<p>[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 22.8A.5G]</p>
22.8.9	G	<p>[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 22.8A.6G]</p>

22.8.10

G

- (1) A *firm* should try to ensure that its *appointed representative* considers whether it needs to disclose a breach of individual conduct requirements (as defined in Part Two of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)) when giving a reference under this chapter.
- (2) Therefore an example of information that may be relevant under ■ SYSC 22.2.2R(1) to ■ (3) is the fact that the *employee* has breached a requirement in *APER*, not just a requirement in *COCON*.

22

22.8A Groups and outsourcing

Intra-group transfers

22.8A.1

R

- (1) This *rule* applies when:
 - (a) a *firm* (A) would otherwise have to ask another *person* (B) for a reference under ■ SYSC 22.2.1R; and
 - (b) A and B are in the same *group*.
- (2) A need not ask for a reference from B if there are adequate arrangements in place under which A has access to the same information sources as B to the extent that they are relevant to things A has to ask B under ■ SYSC 22.2.1R (Obligation to obtain references).
- (3) If A only has access to some of the information sources in (2), A may ask for a reference that only covers the sources to which A does not have such access.
- (4) If A, in accordance with this *rule*, does not ask for a reference or a full reference it must access the information resources referred to in this *rule* and get the relevant information within the time specified by ■ SYSC 22.2.3R.

22.8A.2

G

- (1) ■ SYSC 22.8A.1R means that a *firm* recruiting someone from another member of its *group* is not required to request a reference from the other where the *group* has centralised records or alternative measures in place to ensure sharing of relevant information between its members.
- (2) The recruiting *firm* should be satisfied that the centralised or alternative measures ensure relevant information is made available as part of the fit and proper assessment of the recruit.

22.8A.3

G

If:

- (1) a *firm* (A) appoints someone (P) to a *certification function* or *approved person* position;
- (2) A obtains a reference from an *ex-employer* (B);
- (3) later P transfers to a *certification function* position or an *approved person* position with an *SMCR firm* in A's *group* (C);

- (4) B's reference is:
- addressed to all *firms* in A's *group*; or
 - otherwise drafted so that it is clear that C may rely on it; and
- (5) C does not need to ask for the reference to be reissued or amended, taking account of ■ SYSC 22.7.6G and ■ SYSC 22.7.7G;

C may be able to rely on that reference without asking B to give another one.

Getting and giving a reference where the employee has worked in a group or on secondment

22.8A.4

[G]

If:

- a *firm* (A) is thinking of employing someone (P);
- P is *employed* by a group services company (D) that is not a *firm*;
- P (in their capacity as an *employee* of D) performs a function or service for a *firm* (B) in the same *group* as D such that P is also an *employee* of B; and
- A intends to appoint (P) to a position that entitles A to obtain a reference from B;

then:

- A should ask both B and D for a reference;
- B is obliged to give the reference if A asks it to;
- B should ask D to provide it with the information needed to provide a reference in accordance with this chapter;
- D may give a reference but (as it is not a *firm*) it is not obliged to; and
- D and B may give a single joint reference.

22.8A.5

[G]

■ SYSC 22.8A.4G also applies where:

- D is not in the same *group* but has seconded P to B; and
- P (in their capacity as an *employee* of D) performed any function or services for B such that P was also an *employee* of B.

22.8A.6

[G]

If:

- a *firm* (A) is thinking of appointing someone (P) to a position that entitles A to obtain a reference from another *firm* (B); and
- P was an *employee* of other members of B's *group* as well as of B;

then:

- (3) A should ask all the group members that *employed* P for a reference;
- (4) B should give a reference if A asks it to;
- (5) P's *employers* in that group (including any that are not *firms*) may give a single joint reference; and
- (6) if the reference is being provided on a consolidated group basis, it should be clear what information is relevant to which *employer* within the *group*.

22.9 Records and transitionals

22.9.1

R

- (1) A *firm* must arrange for orderly records to be created and kept that are sufficient to enable it to comply with the requirements of this chapter.
- (2) This *rule* only applies to records in relation to the following questions in Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements):
 - (a) question (E) (fit and proper); and
 - (b) question (F) (disciplinary action).

22.9.2

G

Time limit for records to be kept

■ SYSC 22.9.1R does not have an express time limit for which a *firm* should retain the records as its effect is that those time limits are the same as the time limits in ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).

22.9.3

R

Reduction in disclosure obligations where there are limited record keeping requirements

A *firm* does not breach the requirements of this chapter by failing to include information in a reference that it would otherwise have to include if:

- (1) the reason for the omission is that the *firm* does not have the necessary records; and
- (2) neither ■ SYSC 22.9.1R nor any other requirement of or under the *regulatory system* requires the *firm* to have those records.

22.9.4

G

If a *firm* is asked to give a reference in circumstances where the record keeping requirements in ■ SYSC 22.9.1R do not apply:

- (1) it is still required to give the reference;
- (2) it should give the reference based on the records it does have; and
- (3) it will not breach the requirements of this chapter by failing to include information in a reference if the reason for this is that it does not have the necessary records, as long as it is not required to have those records by some other requirement in the *Handbook* outside

- this chapter or some other requirement of or under the *regulatory system*.
- Effect of previous record keeping requirements**
- 22.9.5** **G**
- (1) SYSC 22.9.1R applies to keeping records created before the date this chapter came into force as well as ones created afterwards.
 - (2) A *firm* does not breach the requirements of this chapter by failing to include something in a reference or by failing to have records because it destroyed the relevant records before the date this chapter came into force in accordance with the record keeping requirements applicable to it at the time of destruction.
 - (3) (1) also applies to records created before this chapter (or the relevant provision of this chapter) first applied to the *firm*.
 - (4) (2) also applies if the *firm* destroyed the records before this chapter (or the relevant provision of this chapter) first applied to it.
- Transitionals**
- 22.9.6** **R**
- If:
- (1) a *firm* (A) asks a *person* (B) who is not an *SMCR firm* for a reference;
 - (2) B then becomes an *SMCR firm*; and
 - (3) B gives the reference after it becomes an *SMCR firm*;
- the requirements in this chapter apply to B when giving the reference.
- 22.9.7** **G**
- If a *firm* gives a reference after it becomes an *SMCR firm*, the requirements of this chapter apply even if the matters covered by the reference occurred before then.
- 22.9.8** **G**
- SYSC 22.2.4R (Obligation to revise references) does not apply to a reference that a *firm* gave before it became an *SMCR firm*.

Template for regulatory references given by SMCR firms and disclosure requirements

Part One: Form of Template

Guide to using this template:

Each question must be answered. Where there is nothing to disclose, this should be confirmed by ticking the "No" box for the relevant question.

In this template:

- "we" / "our firm" refers to the firm or firms giving the reference (as set out in either 1A or 1B below);
- "individual" refers to the subject of the reference (as set out in 2 below); and
- "your" refers to the firm requesting the reference (as set out in 3 below).

	Information requested	Response
1A	Name, contact details and firm reference number of firm providing reference; or	
1B	Names, contact details and firm reference numbers (where applicable) of group firms providing a joint reference	
2	Individual's name (i.e. the subject of the reference)	
3	Name, contact details and firm reference number of firm requesting the reference	
4	Date of request for reference	
5	Date of reference	

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

Question A

Has the individual:

- (1) performed a certification function for our firm; or
- (2) been an approved person for our firm.

Answer:

Yes

No

Question B:

Has the individual performed one or more of the following roles in relation to our firm:

- (1) notified non-executive director;
- (2) credit union non-executive director;
- (3) key function holder (other than a controlled function); or

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

(4) board director.

Answer:

Yes

No

Question C:

If we have answered 'yes' to either Question A or B above, we set out the details of each position held below, including:

- (1) what the controlled function, certification function or key function holder role is or was;
- (2) (in the case of a controlled function) whether the approval is or was subject to a condition, suspension, limitation, restriction or time limit;
- (3) whether any potential FCA governing function is or was included in a PRA controlled function; and
- (4) the dates during which the individual held the position.

Answer:

Question D:

Has the individual performed a role for our firm other than the roles referred to in Questions A and B above:

Answer:

Yes

No

If 'yes', we have provided summary details of the other role(s), e.g. job title, department and business unit, below.

Question E:

Have we concluded that the individual was not fit and proper to perform a function:

Answer:

Yes

No

If 'yes' and associated disciplinary action was taken as a result, please refer to Question F below.

If 'yes', and no associated disciplinary action was taken as a result, we have set out below the facts which led to our conclusion.

Question F:

We have taken disciplinary action against the individual that:

(1) relates to an action, failure to act, or circumstances, that amounts to a breach of any individual conduct requirements that:

(a) apply or applied to the individual; or

(b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under PRA rules (including if applicable, PRA rules in force before 7 March 2016); or

(2) relates to the individual not being fit and proper to perform a function.

Answer:

Yes

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

No

If 'yes', we have provided below a description of the breaches (including dates of when they occurred) and the basis for, and outcome of, the subsequent disciplinary action.

Question G:

Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper? This disclosure is made on the basis that we shall only disclose something that:

(1) occurred or existed:

- (a) in the six years before your request for a reference; or
- (b) between the date of your request for the reference and the date of this reference; or

(2) is serious misconduct.

Answer:

Yes

No

If 'yes', we have provided the relevant information below.

Part Two: Definitions used in Part One

Section One of Part Two of this annex defines terms used in this annex.

Section Two of Part Two of this annex modifies the meaning of certain requirements in Part One and has material about completing the template.

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
B	B refers to the <i>employer</i> or <i>ex-employer</i> giving the reference as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R .
P	P refers to the <i>employee</i> or <i>ex-employee</i> about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R .
A finding or conclusion by B that P was not fit and proper to perform a function (see questions (E) to (F) of the template)	<p>This means a finding or conclusion by B where:</p> <ul style="list-style-type: none"> (a)B assesses the continuing fitness and propriety of P as an <i>approved person</i> in accordance with the requirements of the <i>regulatory system</i>, including when carrying out this assessment under section 63(2A) of the Act (annual assessment of <i>approved persons</i> by an <i>SMCR firm</i>); or (b)B assesses the fitness and propriety of P when B is proposing to issue a certificate under section 63H of the Act (Certification of employees by <i>SMCR firms</i>) for P. <p>Paragraph (b) applies whether the certificate is being issued for the first time or is being renewed.</p>
Individual conduct requirements	<p>Individual conduct requirements mean any of the following:</p> <ul style="list-style-type: none"> (a)<i>COCON</i>; (b)<i>APER</i>;

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
Function (as referred to in questions (E) to (F))	(c)the PRA's Individual Conduct Standards or Senior Manager Conduct Standards in: (i) Chapter 3 of the Part of the <i>PRA Rulebook</i> called Insurance – Conduct Standards; (ii) Chapter 3 of the Part of the <i>PRA Rulebook</i> called Large Non-Solvency II Firms – Conduct Standards; and (iii) Chapter 2 of the Part of the <i>PRA Rulebook</i> called Non-Solvency II firms - Conduct Standards; or (d)the PRA's Individual Conduct Rules or Senior Manager Conduct Rules in: (i) Chapters 2 and 3 of the Part of the <i>PRA Rulebook</i> called CRR Firms: Conduct Rules; and (ii) Chapters 2 and 3 of the Part of the PRA Rulebook called Non- CRR Firms: Conduct Rules.
Disciplinary action	A function means a function as an <i>approved person</i> or <i>certification employee</i> . Disciplinary action has the same meaning as in section 64C(2) of the Act (Requirement for authorised persons to notify regulatory of disciplinary action), which is: (a)the issue of a formal written warning; or (b)the suspension or dismissal of P; or (c)the reduction or recovery of any of P's remuneration.
Notified non-executive director, credit union non-executive director and key function holder	This definition applies even if B is not an <i>SMCR firm</i> .
Certification function, approved person, controlled function and PRA controlled function	These terms have the same meaning as they do in the <i>PRA Rulebook</i> .
Board director	These terms have the same meaning as they do in the <i>Glossary</i> .
Potential FCA governing function	Non-SMF board director subject to competence requirements, as defined in the <i>Glossary</i> . Potential FCA governing function means a function: (a)that would have been an <i>FCA controlled function</i> but for: (i) SUP 10A.11 (Minimising overlap with the PRA approved persons regime) (when that section was in force); or (ii) SUP 10C.9 (Minimising overlap with the PRA approved persons regime); (b)but instead is included in a <i>PRA controlled function</i> under the parts of the <i>PRA Rulebook</i> listed in SUP 10C.9.6G .
Section Two: Supplementary requirements	
Item of template for which supplemental requirements apply	Supplemental requirements

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
Questions (E) and (F)	If: (a)the finding or disciplinary action was reached or taken by another member of B's <i>group</i> with the authority to do so; and (b)the finding or disciplinary action relates to conduct by P relating to the carrying on of activities (whether or not <i>regulated activities</i>) by B; this question applies to such finding or disciplinary action in the same way as it does to findings or disciplinary action made or taken by the <i>firm</i> itself.
Question (F)	This question is subject to SYSC TP 5.4.5R and SYSC TP 7.4.4R (where there is no need to disclose disciplinary action that took place before certain dates if the <i>firm</i> 's records do not show whether there was a breach of individual conduct requirements).
The whole of Part One of this annex	The template to be used by a <i>firm</i> in giving a reference consists of everything in Part One of this annex except for the "Guide to using this template" paragraph.

Factors to take into account when asking for and giving regulatory references

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Matters to take into account	Comments
(A)Any outstanding liabilities of that person from commission payments (B)Any relevant outstanding or upheld complaint from an <i>eligible complainant</i> against P (C)Section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime) or SUP 10C Annex 3 (Application to perform senior management functions) (D) FIT 2 (Main assessment criteria) (E)The persistency of any life policies sold by P	This only applies if SUP 16.8.1G(1) (Persistency reports from insurers) applies to B

Note: P refers to the *employee* or *ex-employee* about whom the reference is given as defined in more detail in [SYSC 22.2.1R](#) and [SYSC 22.2.2R](#).

Chapter 23

Senior managers and certification regime: Introduction and classification

23.1 Purpose

23.1.1 G The purpose of this chapter is to:

- (1) explain what the senior managers and certification regime is and where to find the main *FCA Handbook* provisions;
- (2) define which *firms* the regime applies to;
- (3) define the different kinds of *SMCR firm*; and
- (4) require certain *firms* to carry out criminal record checks before appointing certain *board directors*.

23.2 Definitions and types of firms

- 23.2.1 R** SYSC 23 Annex 1R (Definition of SMCR firm and different types of SMCR firms) defines:
- (1) what an *SMCR firm* is; and
 - (2) what the different types of *SMCR firm* are.
- 23.2.2 G** Broadly speaking, *firms* covered by the senior managers and certification regime that are dual-regulated by the *FCA* and the *PRA* are divided into two categories:
- (1) Banks and deposit-takers. They are called *SMCR banking firms*.
 - (2) Insurers. They are called *SMCR insurance firms*.
- 23.2.3 G** Broadly speaking, *firms* covered by the senior managers and certification regime that are regulated by the *FCA* are divided into three categories:
- (1) *Firms* regulated by the *FCA* that do not fall into (2) or (3). They are called *core SMCR firms*. A large number of *firms* will be in this category.
 - (2) Certain large *firms*. These are called *enhanced scope SMCR firms*. Relatively few *firms* fall into this category.
 - (3) *Firms* whose business is limited to certain types. These are called "*limited scope SMCR firms*". A large number of *firms* will be in this category. The main examples are:
 - (a) *limited permission consumer credit firms*;
 - (b) an *authorised professional firm* whose only *regulated activities* are *non-mainstream regulated activities*;
 - (c) internally managed *AIFs*;
 - (d) *firms* whose main business is not regulated and whose regulated business is (with limited exceptions) restricted to *insurance distribution activity* in relation to *non-investment insurance contracts*;
 - (e) a *firm* that only has *regulated claims management activities* in its *permission*;
 - (f) a *firm* that only has *permission* for benchmark activities and has the benefit of a *waiver* treating it as a *limited scope SMCR firm* as

described in ■ SYSC 23 Annex 1 6.12R (Benchmark firms: Waiver applying limited scope status);

- (G) a *firm* that only has *permission* for *funeral plan distribution*; and
- (h) a *firm* that only has *permission* for *regulated pensions dashboard activity* and, if applicable, *making arrangements with a view to transactions in investments*, which has a *limitation* to activities that are *post-view services* as permitted under ■ PDCOB 12.

23.3 Overview of the senior managers and certification regime

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23.3.1 **G** There are three main elements to the regime:

- (1) the senior managers regime;
- (2) the certification regime; and
- (3) conduct rules that apply directly to a *firm's* workforce.

23.3.2 **G** The table in ■ SYSC 23.3.3G gives more details about each of those three elements. The first two columns of the table apply to all *firms*. The third column only covers *firms* that are not regulated by the *PRA*.

23.3.3 **G** Table: Summary of the senior managers and certification regime

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
The senior managers regime: Parts that apply to all firms		
Pre-approval by the FCA of senior management (the <i>FCA Handbook</i> calls senior management subject to pre-approval <i>SMF managers</i>)	SUP 10C	Applies to all solo-regulated <i>firms</i>
<i>Firm</i> to be satisfied that a person is fit and proper before applying for them to be approved as an <i>SMF manager</i> by the <i>FCA</i> or <i>PRA</i>	This requirement is in <u>section 60A</u> of the Act. There is <i>guidance</i> on it in SUP 10C.10.14G (Vetting of candidates by the firm).	Applies to all solo-regulated <i>firms</i>
Annual assessment of fitness and propriety by the <i>SMF managers' firms</i>	This requirement is in <u>section 63(2A)</u> of the Act. There is <i>guidance</i> and related notification obligations in SUP 10C.14.18R to SUP 10C.14.25G (Notifications about fitness, disciplinary action and breaches of COCON).	Applies to all solo-regulated <i>firms</i>
A <i>firm</i> should carry out	SUP 10C.10.16R (Criminal	Applies to all solo-regu-

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
criminal records checks before applying for someone to be approved as an <i>SMF manager</i>	records checks and verifying fitness and properness)	lated <i>firms</i> except for a <i>sole trader</i> without employees
A <i>firm</i> should ask for a regulatory reference before appointing someone to be an <i>SMF manager</i> , or to certain other senior management positions, and give one if asked to by another <i>firm</i> doing so	SYSC 22 (Regulatory references)	Obligation to give a reference applies to all solo-regulated <i>firms</i> . Obligation to ask for one applies to all solo-regulated <i>firms</i> except for a <i>sole trader</i> without employees.
<i>Statements of responsibilities</i>	SUP 10C.11 (Statements of responsibilities).	Applies to all solo-regulated <i>firms</i>
This is a document that sets out the responsibilities that an <i>SMF manager</i> performs as part of their <i>designated senior management function</i> . It is prepared as part of the <i>firm's</i> application to the <i>FCA</i> or (if the <i>firm</i> is a <i>PRA-authorised person</i>) <i>PRA</i> for them to be approved as an <i>SMF manager</i> . It should be updated after approval when there has been any significant change in the responsibilities of the <i>SMF manager</i>	Many of the requirements are in the <i>Act</i> itself but they are summarised in SUP 10C.11 . <i>SUP 10C.11</i> also adds some further requirements, particularly about there being one <i>statement of responsibilities</i> per <i>SMF manager</i> per <i>firm</i> .	
Duty of responsibility This applies to <i>SMF managers</i> in all types of <i>firm</i> .	This is dealt with in section 66A(5) of the <i>Act</i> . There is <i>guidance</i> on this in DEPP 6.2.9-AG to DEPP 6.2.9-FG .	Applies to all solo-regulated <i>firms</i>
The senior managers regime: Parts that apply to many firms		
A <i>firm</i> should allocate certain specified management responsibilities among its <i>SMF managers</i>	SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities)	Does not apply to a <i>limited scope SMCR firm</i> . Applies to a <i>core SMCR firm</i> and an <i>enhanced scope SMCR firm</i> .
The <i>FCA Handbook</i> calls them <i>FCA-pre-scribed senior management responsibilities</i>		

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
A firm solo-regulated by the FCA should carry out criminal records checks before appointing a <i>board director</i> who is not an <i>SMF manager</i>	SYSC 23.4 (Criminal record checks for non-executive directors)	Does not apply to a <i>limited scope SMCR firm</i> . Applies to a <i>core SMCR firm</i> and an <i>enhanced scope SMCR firm</i> .
The senior managers regime: Parts that only apply to a limited range of firms		
A firm should maintain a comprehensive and up-to-date <i>document</i> (called the <i>management responsibilities map</i>) that describes its management and governance arrangements	SYSC 25 (Senior managers and certification regime: Management responsibilities maps and handover procedures and material)	Does not apply to a <i>limited scope SMCR firm</i> or a <i>core SMCR firm</i> . Applies to an <i>enhanced scope SMCR firm</i> .
A firm should ensure that, at all times, one or more of its <i>SMF managers</i> have overall responsibility for each of the activities, business areas and functions of the <i>firm</i> .	SYSC 26 (Senior managers and certification regime: Overall and local responsibility)	Does not apply to a <i>limited scope SMCR firm</i> or a <i>core SMCR firm</i> . Applies to an <i>enhanced scope SMCR firm</i> .
A firm should ensure that a person becoming an <i>SMF manager</i> has all the information and material that they could reasonably expect to have to perform their responsibilities	SYSC 25.9 (Handover procedures and material)	Does not apply to a <i>limited scope SMCR firm</i> or a <i>core SMCR firm</i> . Applies to an <i>enhanced scope SMCR firm</i> .
A retail intermediary firm should check whether it meets the financial criteria for being an <i>enhanced scope SMCR firm</i> and report to the FCA when it meets those criteria for the first time or ceases to meet them.	SUP 15.15 (Notification by retail intermediaries of qualifying as an enhanced scope SMCR firm)	Only applies to certain UK retail intermediaries. The full details of who this covers are in SUP 15.15.
Firms should report changes to their <i>management body</i> when members who are not <i>SMF managers</i> leave or join it.	SUP 15.16 (Notification of changes in the management body)	Only applies to a <i>MiFID investment firm</i> or a <i>MiFID optional exemption firm</i> .
A firm is required to maintain a clear and appropriate apportionment of significant responsibilities among	SYSC 4.4 (Apportionment of responsibilities)	Applies to a <i>limited scope SMCR firm</i> , except for a <i>limited scope SMCR benchmark firm</i>

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
its <i>directors</i> and <i>senior managers</i>		Does not apply to most core <i>SMCR firms</i> .
A <i>limited scope SMCR benchmark firm</i> is required to report to the FCA certain changes in the split of its revenue between <i>regulated activities</i> and <i>unregulated activities</i>	SUP 15.17 (Notification of regulated income by limited scope SMCR benchmark firm)	Does not apply to an <i>enhanced scope SMCR firm</i> . Only applies to a <i>limited scope SMCR benchmark firm</i> .
		Does not apply to any other <i>limited scope SMCR firm</i> . Does not apply to a <i>core SMCR firm</i> or an <i>enhanced scope SMCR firm</i> .
The senior managers regime: Parts outside the Handbook	This is contained in section 36 of the Financial Services (Banking Reform) Act 2013	Does not apply to any solo-regulated <i>firm</i>
Criminal offence relating to a decision that causes a financial institution to fail.		
It applies to a <i>UK SMCR banking firm</i> but does not apply to a <i>credit union</i> .		
It does not apply to any <i>firm</i> that is not a <i>UK SMCR banking firm</i> .		
The certification regime		
A <i>firm</i> should not permit an <i>employee</i> to carry out certain functions (<i>certification functions</i>) unless it has issued them with a certificate.	Most of the requirements of this regime are in sections 63E (Certification of employees by authorised persons) and 63F (Issuing of certificates) of the Act.	Applies to all solo-regulated <i>firms</i> except for internally managed <i>AIFs</i> and <i>pure benchmark SMCR firms</i> .
The certificate is only valid for a year. The <i>firm</i> will have to renew it if the <i>employee</i> is to carry on performing the function.	SYSC 27 (Senior managers and certification regime: Certification regime) describes the regime and explains which <i>employees</i> are covered.	The certification regime does not apply to <i>benchmark activities</i> .
A <i>firm</i> may not issue or renew a certificate unless it is satisfied that the <i>person</i> is fit and proper.		
Certification does not involve pre-approval by the <i>FCA</i> or <i>PRA</i> .		

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
A firm should ask for a regulatory reference before appointing someone to perform an FCA certification function (or a PRA equivalent) and give one if asked to by another firm doing so.	SYSC 22 (Regulatory references)	Applies to all solo-regulated firms
A firm must report information to the FCA about its <i>Directory persons</i> , including its certification employees.	SUP 16.26 (Reporting of information about Directory persons)	Applies to all solo-regulated firms except pure benchmark SMCR firms
Conduct rules (applies to all firms)		
Rules of conduct that apply directly to a firm's workforce other than ancillary staff	COCON	Applies to all solo-regulated firms
A firm should report breaches of COCON to the FCA	Section 64C of the Act (Requirement for authorised persons to notify regulator of disciplinary action) and SUP 15.11 (Notification of COCON breaches and disciplinary action)	Applies to all solo-regulated firms
A firm should:		
(a) ensure that all persons subject to COCON are notified of the rules that apply to them; and	These obligations are in section 64B of the Act (Rules of conduct: responsibilities of authorised persons).	Applies to all solo-regulated firms
(b) take all reasonable steps to ensure that they understand how COCON applies to them	There is guidance in COCON 2.3 (Firms: Training and breaches).	

23.3.4

G

The PRA has requirements corresponding to the senior managers and certification regime that apply to *PRA-authorised persons*. The FCA and PRAs' regimes are designed to work together and complement each other. A *PRA-authorised person* will therefore need to consider the PRA's requirements to get a complete picture of the requirements that apply to it (and its workforce) in the area covered by the senior managers and certification regime and the requirements in the Act on which it is based.

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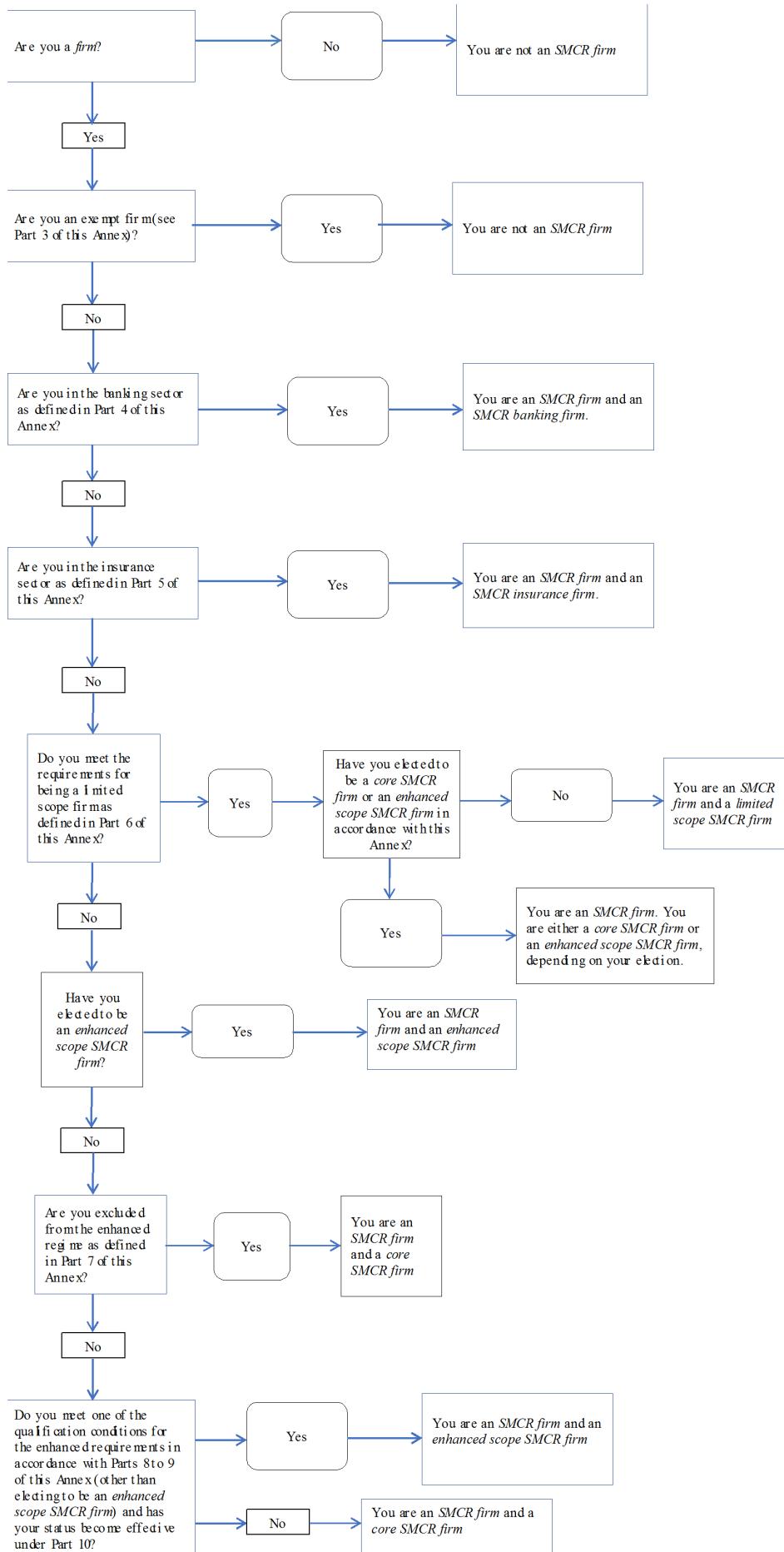
23.4 Criminal record checks for certain directors

- 23.4.1** **R** This section applies to a *UK SMCR firm* that is:
- (1) an *enhanced scope SMCR firm*; or
 - (2) a *core SMCR firm*.
- 23.4.2** **R** A *firm* must (as part of its assessment of the fitness and propriety of any of its *non-SMF board directors subject to competence requirements (P)*) obtain the fullest information that it is lawfully able to obtain about P under **Part V** of the Police Act 1997 (Certificates of Criminal Records, &c) and related subordinated legislation of the *United Kingdom* or any part of the *United Kingdom* before P's appointment as a *board director*.
- 23.4.3** **G** The *guidance* in ■ SUP 10C.10.17G, ■ SUP 10C.10.18G and ■ SUP 10C.10.21G about criminal record checks for *candidates* to be an *SMF manager* applies to criminal record checks under this section.

Definition of SMCR firm and different types of SMCR firms

Part One: Flow diagram and other basic provisions

- 1.1 R The flow diagram in SYSC 23 Annex 1 1.2R defines:
- (1) an *SMCR firm*; and
 - (2) the different categories of *SMCR firm*.
- 1.2 R Flow diagram: Types of SMCR firm
- 1.3 R (1) A Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an *EEA PTV firm* for the purposes of deciding into which category of *SMCR firm* it falls. In particular, it is to be treated as an *EEA SMCR firm*.
- (2) (1) is without prejudice to the generality of GEN 2.3.
- 1.4 R (1) A Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an *EEA PTV firm* for the purposes of deciding whether it is an *SMCR firm* and into which category of *SMCR firm* it falls. In particular, if it is an *SMCR firm*, it is to be treated as an *EEA SMCR firm*.
- (2) (1) is without prejudice to the generality of GEN 2.3.



Note to the flow diagram

The categorisation in this flow diagram is subject to **SYSC 23 Annex 1 2.1R** and **SYSC 23 Annex 1 6.25R**.

- 1.3 R A reference in this Annex to a *firm* having permission to carry on a particular *regulated activity* but no other *regulated activity* includes that *firm* also having permission for agreeing to carry on a *regulated activity* in respect of that first *regulated activity*.

Part Two: Changing category

- 2.1 R If a *firm* is subject to a *requirement* that it must comply with the *rules* in the *FCA Handbook* applicable to one of the categories of *SMCR firm* set out in this Annex, it is to be treated as falling into that category of *SMCR firm* for all purposes.
- 2.2 G (1) The *FCA* may, on a case-by-case basis, require a *limited scope SMCR firm* or a *core SMCR firm* to comply with the requirements that apply to an *enhanced scope SMCR firm* if the *FCA* considers it appropriate to do so to advance one or more of its operational objectives under the *Act*.
(2) The most common example of a *requirement* described in **SYSC 23 Annex 1 2.1R** is likely to be one of the kind described in (1).
(3) One effect of **SYSC 23 Annex 1 2.1R** is that if a *firm* is moved from the *limited scope SMCR firm* or *core SMCR firm* category to the *enhanced scope SMCR firm* category, the *FCA*-designated senior management functions that will apply to it are the ones for *enhanced scope SMCR firms*.
- 2.3 G (1) In practice, it is unlikely that the procedure described in **SYSC 23 Annex 1 2.1R** will be used to move a *firm* from a category applicable to *PRA-authorised persons* to one applicable to *FCA-authorised persons* or vice versa.
(2) This is because the *FCA*'s regime for *PRA-authorised persons* is designed on the basis that the *PRA*'s regime also applies to those *firms* while the regime for *FCA-authorised persons* is designed on the basis that no *PRA* requirements apply.
- 2.4 G (1) Where a *firm* becomes or stops being an *enhanced scope SMCR firm* under the procedure described in **SYSC 23 Annex 1 2.1R**, the material in Parts 10 and 11 of this Annex about when the change of status becomes effective will not apply. Instead the timing will be dealt with in the variation of *permission*.
(2) If the variation does not specify the timing of the change, the change is likely to take effect when the variation does.

Part Three: Definition of exempt firm

- 3.1 R This part defines an *exempt firm* for the purposes of the flow diagram in Part One of this Annex.
- 3.2 R An *overseas firm* is an *exempt firm* if it:
(1) does not have; and
(2) does not have an *appointed representative* that has;
an establishment in the *United Kingdom*.
- 3.3 R An *EEA PTV firm* that is a *pure reinsurer* is an *exempt firm*.
- 3.4 R [deleted]
- 3.5 R A *TP UCITS qualifier* is an *exempt firm*.
- 3.6 R [deleted]
- 3.7 R [deleted]
- 3.8 G As explained in **SYSC TP 8.2.1R**, certain claims management *firms* are excluded from being *SMCR firms* and treated as *exempt* under this Part.

Part Four: Definition of banking sector

- 4.1 R A *firm* is in the banking sector for the purposes of the flow diagram in Part One of this Annex if the *firm* meets the conditions in **SYSC 23 Annex 1 4.2R**, **SYSC 23 Annex 1 4.4R** or **SYSC 23 Annex 1 4.6R**.

- 4.2 R A firm is in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is an institution that meets the following conditions:
- (1) it is incorporated in, or formed under the law of any part of, the *United Kingdom*;
 - (2) it is not an institution authorised under the Act to carry on the regulated activity of *effecting contracts of insurance or carrying out contracts of insurance*; and
 - (3) it meets one of the following conditions:
 - (a) its *Part 4A permission* includes *accepting deposits*; or :
 - (b) it meets all the following conditions:
 - ① the institution is an *investment firm*;
 - ② its *Part 4A permission* covers *dealing in investments as principal*; and
 - ③ when carried on by it, that activity is a *PRA-regulated activity*.
- 4.3 R An *SMCR banking firm* in SYSC 23 Annex 1 4.2R is a *UK SMCR banking firm*.
- 4.4 R A firm is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is a non-UK institution other than an *EEA PTV firm* that meets the following conditions:
- (1) it has a *branch* in the *United Kingdom*;
 - (2) it is not an institution authorised under the Act to carry on the regulated activity of *effecting contracts of insurance or carrying out contracts of insurance*; and
 - (3) it meets one of the following conditions:
 - (a) it is a *credit institution* which has a *Part 4A permission* that includes *accepting deposits*; or
 - (b) it meets all the following conditions:
 - ① the institution is an *investment firm*;
 - ② its *Part 4A permission* covers *dealing in investments as principal*; and
 - ③ when carried on by it, that activity is a *PRA-regulated activity*.
- 4.5 R An *SMCR banking firm* in SYSC 23 Annex 1 4.4R is an overseas *SMCR banking firm*.
- 4.6 R A firm is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is an *EEA PTV firm* that meets the following conditions:
- (1) it has a *branch* in the *United Kingdom*;
 - (2) it is not an institution authorised under the Act to carry on the regulated activity of *effecting contracts of insurance or carrying out contracts of insurance*; and
 - (3) it meets one of the following conditions:
 - (a) it is a *credit institution* which has a *permission* under Part 4A of the Act that includes *accepting deposits*; or
 - (b) it meets all the following conditions:
 - ① the institution is an *investment firm*;
 - ② it has a *permission* under Part 4A of the Act that covers *dealing in investments as principal*; and
 - ③ when carried on by it, that activity is a *PRA-regulated activity*.
- 4.7 R An *SMCR banking firm* in SYSC 23 Annex 1 4.6R is an *EEA SMCR banking firm*.
- Part Five: Definition of insurance sector
- 5.1 R A firm is in the insurance sector for the purposes of the flow diagram in Part One of this Annex if the firm is:
- (1) a *Solvency II firm* (including a *large non-directive insurer*); or
 - (2) a *small non-directive insurer*.

- 5.2 R (1) A *firm* from which the Solvency II rules (as defined by the part of the *PRA Rulebook* described in this paragraph (1)) are disapplied by chapter 2 of the Solvency II Firms: Transitional Measures part of the *PRA Rulebook* is in the insurance sector for the purposes of the flow diagram in Part One of this Annex.
- (2) A *firm* defined as a small run-off firm in the Glossary part of the *PRA Rulebook* is in the insurance sector for the purposes of the flow diagram in Part One of this Annex.

Part Six: Definition of limited scope SMCR firm

Introduction

- 6.1 R (1) This Part sets out the requirements for being a *limited scope SMCR firm* referred to in the flow diagram in Part One of this Annex.
- (2) Where this Part says that a *firm* is a *limited scope SMCR firm*, that means that the *firm* meets those requirements.

Opting up

- 6.2 G Part 12 of this Annex sets out a procedure for a *firm* that would otherwise have been a *limited scope SMCR firm* to elect to be a *core SMCR firm* or an *enhanced scope SMCR firm* and to reverse that election.

Specialised activities

- 6.3 R (1) A *firm* listed in the table in SYSC 23 Annex 1 6.4R is a *limited scope SMCR firm* if:
- (a) its principal purpose is to carry on activities other than *regulated activities*; and
 - (b) it is not a *MiFID investment firm* or an *EEA MiFID investment firm* that is an *EEA PTV firm*.
- (2) In the case of a *firm* in SYSC 23 Annex 1 6.4R(5), *regulated claims management activities* are treated as *unregulated activities* for the purpose of deciding what the *firm's* principal purpose is under (1).

6.4 R Table: List of limited scope SMCR firms referred to in SYSC 23 Annex 1 6.3R

- (1) *Oil market participant*
- (2) *Service company*
- (3) *Energy market participant*
- (4) A wholly owned subsidiary of:
 - (a) a *local authority*; or
 - (b) a registered social landlord.
- (5) A *firm* that meets the following conditions:
 - (a) it has *permission* to carry on *insurance distribution activity* in relation to *non-investment insurance contracts*; and
 - (b) it:
 - (i) either does not have *permission* to carry on any other *regulated activity*; or
 - (ii) has *permission* to carry on no other *regulated activity* except one or more of the following:
 - (A) *advising on P2P agreements*; or
 - (B) *regulated claims management activities*.

(6) A *firm* that meets the following conditions:

- (a) it has *permission* for any activity constituting *funeral plan distribution*; and
- (b) it does not have *permission* to carry on any other *regulated activity*.

- 6.5 G It will be a matter of fact in each case whether, having regard to all the circumstances, including in particular where the balance of the business lies, a *firm's* principal purpose is to carry on activities other than *regulated activities*. If a *firm* wishes to rely on SYSC 23 Annex 1 6.3R, it should be in a position to demonstrate that its principal purpose is to carry on activities other than *regulated activities*.

Sole trader

6.6 R A *sole trader* is a *limited scope SMCR firm*.

Limited permission consumer credit firms

6.7 R A *firm whose permission* is limited to the carrying on of a relevant credit activity (as defined in ~~paragraph 2G~~ of Schedule 6 to the Act) (a *limited permission*) is a *limited scope SMCR firm*, excluding a *firm* in SYSC 23 Annex 1 6.8R.

6.8 R A *not-for-profit debt advice body* is a *limited scope SMCR firm*.

Authorised professional firms

6.9 R An *authorised professional firm* whose only *regulated activities* are *non-mainstream regulated activities* is a *limited scope SMCR firm*.

Internally managed AIFs

6.10 R A *firm* is a *limited scope SMCR firm* if it meets the following conditions:

- (1) it is an *internally managed AIF*;
- (2) it is a *body corporate*; and
- (3) it is not a *collective investment scheme*.

Claims management

6.11 R (1) A *firm* is a *limited scope SMCR firm* if it meets the following conditions:

- (a) it has *permission* to carry on *regulated claims management activities*; and
- (b) it:
 - (i) either does not have *permission* to carry on any other *regulated activity*; or
 - (ii) has *permission* to carry on no other *regulated activity* except a *relevant credit activity*.

(2) A *firm* in SYSC 23 Annex 1 6.7R or SYSC 23 Annex 1 6.8R does not fall within this *rule*.

Benchmark firms: Waiver applying limited scope status

6.12 R A *firm* is a *limited scope SMCR firm* (and a *limited scope SMCR benchmark firm*) if:

- (1) it is subject to a *waiver* that applies this *rule* to the *firm*; and
- (2) it meets the conditions in SYSC 23 Annex 1 6.13R.

6.13 R (1) The conditions referred to in SYSC 23 Annex 1 6.12R(2) are that the *firm*:

- (a) is capable of being a *limited scope SMCR firm* under the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm);
- (b) has *permission* to carry on the *regulated activity* of *administering a benchmark* but no other *regulated activity* (a *pure benchmark SMCR firm*); and
- (c) is an *FCA-authorised person*.

(2) A *firm* that meets the conditions in this *rule* is referred to in this Annex as a "potential benchmark waiver firm".

6.14 G (1) If, after the *waiver* in SYSC 23 Annex 1 6.12R(1) comes into force, a *firm* ceases to be a potential benchmark waiver firm it immediately ceases to be:

- (a) a *limited scope SMCR benchmark firm*; and
- (b) a *limited scope SMCR firm* (unless it qualifies as one for another reason).

(2) (1) applies even if the *firm* subsequently becomes a potential benchmark waiver firm again.

(3) If (2) applies, it may become a *limited scope SMCR benchmark firm* again if it applies for and obtains a new *waiver*.

Benchmark firms: When the waiver is likely to be available

- (1) The *FCA* considers that treating a potential benchmark waiver firm (as defined in SYSC 23 Annex 1 6.13R(2)) as a *core SMCR firm* may be unduly burdensome as contemplated by ~~section 138A(4)(a)~~ of the Act (Modification or waiver of rules).

- (2) The FCA considers that deciding whether this is the case involves balancing the factors in (3) and (4).
- (3) The directors of a potential benchmark waiver firm who would require approval for performing one of the FCA governing functions if it was a core SMCR firm may spend very little of their time managing the firm's regulated activities. In a big firm they may also be distant from those activities. It may therefore be more proportionate to require approval for someone who is closer to the day-to-day management of the firm's regulated activities.
- (4) On the other hand, applying the Act and the FCA's requirements directly to a firm's most senior management will make it more likely that they will take steps and put in place systems that will increase the likelihood that the firm's staff will meet the requirements of the senior managers and certification regime and that the values represented by those requirements will be absorbed into the firm's culture. It also helps to ensure that the firm's leaders have sufficient knowledge of, and skills in, the firm's regulated activities.
- (5) The approach in SYSC 23 Annex 1 6.16G is designed to weigh the factors in (3) and (4) against each other.
- 6.16 G (1) SYSC 23 Annex 1 6.16G summarises the approach the FCA anticipates it will take in deciding whether to grant the waiver. SYSC 23 Annex 1 6.17G to SYSC 23 Annex 1 6.22G then give more detail.
- (2) Subject to (3), the FCA considers that a potential benchmark waiver firm (as defined in SYSC 23 Annex 1 6.13R(2)) is likely to meet the criteria for the granting of a waiver in section 138A(4)(a) of the Act (Modification or waiver of rules) if regulated activities form a small part of its activities, measured in the way described in SYSC 23 Annex 1 6.17G.
- (3) The FCA considers that a potential benchmark waiver firm meeting the conditions in (2) is nevertheless unlikely to meet the criteria for the granting of a waiver in section 138A(4) of the Act if:
- (a) any of the benchmarks it administers are important; or
 - (b) the firm or the person who would be performing the limited scope function would not meet the requirements of MAR 8.5.2R (Responsibility for benchmark activities: regulated benchmark administrators).
- (4) In particular, under (3)(b):
- (a) the person who would be performing the limited scope function should be sufficiently senior (see MAR 8.5.3AG); and
 - (b) the responsibilities in MAR 8.5.2R should not be split between several people (see MAR 8.5.3G).
- (5) SYSC 23 Annex 1 6.18G to SYSC 23 Annex 1 6.20G describe what important means in (3)(a).
- (6) SYSC 23 Annex 1 6.22G gives more detail about (3)(b).
- (7) The waiver would be available to firms of any size.
- 6.17 G (1) SYSC 23 Annex 1 6.17G describes how the FCA anticipates that it would decide whether regulated activities form a small part of a firm's activities for the purpose of SYSC 23 Annex 1 6.16G(2).
- (2) The FCA anticipates that it would consider that:
- (a) a firm would meet the criterion in (1) if revenue from regulated activities represents less than 20% of its overall revenue; and
 - (b) a firm would not meet the criterion in (1) if revenue from regulated activities were 20% or more.
- (3) The FCA anticipates that it would measure those figures over a reasonable period and not just a single accounting period.
- (4) The FCA anticipates that it would measure revenue from regulated activities and overall revenue in the way described in SUP 15.17.5R to SUP 15.17.7R (Obligation to make calculations).

- (5) The FCA anticipates that it would adjust the calculation if there were good reason to think that past revenue is unlikely to be representative of the future. For instance:
- the firm's past revenue may be distorted by extraordinary items; or
 - the firm may recently have carried out a major reorganisation of its business involving, for example, the disposal of all its activities other than benchmark activities or the acquisition of a business carrying out activities other than benchmark activities.
- 6.18 G The FCA anticipates that, in deciding whether a benchmark is important for the purposes in SYSC 23 Annex 1 6.16G, it will take into account whether there could be a significant and adverse impact on the United Kingdom's economy or financial system if the benchmark:
- stops being provided; or
 - is provided in a way that significantly breaches or falls short of the requirements and standards of the benchmarks regulation.
- 6.19 G The FCA considers that a firm's benchmark is likely to be important for the purposes in SYSC 23 Annex 1 6.16G(3) and to meet the criteria in SYSC 23 Annex 1 6.18G if the benchmark is recognised as critical under the benchmarks regulation.
- 6.20 G In making the assessment of the importance of a benchmark that is not recognised as critical as described in SYSC 23 Annex 1 6.19G, the FCA anticipates that it will take into account factors that include the following:
- whether the benchmark has no or very few appropriate market-led substitutes; and
 - whether the benchmark is used extensively in particular markets or sectors.
- 6.21 G (1) One reason for taking into account the importance of a benchmark is that if it is important, the factors in SYSC 23 Annex 1 6.15G(4) outweigh the factors in SYSC 23 Annex 1 6.15G(3).
- (2) Another reason is that, under section 138A(4)(b) of the Act (Modification or waiver of rules), the FCA may not grant a waiver if doing so would adversely affect the advancement of any of its operational objectives. Granting the waiver where a benchmark is important is likely to be inconsistent with section 138A(4)(b) because:
- the occurrence of the situation in SYSC 23 Annex 1 6.18G(1) or (2) is likely in particular to prejudice the integrity operational objective; and
 - for the reasons in SYSC 23 Annex 1 6.15G(4), the FCA considers that applying the regime for core SMCR firms to benchmark firms will reduce the risk of that happening.
- 6.22 G The FCA anticipates that if a firm has a complicated management structure, that may mean that the firm does not meet the conditions in SYSC 23 Annex 1 6.16G(3)(b). In particular this may be the case if:
- there are several managers involved in managing the firm's regulated activities who have different reporting lines; or
 - the person managing the firm's regulated activities has different reporting lines for different aspects of the role that give them different levels of autonomy.
- Benchmark firms: Ceasing to meet waiver criteria
- 6.23 G If a limited scope SMCR benchmark firm ceases to meet the criterion in SYSC 23 Annex 1 6.17G, it is likely to be inappropriate for the waiver to continue. The mechanism for ensuring that this is the case might include one or more of the following:
- building those criteria into the waiver;
 - revocation of the waiver; or
 - granting the waiver subject to a time limit and re-examining the criteria if the firm applies for a renewal.
- 6.24 G The FCA anticipates that the mechanisms in SYSC 23 Annex 1 6.23G will generally provide for a period of time between the firm ceasing to meet the criterion in SYSC 23 Annex 1 6.17G and the firm ceasing to be a limited scope SMCR firm.
- Benchmark firms: Opting to be a core or enhanced scope firm

- 6.25 R (1) A *limited scope SMCR benchmark firm* may opt to be an *enhanced scope SMCR firm* in accordance with this Annex.
- (2) A *limited scope SMCR benchmark firm* may not opt to be a *core SMCR firm* under this Annex.
- 6.26 G If a *limited scope SMCR benchmark firm* opts to be an *enhanced scope SMCR firm* and it subsequently revokes that election after it comes into effect, the *firm* will become a *core SMCR firm*. If it wants to be a *limited scope SMCR benchmark firm* again it will need to apply for a new *waiver*.
- 6.27 G A *limited scope SMCR benchmark firm* that wishes to become a *core SMCR firm* again should request the *FCA* to revoke the *waiver* in SYSC 23 Annex 1 6.12R.
- Pensions dashboard service
- 6.28 R A *firm* is a *limited scope SMCR firm* if it meets the following conditions:
- (1) it has *permission* to carry on *regulated pensions dashboard activity*; and
 - (2) either:
 - (i) it does not have *permission* to carry on any other *regulated activity*; or
 - (ii) it does not have *permission* to carry on any other *regulated activity* except for:
 - (a) *permission* to carry on *making arrangements with a view to transactions in investments* which has a *limitation* to activities which are *post-view services* as permitted under PDCOB 12; and/or
 - (b) *permission* for *agreeing to carry on a regulated activity* in respect of *regulated pensions dashboard activity*.

- 6.29 G The *FCA* considers that, if a *firm* offers *post-view services* as permitted under PDCOB 12, the *firm* may need *permission* to carry on the *regulated activity* of *making arrangements with a view to transactions in investments* which has a *limitation* to activities which are *post-view services* as permitted under PDCOB 12. In that scenario, the *firm* will be a *limited scope SMCR firm* if it meets the requirement in SYSC 23 Annex 1 6.28R.

Part Seven: Exclusion from enhanced regime

- 7.1 R This Part sets out which *firms* are excluded from the enhanced regime for the purposes of the flow diagram in Part One of this Annex.
- 7.2 R An *overseas SMCR firm* is excluded from the enhanced regime.
- 7.3 R A *firm* is excluded from the enhanced regime if its *permission* only covers being the *full-scope UK AIFM* of:
- (1) an *unauthorised AIF*; or
 - (2) an *authorised AIF* only marketed to investors that are *professional clients*.
- 7.4 R A *firm* is excluded from the enhanced regime if:
- (1) it is an *exempt MiFID commodities firm*; and
 - (2) its only *permission* is *bidding in emissions auctions*.
- 7.5 R An *ICVC* is excluded from the enhanced regime.

Part Eight: Financial qualification condition for being an enhanced scope SMCR firm

The financial qualification tests

- 8.1 R A *firm* meets a qualification condition for the purposes of identifying an *enhanced scope SMCR firm* under the flow diagram in Part One of this Annex if it meets one of the criteria set out in column (1) of the table in SYSC 23 Annex 1 8.2R.

8.2 R Table: Financial qualification conditions

(1)	(2)	(3)
Qualification condition	How to do the calculation and correspond-	Comments

ing re-reporting requirement

Part One: Point in time measurements

- (1) The average amount of the firm's assets under management (calculated as a three-year rolling average) is £50 billion or more
- Assets under management are calculated in accordance with the method that must be used to calculate the amount to be recorded in *data element 1A* (Total funds under management) in *data item FSA038* (Volumes and Type of Business)
- (2) The firm currently has 10,000 or more outstanding regulated mortgages
- A firm's outstanding regulated mortgages are calculated as follows:
- (a) calculate the amount that must be recorded in row E4.5 (Total) in the box under the successive headings and sub-headings "Regulated Loans", "Balances outstanding"

ing" and
"Number"
in the
MLAR;

(b)calculate the amount that must be recorded in row G1.1(d) (total) under the successive headings and sub-headings "As PRINCIPAL administrator" and "Regulated loans" in the *MLAR*; and

(c)add those amounts together.

Part Two: Revenue measurements

(3) The average amount of the firm's total intermediary regulated business revenue (calculated as a three-year rolling average) is £35 million per annum

Total intermediary regulated business revenue is calculated in accordance with the method that must be used to calculate the amount to be recorded in *data element 4E* (Total regulated business revenue) in Section

SYSC 23 Annex 1 8.18R applies this condition to *firms* to which the reporting requirement in column (2) does not apply in the cases specified in that rule.

num or more	B (Profit and Loss account) of the RMAR
(4) The average amount of the firm's annual revenue generated by regulated consumer credit lending (calculated as a three-year rolling average) is £100 million or more	Annual revenue generated by regulated consumer credit lending is calculated as follows: (a) calculate each amount that must be recorded in column B (Revenue) for the rows headed "Lending" in data item CCR002 (Consumer Credit data: Volumes); and (b) add those amounts together.

Note 1: Where Parts 8 to 11 of SYSC 23 Annex 1 refer to a calculation period they refer to the annual period in column (1).

Note 2: Where Parts 8 to 11 of SYSC 23 Annex 1 refer to an averaging period they refer to the three-year period in column (1).

Note 3: Where Parts 8 to 11 of SYSC 23 Annex 1 refer to a reporting period they refer to the period for which reports in column (2) are prepared.

Note 4: Where Parts 8 to 11 of SYSC 23 Annex 1 refer to a calculation date they refer to the date as of which the calculations in column (2) of this table are made.

- 8.3 G (1) Column (2) of the table in SYSC 23 Annex 1 8.2R refers to the FCA Handbook versions of the relevant data items.
- (2) The boxes referred to in row (2) (outstanding regulated mortgages) correspond to the online version of the MLAR as follows:
- (a) paragraph (a) corresponds to data item c3; and
 - (b) paragraph (b) corresponds to data item G1.1 c1 (d).

Qualification conditions only apply if reporting requirements apply

- 8.4 R Subject to SYSC 23 Annex 1.8.18R, a qualification condition in column (1) of the table in SYSC 23 Annex 1.8.2R only applies to a *firm* if the corresponding reporting requirement referred to in column (2) of the table currently applies to the *firm*.

General calculation principles

- 8.5 R If the applicable financial reporting requirements in column (2) of the table in SYSC 23 Annex 1.8.2R have changed during the relevant period, the calculations must be made in accordance with whatever requirements applied for the applicable period.

- 8.6 R The calculations are made on a solo basis.

- 8.7 R (1) The calculation periods, averaging periods and dates in column (1) of the table in SYSC 23 Annex 1.8.2R are defined so as to be consistent with the financial reporting periods and calculation dates used for the corresponding *data item* in column (2) of that table. The rest of this *rule* gives examples of this principle.

- (2) If a calculation in column (1) of the table in SYSC 23 Annex 1.8.2R is based on per annum or annual revenue and the reporting period in column (2) is based on the *firm's* accounting period:

- (a) the calculation periods in column (1) are also based on the *firm's* accounting period; and

- (b) the averaging period in column (1) is made up of the applicable number of accounting periods.

- (3) If a calculation in column (1) of the table in SYSC 23 Annex 1.8.2R is based on per annum or annual revenue and the reporting period in column (2) is based on a calendar year:

- (a) the calculation periods in column (1) are also based on a calendar year; and

- (b) the averaging period in column (1) is made up of the applicable number of calendar years.

- (4) Where row (2) of column (1) of the table in SYSC 23 Annex 1.8.2R refers to a *firm's* current financial figures it refers to the figures as at the calculation date for its most recent reporting period in column (2).

- (5) A *firm's* most recent reporting period is the one for the *data item* whose required submission date has passed most recently.

Averaging periods

- 8.8 R (1) This *rule* deals with the establishment of a *firm's* averaging periods.

- (2) When the table in SYSC 23 Annex 1.8.2R specifies that this paragraph (2) applies:

- (a) each averaging period ends on the calculation date for a reporting period; and

- (b) there is an averaging period that ends on each such day.

- (3) When the table in SYSC 23 Annex 1.8.2R specifies that this paragraph (3) applies:

- (a) each averaging period ends on the last day of a year; and

- (b) there is an averaging period that ends on each such day.

- (4) The term 'year' in (3) is defined in accordance with SYSC 23 Annex 1.8.7R.

- 8.9 G (1) SYSC 23 Annex 1.8.8R(2) provides for a *firm's* status to be tested every six months if the relevant *data item* is reported in six-month intervals and to be tested yearly if the relevant *data item* is reported yearly.

- (2) SYSC 23 Annex 1.8.8R(3) provides for a *firm's* status to be tested once a year even if the relevant *data item* is reported in six-month intervals.

Requirements where the firm reports more than once a year

- 8.10 R (1) This *rule* applies to calculations in Part Two of the table in SYSC 23 Annex 1.8.2R.

- (2) If:

- (a) the *firm* reports the relevant *data items* more than once a year; and

- (b) each successive report covers the whole year to date;

the calculations in the table are only based on the *data item* that covers the full year.

(3) The term year in (2) is defined in accordance with SYSC 23 Annex 1.8.7R.

Requirements for calculating average amounts in certain cases

811 R When the table in SYSC 23 Annex 1.8.2R specifies that this *rule* applies, the calculation of the average involves calculating the relevant amount for each reporting period relating to the averaging period, summing those amounts and dividing the result by the applicable number of reporting periods.

Adjustments where reporting periods cover irregular periods

812 R (1) This *rule* applies where:

- (a) the calculation is under Part Two of the table in SYSC 23 Annex 1.8.2R;
- (b) the reporting period in column (2) is based on the *firm's* accounting period;
- (c) any of the *firm's* accounting periods in the applicable averaging period is not twelve *months*; and
- (d) as a result the averaging period would not be a whole number of calendar years.

(2) Where this *rule* applies, the *firm* must adjust the minimum qualification amount in column (1) proportionately.

813 G The main example of when SYSC 23 Annex 1.8.12R may apply is where a *firm* changes its accounting reference date.

Short reporting periods

814 G (1) The financial reporting period may be shorter than the corresponding calculation period.

- (2) For example, the calculation period may be based on annual revenue but the *firm* may have to prepare the corresponding *data item* in column (2) of the table in SYSC 23 Annex 1.8.2R for revenue arising in six-month periods.
- (3) If SYSC 23 Annex 1.8.10R applies this does not matter as the calculation is based on the figures for the full year.
- (4) If SYSC 23 Annex 1.8.10R does not apply, in the example in (2):
 - (a) the calculation of the *firm's* most recent annual revenue in column (1) is based on the most recently ended six-month period and the six-month period before that; and
 - (b) each year within the three-year averaging period is based on two six-month periods.

Effect of reporting requirements not applying for full period

815 R Subject to SYSC 23 Annex 1.8.4R, if the reporting requirement referred to in column (2) of the table in SYSC 23 Annex 1.8.2R did not apply to the *firm* for the whole of its most recent averaging period as defined in SYSC 23 Annex 1.8.2R, the averaging period is shortened to cover the period for which those requirements did apply.

816 G Reasons why SYSC 23 Annex 1.8.15R may apply to a *firm* include the following:

- (1) the *firm* has only recently been *authorised*;
- (2) the *firm's* *Part 4A permission* has only recently been varied to include the relevant *regulated activities*;
- (3) the *firm* has only recently become subject to the relevant reporting requirements; or
- (4) the reporting requirement did not exist for the full period (see SYSC TP 7.7.6G for an example).

817 G (1) This paragraph gives an example of how SYSC 23 Annex 1.8.15R works.

(2) In this example:

- (a) the relevant qualification condition is one of those in Part Two of the table in SYSC 23 Annex 1.8.2R;
- (b) the reporting requirement is based on a *firm's* accounting year and reports are due every six *months*;

- (c) the *firm's* accounting year ends on 31 December;
- (d) the *firm* is authorised in February.
- (2) The *firm* will not meet the qualification condition before the end of Year One, however large its business is in the period from February to June. This is because the calculations are based on calculation periods of a year and the year is not over yet.
- (3) Following the end of Year One, the assessment of whether the *firm* meets the qualification condition is based on the figures for Year One. There is no adjustment to take account of the fact that the *firm* was only authorised part of the way through that period.
- (4) After the end of Year Two, the averaging period is two years and the figures are taken from the part of Year One during which it was authorised and from Year Two.
- (5) The figures for the next averaging period are taken from the part of Year One during which it was authorised and from Years Two and Three.
- (6) If the *firm* in this example is authorised in September, the assessment of whether the *firm* meets the qualification condition for Year One is based on the figures for the part of Year One for which it is authorised, as it is in (3). However, in contrast to (2), that means that the assessment is made in respect of its first few months of authorisation.
- (7) In this paragraph:
- (a) the *firm* being authorised means the *firm* being *authorised* or the relevant *regulated activities* being included in its *permission* so that the relevant reporting requirement applies;
 - (b) the accounting year in which this occurs is referred to as Year One; and
 - (c) subsequent accounting years are referred to accordingly.

Special requirements for calculating intermediary regulated business revenue

- 818 R The qualification condition in row (3) of the table in SYSC 23 Annex 1.8.2R may also apply to a *firm* that meets the following conditions, even though the financial reporting requirement referred to in that row does not apply to it:
- (1) it falls into any of the following categories:
 - (a) its *permission* includes an *insurance distribution activity* in relation to *non-investment insurance contracts*;
 - (b) its *permission* includes a *home finance mediation activity*;
 - (c) it is a *retail investment firm*;
 - (d) it is a *personal investment firm*;
 - (e) (subject to SYSC 23 Annex 1.8.19R) its *permission* includes *advising on P2P agreements*; or
 - (f) (subject to SYSC 23 Annex 1.8.20R) its *permission* includes *designated investment business* or it carries out *designated investment business*; and
 - (2) it is not required to complete Section B of the *RMAR*.
- 819 R A *firm* is excluded from SYSC 23 Annex 1.8.18R(1)(e) if its *permission*, so far as it relates to the activity in SYSC 23 Annex 1.8.18R(1)(e), is limited to activities carried on exclusively with or for *professional clients*.
- 820 R A *firm* is excluded from SYSC 23 Annex 1.8.18R(1)(f) if its *permission*, so far as it relates to the activity in SYSC 23 Annex 1.8.18R(1)(f), is limited and subject to requirements in a way that means it may only carry on those activities exclusively with or for *professional clients* or *eligible counterparties*.
- 821 R (1) This *rule* deals with how the qualification condition in row (3) of the table in SYSC 23 Annex 1.8.2R applies to a *firm* in SYSC 23 Annex 1.8.18R.
- (2) The calculation is made in accordance with the requirements for Section B (Profit and Loss account) of the *RMAR* and otherwise as described in column (2) of row (3) of the table in SYSC 23 Annex 1.8.2R.

- (3) The reporting period for the purposes of this Annex is an annual period ending on the *firm's accounting reference date*.
- (4) For the purpose of applying this Annex to a *firm* in SYSC 23 Annex 1 8.18R, a reference in this Annex to:
- the due submission date for a *data item* is treated as being to the reporting date defined in SUP 15.15.9R;
 - a *firm's* most recent reporting period is the period in (3) whose reporting date (as defined in (4)(a)) has occurred most recently; and
 - being subject to a reporting requirement is treated as a reference to meeting the conditions in SYSC 23 Annex 1 8.18R.
- 822 G (1) There is only one qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R.
- (2) Therefore if a *firm* ceases to be in SYSC 23 Annex 1 8.18R because it begins to report using the *RMAR*, SYSC 23 Annex 1 8.4R does not apply and the *firm* will continue to meet the qualification condition as long as its income remains at the necessary level.
- (3) The same applies if the *firm* moves from reporting using the *RMAR* to being a firm within SYSC 23 Annex 1 8.18R.
- (4) If a *firm* makes a change of the kind in (2) or (3), the figures for the averaging periods during which this occurs will be made up of figures taken from its *RMAR* and ones calculated under SUP 15.15. SYSC 23 Annex 1 8.15R does not apply.
- (5) If there is a gap between being subject to SYSC 23 Annex 1 8.18R and reporting using the *RMAR*, SYSC 23 Annex 1 11.8R may mean that the *firm* never stops being an *enhanced scope SMCR firm*.
- 822 G SUP 15.15 requires a *firm* within SYSC 23 Annex 1 8.18R regularly to calculate whether it meets the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R and, in certain circumstances, to notify the FCA of the results.
- Part Nine: Other qualification conditions for being an enhanced scope SMCR firm**
- 9.1 R A *firm* meets a qualification condition for the purposes of identifying an *enhanced scope SMCR firm* under the flow diagram in Part One of this Annex if it meets one of the following criteria:
- the *firm* is a *significant SYSC firm* and it meets all the additional criteria in SYSC 23 Annex 1 9.3R;
 - the *firm* is a *CASS large firm*; or
 - the *firm* notifies the FCA in accordance with Part 12 of this Annex that it intends to become an *enhanced scope SMCR firm*.
- 9.2 G If a *firm* is subject to a *requirement* that it must comply with the *rules* in the *FCA Handbook* applicable to one of the categories of *firm* in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) it is to be treated as falling into that category of *firm* for the purpose of this Annex as well.
- 9.3 R The additional criteria that a *significant SYSC firm* must meet as referred to in SYSC 23 Annex 1 9.1R(1) are as follows:
- it is an *investment firm*, as defined in article 4(1)(2) of the *UK CRR* (including a *collective portfolio management investment firm*) as it has effect on 27 January 2023; and
 - it is not excluded by any of the exclusions in SYSC 23 Annex 1 9.4R.
- 9.4 R (1) A *firm* is excluded for the purposes of SYSC 23 Annex 1 9.3R(2) if it is a *local firm*.
- (2) A *firm* is excluded for the purposes of SYSC 23 Annex 1 9.3R(2) if it meets the following conditions:
- it is authorised to provide one or more of the following *investment services*:
 - ◊ reception and transmission of orders in relation to one or more *financial instruments*;
 - ◊ execution of orders on behalf of *clients*;

- (i) portfolio management; and
(ii) investment advice;
- (b) it is not authorised to provide any other *investment services*;
- (c) it is not authorised to provide the *ancillary service* referred to in paragraph 1 of Part 3A of Schedule 2 to the *Regulated Activities Order* (Safekeeping and administration of *financial instruments*); and
- (d) it is not permitted to hold MiFID money or securities (as defined in (3)) belonging to its *clients* and for that reason may not at any time place itself in debt with those *clients* in relation to its *MiFID business*.
- (3) MiFID money or securities (as referred to in (2)(d)) means money or securities that a *firm* receives from, or holds for or on behalf of, a *client* in the course of, or in connection with, its *MiFID business*.
- 9.5 R (1) A *firm* that is authorised to execute investors' orders for *financial instruments* and to hold such *financial instruments* for its own account is not, for that reason, authorised for the purpose of SYSC 23 Annex 1 9.4R to provide the *investment service* of dealing on own account if it meets the following conditions:
- (a) such positions only arise as a result of the *firm's* failure to match investors' orders precisely;
- (b) the total market value of all such positions is no higher than 15% of the *firm's* initial capital; and
- (c) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.
- (2) Position and initial capital have the meaning that they had for the purpose of IFPRU 1.1.12R (Meaning of dealing on own account) as it applied on 31 December 2021.
- 9.6 G The purpose of the criteria in SYSC 23 Annex 1 9.3R to SYSC 23 Annex 1 9.5R is to replicate the main part of the definition of 'IFPRU investment firm'. Other elements of the definition are reflected elsewhere in this Annex. However, the definition applies to a *firm* whether or not it ever has been treated as an IFPRU investment firm for the purposes of any *rules* that used that definition.
- Part Ten: When a firm becomes an enhanced scope SMCR firm**
- General rule**
- 101 R (1) A *firm* must comply with the requirements for *enhanced scope SMCR firms* (and becomes an *enhanced scope SMCR firm*) from the date specified in this *rule*.
- (2) If a *firm*:
- (a) was not an *enhanced scope SMCR firm*; and
- (b) then meets one of the qualification conditions in Part 8 or Part 9 of this Annex; the date is twelve *months* after it first meets the first qualification condition that it met.
- (3) Where the first qualification condition it meets is the one in SYSC 23 Annex 1 9.1R(3), the date is three *months* after the FCA receives the notice in SYSC 23 Annex 1 9.1R(3).
- (4) (3) also applies if:
- (a) it meets the qualification condition in SYSC 23 Annex 1 9.1R(3) after it meets another qualification condition; and
- (b) the result of applying (3) would be that the *firm* would become an *enhanced scope SMCR firm* sooner.
- (5) This *rule* is subject to SYSC 23 Annex 1 11.8R.
- Meeting the financial thresholds in Part 8**
- 102 R (1) Subject to (4), a *firm* first meets one of the qualification conditions in Part 8 of this Annex (financial qualification conditions) on the due date for submission of the relevant *data item* (see (2) and (3) for the meaning of relevant *data item*).

- (2) Except where (3) applies, the relevant *data item* is the *data item* for the final reporting period applicable to the averaging period for which the *firm* first meets the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1 8.2R.
- (3) Where the qualification condition is the one in row (2) of the table in SYSC 23 Annex 1 8.2R, the relevant *data item* is the one for the reporting period for which the *firm* first meets the condition in column (1) of that row.
- (4) In the case of a *firm* in SYSC 23 Annex 1 8.18R, the *firm* meets the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R on the reporting date for the final reporting period applicable to the averaging period for which the *firm* first meets the condition in column (1) of that row.

Meeting the qualification conditions in Part 9

- 103 R A *firm* meets one of the qualification conditions in Part 9 of this annex (other qualification conditions) on the date when:
- (1) the status in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) becomes effective; or (as the case may be)
 - (2) the FCA receives the notice in SYSC 23 Annex 1 9.1R(3).
- 104 G SYSC 23 Annex 1 10.1R and SYSC 23 Annex 1 10.3R mean that a *firm* becomes an *enhanced scope SMCR firm* under Part 9 of this Annex on the date in column (2) of the table in SYSC 23 Annex 1 10.5G.
- 105 G Table: Date firm becomes an enhanced scope firm

Qualification condition	Date firm becomes an enhanced scope SMCR firm
The <i>firm</i> is a significant SYSC firm	If a <i>firm</i> meets the criteria in SYSC 23 Annex 1 9.3R but does not at first meet the conditions for being a <i>significant SYSC firm</i> and then later becomes a <i>significant SYSC firm</i> , it becomes an <i>enhanced scope SMCR firm</i> one year and three months after the date in SYSC 1.5.2R (the three-month period in SYSC 1.5.5R(2) plus the one year in this Part). If a <i>firm</i> meets the conditions for being a <i>significant SYSC firm</i> but at first does not meet the criteria in SYSC 23 Annex 1 9.3R and then later meets those criteria, the three-month period in SYSC 1.5.5R(2) does not apply. The one-year period in this Part runs from the date the <i>firm</i> first meets the criteria in SYSC 23 Annex 1 9.3R. If a <i>firm</i> first meets the conditions for being a <i>significant SYSC firm</i> and the criteria in SYSC 23 Annex 1 9.3R at the same time, the three-month period in SYSC 1.5.5R(2) applies.
The <i>firm</i> is a CASS large firm	If the <i>firm</i> notifies the FCA in accordance with CASS 1A.2.9R(1) or CASS 1A.2.9R(2), it becomes an <i>enhanced scope SMCR firm</i> one year following the 1 February following the notification under CASS.
This includes a <i>firm</i> that has elected to be treated as a CASS large firm	If the <i>firm</i> notifies the FCA in accordance with CASS 1A.2.9R(3), it becomes an <i>enhanced scope SMCR firm</i> one year after the day it begins to hold <i>client money</i> or <i>safe custody assets</i> . If the <i>firm</i> makes an election under CASS 1A.2.5R(1), it becomes an <i>enhanced scope SMCR firm</i> one year after the day the notification made under CASS 1A.2.5R(2)(a) states that the election is intended to take effect.
The <i>firm</i> opts to be an enhanced scope SMCR firm by notifying the FCA using Form O	It becomes an <i>enhanced scope SMCR firm</i> three months after the FCA receives the notice.

- 106 G (1) The purpose of the one year or three-month period between meeting the conditions for being an *enhanced scope SMCR firm* and the *firm* becoming subject to the requirements for such *firms* is to allow it to make preparations to comply with the new requirements.

- (2) For example, a *core SMCR firm* opting up to be an *enhanced scope SMCR firm* should use this period to apply for approval for its personnel to perform the new *designated senior management functions* that will apply because it has become an *enhanced scope SMCR firm*.
- 107 G (1) A *firm* retains its old status during the one-year or three-month period described in this Part.
- (2) For example, a *core SMCR firm* that meets one of the qualification conditions for being an *enhanced scope SMCR firm* in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) will remain as a *core SMCR firm* for one year after it meets the qualification condition.

Part Eleven: When a firm stops being an enhanced scope SMCR firm

General rule

- 111 R A *firm* that:
- (1) was an *enhanced scope SMCR firm*; and
- (2) then meets none of the qualification conditions in this Annex; ceases to be subject to the requirements for *enhanced scope SMCR firms* (and ceases to be an *enhanced scope SMCR firm*) one year after it ceases to meet the last qualification condition that it met.

Ceasing to meet the financial thresholds in Part 8

- 112 R A *firm* ceases to meet one of the qualification conditions in Part 8 of this Annex (financial qualification conditions) on whichever of the following is applicable:
- (1) the due date for submission of the *data item* for the final reporting period applicable to the averaging period for which the *firm* first ceases to meet the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1 8.2R; or
- (2) (where the qualification condition is the one in row (2) of the table in SYSC 23 Annex 1 8.2R) the due date for submission of the *data item* for the reporting period for which the *firm* first ceases to meet the condition in column (1) of that row; or
- (3) (in the case of a *firm* in SYSC 23 Annex 1 8.18R) the reporting date for the final reporting period applicable to the averaging period for which the *firm* first ceases to meet the condition in column (1) of that row; or
- (4) the date the relevant reporting requirement ceases to apply as referred to in SYSC 23 Annex 1 8.4R.

Ceasing to meet the qualification conditions in Part 9

- 113 R A *firm* ceases to meet one of the qualification conditions in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) (other qualification conditions) on the date that the status in SYSC 23 Annex 1 9.1R ceases to apply.
- 114 R (1) This *rule* deals with a *firm* that notifies the FCA under Part 12 of this Annex that it is cancelling its election to be an *enhanced scope SMCR firm* under SYSC 23 Annex 1 9.1R(3).
- (2) The *firm* ceases to meet the qualification condition under SYSC 23 Annex 1 9.1R(3) on the date the FCA receives the notice.

Only meeting qualification conditions for a short time

- 115 R (1) This *rule* deals with a case in which a *firm* ceases to meet a qualification condition in Part 8 or Part 9 of this Annex while the one-year period in Part 10 of this Annex resulting from meeting that qualification condition is still running.
- (2) The result is that the *firm* does not become an *enhanced scope SMCR firm*. The one-year period no longer runs.
- 116 G If, after the *firm* ceases to meet a qualification condition as described in SYSC 23 Annex 1 11.5R, it later meets the same qualification condition or another qualification condition in Part 8 or Part 9 of this Annex, a new one-year period or, as applicable, three-month period, under Part 10 of this Annex begins. This applies even if it meets that qualification condition during the one-year period referred to in SYSC 23 Annex 1 11.5R.

- 11.7 G (1) SYSC 23 Annex 1 12.13R allows a *firm* to withdraw an election to be an *enhanced scope SMCR firm* before it takes effect.
- (2) The result is that the *firm* does not become an *enhanced scope SMCR firm* and the three-month period in SYSC 23 Annex 1 11.1R does not apply.

Only ceasing to meet qualification conditions for a short time

- 11.8 R If:
- (1) the one-year period in SYSC 23 Annex 1 11.1R is still running; and
 - (2) the *firm* again meets a qualification condition in Part Eight or Nine of this Annex; then (subject to SYSC 23 Annex 1 12.5R):
 - (3) the *firm* remains an *enhanced scope SMCR firm*; and
 - (4) the one-year period in Part Ten of this Annex does not apply.

- 11.9 G SYSC 23 Annex 1 12.5R allows a *firm* to opt to remain as an *enhanced scope SMCR firm* during the one-year period in SYSC 23 Annex 1 11.1R

Ceasing to meet one qualification condition and beginning to meet another

- 11.10 G (1) This paragraph deals with the following example
 - (a) a *firm* meets a qualification condition for being an *enhanced scope SMCR firm* and becomes an *enhanced scope SMCR firm*;
 - (b) later the *firm* meets another qualification condition;
 - (c) shortly after (b) the *firm* ceases to meet the first qualification condition; and
 - (d) the gap between (b) and (c) is less than the one-year period provided for in Part 10 of this Annex.
- (2) In this example:
 - (a) the *firm* never stops being an *enhanced scope SMCR firm*; and
 - (b) neither the one-year period in Part 10 of this Annex nor the one year countdown provided for in SYSC 23 Annex 1 11.1R applies.

Part Twelve: Opting up and opting back down

Opting up to being a core firm

- 12.1 R (1) A *firm* may notify the FCA in accordance with this Part that it intends to become a *core SMCR firm*.
- (2) The notice takes effect three months after the FCA receives the notice.
- (3) A *firm* may only make such an election if the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) allows this.

- 12.2 G The flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) means that only a *limited scope SMCR firm* may opt up to be a *core SMCR firm*.

Opting up to being an enhanced scope firm

- 12.3 R (1) A *firm* may notify the FCA in accordance with this Part that it intends to become an *enhanced scope SMCR firm*.
- (2) The notice takes effect as described in Part 10 of this Annex.
- (3) A *firm* may only make such an election if the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) allows this.

- 12.4 G The flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) means that only a *limited scope SMCR firm* or a *core SMCR firm* may opt up to be an *enhanced scope SMCR firm*.

- 12.5 R (1) An *enhanced scope SMCR firm* that is within the one-year period in Part 11 of this Annex (When a firm stops being an *enhanced scope SMCR firm*) may notify the FCA in accordance with this Part that it intends to remain an *enhanced scope SMCR firm*.
- (2) The notice takes effect immediately on receipt by the FCA. The effect is that:
 - (a) the *firm* remains an *enhanced scope SMCR firm*;

- (b) the three-month period in Part Ten of this Annex (When a firm becomes an enhanced scope SMCR firm) does not apply; and
- (c) the *firm* is treated as meeting the qualification condition for being an *enhanced scope SMCR firm* of having opted to be an *enhanced scope SMCR firm* under SYSC 23 Annex 1 9.1R(3).

Opting up by applicants for permission

- 126 R (1) The following may also give a notice described in SYSC 23 Annex 1 12.1R or SYSC 23 Annex 1 12.3R:
- (a) an applicant for *Part 4A permission*; and
 - (b) other *persons* seeking to carry on *regulated activities* as an *SMCR firm*.

- (2) The notice becomes effective when it becomes an *SMCR firm*.

- 127 D If a *person* in SYSC 23 Annex 1 12.6R(1) wishes to rely on SYSC 23 Annex 1 12.6R, it must make, or, as the case may be, amend its application so as to meet the relevant requirements of this Annex about the notices described in SYSC 23 Annex 1 12.1R or SYSC 23 Annex 1 12.3R.

- 128 G (1) This paragraph relates to a *person* who is about to become an *SMCR firm* and wishes to opt up in accordance with this Part of this Annex.
- (2) This Part of this Annex restricts who can elect to opt up to a higher category of *SMCR firm*. In a case covered by this paragraph, this restriction relates to the category of *SMCR firm* of which the person will be a member when it becomes an *SMCR firm* if it had not made the election.
- (3) (2) also applies to the requirements about how to notify the FCA.

Revoking an opt up

- 129 R (1) This *rule* deals with a *firm* that has elected under this Annex to become a *core SMCR firm* or an *enhanced scope SMCR firm* and that election has taken effect.
- (2) The *firm* may notify the FCA that it is cancelling its election under this Annex to be:
- (a) a *core SMCR firm*; or
 - (b) an *enhanced scope SMCR firm*.
- (3) A notification under (2)(a) takes effect one year after the FCA receives the notice.
- (4) A notification under (2)(b) takes effect in accordance with Part 11 of this Annex.

Opted up firm later meets other qualification conditions

- 1210 G (1) A *firm* may elect to opt up to a higher category of *SMCR firm* and then later meet one of the other qualification conditions for that higher category.
- (2) The table in SYSC 23 Annex 1 12.11G gives examples of various scenarios that can follow on from that.

- 1211 G Table: Examples involving a firm that opts up a category

Scenario	Treatment under this Annex
(1) A <i>firm</i> elects to opt up to a higher category. It later meets one of the other qualification conditions for that higher category. It ceases to meet that second qualification condition some time later.	The <i>firm</i> remains in the higher category because its election remains in force.
(2) A <i>firm</i> elects to opt up to a higher category. It later meets one	The <i>firm</i> remains within that higher category despite cancelling its election because it still meets that second qualification condition.

of the other qualification conditions for that higher category. It later cancels its election.

(3) A firm elects to opt up to a higher category. It later cancels its election. During the one-year period in Part EI even of, or this Part of, this Annex following its cancellation notice it meets one of the other qualification conditions for that higher category.

(4) A firm elects to opt up to a higher category. It later meets one of the other qualification conditions for that higher category. It later cancels its election. Some time after that, it ceases to meet the second qualification condition.

The firm remains within that higher category despite the cancellation notice.

The cancellation notice has no immediate effect (see Example (2)).

However when it ceases to meet the second qualification condition it ceases to be in the higher category. In contrast to Example (1), its election is no longer in force when it ceases to meet the second qualification condition.

Note: When this table refers to the cancellation of an election it refers to cancelling that election after it has taken effect and not to withdrawing it before it takes effect.

Giving notices

- 1212 R (1) This rule deals with a notification under SYSC 23 Annex 1 12.1R to SYSC 23 Annex 1 12.6R.
(2) The notification must be made in accordance with SUP 10C.15.11R (Method of submission: electronic submission).
(3) A firm must use the version of the form made available for this purpose on the electronic system referred to in SUP 10C.15.11R, which is based on the version found in SYSC 23 Annex 2R (Form O).
(4) If SUP 10C.15.11R requires the notification to be in accordance with SUP 10C.15.14R (Method of submission: other forms of submission), the firm must use the version of the form found in SYSC 23 Annex 2R.

Withdrawing notices

- 1213 R A firm may, by notice to the FCA, withdraw a notice in SYSC 23 Annex 1 12.12R at any time before it takes effect.
(1) This paragraph relates to the withdrawal of a notice as described in SYSC 23 Annex 1 12.13R.
(2) If a firm decides to give a withdrawal notice, it should send it to the FCA as soon as possible.

- (3) A *firm* should give a withdrawal notice in accordance with SUP 15.7 (Form and method of notification). There is no specified form for the notice.
- 1215 G See SYSC 23 Annex 1 11.7G for more about the effect of withdrawing a notice electing to be an *enhanced scope SMCR firm*.
- 1216 G If a *firm* notifies the FCA in accordance with this Part of this Annex that it intends to revoke its election to be an *enhanced scope SMCR firm* and then changes its mind within a year, it should withdraw its revocation notice under SYSC 23 Annex 1 12.13R rather than use the opting-up procedure in SYSC 23 Annex 1 12.5R.

**Form O: Changing firm status under the Senior Managers and
Certification Regime**

Form O: Changing firm status under the Senior Managers and Certification Regime

23

Chapter 24

Senior managers and certification regime: Allocation of prescribed responsibilities

24.1 Application

24

- 24.1.1** **R** This chapter applies to an *SMCR firm*, except to the extent that this chapter applies a narrower scope to a particular provision. However, this chapter does not apply to:
- (1) an *EEA SMCR firm*; or
 - (2) a *limited scope SMCR firm*.
- 24.1.2** **R** This chapter is not limited to *regulated activities* or other specific types of activities.
- 24.1.3** **R** There is no territorial limitation on the application of this chapter, subject to **SYSC 24.1.4R**.
- 24.1.4** **R** When this chapter applies to an *overseas SMCR firm*, it applies in relation to the activities of the *firm's branch* in the *United Kingdom*.

24.2 Allocation of FCA-prescribed senior management responsibilities: Main allocation rules

24

Allocation of FCA-prescribed senior management responsibilities

- 24.2.1** **R** A firm must allocate each of the *FCA-prescribed senior management responsibilities* in the table in ■ SYSC 24.2.6R that apply to it to one or more *SMF managers* of the firm.
- 24.2.2** **G**
- (1) Subject to (2), ■ SYSC 24 Annex 1 (Which prescribed responsibilities apply to which kind of firm) sets out which *FCA-prescribed senior management responsibilities* apply to which kind of *SMCR firm*.
 - (2) In some cases, an *FCA-prescribed senior management responsibility* is subject to further restrictions on the types of *firm* and circumstances to which it applies, as set out in the table in ■ SYSC 24.2.6R (Table: *FCA-prescribed senior management responsibilities*).
- 24.2.3** **R**
- (1) A firm may not allocate an *FCA-prescribed senior management responsibility* to an *SMF manager* who is only approved to perform the *other overall responsibility function* or the *other local responsibility function* for that firm, subject to (2).
 - (2) A firm may allocate *FCA-prescribed senior management responsibility* (z) in the table in ■ SYSC 24.2.6R (functions in relation to CASS) to an *SMF manager* who is only approved to perform the *other overall responsibility function* or the *other local responsibility function*.
- 24.2.4** **R** A firm must make the allocations of *FCA-prescribed senior management responsibilities* in this chapter in such a way that it is clear who has which of those responsibilities.
- What the FCA-prescribed senior management responsibilities are**
- 24.2.5** **R** The *FCA-prescribed senior management responsibilities* are set out in the table in ■ SYSC 24.2.6R.

24.2.6

R

Table: FCA-prescribed senior management responsibilities

FCA-prescribed senior management responsibility	Explanation	Reference letter
(1) Responsibility for the <i>firm's performance</i> of its obligations under the senior managers regime	<p>The senior managers regime means the requirements of the <i>regulatory system</i> applying to <i>SMCR firms</i> insofar as they relate to <i>SMF managers</i> performing <i>designated senior management functions</i>, including SUP 10C (FCA senior managers regime for approved persons).</p> <p>This responsibility includes:</p> <ul style="list-style-type: none"> (1) compliance with conditions and time limits on approval; (2) compliance with the requirements about the <i>statements of responsibilities</i> (but not the allocation of responsibilities recorded in them); (3) compliance by the <i>firm</i> with its obligations under section 60A of the Act (Vetting of candidates by authorised persons); and (4) compliance by the <i>firm</i> with the requirements in SYSC 22 (Regulatory references) (and the corresponding <i>PRA</i> requirements) so far as they relate to the senior managers regime, including the giving of references to another <i>firm</i> about an <i>SMF manager</i> or former <i>SMF manager</i>. 	(a)
(2) Responsibility for the <i>firm's performance</i> of its obligations under the certification regime	<p>The certification regime means the requirements of sections 63E and 63F of the Act (Certification of employees) and all other requirements of the <i>regulatory system</i> about the matters dealt with in or relating to those sections, including:</p> <ul style="list-style-type: none"> (1) SYSC 27 (Senior managers and certification regime: Certification Regime); (2) the requirements in SYSC 22 (Regulatory references) so far as they relate to the certification regime, including the giving of references to another <i>firm</i> about a <i>certification employee</i> or former <i>certification employee</i>; and 	(b)

FCA-prescribed senior management responsibility	Explanation	Reference letter
(3) Responsibility for the <i>firm's</i> policies and procedures for countering the risk that the <i>firm</i> might be used to further <i>financial crime</i>	<p>(3) the corresponding <i>PRA</i> requirements; and</p> <p>(4) the requirements in SUP 16.26 (<i>Reporting of information about Directory persons</i>), which require a <i>firm</i> to report information to the <i>FCA</i> about its <i>Directory persons</i>.</p> <p>(1) This includes:</p> <p>(a) responsibility for the <i>firm's</i> policies and procedures in relation to the matters in SYSC 3.2.6R (<i>Systems and controls in relation to compliance, financial crime and money laundering</i>);</p> <p>(b) the functions in SYSC 3.2.6HR or SYSC 6.3.8R (<i>firm</i> must allocate to a <i>director</i> or <i>senior manager</i> overall responsibility within the <i>firm</i> for the establishment and maintenance of effective <i>anti-money laundering systems and controls</i>);</p> <p>if any of those <i>rules</i> apply to the <i>firm</i>.</p> <p>(2) The <i>firm</i> may allocate this <i>FCA-prescribed senior management responsibility</i> to the <i>MLRO</i> but does not have to.</p> <p>(3) If the <i>firm</i> does not allocate this <i>FCA-prescribed senior management responsibility</i> to the <i>MLRO</i>, this <i>FCA-prescribed senior management responsibility</i> includes responsibility for supervision of the <i>MLRO</i>.</p> <p>(4) Responsibility for the <i>firm's</i> obligations for:</p> <p>(a) conduct rules training; and</p> <p>(b) conduct rules reporting.</p> <p>(1) The <i>firm's</i> obligations for conduct rules training means its obligations under section 64B of the <i>Act</i> (<i>Rules of conduct: responsibilities of authorised persons</i>).</p> <p>(2) The <i>firm's</i> obligations for conduct rules reporting means its obligations under section 64C of the <i>Act</i> (<i>Requirement for authorised persons to notify regulator of disciplinary action</i>).</p> <p>(5) Responsibility for:</p>	(d) (b-1) (f)

FCA-prescribed senior management responsibility	Explanation	Reference letter
<p>(a) leading the development of; and</p> <p>(b) monitoring the effective implementation of;</p> <p>policies and procedures for the induction, training and professional development of all members of the <i>firm's governing body</i>.</p> <p>(6) Responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all the <i>firm's</i>:</p> <p>(a) <i>SMF managers</i>; and</p> <p>(b) key function holders;</p> <p>other than members of the <i>firm's governing body</i>.</p> <p>(7) Responsibility for:</p> <p>(a) safeguarding the independence of; and</p> <p>(b) oversight of the performance of;</p> <p>the internal audit function, in accordance with the <i>internal audit requirements for SMCR firms</i> and the <i>PRA</i> requirements referred to in column (2) of this row</p>	<p>(1) Key function holder has the same meaning as it does in the Glossary Part of the <i>PRA Rulebook</i>.</p> <p>(2) Paragraph (b) of column (1) of this row (6) only applies to a <i>firm</i> if and to the extent that the <i>PRA</i>'s requirements about key function holders apply to it.</p>	(g)
	<p>(1) This responsibility includes responsibility for:</p> <p>(a) safeguarding the independence of; and</p> <p>(b) oversight of the performance of;</p> <p>a person approved to perform the Head of Internal Audit function for the <i>firm</i> if that function applies to the <i>firm</i>.</p> <p>(2) This responsibility only applies if and to the extent that:</p> <p>(a) the <i>internal audit requirements for SMCR firms</i>; or</p> <p>(b) any requirements of the <i>PRA</i> about the matters in paragraph (1) of this column of this row (7);</p> <p>apply to the <i>firm</i>.</p>	(j)

FCA-prescribed senior management responsibility	Explanation	Reference letter
(8) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the compliance function in accordance with the <i>compliance requirements for SMCR firms</i> .	(3) Independence means independence to the extent it is required by the requirements referred to in paragraph (2) of this column of this row (7). (4) The Head of Internal Audit function means the <i>head of internal audit function</i> or the PRA's Head of Internal Audit <i>designated senior management function</i> . (1) This responsibility includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the person performing the <i>compliance oversight function</i> for the firm. (2) This responsibility only applies if and to the extent that the <i>compliance requirements for SMCR firms</i> apply to the firm. (3) "Independence" means independence to the extent it is required by the <i>compliance requirements for SMCR firms</i> .	(k)
(9) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the risk function, in accordance with the <i>risk control requirements for SMCR firms</i> and the PRA requirements referred to in column (2) of this row (9).	(1) This responsibility includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; a person approved to perform the Chief Risk function for the firm if that function applies to the firm. (2) This responsibility only applies if and to the extent that: (a) the <i>risk control requirements for SMCR firms</i> ; or (b) any requirements of the PRA about the matters in paragraph (1) of this column of this row (9); apply to the firm. (3) "Independence" means independence to the extent it	(l)

FCA-prescribed senior management responsibility	Explanation	Reference letter
<p>(10) Responsibility for overseeing the development of and implementation of the <i>firm's</i> remuneration policies and practices in accordance with SYSC 19D (Remuneration Code)</p> <p>(11) Responsibility for the <i>firm's</i> compliance with CASS</p>	<p>is required by the requirements referred to in paragraph (2) of this column of this row (9).</p> <p>(4) The Chief Risk function means the <i>chief risk officer function</i> or the PRA's Chief Risk designated senior management function.</p> <p>This responsibility does not apply to a <i>firm</i> to which SYSC 19D does not apply.</p> <p>(1) This responsibility only applies to a <i>firm</i> to which CASS applies.</p> <p>(2) A <i>firm</i> may include in this FCA-prescribed senior management responsibility whichever of the following functions apply to the <i>firm</i>:</p> <ul style="list-style-type: none"> (a) CASS 1A.3.1R (certain CASS compliance functions for a CASS small firm); (b) CASS 1A.3.1AR (certain CASS compliance functions for a CASS medium firm or a CASS large firm); (c) CASS 11.3.1R (certain CASS compliance functions for certain CASS small debt management firms); (d) CASS 11.3.4R (certain CASS compliance functions for a CASS large debt management firm); or (e) CASS 13.2.3R (certain CASS compliance functions for a firm carrying on a <i>regulated claims management activity</i>); <p>but it does not have to.</p> <p>(3) If the <i>firm</i> does not include the functions in paragraph (2) of this column of this row (11) in this FCA-prescribed senior management responsibility, this FCA-prescribed senior management</p>	(m) (z)

FCA-prescribed senior management responsibility	Explanation	Reference letter
(12) Responsibility for compliance with the requirements of the <i>regulatory system</i> about the <i>management responsibilities map</i>	<p><i>responsibility</i> includes responsibility for supervision of the person performing the functions in paragraph (2) of this column of this row (11) that apply to the <i>firm</i>.</p> <p>(1) This responsibility does not include allocating responsibilities recorded in the <i>management responsibilities map</i>.</p> <p>(2) This responsibility does not apply to a <i>firm</i> to which the requirements about <i>management responsibilities maps</i> in SYSC 25 (Senior managers and certification regime: Management responsibilities maps and handover procedures and material) do not apply.</p>	(c)
(13) Acting as the <i>firm's whistleblowers' champion</i>	<p>(1) The <i>whistleblowers' champion's</i> allocated responsibilities are set out in SYSC 18.4.4R.</p> <p>(2) This responsibility does not apply to a <i>firm</i> that is not required to have a <i>whistleblowers' champion</i>.</p>	(n)
(14) Responsibility for:	<p>(1) Only applies to a <i>firm</i>:</p> <ul style="list-style-type: none"> (a) that outsources its internal audit function to an external third party service provider; and (b) to which one of the following internal audit <i>PRA-prescribed senior management responsibilities</i> applies: <ul style="list-style-type: none"> (i) the responsibility in rule 3.3(1) in the Insurance – Allocation of Responsibilities Part of the <i>PRA Rulebook</i>; or (ii) the responsibility in rule 3.2(1) in the Large Non-Solvency II Firms – Allocation of Responsibilities Part of the <i>PRA Rulebook</i>. <p>(2) The parts of the <i>PRA Rulebook</i> referred to in column (1) of this row (14) are:</p> <ul style="list-style-type: none"> (a) Solvency II firms - Conditions Governing Business 5; and (b) Non-Solvency II Firms – Governance 9.2. 	(j-2)

FCA-prescribed senior management responsibility	Explanation	Reference letter
	(3) Terms used in column (1) of this row (14) have the same meaning as they do for the corresponding <i>PRA-prescribed senior management responsibility</i> described in paragraph (1) of this column of this row (14).	
(15) Responsibility for management of the <i>firm's</i> risk management processes in the <i>UK</i>		(aa)
(16) Responsibility for the <i>firm's</i> compliance with the <i>UK regulatory system</i> applicable to the <i>firm</i>		(ff)
(17) Responsibility for the escalation of correspondence from the <i>PRA</i> , <i>FCA</i> and other regulators in respect of the <i>firm</i> to each of the <i>governing body</i> or the <i>management body</i> of the <i>firm</i> and, as appropriate, of the <i>firm's parent undertaking</i> and the ultimate <i>parent undertaking</i> of the <i>firm's group</i>	This includes taking steps to ensure that the <i>senior management</i> of the <i>firm</i> and, where applicable, the <i>group</i> , are made aware of any views expressed by the <i>regulatory bodies</i> and any steps taken by them in relation to the <i>branch, firm or group</i> .	(ee)
(18) Responsibility for taking reasonable steps to ensure that every <i>person</i> involved in the performance of the <i>firm's internal audit function</i> is independent from the <i>persons</i> who perform external audit, including:	This only applies if the <i>firm</i> outsources its internal audit function.	(j-3)
(a) supervision and management of the work of outsourced internal auditors; and		
(b) management of potential conflicts of interest between the provision of external audit and in		

FCA-prescribed senior management responsibility	Explanation	Reference letter
internal audit services.		
(19) Responsibility for:	Stress testing refers to stress testing under MIFIDPRU 7.5 (ICARA process: capital and liquidity planning, stress testing, wind-down planning and recovery planning).	(s)
(a) managing the firm's internal stress tests; and		
(b) ensuring the accuracy and timeliness of information provided to the FCA and other regulatory bodies for the purposes of stress testing.	This responsibility only applies to a <i>firm</i> to which MIFIDPRU 7.5 applies.	
(20) The responsibilities allocated under COLL 6.6.27R , COLL 8.5.22R or COLL 15.7.24R (Allocation of responsibility for compliance to an approved person).	Only applies to a <i>firm</i> to which the <i>rules</i> in column (1) apply.	(za)
(21) Responsibility for the development and maintenance of the firm's business model by the governing body.	Business model means the same thing as it does in Schedule 6 to the Act (Threshold Conditions). This responsibility applies even if the business model threshold condition does not apply to it.	(t)

24.3 Who prescribed responsibilities should be allocated to

24

24.3.1 **G** The FCA expects that a *person* who has responsibility for an *FCA-prescribed senior management responsibility*:

- (1) will generally (in the case of the *FCA-prescribed senior management responsibilities* in ■ SYSC 24.3.3G(1)) be the most senior employee or officer responsible for managing that area (or the most senior below the *chief executive*); and
- (2) will:
 - (i) be sufficiently senior and credible; and
 - (ii) have sufficient resources and authority; to be able to exercise their management and oversight responsibilities effectively.

Executive or non-executive

24.3.2 **G** The FCA expects that normally a *firm* will allocate the *FCA-prescribed senior management responsibility* with the following *FCA reference letters* (see column three of the table in ■ SYSC 24.2.6R) to an *SMF manager* who is a *non-executive director* of the *firm* (or, in the case of a partnership, a partner without management responsibilities):

- (1) (f) (development of members of *governing body*);
- (2) (j) (internal audit oversight);
- (3) (k) (compliance oversight);
- (4) (l) (risk control oversight);
- (5) (m) (remuneration code oversight); and
- (6) (n) (whistleblowers' champion).

24.3.3 **G** (1) Subject to (2), the FCA expects that normally a *firm* will allocate the other *FCA-prescribed senior management responsibilities* to an *SMF manager* who performs executive functions for the *firm*.

- (2) The relevant *rules* in *COLL* deal with the persons to whom a *firm* should allocate *FCA-prescribed senior management responsibility* (za) (Allocation of responsibility for *COLL* compliance to an approved person).

Exceptions for small non-complex firms

24.3.4

G

The *FCA* accepts that it may not be practical for a small non-complex *firm* to comply with the parts of ■ SYSC 24.3.1G(1), ■ SYSC 24.3.2G and ■ SYSC 24.3.3G(1) that would otherwise apply to it.

24.3.5

G

- (1) A *UK SMCR banking firm* is likely to be small for the purposes in ■ SYSC 24.3.4G if it is:
- (a) a small *CRR* firm as defined in the part of the *PRA Rulebook* called "Allocation of responsibilities"; or
 - (b) a *credit union* that meets the *PRA*'s size requirements for small *CRR* firms as defined.
- (2) A *firm* is likely to be non-complex for these purposes if:
- (a) it conducts a limited number of simple business lines;
 - (b) it does not rely on group governance arrangements; and
 - (c) (in the case of a *branch*) it does not rely on governance arrangements for other parts of the *firm*.

24

Not assigning too many responsibilities to one person

24.3.6

G

When deciding how to allocate *FCA-prescribed senior management responsibilities*, a *firm* should avoid assigning such a wide range of responsibilities to a particular *SMF manager* that they are not able to carry out those responsibilities effectively.

Dividing and sharing management functions between different people

24.3.7

G

The *FCA* expects that a *firm* will not normally split an *FCA-prescribed senior management responsibility* between several *SMF managers*, with each only having responsibility for part.

24.3.8

G

The *FCA* expects that a *firm* will not normally allocate responsibility for an *FCA-prescribed senior management responsibility* to two or more *SMF managers* jointly.

24.3.9

G

- (1) Although the norm should be for a *firm* to have a single individual performing each *FCA-prescribed senior management responsibility*, there may be circumstances in which responsibilities can be divided or shared (see (2)).
- (2) A *firm* should only divide or share a responsibility where this is appropriate and can be justified.

- (3) For example, it would be justified to share a responsibility if that is done:
 - (a) as part of a job share; or
 - (b) where departing and incoming senior managers work together temporarily as part of a handover.
- (4) A *firm* may have co-heads of a department or business unit if this can be justified under (1) to (3).

24.3.10 G

- (1) The *FCA* expects a *firm* to divide and allocate responsibilities under this chapter between its *SMF managers* so that responsibilities are grouped together appropriately.
- (2) The *firm* should make the judgement:
 - (a) in (1); and
 - (b) about whether and how responsibilities should be shared; under:
 - (c) ■ SYSC 4.1.1R (robust governance arrangements);
 - (d) any other applicable *Handbook* requirements, including:
 - (i) ■ SYSC 2 (Apportionment of Responsibilities);
 - (ii) ■ SYSC 24.3.7G to ■ SYSC 24.3.9G;
 - (iii) article 21 of the *MiFID Org Regulation* (as applied in accordance with ■ SYSC 1 Annex 1.2.8AR, ■ SYSC 1 Annex 1.3.2-AR, ■ SYSC 1 Annex 1.3.2-BR, ■ SYSC 1 Annex 1.3.2CR and ■ SYSC 1 Annex 1.3.3R); and
 - (e) article 21 of the *MiFID Org Regulation* (General organisational requirements) or other similar relevant *onshored regulations*.
 - (3) The *firm* should take into account the way it is organised, the business it carries out and the need not to allocate too many responsibilities to one individual (■ SYSC 24.3.6G).
 - (4) The *FCA* expects a *firm* to allocate *FCA-prescribed senior management responsibilities* to the *SMF managers* they are most closely linked to.

24.3.11 G

- SUP 10C.11.31G to ■ SUP 10C.11.33G (What statements of responsibilities should contain: dividing and splitting responsibilities) contains material about:
 - (1) how to prepare *statements of responsibilities* where a responsibility is shared or divided between several *SMF managers*; and
 - (2) dividing and sharing responsibilities.

24.3.12 G

- (1) A *firm* may allocate more than one *FCA-prescribed senior management responsibility* to the same *SMF manager*.
- (2) This is subject to:

- (a) ■ SYSC 24.3.6G (should not give too many responsibilities to one person); and
- (b) ■ SYSC 24.3.10G (what responsibilities should be grouped together).

Allocation of responsibilities and territorial scope.

24.3.13

G

- (1) As explained in ■ SYSC 24.1.3R, there is no territorial limitation to the application of this chapter.
- (2) This means that a *firm* should allocate the *FCA-prescribed senior management responsibilities* so that they cover activities, transactions, business areas and management functions that are located or take place wholly or partly outside, as well as ones in, the *United Kingdom*.

24.3.14

G

In the case of an *overseas SMCR firm*, the *FCA-prescribed senior management responsibilities* relate to the activities of the *firm's branch* in the *United Kingdom* (see ■ SYSC 24.1.4R).

Which FCA-prescribed senior management responsibilities apply to which kind of firm

Introduction and exclusions

- 1.1 G This annex sets out which *FCA-prescribed senior management responsibilities* apply to which type of *SMCR firm*.
- 1.2 R In this annex:
- (1) a ✓ means that the *FCA-prescribed senior management responsibility* does apply;
 - (2) a ✗ means that the *FCA-prescribed senior management responsibility* does not apply; and
 - (3) a reference letter refers to the reference letters in column (3) of the table in **SYSC 24.2.6R** (Table: FCA-prescribed senior management responsibilities).
- 1.3 G If an *FCA-prescribed senior management responsibility* is not included in the table for a particular class of *firm*, that *FCA-prescribed senior management responsibility* does not apply to any *firm* in that class.
- 1.4 R The following *FCA-prescribed senior management responsibilities* do not apply to a *full-scope UK AIFM* in relation to its *managing an AIF*:
- (1) responsibility (j) (internal audit oversight);
 - (2) responsibility (k) (compliance oversight);
 - (3) responsibility (l) (risk oversight);
 - (4) responsibility (j-3) (independence of outsourced internal audit); and
 - (5) responsibility (t) (business model).

Banking sector firms

- 2.1 R (1) The table in **SYSC 24 Annex 1 2.3R** sets out which *FCA-prescribed senior management responsibilities* apply to which type of *SMCR banking firm*.
- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):
- (a) a *UK SMCR banking firm* (excluding firms in (b));
 - (b) a *small UK SMCR banking firm*; and
 - (c) an *overseas SMCR banking firm*.
- 2.2 R A small *UK SMCR banking firm* means a *UK SMCR banking firm* that is:
- (1) a small **CRR** firm as defined in the part of the *PRA Rulebook* called "Allocation of responsibilities"; or
 - (2) a *credit union*.
- 2.3 R Table: FCA-prescribed senior management responsibilities applying to banking sector firms

Brief description of responsibility	Reference letter of responsibility	UK firm	Small UK firm	Overseas firm
Responsibility for the firm's performance of its obligations under the senior managers regime	(a)	✓	✓	✓

Brief description of responsibility	Reference letter of responsibility	UK firm	Small UK firm	Overseas firm
Responsibility for the firm's performance of its obligations under the employee certification regime	(b)	✓	✓	✓
<i>Financial crime</i>	(d)	✓	✓	✓
COCON	(b-1)	✓	✓	✓
Training governing body	(f)	✓	✗	✗
Training of staff performing <i>designated senior management responsibilities</i>	(g)	✓	✗	✗
See Note (2)				
<i>Management responsibilities maps</i>	(c)	✓	✓	✓
<i>Whistleblowers' champion</i>	(n)	✓	✓	✗
Internal audit oversight	(j)	✓	✗	✗
Compliance oversight	(k)	✓	✗	✗
Risk oversight	(l)	✓	✗	✗
Remuneration	(m)	✓	✗	✗
CASS	(z)	✓	✓	✓
UK risk management	(aa)	✗	✗	✓
Compliance with <i>UK regulatory system</i>	(ff)	✗	✗	✓
Escalation of correspondence	(ee)	✗	✗	✓

Note (1): the categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SYSC 24 Annex 1 2.1R. Therefore:

- (a) column three (UK firm) refers to SYSC 24 Annex 1 2.1R(2)(a);
- (b) column four (Small UK firm) refers to SYSC 24 Annex 1 2.1R(2)(b); and
- (c) column five (Overseas firm) refers to SYSC 24 Annex 1 2.1R(2)(c).

Note (2): Paragraph (b) of this *FCA-prescribed senior management responsibility* (key function holder) does not apply to any *firm* in this table.

Insurance sector firms

- 3.1 R (1) The table in SYSC 24 Annex 1 3.2R sets out which *FCA-prescribed senior management responsibilities* apply to which type of *SMCR insurance firm*.
- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

- (a) a *Solvency II firm* (excluding firms in any other paragraph);
 - (b) a *firm* falling within paragraph (b) of the definition of *Solvency II firm* (undertaking that would require *Part 4A permission* as an insurance or reinsurance undertaking if its head office were situated in the *United Kingdom*);
 - (c) a *small non-directive insurer*;
 - (d) a *firm* in SYSC 23 Annex 1 5.2R (*firms* in run-off); and
 - (e) an *insurance special purpose vehicle*.
- (3) An *insurance special purpose vehicle* only falls into paragraph (2)(e). Subject to that, a *firm* in (2)(d) does not fall into any other paragraph.

3.2 G References to a *Solvency II firm* include a *large non-directive insurer*.

3.3 R Table: FCA-prescribed senior management responsibility applying to insurance sector firms

24

Brief description of responsibility	Reference letter of responsibility	Solvency II firm	Overseas branches	Other insurance sector	ISPV
Responsibility for the <i>firm's</i> performance of its obligations under the senior managers regime	(a)	√	√	√	√
Responsibility for the <i>firm's</i> performance of its obligations under the employee certification regime	(b)	√	√	√	√
<i>Financial crime</i>	(d)	√	√	√	√
<i>COCON</i>	(b-1)	√	√	√	√
<i>Training governing body</i>	(f)	√	✗	✗	✗
<i>Training of staff performing designated senior management responsibilities</i>	(g)	√	✗	✗	✗
<i>Management responsibilities maps</i>	(c)	√	√	✗	✗
<i>Whistleblowers' champion</i>	(n)	√	✗	✗	✗
<i>CASS</i>	(z)	√	√	√	✗
<i>Internal audit for non-significant insurers</i>	(j-2)	√	✗	✗	✗
<i>Compliance with UK regulatory system</i>	(ff)	✗	√	✗	✗
<i>Escalation of correspondence</i>	(ee)	✗	√	✗	✗

Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SYSC 24 Annex 1 3.1R. Therefore:

- (1) Solvency II firm (column three) refers to SYSC 24 Annex 1 3.1R(2)(a);
- (2) Overseas branches (column four) refers to SYSC 24 Annex 1 3.1R(2)(b);
- (3) Other insurance sector (column five) refers to SYSC 24 Annex 1 3.1R(2)(c) and (d); and
- (4) ISPV (column six) refers to SYSC 24 Annex 1 3.1R(2)(e).

Solo regulated firms				
4.1	R	(1)	The table in SYSC 24 Annex 1 4.2R sets out which FCA-prescribed senior management responsibilities apply to which type of core SMCR firm and enhanced scope SMCR firm.	
		(2)	SMCR firms in (1) are divided into the following categories for the purposes of in (1):	
		(a)	UK core SMCR firm;	
		(b)	overseas core SMCR firm (excluding an EEA SMCR firm); and	
		(c)	enhanced scope SMCR firm.	
4.2	R	Table: FCA-prescribed senior management responsibility applying to solo regulated firms		

24

(1) Brief description of responsibility	(2) Reference letter of responsibility	(3) UK core firm	(4) Overseas core firm	(5) Enhanced scope firm
Responsibility for the firm's performance of its obligations under the senior managers regime	(a)	√	√	√
Responsibility for the firm's performance of its obligations under the employee certification regime	(b)	√	√	√
Financial crime	(d)	√	√	√
COCON	(b-1)	√	√	√
Management responsibilities maps	(c)	✗	✗	√
Internal audit oversight	(j)	✗	✗	√
Compliance oversight	(k)	✗	✗	√
Risk oversight	(l)	✗	✗	√
CASS	(z)	√	√	√
Independence of outsourced internal audit	(j-3)	✗	✗	√
Business model	(t)	✗	✗	√
Stress tests	(s)	✗	✗	√
Allocation of responsibility for COLL compliance to an approved person	(za)	√	√	√
UK risk management	(aa)	✗	√	✗
Compliance with UK regulatory system	(ff)	✗	√	✗

(1) Brief description of responsibilit	(2) Reference letter of responsibility	(3) UK core firm	(4) Overseas core firm	(5) Enhanced scope firm
Escalation of correspondence	(ee)	x	✓	x

Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SYSC 24 Annex 1 4.1R. Therefore:

- (1) UK core firm (column three) refers to SYSC 24 Annex 1 4.1R(2)(a);
- (2) Overseas core firm (column four) refers to SYSC 24 Annex 1 4.1R(2)(b); and
- (3) Enhanced scope firm (column five) refers to SYSC 24 Annex 1 4.1R(2)(c).

Chapter 25

Senior managers and certification regime: Management responsibilities maps and handover procedures and material

25.1 Application and purpose

Main application rules

25.1.1

R

This chapter applies to:

- (1) an *SMCR banking firm*;
- (2) an *SMCR insurance firm* that is a *Solvency II firm* (including a *large non-directive insurer*) but excluding:
 - (a) an *insurance special purpose vehicle*; and
 - (b) a *firm* in ■ SYSC 23 Annex 1 5.2R (*firms* in run-off); and
- (3) an *enhanced scope SMCR firm*;

except to the extent that this chapter applies a narrower scope to a particular provision.

25.1.2

R

This chapter is not limited to *regulated activities* or other specific types of activities.

Territorial scope

25.1.3

R

Subject to ■ SYSC 25.1.4R, there is no territorial limitation on the application of this chapter.

25.1.4

R

This chapter applies to an *overseas SMCR firm* in relation to the activities of a *branch* maintained by the *firm* in the *United Kingdom*.

How this chapter applies to overseas SMCR firms

25.1.5

R

Unless the context requires otherwise, the following terms in this chapter are modified as follows in relation to an *overseas SMCR firm*:

Reference in this chapter	Modification
<i>firm</i>	treated as a reference to the <i>branch</i>
<i>governing body, management body, senior management and senior personnel</i>	(a) treated as a reference to the <i>branch's governing body, management body, senior management or senior personnel</i> ; (b) the <i>Glossary</i> definitions of these terms are adjusted so as to refer to the <i>branch</i> rather than the <i>firm</i> as a whole

Reference in this chapter	Modification
<i>group</i>	treated as including the rest of the <i>firm</i>

Purpose.....

25.1.6

G

- (1) One purpose of the *management responsibilities map* is to help the *firm* and the *FCA* satisfy themselves that the *firm* has a clear organisational structure (as required by the *regulatory system*).
- (2) It also helps the *FCA* to identify who it needs to speak to about particular issues.
- (3) The *management responsibilities map* helps the *FCA* to operate its powers and requirements for individuals. For example it helps the *FCA*:
 - (a) to identify who is accountable if something goes wrong;
 - (b) to understand the role of the *approved person* (or *candidate*) in the *firm* and therefore to judge how to use its powers under the regime for *SMCR firms*, such as the power to grant or refuse approval of an *SMF manager* or to amend or impose conditions.

25

25.2 Management responsibilities maps: Main rules

25

25.2.1

R

- (1) A *UK SMCR firm* must, at all times, have a comprehensive and up-to-date document (the *management responsibilities map*) that describes its management and governance arrangements.
- (2) An *overseas SMCR firm* must, at all times, have a comprehensive and up-to-date document (the *management responsibilities map*) that describes the management and governance arrangements for any *branch* it maintains in the *United Kingdom*.
- (3) A *management responsibilities map* must include:
- (a) details of the reporting lines and the lines of responsibility; and
 - (b) reasonable details about:
 - (i) the *persons* who are part of those arrangements; and
 - (ii) their responsibilities.
- (See further requirements in ■ SYSC 25.2.3R.)

25.2.2

R

The *firm's management responsibilities map* must show clearly how any responsibilities covered by a *firm's management responsibilities map* are shared or divided between different *persons*.

Specific requirements

25.2.3

R

A *management responsibilities map* must include:

- (1) (a) the names of all the *firm's*:
 - (i) *approved persons* (including *PRA approved persons*);
 - (ii) members of its *governing body* and (if different) *management body* who are not *approved persons*;
 - (iii) *senior management*;
 - (iv) *senior personnel*; and
 - (b) details of the responsibilities which they hold;
- (2) all responsibilities described in any current *statement of responsibilities*;

- (3) details of the management and governance arrangements relating to:
- (a) the *FCA-prescribed senior management responsibilities*; and
 - (b) the *PRA-prescribed senior management responsibilities*;
- including the identity of the *persons* to whom those functions are allocated;
- (4) the reasons why (if it has done any of these things) the *firm*:
- (a) allocates responsibility for an *FCA-prescribed senior management responsibility* to more than one *person* jointly; or
 - (b) divides responsibility for an *FCA-prescribed senior management responsibility* between different *persons*;
- (5) details about the functions allocated under, ■ **SYSC 26** (Senior managers and certification regime: Overall and local responsibility), including:
- (a) what the activities, business areas and management functions allocated under that chapter are;
 - (b) the management and governance arrangements relating to them;
 - (c) [deleted]
 - (d) the reasons why (if it has done this) the *firm* allocates responsibility for any such function to more than one *person* jointly; and
 - (e) the identity of the *persons* to whom those functions are allocated;
- (6) matters reserved to the *governing body* (including the terms of reference of its committees) and, if different, the *management body*;
- (7) details of how the *firm's* management and governance arrangements fit together with:
- (a) its *group*; and
 - (b) any other *person* in (8);
- (8) details of the extent to which the *firm's* management and governance arrangements are provided by, or shared with, other members of its *group* or others;
- (9) details of the reporting lines and the lines of responsibility (if any) between the *firm* and those who carry out functions in relation to it and:
- (a) other members of its *group* or other third parties;
 - (b) *persons* acting as employees or officers of, or otherwise acting for, anyone in (a); or
 - (c) committees or other bodies of anyone in (a);
- (10) reasonable information about the *persons* described or identified in the *management responsibilities map*, including:
- (a) whether they are *employees* of the *firm* and, if not, by whom they are employed;

- (b) if they are *certification employees* of the *firm*; and
- (c) the responsibilities they have in relation to other *group members* or any other *person* in (8); and
- (11) details of how (1) to (10) fit together and fit into the *firm's* management and governance arrangements as a whole.

25.2.4

R

- SYSC 25.2.3R(1) does not require the *firm* to include the names of *approved persons* under ■ SUP 10A (FCA Approved Persons in Appointed Representatives).

25.3 Management responsibilities maps: Exclusion of non-financial services activities for some firms

- 25.3.1 R** An *enhanced scope SMCR firm* may prepare its *management responsibilities map* so that (subject to ■ SYSC 25.3.2R) it only includes its management and governance arrangements to the extent that they cover, support or otherwise relate to its *SMCR financial activities*.
- 25.3.2 R** If a *firm* uses the exclusion in ■ SYSC 25.3.1R it must include sufficient information about the excluded management and governance arrangements to show how the included management and governance arrangements fit in with the *firm's* management and governance arrangements as a whole.
- 25.3.3 G** Support functions that should be covered by a *management responsibilities map* despite ■ SYSC 25.3.1R include:
- (1) human resources;
 - (2) the *firm's* information technology; and
 - (3) compliance and legal services.
- 25.3.4 G**
- (1) A *firm* may have a non-financial services business in addition to carrying on its *SMCR financial activities*. Its support services may support both aspects of its business and its *management responsibilities map* may therefore still need to cover the support services even though they also cover the *firm's* non-financial services business.
 - (2) Take for example human resources. If the *firm's* human resources function covers the *firm's* entire workforce without separating the parts that deal with the *firm's* financial services and its other business, the *management responsibilities map* should cover the entire human resources function.
 - (3) On the other hand, the *firm* may separate the part of its human resources function that deals with those working in its financial services business from the part that deals with the other part of its business. In that case the *management responsibilities map* may leave out (subject to ■ SYSC 25.3.2R) the part of the human resources function that covers its non-financial services business.

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25.4 Guidance about what should be in a management responsibilities map

Material applicable to all firms

- 25.4.1**  The *management responsibilities map* should be consistent with the *statements of responsibilities*.
- 25.4.2**  The *statements of responsibilities* and the *management responsibilities map* should all be prepared in a way that makes it simple to see how the responsibilities allocated in a particular *statement of responsibilities* fit into the overall system of management and governance of the *firm*.
- 25.4.3**  The *management responsibilities map* should include functions that are:
- (1) included in a *PRA controlled function* under the *PRA rules* complementing ■ SUP 10C.9 (Minimising overlap with the PRA approved persons regime) (as listed in ■ SUP 10C.9.6G(2));
 - (2) excluded from the *other overall responsibility function* under ■ SUP 10C.7.1R(2) (Exclusion for approved person with approval to perform other *designated senior management functions*); or
 - (3) excluded from the *other local responsibility function* under ■ SUP 10C.8.1R(2) (Exclusion for approved person with approval to perform other *designated senior management functions*).
- 25.4.4**  A *firm's management responsibilities map* should demonstrate that there are no gaps in the allocation of responsibilities among its management.
- 25.4.5**  A *firm* need only include summary details of the *persons* in ■ SYSC 25.2.3R(1).
- 25.4.6**  A *firm's SMF managers* and members of its governing body may overlap with its *senior management* and *senior personnel*. If so, the *firm* does not have to give the same details twice.
- 25.4.7**  A *firm* should include details about individuals in addition to the details in ■ SYSC 25.2.3R(1), (3) and (5) if they are needed to make the *management responsibilities map* clear. For example, if the same individual has

- responsibilities in a number of different areas of the *firm* it may be necessary to make this clear.
- 25.4.8** **G** A *firm* should only include summary details about *statements of responsibilities* under ■ SYSC 25.2.3R(2). There is no need to duplicate the *statements of responsibilities*. The main aim of including material about *statements of responsibilities* in the *management responsibilities map* is to show how that material:
- (1) fits into the *firm's* overall governance structure; and
 - (2) for each *statement of responsibilities*, fits with the others.
- 25.4.9** **G** A *management responsibilities map* should include a checklist confirming that all *FCA-prescribed senior management responsibilities* have been allocated or, if some have not been allocated, the reason why.
- 25.4.10** **G** If:
- (1) any *designated senior management function* is performed by; or
 - (2) any *FCA-prescribed senior management responsibility* is allocated to;
- more than one *person*, a *firm's management responsibilities map* should give details of how the performance or discharge of the responsibilities is to be carried out by those *persons*.
- 25.4.11** **G** The *executive director function*, the *other local responsibility function*, the *group entity senior manager function*, the *partner function* and the *other overall responsibility function* are defined generally and generically and can be performed by several people. Therefore, there is no need to explain why several people perform one of the functions.
- 25.4.12** **G** The material in ■ SUP 10C.11.31G and ■ SUP 10C.11.32G (recording sharing and splitting of responsibilities in *statements of responsibilities*) also applies to a *management responsibilities map*.
- 25.4.12A** **G** In relation to the temporary absence of an *SMF manager* of a *firm* see the guidance at ■ SUP 10C.14.5JG.
- Branches of overseas firms**
- 25.4.13** **G** One effect of ■ SYSC 25.1.5R is that an *overseas SMCR firm* should draw up its *management responsibilities map* as if the rest of the *firm* outside the *UK branch* were a separate company in its *group*. This means, for example, that the map should include:
- (1) details of how the *branch's* management and governance arrangements fit together with the wider *firm*;

- (2) details of the extent to which the *branch's* management and governance arrangements are provided by, or shared with, the wider *firm*; and
- (3) details of the reporting lines and the lines of responsibility between the *branch* and those who carry out functions in relation to it and the wider *firm* and *persons* acting for it.

Small firms

25.4.14

G

- (1) The FCA expects that the *management responsibilities map* of a small and non-complex *firm* is likely to be simple and short. It may be no more than a single sheet of paper.
- (2) See ■ SYSC 24.3.5G for what small and non-complex mean.

25.5 Management responsibilities map should be a single document

- 25.5.1** **R** A *management responsibilities map* must be a single *document*.
- 25.5.2** **G**
- (1) The requirement for a *management responsibilities map* to be a single *document* does not mean that it has to be a single sheet of paper or must be capable of being reproduced as one.
 - (2) A *management responsibilities map* may be made up of a folder with several files or items in it. The folder may be electronic.
 - (3) However, a *firm* that creates a *management responsibilities map* in this way should ensure that its approach is compatible with it being a single *document*. In particular:
 - (a) there should be a single item that identifies every item making up the *management responsibilities map* and shows where each item can be found;
 - (b) for example, this could be a contents list of the items making up the *management responsibilities map* with electronic links to each of them;
 - (c) the *management responsibilities map* should be complete by itself and should not refer to documents not forming part of it;
 - (d) every item in the *management responsibilities map* should only contain material about the matters required by this chapter to be included in *management responsibilities maps*;
 - (e) for example, if there is relevant material in the *firm's* report and accounts, the folder should only contain the relevant parts or a link to those parts.
 - (4) The folder and its contents should be easily identifiable as the *firm's* *management responsibilities map*.
- 25.5.3** **G** Although a *management responsibilities map* can be large and complex, **SYSC 25.4.14G** explains that, for small non-complex *firms*, it may be small and simple.

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25.6 Management responsibilities maps: Material only relevant to EEA SMCR firms

Application

- 25.6.1** **R** This section applies to an *EEA SMCR firm*.
- 25.6.2** **G** [deleted]
- 25.6.3** **G** [deleted]
- 25.6.4** **G** ■ SYSC 25.2.3R (Specific requirements) requires a *management responsibilities map* to cover the allocation of *FCA-prescribed senior management responsibilities*. This is not relevant to an *EEA SMCR firm* as *FCA-prescribed senior management responsibilities* do not apply to it.
- 25.6.5** **R**
- (1) An *EEA SMCR firm* may exclude from its *management responsibilities map* any information that it has, before *IP completion day*, excluded under this section of the *FCA Handbook* in the form this section was in immediately before *IP completion day*.
 - (2) [deleted]
 - (3) An *EEA SMCR firm* may exclude from its *management responsibilities map* any other information that has been supplied by the *firm* to the *FCA* or the *PRA* (including through the *firm's Home State competent authority*) if:
 - (a) that information was supplied to the *FCA* or the *PRA* in carrying out their functions under the *regulatory system* in relation to *firms*; and
 - (b) the *Single Market Directives* or any other *EU legislation* the *Single Market Directives* or any other *EU legislation* provides provided as at *IP completion day* for the supply of that kind of information to a *Host State competent authority*.
 - (4) For these purposes:

- (a) Home State and Host State have the meaning that they did in the *Glossary* as it was in force immediately before *IP completion day*; and
- (b) competent authority means a competent authority in an *EEA State* for the purposes of a *Single Market Directive*.
- 25.6.6** **G** [deleted]
- 25.6.7** **G** [deleted]
- 25.6.8** **G** The *FCA* expects that an *EEA SMCR firm* that excludes information from its management responsibilities map under ■ SYSC 25.6.5R will identify in its *management responsibilities map* the documents supplied to the *FCA* or the *PRA* where the omitted information can be found.
- 25.6.9** **G** In practice an *EEA SMCR firm* may find it easier to prepare its *management responsibilities map* without omitting any information under ■ SYSC 25.6.5R so that all the information referred to in ■ SYSC 25.2 (Management responsibilities maps: Main rules) can be found in a single integrated document.
- 25.6.10** **G** ■ SYSC 25.4 (Guidance about what should be in a management responsibilities map) does not take into account the right of a *firm* to omit information under ■ SYSC 25.6.5R. It assumes that the *firm* will prepare a single *document* under ■ SYSC 25.6.9G. However ■ SYSC 25.4 is not intended to take away the right to omit information under ■ SYSC 25.6.5R.

- 25**
- 25.7.1** **G** This section gives *guidance* about ■ SYSC 25 Annex 1G (Examples of the business activities and functions of an *SMCR firm*).
- Purpose of SYSC 25 Annex 1G**
- 25.7.2** **G**
- (1) A *firm* may use ■ SYSC 25 Annex 1G as a prompt to see whether its *management responsibilities map* covers all its business activities.
 - (2) A *firm* may wish to prepare its *management responsibilities map* using the same split of activities, where this is appropriate.
- 25.7.3** **G** As mentioned in ■ SYSC 26.11.2G, a *firm* may also use ■ SYSC 25 Annex 1G as a prompt when allocating responsibilities under ■ SYSC 26 (Senior managers and certification regime: Overall and local responsibility).
- 25.7.4** **G** If a *firm* uses ■ SYSC 25 Annex 1G to help it prepare its *management responsibilities map* or when allocating responsibilities under ■ SYSC 26 (Senior managers and certification regime: Overall and local responsibility), it should bear in mind that it is not comprehensive and that there may be other business activities and functions that are relevant to that firm but that are not included in ■ SYSC 25 Annex 1G (see ■ SYSC 25.7.8G).
- 25.7.5** **G** The purpose of ■ SYSC 25 Annex 1G is not say how an *SMCR firm* should:
- (1) prepare its *management responsibilities map*;
 - (2) allocate responsibilities amongst its senior management; or
 - (3) organise itself.
- Contents of SYSC 25 Annex 1G**
- 25.7.6** **G** ■ SYSC 25 Annex 1G sets out examples of the business activities and functions that the *FCA* thinks could be relevant to most large or complex *firms*, although the *FCA* does not require *firms* (large or small, complex or non-complex) to organise themselves in this way.
- 25.7.7** **G** Most or all of these activities and functions will normally apply to a complex *firm*. Many of them may not apply to a non-complex *firm*.

25.7.8

G

- (1) ■ SYSC 25 Annex 1G is not comprehensive. While it is intended to cover most front-line business activities of an *SMCR firm*, it does not cover all internal oversight and monitoring functions.
- (2) For example, it does not cover compliance or internal audit or the *firm's governing body* or its *committees*.

- 25**
- 25.8.1** **G** A *firm* should consider past versions of its *management responsibilities map* as an important part of its records and as an important resource for the FCA in supervising the *firm*.
- 25.8.2** **G** Past versions of a *firm's management responsibilities map* form part of its records under the *regulatory system*.
- 25.8.3** **R**
- (1) This *rule* applies to a *Solvency II firm* (including a *large non-directive insurer*) to which ■ SYSC 25.1.1R(2) (Main application rules) applies.
 - (2) A *firm* must retain each version of its *management responsibilities map* for:
 - (a) (in the case of a *large non-directive insurer*) six years; or
 - (b) (in any other case) ten years;from the date on which it was superseded by a more up-to-date version.
 - (3) A *firm* must be prepared to provide each version to the FCA on request for as long as the *firm* is required to retain it.

25.9 Handover procedures and material

Application

25.9.1

R

This section applies to a *firm* that meets the following conditions:

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- (1) it falls within ■ SYSC 25.1.1R (Application and purpose); and
- (2) it falls within one of the following categories:
 - (a) it is a *UK SMCR firm*; or
 - (b) it is an *overseas SMCR banking firm*.

25.9.2

R

For *overseas SMCR banking firms*, references in this section to an *SMF manager* are references to the *SMF manager* when acting as an *SMF manager* for the *firm's branch* in the *United Kingdom*.

25.9.3

R

This section does not apply to a *full-scope UK AIFM* in relation to its *managing an AIF*.

Rules about handover material

25.9.4

R

A *firm* must take all reasonable steps to ensure that:

- (1) a *person* who is becoming an *SMF manager*;
- (2) an *SMF manager*:
 - (a) taking on a new job or new responsibilities; or
 - (b) whose responsibilities or job are being changed; and
- (3) anyone who has management or supervisory responsibilities for the *SMF manager* in (1) or (2);

has, when the *SMF manager* starts to perform their new or revised responsibilities or job, all information and material that a *person* in (1) to (3) could reasonably expect to have to perform those responsibilities or that job effectively and in accordance with the requirements of the *regulatory system*.

25.9.5

R

- (1) A *firm* must have a policy about how it complies with ■ SYSC 25.9.4R, including the systems and controls it uses.

25
25.9.6

G

- (2) A *firm* must make and maintain adequate records of the steps taken to comply with ■ SYSC 25.9.4R.

25.9.7

G

- The information and material in ■ SYSC 25.9.4R that should be made available includes details:
- (1) about unresolved or possible breaches of the requirements of the *regulatory system*; and
 - (2) of any unresolved concerns expressed by the *FCA*, the *PRA* or another *regulatory body*.
- (1) The main purpose of ■ SYSC 25.9.4R is to help the *SMF manager* with their new or revised responsibilities or job and to help the managers of *SMF managers*.
 - (2) The information and material should be practical and helpful and not just a record.
 - (3) The material should include an assessment of what issues should be prioritised.
 - (4) The information and material should include judgement and opinion, not just facts and figures.

Handover arrangements and certificates

25.9.8

G

- (1) Where the responsibilities or job in ■ SYSC 25.9.4R are being taken over from another *person*, the *firm* should have arrangements for an orderly transition.
- (2) As part of these arrangements, the *firm* should take reasonable steps to ensure that the predecessor contributes to the information and material in ■ SYSC 25.9.4R all that would be reasonable to expect the predecessor to know and consider relevant, including the predecessor's opinions.
- (3) One way of doing this could be for the predecessor to prepare a handover certificate.
- (4) However, the *FCA* accepts that there will be cases in which it will be impractical to ask the predecessor to prepare a handover certificate.

Application of this section to other parts of a firm's management

25.9.9

G

- A *firm* should consider whether to apply the procedures in this section to other parts of its management.

Examples of the business activities and functions of an SMCR firm

Business areas and management functions	Explanation
(1) Payment services	<p>This means:</p> <ul style="list-style-type: none"> (1) <i>payment services</i>; (2) issuing and administering other means of payment (for example, cheques and bankers' drafts); (3) issuing <i>electronic money</i>; and (4) current accounts.
(2) Settlement	<p>This means clearing and settlement of any transactions described in rows (3) and (6) to (9) of this annex, in relation to the assets covered by (9).</p> <p>It also includes clearing and settlement of any transactions described in row (10).</p>
(3) Investment management	<p>This has the same meaning as <i>managing investments</i> with the following adjustments:</p> <ul style="list-style-type: none"> (a) it covers all types of assets; and (b) the exclusions in the <i>Regulated Activities Order</i> do not apply. <p>It also covers fund management.</p>
(4) Financial or investment advice	This includes <i>advising on investments</i> .
(5) Mortgage advice	This has the same meaning as <i>advising on regulated mortgage contracts</i> but is expanded to cover land anywhere in the world and to cover security of any kind over land.
(6) Corporate investments	This means acquiring, holding, managing and disposing a <i>firm's</i> investments made for its own account.
(7) Wholesale sales	This means the <i>selling</i> of any <i>investment</i> to a <i>person</i> other than a <i>retail customer</i> .
(8) Retail sales	<p>It does not include the activities in (1).</p> <p>This means the <i>selling</i> of any <i>investment</i> to a <i>retail customer</i>.</p>
(9) Trading for clients	<p>It includes savings accounts. It does not include the activities in (1).</p> <p>This means <i>dealing in investments as agent and execution of orders on behalf of clients</i> but the list of products also includes money market instruments and foreign exchange.</p>
(10) Market making	This means the activities described in the <i>Glossary</i> definition of <i>market maker</i> .
(11) <i>Investment research</i>	
(12) Origination/syndication and underwriting	<p>Origination and syndication include:</p> <ul style="list-style-type: none"> (1) entering into or acquiring (directly or indirectly) any commitment or <i>investment</i> with a view to transferring some or

Business areas and management functions	Explanation
(13) Retail lending decisions	<p>all of it to others, or with a view to others investing in the same transaction;</p> <p>(2) sub-participation; and</p> <p>(3) any transaction described in each limb of the <i>Glossary</i> definition of <i>originator</i>.</p> <p>Underwriting includes underwriting that is not on a firm commitment basis.</p> <p>A commitment or <i>investment</i> includes an economic interest in some or all of it.</p> <p>This activity also includes the provision of services relating to such transactions.</p> <p>Deciding whether, and on what terms, to lend to <i>retail customers</i>.</p> <p>Lending includes granting credit, leasing and hire (including finance leasing).</p>
(14) Wholesale lending decisions	<p>Deciding whether, and on what terms, to lend to <i>persons</i> who are not <i>retail customers</i>.</p> <p>Lending includes granting credit, leasing and hire (including finance leasing).</p>
(15) Design and manufacturing of products intended for wholesale customers	Wholesale customers mean <i>persons</i> who are not <i>retail customers</i> .
(16) Design and manufacture of products intended for <i>retail customers</i>	
(17) Production and distribution of marketing materials and communications	This includes <i>financial promotions</i> .
(18) Customer service	<p>This means dealing with <i>clients</i> after the point of sale, including queries and fulfilment of <i>client</i> requests.</p>
(19) Customer complaints handling	<p>This includes the <i>firm's</i> compliance with <i>DISP</i>.</p> <p>It also includes:</p> <p>(1)any similar procedures relating to activities that do not come under the jurisdiction of the <i>Financial Ombudsman Service</i>;</p> <p>(2)activities that take place outside the UK; and</p> <p>(3)activities that are not subject to any ombudsman service.</p>
(20) Collection and recovering amounts owed to a <i>firm</i> by its customers Dealing with customers in arrears	<p>'Customer' means any <i>person</i> falling into any of the definitions of <i>client</i> in the <i>Glossary</i> so far as they apply to the <i>FCA's Handbook</i>. The definition is extended to cover all services provided by the <i>firm</i> and not just those that are provided in the course of carrying on a <i>regulated activity</i> or an <i>ancillary service</i>.</p>
(21) Middle office	This means risk management and controls in relation to, and accounting for, transactions in <i>securities</i> or <i>derivatives</i> .
(22) The <i>firm's</i> information technology	This includes cybersecurity.
(23) Business continuity planning	If <i>SYSC 4.1.6R</i> and <i>SYSC 4.1.7R</i> (Business continuity) apply to the <i>firm</i> , this includes the systems and policies used to comply with those <i>rules</i> .

Business areas and management functions	Explanation
	This business area of function includes operational continuity, resilience and strategy.
(24) Human resources	This includes recruitment, training and competence and performance monitoring.
(25) Incentive schemes for the <i>firm's</i> staff	This is not limited to schemes based on sales.
(26) <i>Contributing input data to a BMR benchmark administrator (other than an Annex II benchmark administrator)</i>	
(27) <i>Administering a benchmark</i>	
(28) Administration of insurance	This means the activity described in SYSC 27.8.5G(1)(k) (examples of what the significant management FCA certification function can cover).
(29) Issuing commitments	This means the activity described in SYSC 27.8.5G(1)(i) (examples of what the significant management FCA certification function can cover).
(30) Processing	This means the activity described in SYSC 27.8.5G(1)(j) (examples of what the significant management FCA certification function can cover).
(31) Outsourcing, procurement and vendor management Management of services shared with other <i>group</i> members	
(32) Internal operations	
(33) The <i>firm's</i> legal department	
Note (1): The purpose of this annex is explained in SYSC 25.7 (Guidance about SYSC 25 Annex 1G) and SYSC 26.11.2G.	
Note (2): A <i>firm</i> does not have to use the split of example activities in this annex for the purposes in Note (1). If a <i>firm</i> does decide to use it, the <i>firm</i> should adapt it to suit the <i>firm's</i> management arrangements better.	
For example, a <i>firm</i> may find the split of activities into retail and wholesale activities unsuitable. If so, the <i>firm</i> might:	
(a) treat retail and wholesale activities together; or	
(b) use its own definition of retail and wholesale activities.	

Chapter 26

Senior managers and certification regime: Overall and local responsibility

26.1 Application

Main application rules

- 26.1.1** **R** This chapter applies to:
- (1) an *SMCR banking firm*;
 - (2) an *SMCR insurance firm* that is a *Solvency II firm* (including a *large non-directive insurer*) but excluding:
 - (a) an *insurance special purpose vehicle*; and
 - (b) a *firm* in ■ SYSC 23 Annex 1 5.2R (*firms* in run-off); and
 - (3) an *enhanced scope SMCR firm*;
except to the extent that this chapter applies a narrower scope to a particular provision.

- 26.1.2** **R** This chapter is not limited to *regulated activities* or other specific types of activities.

Exclusions

- 26.1.3** **R** This chapter does not apply to an *EEA SMCR firm*.

Territorial scope

- 26.1.4** **R** There is no territorial limitation on the application of this chapter, save as set out in ■ SYSC 26.1.5R.

- 26.1.5** **R** When this chapter applies to an *overseas SMCR firm*, it applies in relation to the *firm's branch* in the *United Kingdom*.

- 26.1.6** **R** Unless the context requires otherwise, the terms in the first column of the table in ■ SYSC 26.1.7R are modified as described in the second column of that table in relation to an *overseas SMCR firm*.

- 26.1.7** **R** Table: Application of this chapter to an overseas SMCR firm

Reference in this chapter	Modification
<i>firm</i>	treated as a reference to the <i>branch</i>

Reference in this chapter	Modification
<i>governing body</i>	(a) treated as a reference to the <i>branch's governing body</i> ; (b) the <i>Glossary</i> definition of this term is adjusted so as to refer to the <i>branch</i> rather than the <i>firm</i> as a whole
<i>group</i>	treated as including the rest of the <i>firm</i>
<i>chief executive</i>	<i>branch manager</i> or the <i>person performing the head of third country branch function</i> or the PRA's Head of Overseas Branch <i>designated senior management function</i>

26.2 Purpose

26.2.1

G

The purpose of this chapter is to ensure, together (in the case of a *PRA-authorised person*) with the equivalent *PRA* requirements and the requirements about *FCA-prescribed senior management responsibilities* in ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities), that:

- (1) an *SMF manager* is responsible and accountable for every area of a *firm's* activities;
- (2) the allocation of responsibilities is done systematically and explicitly; and
- (3) the process of allocation of responsibilities under this chapter covers every part of a *firm's* activities, business areas and management functions (subject to the exclusions in ■ SYSC 26.4 (Exclusions) without any gaps in what is allocated in this process.

26.2.2

G

The purpose of this chapter is not primarily to ensure that formal responsibility for everything a *firm* does is allocated amongst its senior management. Even without the requirements of this chapter, responsibilities that have not been allocated explicitly would fall to the *chief executive* by default. However, one of the purposes of this chapter is to avoid responsibilities being allocated by implication or by default.

26.2.3

G

- (1) The allocation of responsibilities under this chapter does not replace the responsibilities of the *chief executive*.
- (2) If a *firm* allocates responsibilities under this chapter to an *SMF manager* other than the *chief executive*, the *chief executive* will be responsible for managing that *person's* performance of those responsibilities in the same way that the *chief executive* manages that *person's* other responsibilities.
- (3) A *firm* may allocate responsibilities under this chapter to the *chief executive*.

26.3 Main rules

- 26.3.1 R** A UK SMCR firm must ensure that, at all times, one or more of its SMF managers have overall responsibility for each of the activities, business areas and management functions of the firm.
- 26.3.2 R**
- (1) An overseas SMCR firm must ensure that, at all times, one or more of its SMF managers has overall responsibility (subject to the branch's governing body) for each of the activities, business areas and management functions of the branch that are under the management of the branch's governing body.
 - (2) An overseas SMCR firm must ensure that, at all times, one or more of its SMF managers has responsibility for each of the activities, business areas and management functions of the branch not covered by (1).
 - (3) An SMF manager in (2) must be directly involved in the management of the activity, business area or management function for which they have responsibility under (2).
- 26.3.3 R** An SMF manager who has responsibility for an activity, business area or management function under this section:
- (1) (in the case of a UK SMCR firm) has "overall responsibility";
 - (2) (in the case of an overseas SMCR firm) has "local responsibility";
- for that activity, business area or management function.
- 26.3.4 R** A firm must make the allocations of responsibilities in this chapter in such a way that it is clear who has which of those responsibilities.

26.4 Exclusions

Exclusions where other requirements apply.....

- 26.4.1** **R** SYSC 26.3 (Main rules) does not require a *PRA-authorised person* to ensure that *SMF managers* have local or overall responsibility for any activity, business area or management function that is included in an *FCA-prescribed senior management responsibility* that applies to the *firm*.
- 26.4.2** **R** SYSC 26.3 (Main rules) does not require a *firm* to ensure that *SMF managers* have local or overall responsibility for any activity, business area or management function that is:
- (1) included in a *PRA-prescribed senior management responsibility* that applies to the *firm*; or
 - (2) managed (as part of the *PRA-designated senior management function* concerned) by any of the *firm's SMF managers* approved to perform any of the following *PRA-designated senior management functions* for the *firm*:
 - (a) the Chief Finance function;
 - (b) the Chief Risk function;
 - (c) the Head of Internal Audit function;
 - (d) the Head of Key Business Area function;
 - (e) the Chief Operations function; or
 - (f) the Group Entity Senior Manager function or the Group Entity Senior Insurance Manager function.

Exclusion of the governing body and non-executive directors.....

- 26.4.3** **R** SYSC 26.3 (Main rules) does not require a *firm* to allocate overall or local responsibility for the running of the *firm's governing body*.
- 26.4.4** **G** SYSC 26.4.3 means that a *person* does not have overall or local responsibility for a function under this chapter just by being a member of a *firm's governing body* or equivalent.
- 26.4.5** **G** (1) A *person* who just provides oversight of a function does not have overall or local responsibility for that function under this chapter.

- (2) Paragraph (1) and ■ SYSC 26.4.4G mean that a *non-executive director* acting as such does not have overall or local responsibility for a function under ■ SYSC 26.3 or perform the *other overall responsibility function* or the *other local responsibility function*.
- (3) Paragraph (1) and ■ SYSC 26.4.4G mean that a *non-executive director*:
- (a) providing oversight of a function; or
 - (b) being responsible for the independence of a function;
- does not have overall or local responsibility for that function under this chapter or perform the *other overall responsibility function* or the *other local responsibility function*.

Exclusion where the 12-week rule applies

26.4.6

R

- (1) This *rule* applies where:
- (a) a *firm* appoints someone to perform a function in order to provide cover as described in ■ SUP 10C.3.13R(1) (The 12-week rule) or (in the case of a *PRA-authorised person*) the *PRA equivalent*; and
 - (b) the *firm* has allocated any responsibilities (the “*Responsibilities*”) under ■ SYSC 26.3 (Main rules) to the *SMF manager* (the absent manager) who is absent as described in ■ SUP 10C.3.13R(2) or (in the case of a *PRA-authorised person*) the *PRA equivalent*.
- (2) While the disapplication of the *designated senior management function* provided for in ■ SUP 10C.3.13R or (in the case of a *PRA-authorised person*) the *PRA equivalent* is still in force the *firm* may allocate the *Responsibilities* to an *employee* who is not an *SMF manager*.
- (3) For the purposes of this *rule*, the *PRA equivalent* of:
- (a) ■ SUP 10C.3.13R is the following parts of the *PRA Rulebook*:
 - (i) rule 2.3 in “Senior Management Functions”;
 - (ii) rule 2.4 in “Insurance - Senior Management Functions”; and
 - (iii) rule 2.4 in “Large Non-Solvency II Firms – Senior Management Functions”.
 - (b) ■ SUP 10C.3.13R(1) and (2) is the following parts of the *PRA Rulebook*:
 - (i) rules 2.3(1) and (2) in “Senior Management Functions”;
 - (ii) rules 2.4(1) and (2) in “Insurance - Senior Management Functions”; and
 - (iii) rules 2.4(1) and (2) in “Large Non-Solvency II Firms – Senior Management Functions”.

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26.4.7

G

A *firm* need not allocate the *Responsibilities* referred to in ■ SYSC 26.4.6R(1)(b) to the person who is providing cover for the absent *SMF manager*.

26.4.8

G

■ SYSC 26.4.6R and ■ SUP 10C.3.13R apply to a person performing the *other overall responsibility function* or the *other local responsibility function* as

26

26.4.9

R

well as to a person performing one of the other *designated senior management functions*.

Exclusion of the legal function

26.4.10

R

- (1) ■ SYSC 26.3 (Main rules) applies to the *SMCR legal function* as modified by (2).
- (2) A *firm* may allocate local or overall responsibility for the *SMCR legal function* to someone who is not an *SMF manager*.

26.4.11

R

- (1) If a *firm* allocates the functions in (2) to the same *person* as the one to whom it allocates responsibility for activities in ■ SYSC 26.4.10R, the functions in (2) also form part of the *SMCR legal function*. As a result the exclusion in ■ SYSC 26.4.9R(2) also applies.
- (2) A function is covered by this *rule* to the extent that it directly supports the activities in ■ SYSC 26.4.10R.

26.4.12

G

- (1) The purpose of ■ SYSC 26.4.11R is to treat support services for the legal function as part of the legal function where responsibility for the support services is allocated to the person with overall responsibility for the legal function.
- (2) A support service is one that is directly related, but subordinate, to the legal services described in ■ SYSC 26.4.10R. It should be necessary for the successful or better functioning of the main legal services and be an integral part of them.

- (3) One example of a support service is human resources services for the legal staff. This includes recruitment, training, continuing professional development, appraisal and discipline.
- (4) The effect of ■ SYSC 26.4.11R is that if the person with overall responsibility for the legal function also has overall responsibility for human resources services for the staff of the legal function, those services are covered by the exclusion in ■ SYSC 26.4.9R(2). However, they are not excluded if those services are provided by a separate human resources department.
- 26.4.13** G
- (1) A *firm* may divide its legal function into different parts and appoint a different person to have overall responsibility for each.
- (2) If it does, ■ SYSC 26.4.9R and ■ SYSC 26.4.11R still apply.
- (3) So for example, if the *firm* has two legal departments, one headed by A (for which A has overall responsibility) and one headed by B (for which B has overall responsibility):
- (a) neither A nor B need be an *SMF manager*; and
- (b) the *firm* may allocate overall responsibility for the human resources function for A's department to A and overall responsibility for the human resources function for B's department to B even though neither A nor B is an *SMF manager*.
- 26.4.14** G
- SUP 10C.7.1R and ■ SUP 10C.8.1R exclude the person with overall responsibility for the legal function from the *other overall responsibility function* (SMF18) and the *other local responsibility function* (SMF22).
- 26.4.15** G
- The exclusions in ■ SYSC 26.4.9R(2), ■ SYSC 26.4.11R and ■ SYSC 26.4.14G do not affect the scope of the following or the obligation to appoint an *SMF manager* to carry them out:
- (1) any *FCA-designated senior management function* other than the ones in ■ SYSC 26.4.14G; or
- (2) any of the *FCA-prescribed responsibilities*.
- Exclusion of non-financial services activities**
- 26.4.16** R
- SYSC 26.3 (Main rules) only requires an *enhanced scope SMCR firm* to allocate responsibility for activities, business areas and management functions to the extent that they support, form part of or otherwise relate to its *SMCR financial activities*.
- 26.4.17** G
- SYSC 25.3.3G and ■ SYSC 25.3.4G (Management responsibilities maps: Exclusion of non-financial services activities for some firms) are relevant to when an *enhanced scope SMCR firm* may exclude support services from the allocation of responsibilities under this chapter.

26.4.18

R

Exclusion for AIFMD

A full-scope UK AIFM may treat *managing an AIF* as not being part of its *SMCR financial activities* for the purposes of this chapter.

26.5 Guidance on territorial scope

26.5.1

G

Allocation of responsibilities and territorial scope

■ SYSC 26.1.4R (territorial scope) means that a *firm* should allocate overall responsibilities under this chapter so that they cover activities, transactions, business areas and functions that are located or take place wholly or partly outside, as well as ones in, the *United Kingdom*.

26.5.2

G

Allocation of responsibility for transactions in branches

There is an exception to ■ SYSC 26.5.1G for an overseas *SMCR firm*. This is that ■ SYSC 26.1.5R limits this chapter to the activities of its *UK branch*.

26.5.3

G

- (1) It is common for a *branch* to carry out only part of a transaction. For instance, a transaction may be booked in a *branch* but negotiated and arranged elsewhere or vice versa.
- (2) When allocating responsibility to an *SMF manager* for activities in relation to transactions under ■ SYSC 26.3 (Main rules), a *firm* should not exclude a transaction which is arranged, booked or negotiated in the *branch* merely because other elements of the transaction occur outside the *United Kingdom*.

26

- 26**
- 26.6.1** **G** **UK firms**.....
The meaning in practice of overall responsibility for a function of a *UK SMCR firm* depends on whether that function is under the management of the *firm's governing body* or not.
- 26.6.2** **G** **UK firms**.....
(1) Certain requirements of the *regulatory system* say that the *governing body* of certain *firms* should have ultimate responsibility for, and the prime and leading role in, managing the *firm*.
(2) In particular this is the case under:
(a) ■ SYSC 4.3A.1R (Management body); and
(b) [deleted]
(c) rule 2.1 in the Part of the *PRA Rulebook* called Conditions Governing Business (General Governance Requirements) in the Part of the *PRA Rulebook* called Conditions Governing Business.
(3) This means that the *governing body* of a *UK SMCR firm* subject to these requirements will manage the conduct of the whole of the business of the *firm*. In turn that means that the parts of this chapter dealing with a function that is not managed by the *firm's governing body* will not be relevant to it.
- 26.6.3** **G** **UK firms**.....
The *FCA* recognises that for some *UK SMCR firms* not subject to the requirements in ■ SYSC 26.6.2G, some activities, business areas and functions of a *firm* may not be under the management of its *governing body*. This may be the case where, for example:
(1) the *firm* does not have a *governing body*; or
(2) the *firm's shareholders* play a key role in managing it through, for example, a *group management committee*.
- 26.6.4** **G** **Branches of overseas firms**.....
(1) ■ SYSC 26.3.2R(1) refers to the activities, business areas and management functions of the *branch* that are under the management of the *branch's governing body*. However, the *FCA* recognises that for some *branches*, some activities, business areas and functions of the *branches* may not be under the management of the *branch's governing body*. This may be the case where the *branch* does

not have its own *governing body* or where it is organised in such a way that certain functions are under the management of a *person* or body outside the *branch's* management structure. In those circumstances, it would not be appropriate to require the *firm* to allocate overall responsibility for that matter to a *person* who is part of the management structure of the *branch*.

- (2) The requirements to allocate responsibility for activities, business areas and functions of a *branch* under ■ SYSC 26.3.2R(1) and (2) respectively are intended to allow for the difference described in (1). In particular:
- (a) ■ SYSC 26.3.2R(1) is intended to cater for the situation where a particular activity, business area or function of the *branch* is under the management of the *branch's governing body*. In that situation, the *firm* should allocate responsibility for that matter under ■ SYSC 26.3.2R(1); and
 - (b) ■ SYSC 26.3.2R(2) is intended to cater for the situation where a particular activity, business area or function of the *branch* is not under the management of *branch's governing body*. In that situation, the *firm* should allocate responsibility for that matter under ■ SYSC 26.3.2R(2).

Further guidance

26.6.5

G

■ SYSC 26.7 gives *guidance* on the effect of ■ SYSC 26.3 (Main rules) when a function is under the *governing body's* management. ■ SYSC 26.8 gives *guidance* on the effect of ■ SYSC 26.3 when the function is not.

Day-to-day or ultimate control

26.6.6

G

Having overall or local responsibility under this chapter for a matter does not necessarily mean:

- (1) having ultimate authority over it; or
- (2) having day-to-day management control of that function.

26.6.7

G

In particular, the ultimate decision-making body of many *UK SMCR firms* is their *governing body*, acting collectively.

- 26**
- 26.7** **Meaning of local and overall responsibility: Reporting to the governing body**
- 26.7.1** **G** This section gives *guidance* on what overall and local responsibility for a function means when the *governing body* manages the function in question under ■ SYSC 26.3 (Main rules).
- 26.7.2** **G** When this chapter refers to a *person* having overall or local responsibility for a function as described in ■ SYSC 26.7.1G, it means a *person* who has:
- (1) ultimate responsibility (under the *governing body* and the *chief executive*) for managing or supervising that function; and
 - (2) primary and direct responsibility for:
 - (a) briefing and reporting to the *governing body* about that function; and
 - (b) putting matters for decision about that function to the *governing body*.
- 26.7.3** **G** In general, the FCA expects that a person to whom overall responsibility for a function is allocated as described in ■ SYSC 26.7.1G will be the most senior employee or officer responsible for managing or supervising that function under the management of the *governing body*.
- 26.7.4** **G**
- (1) A *person* with overall or local responsibility for a matter will either be a member of the *governing body* or will report directly to the *governing body* for that matter.
 - (2) For example, a *firm* appoints A to be head of sales. A is not on the *governing body*. A reports to an executive director (B) and B reports to the *governing body* about the sales function. In this example B, rather than A, has overall responsibility for sales.
- 26.7.5** **G**
- (1) A *person* who reports to another, or is subject to oversight by another, may still have overall or local responsibility for a function.
 - (2) For example, a head of compliance may report direct to the *governing body* but be subject to performance appraisal by the *chief executive*. In this example, the head of compliance will still have overall responsibility for compliance.

- (3) If a person (A):
- (a) reports directly to the *firm's governing body* about a particular matter; but
 - (b) is not a member of the *governing body*; and
 - (c) reports to a member of the *governing body* (B) about that matter, who also reports to the *governing body* about that matter;
- B has overall or local responsibility for that matter.
- (4) If:
- (a) a person (A) reports directly to the *firm's governing body* about a particular matter;
 - (b) A also reports to another person (B) about that matter;
 - (c) neither A nor B is a member of the *governing body*; and
 - (d) B also reports directly to the *firm's governing body* about that matter;
- B has overall responsibility for that matter.
- (5) A member of the *governing body* who reports to the *chief executive* may still have overall or local responsibility for a function.
- (6) If:
- (a) a person (A) reports directly to the *firm's governing body* about a particular matter; and
 - (b) A's function is subject to oversight by a *non-executive director* (B) or by a committee of the *firm's governing body* chaired by B;
- A (not B) has overall or local responsibility for that matter.

26.7.6

G

A person may have local responsibility for a function for a *branch* of an overseas *SMCR firm* even though that person also reports to a person outside the branch.

26

G

26.8 Meaning of local and overall responsibility: Not reporting to the governing body

Scope of this section

26.8.1

G

This section relates to the allocation of overall or local responsibility for any activities, business areas and functions of the *firm* which are not under the management of its *governing body* (see ■ SYSC 26.3 (Main rules)).

Branches: Responsibility held outside the management structure of branch

26.8.2

G

A person having local responsibility for a function for a *branch* does not need to be part of the management structure of the *branch* in order to have local responsibility for the function.

Branches: Setting overall strategy for a branch

26.8.3

G

- (1) Generally, where a *overseas SMCR firm* allocates responsibility as described in ■ SYSC 26.8.1G to one of the *firm's SMF managers* who is not based in the *branch* the *FCA* would expect:
 - (a) that the responsibility would not be allocated to a manager whose responsibilities for the *branch* are limited to setting overall strategy for the *branch*; and
 - (b) that, instead, the *firm* would allocate it to a manager who is the most senior *person* responsible for implementing the strategy for the *branch*.
- (2) See ■ SUP 10C.1.5AG for more about how the difference between strategic and implementing responsibilities affects the *FCA* senior managers regime for *approved persons* in *overseas SMCR firms*.

Branches: Seniority

26.8.4

G

- (1) In some cases, a *person* who has local responsibility for a particular function may be very senior within the *firm* as a whole.
- (2) For instance, in some *branches*, an individual with local responsibility for a function may also be the head of the *firm's Europe and Middle East division* for a business line and may be more senior within the *firm* as a whole than the *person* performing the *PRA's Head of Overseas Branch designated senior management function*.

26.8.5

G

UK firms

Having overall responsibility for a function as described in ■ SYSC 26.8.1G for a *UK SMCR firm* means being the most senior employee or officer (under the *chief executive* if there is one) responsible for managing or supervising that function.

26.9 Who functions should be allocated to

Seniority

26.9.1

G

The FCA expects that anyone who has overall or local responsibility for a matter:

- (1) will be sufficiently senior and credible; and
- (2) will have sufficient resources and authority;

to be able to exercise their management and oversight responsibilities effectively.

26.9.2

G

- (1) The FCA would not consider it unusual if a person who has overall or local responsibility for a particular function was not a member of the firm's governing body or equivalent.
- (2) For example, in some firms, the head of compliance may report directly to the firm's governing body even though the head of compliance is not a member of the governing body.

26.9.3

G

Other parts of this chapter dealing with seniority are:

- (1) ■ SYSC 26.7.3G (seniority of someone with overall responsibility for a function under the management of a firm's governing body);
- (2) ■ SYSC 26.8.3G and ■ SYSC 26.8.4G (seniority of someone from elsewhere in the firm having local responsibility in a branch); and
- (3) ■ SYSC 26.8.5G (seniority of someone within a UK SMCR firm with overall responsibility for a function not under the management of a firm's governing body).

Not giving too much responsibility to one individual

26.9.4

G

- (1) It will be common for a small non-complex firm to divide overall or local responsibility for its activities under the management of its governing body between members of its governing body and not to assign overall or local responsibility for any activity to someone who is not a member.
- (2) However, when deciding how to divide up overall or local responsibility for its activities, a firm should avoid assigning such a

26.9.5

G

wide range of responsibilities to a particular *person* that the *person* is not able to carry out those responsibilities effectively.

- (3) Therefore, in a large or complex *firm*, the *FCA* expects overall or local responsibility for some functions to be assigned to *persons* in the layer of management below the *governing body*. Anyone in that layer having overall or local responsibility for an activity will be performing a *designated senior management function*.

26.9.6

G

■ SYSC 26.9.4G(2) also applies to allocating responsibility for functions that are not under the management of the *firm's* or *branch's governing body*.

Dividing and sharing management functions between different people

26.9.7

G

The following provisions of ■ SYSC 24.3 (Who prescribed responsibilities should be allocated to) also apply to allocations under this chapter so far as those provisions deal with sharing responsibilities:

- (1) ■ SYSC 24.3.8G (responsibilities should generally not be shared);
- (2) ■ SYSC 24.3.9G (when responsibilities may be shared); and
- (3) ■ SYSC 24.3.11G (*statements of responsibilities*);

- (1) The material in ■ SYSC 24.3 (Who prescribed responsibilities should be allocated to) about splitting of responsibilities is not directly relevant to this chapter. This is because ■ SYSC 24 deals with functions that have been defined in the *FCA Handbook* whereas this chapter does not define the areas into which a *firm's* activities should be divided when allocating responsibilities to its *SMF managers*.
- (2) However ■ SYSC 24.3.10G (responsibilities should be grouped together appropriately) is also relevant for deciding whether responsibility for a particular set of matters should be allocated to one *SMF manager* or allocated between several.

- 26**
- 26.10.1** **G**
- (1) This chapter requires overall or local responsibility for various aspects of a *firm's* affairs to be allocated to an *SMF manager*.
 - (2) This requirement does not prevent a *firm* from relying on an employee of a company in the same group to perform the function.
 - (3) A *firm* has two main choices about how to fit such arrangements into the senior managers regime for *SMCR firms*.
 - (a) The group employee is appointed by the *firm* (usually by its *governing body* if it has one) to perform the function. This means that the *firm* will have entered into an arrangement with that *person*. As explained in ■ SUP 10C.3.9G, an arrangement with the *firm* is one of the factors that makes the senior managers regime for *SMCR firms* apply. The result is that the group official will be performing a *controlled function* and will need to be approved as an *SMF manager*.
 - (b) The *firm* appoints someone (A) to supervise what the group employee does (so far as it concerns the *firm*) and allocates responsibility for the function to A, leaving day-to-day activities to the group employee. A will need to be approved as an *SMF manager*.
- 26.10.2** **G**
- SYSC 26.10.1G also applies to a *firm* that outsources functions to a third party and is relying on an individual from the outsourced services provider to carry out the functions in those paragraphs.
- 26.10.3** **G**
- (1) This chapter does not cover responsibility for an aspect of a *PRA-authorised person's* affairs managed by an individual approved to perform the Group Entity Senior Manager or the Group Entity Senior Insurance Manager *PRA-designated senior management function* (see ■ SYSC 26.4.2R (Exclusions where other requirements apply)).
 - (2) Where a responsibility is held by someone approved to perform one of those *PRA-designated senior management functions* for the *PRA-authorised person*, there is no need to appoint that person under this chapter and apply the arrangements in ■ SYSC 26.10.1G.

- (3) (a) The *statement of responsibilities* for the individual performing the *PRA-designated senior management function*; and
(b) the *firm's management responsibilities map*;
should clearly show what responsibilities are held by that individual.

26



26.11

Link between this chapter and other parts of the senior managers regime

Link between designated senior management functions and this chapter

26.11.1 **G**

- (1) Having overall or local responsibility for an activity under this chapter requires approval as an *SMF manager*. This is because a person who has overall or local responsibility for an activity will be:
 - (a) performing the *other overall responsibility function* or the *other local responsibility function*; or
 - (b) approved to perform another *designated senior management function*.
- (2) The *other overall responsibility function* applies because this is the effect of ■ SUP 10C.7.1R (definition of *other overall responsibility function*).
- (3) ■ SUP 10C.7.1R(2) says that the *other overall responsibility function* does not apply to a person who is approved to perform another *designated senior management function*.
- (4) The *other local responsibility function* applies because this is the effect of ■ SUP 10C.8.1R (Definition of the *other local responsibility function* (SMF22)).
- (5) ■ SUP 10C.8.1R(2) says that the *other local responsibility function* does not apply to a person who is approved to perform another *designated senior management function* in relation to the *branch*.

Link between SYSC 25 Annex 1G and this chapter

26.11.2 **G**

- (1) The purpose of ■ SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm) is to help a *firm* to prepare its *management responsibilities map* (see ■ SYSC 25.7.2G).
- (2) There is no direct link between ■ SYSC 25 Annex 1G and this chapter.
- (3) However, a *firm* may find ■ SYSC 25 Annex 1G useful as a prompt to help it make sure that it has not failed to allocate overall or local responsibility under this chapter for a particular activity of the *firm*.

- (4) If a *firm* uses ■ SYSC 25 Annex 1G as a prompt when it allocates overall or local responsibility as described in (3), it should bear in mind that it is not comprehensive (see ■ SYSC 25.7.8G).

26.11.3 **G** The FCA does not require:

- (1) there to be a separate person with overall responsibility for each individual business area in ■ SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm); or
a *firm* to allocate functions under this chapter using the same split of business areas as in ■ SYSC 25 Annex 1G.

Overall responsibility for internal operations

26.11.4 **G** If a *firm* does not have anyone who performs the *chief operations function* (or the equivalent *PRA-designated senior management function*) the *firm* should allocate responsibility for the functions in ■ SUP 10C.6B.4G (The chief operations function (SMF24)) among its *SMF managers* under this chapter.

Chapter 27

Senior managers and certification regime: Certification regime

27
27.1.1

R

This chapter applies to an *SMCR firm*, except those excluded from this chapter by ■ SYSC 27.6 (Other exclusions).

27.1.2

G

This chapter is also relevant to *employees* of *SMCR firms* performing functions specified as *FCA certification functions*.

27.1.3

G

- (1) This chapter is about the *FCA's certification regime*.
- (2) Under this regime, a *firm* should ensure that its employees only perform an *FCA certification function* if they have a certificate issued by that *firm* to perform that function.
- (3) The purpose of this chapter is to specify '*FCA certification functions*' and to give *guidance* on the *FCA's certification regime*.

27.1 Application and purpose

Application

27.1.1

R

This chapter applies to an *SMCR firm*, except those excluded from this chapter by ■ SYSC 27.6 (Other exclusions).

27.1.2

G

This chapter is also relevant to *employees* of *SMCR firms* performing functions specified as *FCA certification functions*.

Purpose

27.1.3

G

- (1) This chapter is about the *FCA's certification regime*.
- (2) Under this regime, a *firm* should ensure that its employees only perform an *FCA certification function* if they have a certificate issued by that *firm* to perform that function.
- (3) The purpose of this chapter is to specify '*FCA certification functions*' and to give *guidance* on the *FCA's certification regime*.

27.2 Requirements of the certification regime

General

- 27.2.1** **G** Most of the requirements of the certification regime are in the *Act*. This section summarises and gives *guidance* on them.
- 27.2.2** **G** ■ SYSC TP 5, ■ SYSC TP 7 and ■ SYSC TP 8 contain transitional material about the certification regime. This includes material about the fact that:
- (1) the requirement in ■ SYSC 27.2.3G did not come into force at the same time as the rest of the certification regime; and
 - (2) the certification regime came into force at different times for different types of *firm*.

27

Basic requirements

- 27.2.3** **G** Under **section 63E(1)** of the *Act*, a *firm* must take reasonable care to ensure that no *employee* of the *firm* performs an *FCA certification function* under an arrangement entered into by the *firm* in relation to the carrying on by that *firm* of a *regulated activity*, unless the *employee* has a valid certificate issued by that *firm* to perform the function to which the certificate relates.

Fitness to act

- 27.2.4** **G** Under **section 63F** of the *Act*, a *firm* may issue a certificate to a *person* only if the *firm* is satisfied that the *person* is a fit and proper *person* to perform the *FCA certification function* to which the certificate relates.

- 27.2.5** **G** Under **section 63F** of the *Act*, in assessing if a *person* is fit and proper to perform an *FCA certification function*, a *firm* must have regard, in particular, to whether that *person*:
- (1) has obtained a qualification;
 - (2) has undergone, or is undergoing, training;
 - (3) possesses a level of competence; or
 - (4) has the personal characteristics, required by general *rules* made by the *FCA*.

27.2.6	G	<p>■ FIT 1.3 provides guidance to <i>firms</i> about the criteria that the <i>FCA</i> would expect the <i>firm</i> to consider in assessing if a <i>person</i> is fit and proper to perform an <i>FCA certification function</i>.</p>
27.2.7	G	<p>■ SYSC 22 (Regulatory references) deals with obtaining references from a previous employer when a <i>firm</i> is planning to appoint someone to perform a <i>certification function</i> as part of its assessment of whether that <i>person</i> is fit and proper.</p>
27.2.8	G	<p>(1) A <i>person</i> seconded from a contractor may fall into the certification regime. The material in ■ SYSC 27.4.1G is relevant to when this is the case.</p> <p>(2) In deciding whether a <i>person</i> seconded from a contractor is fit and proper, the <i>firm</i> may take into account information and references from the contractor.</p> <p>(3) In deciding how much reliance to put on the contractor, the <i>firm</i> should take into account:</p> <p class="list-item-l1">(a) the familiarity of the contractor with the obligations of <i>firms</i> under this chapter, the corresponding <i>PRA</i> requirements (if the <i>firm</i> is a <i>PRA-authorised person</i>) and the requirements of the <i>Act</i> described in this chapter;</p> <p class="list-item-l1">(b) whether any reference directly addresses the criteria in <i>FIT</i>; and</p> <p class="list-item-l1">(c) the degree to which the <i>firm</i> believes it can rely on the contractor's judgement about the secondee's fitness and properness and the grounds for that belief.</p>
Issuing and renewing certificates		
27.2.9	G	<p>Under section 63F of the <i>Act</i>, a certificate issued by a <i>firm</i> to a <i>person</i> must:</p> <p class="list-item-l1">(1) state that the <i>firm</i> is satisfied that the <i>person</i> is fit and proper to perform the function to which the certificate relates; and</p> <p class="list-item-l1">(2) set out the aspects of the affairs of the <i>firm</i> in which the <i>person</i> will be involved in performing the function.</p>
27.2.10	G	<p>(1) The <i>Act</i> says that a certificate is valid for a period of 12 months, beginning with the day on which it is issued.</p> <p>(2) The <i>FCA</i> believes that the <i>Act</i> allows a <i>firm</i> to draft a certificate to expire after fewer than 12 months. The <i>FCA</i> interprets the <i>Act</i> in this way because to require a <i>firm</i> to make a certificate last longer than the <i>firm</i> thinks best is likely to make it harder for the <i>firm</i> to ensure the fitness of its <i>certification employees</i>. That would undermine the purpose of the certification regime in the <i>Act</i>.</p> <p>(3) A certificate cannot be drafted to last more than 12 months.</p>
27.2.11	G	<p>Under section 63F of the <i>Act</i>, if, after having considered if a <i>person</i> is fit and proper to perform an <i>FCA certification function</i>, a <i>firm</i> decides not to issue a</p>

- certificate to that *person*, the *firm* must give the *person* a notice in writing stating:
- (1) what steps (if any) the *firm* proposes to take in relation to the *person* as a result of the decision; and
 - (2) the reasons for proposing to take those steps.
- 27.2.12** **G** If, after having considered whether a *person* is fit and proper to perform an *FCA certification function*, a *firm* decides not to issue a certificate to that *person*, it should consider if the circumstances warrant making a notification to the *FCA* for a breach of the *rules* in *COCON* pursuant to ■ SUP 15.3.11R (Breaches of rules and other requirements in or under the Act or the CCA).
- 27.2.13** **G** Under section 63F of the *Act*, a *firm* must maintain a record of every *employee* who has a valid certificate issued by it.
- 27.2.14** **G**
- (1) A *firm* need not issue multiple certificates for one of its *employees* even if they perform several *FCA certification functions* as part of the same job.
 - (2) Similarly, a *firm* need not issue multiple certificates for one of its *employees* who performs an *FCA certification function* that is made up of a number of different functions.
 - (3) An example of an *FCA certification function* in (2) is the material risk taker *FCA certification function* described in ■ SYSC 27.8.14R.
■ SYSC 27.8.14R says that each function carried out by someone who is covered by that *rule* is an *FCA certification function*.
 - (4) Rather than having to issue multiple certificates, a *firm* may, in a single certificate, describe the *employee's* functions that involve an *FCA certification function* in broad terms, and without listing all the activities that the function may involve.
 - (5) A *firm* should assess whether the *employee* is fit and proper to perform all aspects of the *employee's* functions that involve an *FCA certification function* as described by a certificate.
 - (6) Although a *firm* does not need to issue multiple certificates for an *employee* who performs several different *certification functions*, under the requirements in ■ SUP 16.26 (Reporting of Directory persons) the *firm* will need to specify each of the *certification functions* which the *employee* has been assessed as fit and proper to perform and for which the *employee* has a certificate at the time of the report.
- 27.2.15** **G**
- (1) In cases where a *certification employee's* role changes to involve a new *FCA certification function* part way through the 12-month period for which their certificate is valid, the *firm* may need to reissue the certificate.
 - (2) If that new function has different requirements relating to:
 - (a) personal characteristics;

- (b) the level of competence, knowledge and experience;
(c) qualifications; or
(d) training;

the *FCA* would expect the *firm* to assess whether the *employee* is fit and proper to perform that new function before they start it.

- (3) In such a case, the *firm* should not wait until the point of annual reassessment to determine whether the *employee* is fit and proper for the new function.
- (4) A *firm* may not need to issue a new certificate if:
- (a) applying the conditions in paragraph (2), the *firm* concludes that no re-assessment is required; and
- (b) the certificate is drafted broadly enough to cover the new *FCA certification function*.
- (5) Paragraphs (1) to (4) also apply if a *certification employee*'s role changes part way through the 12-month period without the new role involving a new *FCA certification function*.

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27.2.16 G

- (1) This paragraph gives further guidance on the flexibility a *firm* has in drafting its certificates.
- (2) A certificate may cover functions that a *certification employee* is not currently performing, as long as the *firm* has assessed the *employee*'s fitness for these additional functions. This is subject to (3).
- (3) When a *firm* is deciding what a certificate can cover beyond the functions that the *certification employee* is currently performing, it should take the factors in ■ SYSC 27.2.15G(2) into account. A certificate should not normally cover an additional function if ■ SYSC 27.2.15G(2) would require the *firm* to consider the *employee*'s fitness before allowing them to perform it.
- (4) A *firm* may, if it wishes, restrict a certificate to the functions that the *certification employee* is currently performing rather than drafting the certificate more widely as described in (2) and (3).
- (5) ■ SYSC 27.2.10G deals with the flexibility a *firm* has in choosing the period for which a certificate lasts.

27.3 Territorial scope

27.3.1

R

- (1) A function is an *FCA certification function* for a *UK SMCR firm* only to the extent:
- (a) it is performed by a *person* from an establishment of the *firm* (or its *appointed representative*) in the *United Kingdom*; or
 - (b) the *person* performing that function is dealing with a *client* of the *firm* in the *United Kingdom* from an establishment of the *firm* (or its *appointed representative*) overseas.
- (2) A function is an *FCA certification function* for an *overseas SMCR firm* only to the extent that it is performed by a *person* from an establishment of the *firm* (or its *appointed representative*) in the *United Kingdom*.
- (3) Paragraph (1) does not apply to *FCA certification function* (6) (material risk takers). For a *UK SMCR firm*, *FCA certification function* (6) applies without any territorial limitation.

27.3.2

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The *FCA* interprets the phrase 'dealing with' in ■ SYSC 27.3.1R as including having contact with *clients* and extending beyond 'dealing' as used in the phrase 'dealing in investments'. 'Dealing in' is used in Schedule 2 to the *Act* to describe in general terms the *regulated activities* which are specified in Part I of the *Regulated Activities Order*.

27.3.3

G

The *FCA* interprets the phrase 'a *client* of the *firm* in the *United Kingdom*' in ■ SYSC 27.3.1R as referring to:

- (1) for a *client* which is a body corporate, its office or *branch* in the *United Kingdom*; or
- (2) for a *client* who is an individual, a *client* who is in the *United Kingdom* at the time of the dealing.

27.3.4

G

- (1) The *Regulated Activities Order* has an effect on the territorial scope of this chapter.
- (2) As explained in ■ SYSC 27.7.1R (General requirements), a function is only an *FCA certification function* if it is connected to *regulated activities*.

27.3.5

G

- (3) Therefore where overseas activities are excluded from being *regulated activities* by the *Regulated Activities Order*, that will have an effect on the certification regime.
- (1) An example of ■ SYSC 27.3.4G is the territorial restriction relating to *regulated claims management activities*.
- (2) As explained in ■ PERG 2.4A (Link between regulated claims management activities and Great Britain), a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.
- (3) The result is that a claims management activity specified in the *Regulated Activities Order* carried on outside *Great Britain* is an *unregulated activity* for the purposes of this chapter and the *FCA certification functions*.
- (4) This restriction:
- (a) applies to the *FCA certification function* in ■ SYSC 27.3.1R(3) as well as to the other *FCA certification functions*; and
- (b) applies in addition to the restriction in ■ SYSC 27.3.1R.

27

27.4 General material about the scope of the certification regime

27.4.1

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Employees

- (1) The certification regime only applies to an *employee*.
 - (2) This definition includes a *person* who:
 - (a) personally provides, or is under an obligation personally to provide, services to the *firm* in question under an arrangement made between the *firm* and the *person* providing the services or another *person*; and
 - (b) is subject to (or to the right of) supervision, direction or control by the *firm* as to the manner in which those services are provided.
-
- (1) A *person* who works for an *appointed representative* of a *firm* may fall into the certification regime. In practice, however, they may not meet the conditions for the certification regime to apply.
 - (2) One condition for the certification regime to apply to a *person* is that the *person* performs a *certification function* under an arrangement entered into by the *firm* (see ■ SYSC 27.2.3G). However, unlike the equivalent parts of the *Act* for the *approved persons* regime, the *Act* does not say that the certification regime applies if the function is performed under an arrangement entered into by the employee with a contractor of the *firm* instead of the *firm*.
 - (3) The certification regime only applies if the *person* concerned is an *employee*. This is defined in ■ SYSC 27.4.1G. In many cases, a *person* working for an *appointed representative* will not fall into this definition as they may not:
 - (a) provide services to the *firm*; or
 - (b) be subject to (or to the right of) supervision, direction or control by the *firm*.
 - (4) If none of these limitations on the scope of the certification regime apply, a *person* working for an *appointed representative* will be subject to the certification regime, as long as the other conditions in this chapter are met.

27.4.3

G

Effect of PRA requirements

A function does not cease to be an *FCA certification function* if that function is also a *PRA certification function*.

27.5 Exclusions for emergency and temporary appointments

27.5.1

R

Emergency appointments

- (1) If:
- (a) a *firm* appoints an individual to perform a function which, but for this *rule*, would be an *FCA certification function*;
 - (b) the appointment is to provide cover for a *certification employee* whose absence is reasonably unforeseen; and
 - (c) the appointment is for less than four weeks;
- then the performance by that individual of such function does not constitute an *FCA certification function*.
- (2) This *rule* does not apply to *FCA certification function* (4) (functions requiring qualifications).

27.5.2

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■ SYSC 27.5.1R does not apply to *FCA certification function* (4) (functions requiring qualifications). Where there is an unforeseen absence of an *employee* performing a function for which there is a qualification requirement:

- (1) the *firm* should take reasonable care to ensure that no *employee* of that *firm* performs that function without a valid certificate; and
- (2) the certificate should be issued before the *person* starts to perform the function.

Temporary UK role (the 30-day rule)

27.5.3

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- (1) None of the *FCA certification functions* extend to an individual ("P") in relation to a *firm* if:
- (a) P is based outside the *United Kingdom* for the *firm*; and
 - (b) in a 12-month period, P spends no more than 30 days performing what would otherwise be an *FCA certification function* for that *firm* within the territorial scope of this chapter as described in ■ SYSC 27.3.1R.
- (2) Paragraph (1) only applies to the extent that P is appropriately supervised by:
- (a) one of the *firm's SMF managers*; or

- (b) one of the *firm's certification employees* whose certificate covers the *FCA certification function* that is to be disapproved under (1).
- (3) This *rule* does not apply to any *FCA certification function* to the extent that it involves:
- (a) giving advice or performing related activities in connection with *pension transfers, pension conversions or pension opt-outs for retail clients*; or
 - (b) giving advice to a *person* to become, or continue or cease to be, a member of a particular Lloyd's syndicate.
- (4) In the case of a *UK SMCR firm*, this *rule* does not apply to *FCA certification function* (6) (material risk takers).

27.5.4

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■ SYSC 27 Annex 1G gives examples of how ■ SYSC 27.5.3R works.

27.5.5

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The *FCA* would expect an individual from overseas using the temporary *UK role rule* in ■ SYSC 27.5.3R to be accompanied on a visit to a *customer* in the *United Kingdom*.

27.5.6

G

An individual benefiting from the temporary *UK role rule* in ■ SYSC 27.5.3R may still be subject to the requirements of *TC* (Training and competence). However, ■ TC 2.1.9R gives an exemption from certain qualification requirements in *TC* to an individual benefiting from the temporary *UK role rule*.

27.6 Other exclusions

Single Market Directives

27.6.1

G

Under section 63E(7) of the Act (to the extent that it continues in force under the standstill direction), this chapter does not apply to an arrangement which allows an *employee* to perform a function if the question of whether the *employee* is fit and proper to perform the function is reserved under certain European legislation to an authority in a country or territory outside the *United Kingdom*. The standstill direction means the standstill direction as defined in the direction made by the FCA under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on *IP completion day* and is titled "FCA Transitional Direction".

Insolvency

27.6.2

R

This chapter does not apply to a function performed by a *person* acting as:

- (1) an insolvency practitioner under section 388 of the Insolvency Act 1986;
- (2) a nominee in relation to a voluntary arrangement under Part I (Company Voluntary Arrangements) of the Insolvency Act 1986;
- (3) an insolvency practitioner under article 3 of the Insolvency (Northern Ireland) Order 1989; or
- (4) a nominee in relation to a voluntary arrangement under Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

Non-executive directors

27.6.3

R

A function performed by a *non-executive director* of a *firm* acting as such is not an *FCA certification function* for that *firm*.

Benchmarks

27.6.4

R

- (1) This chapter does not apply to a *firm* in relation to *benchmark activities*.
- (2) In particular, this chapter does not apply to a *pure benchmark SMCR firm*.

27	<p>27.6.5 G Some benchmark activities are within the certification regime under ■ SYSC TP 7.5 (Transitional provisions about benchmarks and the certification regime).</p> <p>Overall responsibility</p> <p>27.6.6 R Performing any of the following is not an <i>FCA certification function</i>:</p> <ol style="list-style-type: none">(1) a responsibility allocated to an <i>SMF manager</i> under ■ SYSC 26.3 (Main rules); or(2) a responsibility allocated to someone under ■ SYSC 26.4.6R (Exclusion where the 12-week rule applies). <p>27.6.7 R ■ SYSC 27.6.6R does not apply to having overall or local responsibility for the <i>SMCR legal function</i>.</p> <p>Administrators</p> <p>27.6.8 R A function in paragraph (A) of row (6) of the table in ■ COCON 1.1.2R (Table: To whom does COCON apply?) is not an <i>FCA certification function</i>.</p> <p>Exclusions: Sole traders</p> <p>27.6.9 G</p> <ol style="list-style-type: none">(1) An individual <i>sole trader</i> will not themselves be a <i>certification employee</i>.(2) However members of a <i>sole trader's</i> staff may be.(3) Therefore the certification regime does not apply to a <i>sole trader</i> with no <i>employees</i>. <p>Exclusions: Internally managed AIFs</p> <p>27.6.10 R This chapter does not apply to a <i>firm</i> that meets the following conditions:</p> <ol style="list-style-type: none">(1) it is an <i>internally managed AIF</i>;(2) it is a <i>body corporate</i>; and(3) it is not a <i>collective investment scheme</i>.
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27.7 Specification of functions

General requirements

27.7.1 R In accordance with section 63E of the Act (Certification of employees by authorised persons), a function is an *FCA certification function* only if, in relation to the carrying on of a *regulated activity* by a *firm*, that function:

- (1) is not a *controlled function* in relation to the carrying on of that *regulated activity* by that *firm*; and
- (2) will require the *person* performing it to be involved in one or more aspects of the *firm's* affairs, so far as relating to that *regulated activity*.

27

Scope: FCA certification functions

27.7.2 R In accordance with section 63E(3) of the Act, the functions in the table in SYSC 27.7.3R are *FCA certification functions*.

27.7.3 R Table: FCA certification functions

Function	Where defined
(1) CASS oversight	SYSC 27.8.1R
(2) Proprietary trader	SYSC 27.8.3R
(3) Significant management	SYSC 27.8.4R
(4) Functions requiring qualifications	SYSC 27.8.10R
(5) Managers of certification employees	SYSC 27.8.13R
(6) Material risk takers	SYSC 27.8.14R
(7) Client-dealing	SYSC 27.8.18R
(8) Algorithmic trading	SYSC 27.8.23R

27.7.4 G

- (1) If a function falls into more than one of the *FCA certification functions* in the table in SYSC 27.7.3R, all of those *FCA certification functions* apply to it.
- (2) For example, if a *person's* job involves both *FCA certification function* (4) (functions requiring qualifications) and (6) (material risk takers), the emergency appointments rule (SYSC 27.5.1R) does not apply to that job.

- (3) Another example is the *rule* about the territorial scope of this section (■ SYSC 27.3.1R)) for a *UK SMCR firm*. For example, if a person's job involves both *FCA certification function* (4) (functions requiring qualifications) and (6) (material risk takers), the territorial restriction in that *rule* does not apply to that job. Instead, this chapter applies without any territorial limitation.
- (4) The reason for (3) is that ■ SYSC 27.3.1R(3) says that there is no territorial limitation on *FCA certification function* (6) for a *UK SMCR firm*. As explained in (1), it does not matter that the job also involves *FCA certification function* (4), to which the territorial limitation does apply.

Overlap with designated senior management functions

27.7.5

G

- (1) ■ SYSC 27.7.1R(1) means that an *FCA-designated senior management function* cannot also be an *FCA certification function* at the same time.
- (2) So an *SMF manager* performing an activity that forms part of their *FCA-designated senior management function* is not, by performing that activity, also performing an *FCA certification function*.
- (3) But if an *FCA-designated senior management function* does not apply to a *firm*, performing the function described in the definition of that *FCA-designated senior management function* can be an *FCA certification function*.
- (4) See ■ SYSC 27.8.7AG for an example of this.

27.8 Definitions of the FCA certification functions

27.8.1

R

CASS oversight function

- (1) Each of the following is an *FCA certification function*:
 - (a) in relation to a *CASS medium firm* and a *CASS large firm* (other than a *CASS large debt management firm*), the function of acting in the capacity of a *person* who is allocated the function in ■ CASS 1A.3.1AR (oversight of operational effectiveness);
 - (b) in relation to a *CASS large debt management firm*, the function of acting in the capacity of a *person* who is allocated the function in ■ CASS 11.3.4R (oversight of operational effectiveness);
 - (c) in relation to a *CASS small firm*, the function of acting in the capacity of a *person* who is allocated the function in ■ CASS 1A.3.1R (oversight of operational effectiveness);
 - (d) in relation to a *firm* to which ■ CASS 13 (Claims management: client money) applies, the function of acting in the capacity of a *person* who is allocated the function in ■ CASS 13.2.3R (Organisational requirements and responsibility for CASS operational oversight).
- (2) A function in (1) is not an *FCA certification function* for that *firm* if it is performed by an *SMF manager* of that *firm*.

27.8.2

G

- SYSC 27.8.1R(1) only applies to a *firm* to the extent that *CASS* applies to that *firm*.

Proprietary trader function

27.8.3

R

- The function of acting as a *proprietary trader* whose activity involves, or might involve, a risk of significant harm to the *firm* or any of its *customers* is an *FCA certification function*.

Significant management function

27.8.4

R

- (1) The function of acting as a *senior manager*, with significant responsibility for a significant business unit, is an *FCA certification function*.
- (2) For an *overseas SMCR firm's branch* in the *United Kingdom*, the significant management function is limited to business units of the *branch*.

- 27.8.5** **G** A senior manager carrying on the significant management FCA certification function under ■ SYSC 27.8.4R could, for example, be:
- (1) the head of a unit carrying on the activities of:
 - (a) retail banking;
 - (b) personal lending;
 - (c) corporate lending;
 - (d) salvage or loan recovery;
 - (e) *proprietary trading*;
 - (f) *designated investment business*;
 - (g) *effecting contracts of insurance*;
 - (h) *credit-related regulated activity*;
 - (i) making material decisions on the commitment of the firm's financial resources, its financial commitments, its assets acquisitions, its liability management or its overall cash and capital planning;
 - (j) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters;
 - (k) administration of *contracts of insurance*;
 - (l) complaints handling; or
 - (m) determining whether an applicant should be accepted for *credit* (including lending) and on what terms; or
- (2) a member of a committee (that is, a person who, together with others, has authority to commit the firm) making decisions in these functions.
- 27.8.6** **G** The examples in ■ SYSC 27.8.5G are illustrative only. They are not intended to be exhaustive.
- 27.8.7** **G** A business unit is not limited to one that carries on commercial activities with customers and third parties or that earns revenue. A business unit can be an internal support department that has no contact with people outside the firm. It may include, for example, human resources, the legal department, operations or information technology.
- 27.8.7A** **G**
- (1) An example of ■ SYSC 27.7.5G is that a person performs the significant management FCA certification function if:
 - (a) the person performs a role coming within the definition of one of the following roles:
 - (i) an *FCA-designated senior management function* described in ■ SUP 10C.6A (Systems and controls functions: Finance, risk and internal audit); or
 - (ii) the *chief operations function*; and
 - (b) that *FCA-designated senior management function* does not apply to the firm.

- (2) For example, if a *core SMCR firm* has a chief risk officer, the chief risk officer will not be performing the *chief risk officer function* because the *chief risk officer function* does not apply to core *SMCR firms*. Instead that person will perform the significant management *FCA certification function*.
- (3) (2) does not apply if the chief risk officer performs that role as part of their job as an executive director. The *executive director function* applies to *core SMCR firms* and so that person will be performing the *executive director function* rather than the significant management *FCA certification function*.

27.8.8

G

For the purposes of the definition of the significant management *FCA certification function*, the following additional factors about the *firm* should be considered:

- (1) the size and significance of the *firm's* business in the *United Kingdom* – for example, a *firm* carrying on *designated investment business* may have a large number of *certification employees* (for example, in excess of 100 individuals); or a *firm* carrying on general insurance business may have gross written *premiums* in excess of £100m;
- (2) the number of *regulated activities* carried on, or proposed to be carried on, by the *firm* and (if relevant) other members of the *group*;
- (3) its *group structure* (if it is a member of a *group*);
- (4) its *management structure* (for example, matrix management); and
- (5) the size and significance of its international operations, if any.

27.8.9

G

When considering whether a business unit is significant for the purposes of ■ SYSC 27.8.4R, the *firm* should take into account all relevant factors in the light of the *firm's* current circumstances and its plans for the future, including:

- (1) the risk profile of the unit;
- (2) its use or commitment of the *firm's* capital;
- (3) its contribution to the profit and loss account;
- (4) the number of *employees*, *certification employees* or *SMF managers* in the unit;
- (5) the number of *customers* of the unit; and
- (6) any other factor which makes the unit significant to the conduct of the *firm's* affairs so far as relating to the *regulated activity*.

27.8.10

R

Functions requiring qualifications

- (1) Each function involving an activity for which there is a qualification requirement as specified in **TC App 1.1.1R** (Activities and Products/Sectors to which *TC* applies) is an *FCA certification function*.
- (2) For an *overseas SMCR firm*, each function involving an activity for which there would have been a qualification requirement, as specified in (1) if the *firm* had been a *UK SMCR firm*, is an *FCA certification function*.
- (3) A *person* performs the *FCA certification function* in this *rule* even if:
 - (a) the time period within which the *person* must have obtained the qualification requirement has not yet expired; or
 - (b) the *person* is exempt from the qualification requirement.

27.8.11

G

- (1) **SYSC 27.8.10R** (Functions requiring qualifications) may still apply to an *SMCR firm* where one of the exclusions in **TC App 3.1** (Circumstances in which *TC* does not apply) or elsewhere in *TC* applies.
- (2) **SYSC 27.8.10R** applies to an *overseas SMCR firm* irrespective of whether the function in **TC App 1.1.1R** (Activities and Products/Sectors to which *TC* applies) applies to *EEA PTV firms* or *overseas firms* for the purposes of *TC*.
- (3) The territorial scope of qualification requirements as specified in **TC App 2.1.1R** (Territorial Scope subject to the limitation in *TC* Appendix 3) does not apply to the *FCA certification function* in **SYSC 27.8.10R**. However **SYSC 27.3.1R** (Territorial scope) restricts the scope of this chapter outside the *United Kingdom*.

27.8.12

G

- SYSC 27.8.10R(3)** means that a *person* performs the *FCA certification function* in **SYSC 27.8.10R** even if for example they are:
- (1) still in training and do not yet need to have the qualification; or
 - (2) exempt under **TC 2.1.9R** (Exemption from appropriate qualification requirements).

Managers of certification employees

27.8.13

R

- (1) The function of managing or supervising a *certification employee*, directly or indirectly, is an *FCA certification function*.
- (2) A function in (1) is not an *FCA certification function* for that *firm* if it is performed by an *SMF manager* of that *firm*.

Material risk takers

27.8.14

R

- Each function performed by a *person* in column (2) of the table in **SYSC 27.8.15R** is an *FCA certification function* with respect to a *firm* in the corresponding entry in column (1).

27.8.15

R

Table: Definition of material risk taker

Type of SMCR firm	Employees included
(1) An <i>SMCR banking firm</i> , including an <i>EEA SMCR banking firm</i>	Each member of the <i>dual-regulated firms Remuneration Code staff</i> of the <i>firm</i> in column (1) of this row (1).
(2) [deleted]	
(3) A <i>Solvency II firm</i>	<i>Persons referred to in articles 275.1(c) and (d) of Solvency II Regulation 2015/35 (key functions and staff with a material impact).</i>
(4) A <i>firm</i> subject to SYSC 19G.5 (application of remuneration requirements to material risk takers) including an overseas <i>SMCR firm</i>	Each staff member identified as a <i>material risk taker</i> of the <i>firm</i> in column (1).
(5) [deleted]	
(6) A <i>firm</i> falling within SYSC 19B.1 (application provisions for the remuneration code for a fullscope UK AIFM)	Each member of the <i>AIFM Remuneration Code staff</i> of the <i>firm</i> in column (1).
(7) An <i>above-threshold non-UK AIFM</i>	In relation to a <i>firm</i> in column (1), the definition of <i>AIFM Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of <i>firm</i> in the same way as it includes <i>employees</i> of <i>firms</i> in row (6) of this table.
(8) [deleted]	
(9) [deleted]	
(10) A <i>firm</i> falling within SYSC 19E.1 (application provisions for remuneration code for UCITS management companies)	Each member of the <i>UCITS Remuneration Code staff</i> of the <i>firm</i> in column (1).
(11) [deleted]	
Note: The definition of the <i>persons</i> included in column (2) applies in relation to an <i>EEA SMCR firm</i> in one of the rows of column (1) in the same way as it does to other <i>overseas SMCR firms</i> in that row. The definitions of <i>dual-regulated firms Remuneration Code staff</i> , and <i>AIFM Remuneration Code staff</i> apply accordingly.	
Where an <i>overseas SMCR firm</i> would be subject to SYSC 19G.5 if it were a <i>UK SMCR firm</i> , row (4) applies in the same way as it applies to <i>UK SMCR firms</i> , and the definition of <i>material risk taker</i> in column (2) applies accordingly.	

27.8.16

G

If the definitions or requirements in the 'Employees included' column of the table in ■ SYSC 27.8.15R (as adjusted) do not apply to a *firm* in the corresponding entry in the 'Type of SMCR firm' column, that row of the table does not apply to the *firm*.

27.8.17

G

One example of ■ SYSC 27.8.16G is that a *credit union* is excluded from the table in ■ SYSC 27.8.15R. Therefore the material risk taker *FCA certification function* does not apply to a *credit union*. However, it is subject to equivalent *PRA* requirements.

27.8.18

R

Client-dealing function

A person ("P") performs the client-dealing *FCA certification function* for a firm if:

- (1) P is carrying out any of the activities in the table in ■ SYSC 27.8.19R; and
- (2) those activities will involve P dealing with:
 - (a) a person with or for whom those activities are carried out; or
 - (b) the property of any such person;in a manner substantially connected with the carrying on of *regulated activities* by the firm.

27.8.19

R

Table: Activities covered by the client-dealing FCA certification function

Activity	Comments
(1) The following activities: (a) <i>advising on investments</i> other than a <i>non-investment insurance contract</i> ; or	(a) does not include <i>advising on investments</i> in the course of carrying on the activity of giving <i>basic advice</i> on a <i>stakeholder product</i> .

Activity	Comments
<p>(b) performing other functions related to this, such as <i>dealing</i>, <i>arranging</i> and (where the product is a contract) entering into and carrying it out.</p> <p>(2) The following activities:</p> <p>(a) giving advice in connection with <i>corporate finance business</i>; or</p> <p>(b) performing other functions related to this.</p> <p>(3) If the <i>firm</i> does any of the following activities:</p> <p>(a) <i>dealing</i>, as principal or as agent;</p> <p>(b) <i>arranging (bringing about) deals in investments</i>; or</p> <p>(c) <i>funeral plan distribution</i> (but not <i>advising on investments</i>) or a <i>funeral plan provision activity</i>;</p> <p>taking part in those activities is included.</p> <p>(4) If the <i>firm</i> is acting in the capacity of an <i>investment manager</i> the following are included:</p> <p>(a) taking part in that activity; and</p> <p>(b) carrying on functions connected to this.</p> <p>(5) Acting as a 'bidder's representative' in relation to <i>bidding in emissions auctions</i>.</p>	<p>(a) and (b) do not include <i>dealing</i> or <i>arranging (bringing about) deals in investments</i> in a <i>non-investment insurance contract</i>.</p> <p>For the activity in this row (3), SYSC 27.8.18R(2)(a) and (b) are expanded to cover also:</p> <p>(a) a <i>person</i> in connection with whom the activities in the first column of this row are carried out; and</p> <p>(b) the property of any such person.</p> <p>Acting as a 'bidder's representative' has the meaning in regulation 5(5) of the <i>UK auctioning regulations</i>.</p>

- 27.8.20** G ■ SYSC 27.3.2G (the FCA interprets the phrase 'dealing with' as including having contact with and extending beyond 'dealing' as used in 'dealing in investments') applies to ■ SYSC 27.8.18R.
- 27.8.21** G The client-dealing *FCA certification function* generally involves dealing with any *person* with or for whom the activities in the table in ■ SYSC 27.8.19R are carried out (or their property). That *person* need not be a *client* of the *firm*.
- 27.8.22** G The restrictions in ■ SYSC 27.7.1R (*FCA certification function* should require the *person* performing it to be involved in one or more aspects of the *firm's* affairs so far as they relate to *regulated activities*) also applies to the client-dealing *FCA certification function*.
- 27.8.22A** R (1) This rule qualifies rows (3) and (4) of the table in ■ SYSC 27.8.19R (Table: Activities covered by the client-dealing FCA certification function).

27.8.22B G

- (2) A person does not perform a function in (1) if their only activities that would otherwise come within the client-dealing *FCA certification function* do not require them to exercise a significant amount of discretion, judgment or technical skill.
- (1) The client-dealing *FCA certification function* does not apply to purely administrative roles even though they involve customer contact.
- (2) ■ SYSC 27.8.22AR excludes someone who has no scope to choose, decide or reach a judgement on what should be done in a given situation, and whose tasks do not require them to exercise significant technical skill.
- (3) ■ SYSC 27.8.22AR is likely to exclude a role that is simple or largely automated.
- (4) There is no need to apply ■ SYSC 27.8.22AR to row (1)(b) or (2)(b) of the table in ■ SYSC 27.8.19R, because a person must also be carrying out the functions in row (1)(a) or (2)(a) for the client-dealing *FCA certification function* to apply and the functions in row (1)(a) or (2)(a) require judgment and skill.

Algorithmic trading function

27.8.23 R

- (1) Each of the following is an *FCA certification function*:
- (a) approving the deployment of:
- (i) a trading algorithm or a part of one; or
- (ii) an amendment to a trading algorithm or a part of one; or
- (iii) a combination of trading algorithms; and
- (b) each of the following functions:
- (i) having significant responsibility for the management of monitoring whether or not a trading algorithm; and
- (ii) deciding whether or not a trading algorithm; is, or remains, compliant with the *firm's* obligations.
- (2) The *firm's* obligations in (1)(b) include:
- (a) the *firm's* regulatory obligations; and
- (b) the rules and requirements of the *trading venues* to which the *firm's* trading systems are connected.

27.8.24 R

A trading algorithm means a computer algorithm used in *algorithmic trading*.

27.8.25 G

Algorithmic trading is not limited to high-frequency algorithmic trading.

27.8.26 G

Deploying a trading algorithm includes deploying one on a *trading venue* on which the *firm* has not traded before where the *firm* is already using that trading algorithm on another *trading venue*.

- 27.8.27 **G** ■ SYSC 27.8.23R(1)(b) (monitoring or deciding whether or not a trading algorithm is compliant) includes testing, such as validation and stress testing.
- 27.8.28 **G**
- (1) Sometimes an approval or a decision involves sign-off from different people about different aspects of the decision or approval.
 - (2) If this is the case, all will have given the approval or decision for the purposes of ■ SYSC 27.8.23R.
- 27.8.29 **G**
- (1) Sometimes an approval or decision involves sign-off by a number of people of different levels of seniority about the same aspects of the decision.
 - (2) If this is the case, only the most senior decision-taker gives the approval or decision for the purposes of ■ SYSC 27.8.23R.
 - (3) Where the *firm's* procedures do not require the more senior person to carry out a detailed review of the decision of the more junior, both the junior and the senior person will give the approval or decision.
- 27.8.30 **G** A *firm* may have deployed an algorithm even though:
- (1) it has not yet actually been used in the generation or acceptance of orders; or
 - (2) it is not actually being used in the generation or acceptance of orders at the moment; or
 - (3) it is not currently being used in the generation or acceptance of orders because the circumstances have not arisen for it to start doing so.
- 27.8.31 **G** In the examples in ■ SYSC 27.8.30G the algorithm is capable of being used in the generation or acceptance of orders but is not actually generating or accepting them at the moment. However, a *firm* does not deploy an algorithm if the algorithm is not yet capable of generating or accepting orders because, for example, it is still in development.
- 27.8.32 **G** The algorithmic trading *FCA certification function* applies whether the *firm* develops the algorithm itself or buys one from a third party.

27.9 Material relating to several FCA certification functions

27.9.1

G

Legal function

A person performing the function described in ■ SYSC 26.4.9R (Exclusion of the legal function) will perform the significant management or the material risk taker *FCA certification function*, or both.

Examples of how the temporary UK role rule in SYSC 27.5.3R (the 30-day rule) works

Example	How the temporary UK role rule applies
(1) A spends 20 days in the <i>UK</i> performing the proprietary trader <i>FCA certification function</i> for Firm X and wishes to spend another 20 days in the <i>UK</i> performing the significant management <i>FCA certification function</i> for Firm X.	The <i>rule</i> does not allow this. There is a single 30-day allowance, not a separate 30-day allowance for each <i>FCA certification function</i> .
(2) A spends 20 days in the <i>UK</i> performing an <i>FCA certification function</i> for Firm X (which is a <i>UK SMCR firm</i>) and wishes to spend another 20 days dealing with Firm X's <i>clients</i> in the <i>UK</i> from the overseas office of Firm X in which A is based.	The <i>rule</i> does not allow this. There is a single 30-day limit for both types of contact with the <i>UK</i> .
(3) A wishes to spend 40 days dealing with Firm X's <i>clients</i> in the <i>UK</i> from the overseas office of Firm X (which is a <i>UK SMCR firm</i>) in which A is based. However the total time spent doing that will only be a few hours overall.	The <i>rule</i> does not allow this. If A deals with a <i>UK client</i> on one day, that uses up one day of the 30-day allowance, however short the time for which the contact lasts.
(4) A spends 25 days in calendar year one for Firm X in the <i>UK</i> and 25 days in calendar year two. However A spends 40 days in the <i>UK</i> for Firm X between June in calendar year 1 and June in calendar year 2.	The <i>rule</i> does not allow this. This is because the 30-day annual allowance relates to any 12-month period and not just a calendar year.
(5) Firm X is an <i>overseas SMCR firm</i> . A is <i>employed</i> by Firm X and is based in one of its offices outside the <i>UK</i> . A wants to work in the <i>UK branch</i> for 10 days.	The <i>rule</i> applies to <i>overseas SMCR firms</i> . It does not matter that A is not <i>employed</i> by the <i>UK branch</i> and instead is <i>employed</i> by another part of Firm X. It does not make a difference whether A is based in an office of Firm X in its home state or one in a third country.
(6) A is based in one of Firm X's overseas offices. Firm X then decides to relocate A to the <i>UK</i> , where A will be certified to perform an <i>FCA certification function</i> for Firm X. Firm X wants to rely on the temporary <i>UK role rule</i> for the first 30 days while Firm X goes through the certification process for A.	The <i>rule</i> does not allow this. A is no longer based in an overseas office and so the <i>rule</i> does not apply.
(7) A is based in the overseas branch of a <i>UK SMCR firm</i> . A is to be promoted, so that A will be performing the material risk taker <i>FCA certification function</i> . Firm X wants to rely on the temporary <i>UK role rule</i> for the first 30 days while Firm X goes through the certification process for A.	The <i>rule</i> does not allow this because it does not apply to the material risk taker <i>FCA certification function</i> when it is performed for a <i>UK SMCR firm</i> .

Example	How the temporary UK role rule applies
A reference in this table to an <i>FCA certification function</i> is to a function that would have been an <i>FCA certification function</i> but for SYSC 27.5.3R (temporary UK role).	

Chapter 28

Insurance distribution: specific knowledge, ability and good repute requirements

28

28.1.1 R

- (1) This chapter applies to a *firm* with *Part 4A permission* to carry on *insurance distribution activities*.
- (2) ■ SYSC 28.2 (except ■ SYSC 28.2.1R(1)) does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.

28.1.2 R

In this chapter, relevant employees are employees or other persons:

- (1) directly involved in the carrying on of the *firm's insurance distribution activities*; or
- (2) within the management structure responsible for the *firm's insurance distribution activities*; or
- (3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).

[Note: article 10(1) and the fifth paragraph of article 10(2) of the *IDD*]

28.1.3 R

In this chapter 'employee':

- (1) is not restricted to an individual working under a contract of employment; and
- (2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the *firm*, under an arrangement between the *firm* and a third party; and
- (3) also includes *appointed representatives* and their employees.

28.1.4 G

Rules specified in sections ■ SYSC 28.2 (knowledge and ability), ■ SYSC 28.4 (record-keeping) and ■ SYSC 28.5 (other requirements to consider) relate to the requirements in:

- SYSC 3.1.6R;

- SYSC 5.1.1R;
 - SYSC 3.2.20R, ■ SYSC 9.1.1R and ■ SYSC 9.1.1AR;
 - TC 4.2 (Specified requirements for firms carrying on insurance distribution activities); and
- article 22 of the *AIFMD level 2 regulation*.

28.2 Knowledge and ability requirements

Knowledge and ability requirements

28.2.1

R

- (1) A *firm* must ensure that it and each relevant employee possesses appropriate knowledge and ability in order to complete their tasks and perform their duties adequately.
- (2) A *firm* must ensure that it and each relevant employee complies with continued professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market.
- (3) A *firm* must ensure that each relevant employee completes a minimum of 15 hours of professional training or development in each 12 month period.
- (4) For the purposes of (3), a *firm* must take into account the:
 - (a) role and activity carried out by the relevant employee within the *firm*; and
 - (b) type of distribution and the nature of the products sold.

[**Note:** article 10(1) and the first, second and fourth paragraphs of article 10(2) of the *IDD*]

28.2.2

G

Training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.[**Note:** recital 29 to the *IDD*]

28.2.3

R

A *firm* must, including in relation to the relevant employee, demonstrate compliance with the following professional knowledge and competence requirements:

- (1) for *general insurance contracts*:
 - (a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks covered by such policies;
 - (b) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
 - (c) minimum necessary knowledge of claims handling;
 - (d) minimum necessary knowledge of complaints handling;

- (e) minimum necessary knowledge of assessing customer needs;
- (f) minimum necessary knowledge of the insurance market;
- (g) minimum necessary knowledge of business ethics standards; and
- (h) minimum necessary financial competence;
- (2) for *insurance-based investment products*:
- (a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
- (b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;
- (c) minimum necessary knowledge of financial risks borne by policyholders;
- (d) minimum necessary knowledge of policies covering life risks and other savings products;
- (e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;
- (f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;
- (g) minimum necessary knowledge of the insurance market and the saving products market;
- (h) minimum necessary knowledge of complaints handling;
- (i) minimum necessary knowledge of assessing customer needs;
- (j) conflict of interest management;
- (k) minimum necessary knowledge of business ethics standards; and
- (l) minimum necessary financial competence; and
- (3) for *long-term insurance contracts*:
- (a) minimum necessary knowledge of policies including the terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
- (b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant state;
- (c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, relevant tax law and relevant social and labour law;
- (d) minimum necessary knowledge of insurance and other relevant financial services markets;
- (e) minimum necessary knowledge of complaints handling;
- (f) minimum necessary knowledge of assessing consumer needs;
- (g) conflict of interest management;
- (h) minimum necessary knowledge of business ethics standards; and
- (i) minimum necessary financial competence.

[Note: article 10(2) last paragraph and annex I of the *IDD*]

28.3 Good repute

Good repute requirements

- 28.3.-1** **R** This section does not apply to a *connected travel insurance intermediary*.
- 28.3.1** **R** A *firm* must ensure that all the *persons* in its management structure and any staff directly involved in *insurance distribution activities* are of good repute.**[Note:** article 10(3) paragraphs 1 to 3 of the *IDD*]
- 28.3.2** **G** This includes but is not limited to those natural persons:
- (1) that are directly involved in *insurance distribution activities*; or
 - (2) within the management structure responsible for *insurance distribution activities*; or
 - (3) within the management structure responsible for any staff directly involved in *insurance distribution activities*.
- [Note:** article 10(3) paragraphs 1 and 3 of the *IDD*]
- 28.3.3** **R** An *IDD ancillary insurance intermediary* must ensure that natural persons working in the *firm*, responsible for ancillary *insurance distribution activities*, are of good repute.
[Note: article 10(3) paragraph 4 of the *IDD*]
- 28.3.4** **R** In considering a *person's* repute the firm must at a minimum ensure that the *person*:
- (1) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
 - (2) has not previously been declared bankrupt,
- unless they have been rehabilitated in accordance with national law.
[Note: article 10(3) paragraph 1 of the *IDD*]
- 28.3.5** **G** (1) In the *United Kingdom* the following *persons* will be considered to have been rehabilitated:

- (a) in relation to a serious criminal offence, where the conviction is considered 'spent' under the **Rehabilitation of Offenders Act 1974**;
 - (b) in relation to bankruptcy, where the bankruptcy has been discharged.
- (2) References to "serious criminal offences" are not restricted to offences considered to have been committed in or under the law of the *United Kingdom*.
- (3) A *firm* should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.

28.3.6

G

A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (see ■ SYSC 3.2.13G and ■ SYSC 5.1.2G). This includes, among other things, the assessment of an individual's honesty.

28.4 Record-keeping requirements

Record-keeping requirements

28.4.1

R

A firm must:

- (1) establish, maintain and keep appropriate records to demonstrate compliance with this chapter; and
- (2) be in a position to provide to the FCA, on request, the name of the person responsible for the record-keeping requirement in (1).

[Note: article 10(8) last paragraph of the *IDD*]

28.4.2

R

A firm must:

- (1) make an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 month period;
- (2) retain that record for not less than 3 years after the relevant employee stops carrying on the activity; and
- (3) be in a position to provide any version of the record to the FCA on request.

[Note: article 10(2) second paragraph of the *IDD*]

28.4.3

R

A firm must not prevent a relevant employee from obtaining a copy of the records relating to that relevant employee which are maintained by the firm for the purposes of ■ SYSC 28.4.1R and ■ SYSC 28.4.2R.

28.5 Other requirements to consider

28.5.1

G

In addition to the requirements in ■ SYSC 28:

- (1) *firms* may have to take into account and comply with the requirements in the Training and Competence sourcebook (*TC*);
- (2) article 22 of the *AIFMD level 2 regulation* and the *competent employees rules* (■ SYSC 3.1.6R and ■ SYSC 5.1.1R) set out a high-level competence requirement which every *firm* has to comply with; and
- (3) it may be that the effect of the *rules* referred to in (1) and (2) is that *firms* have to meet requirements additional to those in ■ SYSC 28.

Chapter 28A

Regulated funeral plan activities: good repute requirements

28A.1 Application

- 28A.1.1 R** This chapter applies to a *firm* with respect to *regulated funeral plan activities*.

28A.2 Good reput

Good reput requirements

- 28A.2.1 R** A firm must ensure that all the persons in its management structure and any staff directly involved in the activities specified in SYSC 28A.1.1R are of good reput.
- 28A.2.2 G** This includes but is not limited to those natural persons:
- (1) that are directly involved in the activities specified in SYSC 28A.1.1R; or
 - (2) within the management structure responsible for the activities specified in SYSC 28A.1.1R; or
 - (3) within the management structure responsible for any staff directly involved in the activities specified in SYSC 28A.1.1R.
- 28A.2.3 R** In considering a person's reput the firm must at a minimum ensure that the person:
- (1) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
 - (2) has not previously been declared bankrupt,
- unless they have been rehabilitated in accordance with national law.
- 28A.2.4 G**
- (1) In the United Kingdom the following persons will be considered to have been rehabilitated:
 - (a) in relation to a serious criminal offence, where the conviction is considered 'spent' under the Rehabilitation of Offenders Act 1974;
 - (b) in relation to bankruptcy, where the bankruptcy has been discharged.
 - (2) References to "serious criminal offences" are not restricted to offences considered to have been committed in or under the law of the United Kingdom.

- (3) A *firm* should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.

28A.2.5

G

A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (see ■ SYSC 5.1.2G). This includes, among other things, the assessment of an individual's honesty.

28A.3 Record keeping requirements

Record keeping requirements

28A.3.1 R

A firm must:

- (1) establish, maintain and keep appropriate records to demonstrate compliance with this chapter; and
- (2) be in a position to provide to the FCA, on request, the name of the person responsible for the record-keeping requirement in (1).

28A.3.2 R

A firm must not prevent any person from obtaining a copy of the records relating to them which are maintained by the firm for the purposes of ■ SYSC 28A.3.1R.

28A.3.3 G

The rules specified in ■ SYSC 28A.3.1R relate to the requirements specified in ■ SYSC 5.1.1R, ■ SYSC 9.1.1R and ■ SYSC 10.1.6R.

28A

Senior management arrangements, Systems and Controls

SYSC TP 2

Firms other than common platform firms, insurers, managing agents and the Society

(1)	(2)	(3)	(4)	(5)	(6)
2.1 [FCA] [PRA]	Material to which the transitional provision applies SYSC 8.1	R	Transitional provision If a <i>firm</i> other than a <i>common platform firm, insurer, managing agent</i> or the <i>Society</i> has in force on 1 April 2009 <i>outsourcing arrangements</i> which would be covered by SYSC 8.1 it need not amend those contracts to comply with these provisions but should comply with the new rules and guidance in respect of any <i>outsourcing contracts</i> which are entered into, or materially amended, on or after 1 April 2009.	Transitional provision: dates in force 1 April 2009 indefinitely	Handbook provisions: Coming into force 1 April 2009
2.2 [FCA]	The changes to SYSC set out in Annex D of the Alternative Investment Fund Managers Dir-	R	[expired]		

(1)	(2)	(3)	(4)	(5)	(6)
2.3 [FCA]	ective Instru- ment 2013 SYSC 4.2.2 R to SYSC 4.2.5 G, SYSC 9.1.2 R and SYSC 9.1.3 R	R	[expired]		
2.4 [FCA]	SYSC 4.1.8A R to SYSC 4.1.8E R and 4.1.9AR	R	[expired]		

Senior Management Arrangements, Systems and Control

SYSC TP 3 Remuneration codes

Part A		IFPRU Remuneration Code [deleted]			
Part B		UCITS Remuneration Code			
(1)	(2) Material to which the transitional provision applies	(3) Transitional provision	(4) Transitional provision: date in force	(5) Handbook provisions: coming into force	
1	The <i>UCITS</i> remuneration principles	R A <i>management company</i> need not apply the <i>UCITS remuneration principles</i> to any awards of variable remuneration until it commences its first full performance year starting on or after 18 March 2016.	From 18 March 2016 until 18 March 2017	18 March 2016	

Senior Management Arrangements, Systems and Controls

SYSC TP 5

Financial Services (Banking Reform) Act 2013: Certification and regulatory references

Note to the reader

- 5.1.1-2 G (1) SYSC TP 5 has not been amended to reflect changes in the FCA Handbook and Glossary since the beginning of 2018. This is because it is made up of transitional provisions that mostly expired before then.
- (2) A small number of provisions may have effect beyond that date. To help the reader, the table in SYSC TP 5.1.1-1G explains how superseded Glossary terms in SYSC TP 5 should be interpreted.
- 5.1.1-1 G Table: meaning of superseded Glossary terms

Term in SYSC TP 5	Term that has replaced it	Comment
FCA specified significant-harm function	<i>FCA certification function</i>	
full scope regulatory reference firm	Any of the following: (a) an <i>SMCR banking firm</i> ; (b) a <i>Solvency II firm</i> ; or (c) a <i>large non-directive insurer</i> .	SYSC TP 5.4.2R refers to SYSC 22.2.1R (Obligation to obtain a regulatory reference). On 7 March 2017 (the date referred to in SYSC TP 5.4.2R), SYSC 22.2.1R applied to what were then called full scope regulatory reference firms.
relevant authorised person	<i>SMCR banking firm</i>	
specified significant-harm function	<i>certification function</i>	

Purpose of SYSC TP 5

- SYSC 5.1.1 G SYSC TP 5:
 (1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and
 (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references).
- 5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017.
- Application
- SYSC 5.2.1 G (1) All of SYSC TP 5 applies to relevant authorised persons.
 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all firms.
- Certification: The transitional period

SYSC 5.3.1	G	The obligation in section 63E(1) of the Act for a <i>relevant authorised person</i> to take reasonable care to ensure that no <i>employee</i> of the <i>firm</i> performs an <i>FCA specified significant-harm function</i> , unless the <i>firm</i> has issued the <i>employee</i> with a valid certificate, does not apply until the end of the transitional period.
SYSC 5.3.2	G	However, other parts of the <i>Handbook</i> and the <i>Act about certification employees</i> apply in the transitional period.
SYSC 5.3.3	G	The table in SYSC TP 5.3.4G explains how the requirements of the <i>Handbook</i> and the <i>Act about certification employees</i> apply in the transitional period.
SYSC 5.3.4	G	Table: How the certification regime applies in the transitional period

Provision in the Act or the Handbook	What that provision is about	How it applies in the transitional period
Definition of certification employee		During the transitional period, the <i>Glossary</i> definition of <i>certification employee</i> covers everyone who would need a certificate to perform their job if the obligation to issue certificates was in force
SYSC 27.2.3G to SYSC 5.2.17G	<i>Guidance</i> about issuing certificates and fitness	Does not apply
SYSC 27.6.1R to SYSC 27.8.31G	Definition of who falls into the certification regime	Applies for the purpose of those parts of the <i>Handbook</i> and the <i>Act</i> that are in force as described in this table.
The parts of SYSC 4.5 dealing with the <i>management responsibilities map</i>	SYSC 4.5 says that the <i>management responsibilities map</i> should say if persons described or identified in the <i>management responsibilities map</i> are <i>certification employees</i>	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
COCON		Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force. This applies even if they have not been notified that: (a) COCON applies to them; or (b) of the rules that apply to them.
Section 64B of the Act	<i>Firm</i> should ensure that all persons subject to COCON are notified <i>Firm</i> should take reasonable steps to ensure that those persons understand how COCON applies to them.	Applies to those who would have been excluded from the certification regime by SYSC 27.5.1R (Scope: emergency appointments). Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.

Provision in the Act or the Handbook	What that provision is about	How it applies in the transitional period
Definition of certification employee		During the transitional period, the <i>Glossary</i> definition of <i>certification employee</i> covers everyone who would need a certificate to perform their job if the obligation to issue certificates was in force
The parts of SUP 15.3 that deal with COCON breaches	Notifying a significant breach of COCON to the FCA	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
Section 64D of the Act and SUP 15.11	Notifying the FCA of disciplinary action	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.

Transitional provisions about regulatory references: Full scope regulatory reference firms			
SYSC 5.4.1	R	(1)	If on 7 March 2017 an <i>employee</i> (P) is already performing a <i>specified significant-harm function</i> for a <i>relevant authorised person</i> (A), the obligation under SYSC 22 (Regulatory references) for A to obtain a reference when issuing a certificate for P for that <i>significant-harm function</i> does not apply.
		(2)	Paragraph (1) ceases to apply if there has been a significant change in P's responsibilities forming part of that <i>specified significant-harm function</i> as compared to the position on 7 March 2017.
5.4.2	R		SYSC 22.2.1R (Obligation to obtain a regulatory reference) does not apply to an application for approval as an <i>approved person</i> that is made before 7 March 2017 but that has not yet been finally determined by that date.
SYSC 5.4.3	G	(1)	SYSC 22.7.5G to SYSC 22.7.8G (Asking for a reference to be updated) deal with a <i>full scope regulatory reference firm</i> (A) that is obliged to get a reference from an ex-employer (B) and wants to rely on one that B has already given A.
		(2)	The SYSC material referred to in (1) can apply where the reference was given before 7 March 2017.
		(3)	One relevant factor is whether B is a <i>full scope regulatory reference firm</i> . This is because the FCA requirements about <i>firms</i> asked to give regulatory references that applied to <i>firms</i> that are not <i>full scope regulatory reference firms</i> before 7 March 2017 were similar to those in SYSC 22. As such, the existing reference may already be sufficient.
		(4)	The main difference between the requirements for a <i>firm</i> that is not a <i>full scope regulatory reference firm</i> before and after 7 March 2017 is that the range of functions for which A is entitled to ask for a reference was widened. For example, there was no obligation to supply a reference for a <i>certification employee</i> before then.
SYSC 5.4.4	G		SYSC 22.2.4R (Obligation to revise references) does not apply to references given before 7 March 2017.
SYSC 5.4.5	R		Question (F) (disciplinary action) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements) does not require disclosure of breaches of individual conduct requirements referred to in question (F) if the disciplinary action referred to in that item took place before:
		(1)	(in the case of a <i>relevant authorised person</i>) 7 March 2016; or
		(2)	(in the case of any other <i>full scope regulatory reference firm</i>) 7 March 2017;

if the *firm's* records do not show whether the conduct that was subject to disciplinary action amounted to a breach of those individual conduct requirements.

Transitional provisions about regulatory references: All firms

- | | | |
|---------------|---|--|
| SYSC
5.5.1 | R | If a <i>firm</i> (A) asks another <i>firm</i> (B) for a reference before 7 March 2017, SYSC 22 (Regulatory references) applies to B if B gives the reference after that date. |
| SYSC
5.5.2 | G | SYSC 22 applies to a reference requested or given after 7 March 2017 even if the matters covered by the reference occurred before then. |

Senior Management Arrangements, Systems and Controls

SYSC TP 6 Transitional Provision 6

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions: coming into force
1.	SYSC 2.2.4	R	[expired]		
2.	SYSC 2.1.3A	R	[expired]		
3.	SYSC 2.2.6		[expired]		
4.	SYSC 2.1.3C	R	[expired]		
5.	SYSC 2.2.1R and SYSC 2.2.1AR	R	A <i>firm</i> must continue to retain the records it was required to make and retain under SYSC 2.2.1R before its disapplication to the <i>firm</i> under SYSC 2.2.1AR, for as long as SYSC 2.2.1R required before its disapplication.	From 1 January 2016 until the date that the records are no longer required to be retained.	1 January 2016
6	SYSC 27.7.3R (row 2) and SYSC 5.2.33R	R	[deleted]		
7	SYSC 14.1.2AR	R	The <i>rule</i> in column 2, as it was in force on 28 June 2018, continues to apply to a <i>benchmark administrator</i> , until that administrator becomes authorised or registered under the <i>benchmarks regulation</i> , or ceases to be authorised for <i>administering a specified benchmark</i> .	From 29 June 2018	Already in force

Bank of England and Financial Services Act 2016: Certification and regulatory references

SYSC TP 7

Bank of England and Financial Services Act 2016: Certification and regulatory references

7.1 Application, purpose and definitions														
7.1.1	R	SYSC TP 7 applies as set out in the table in SYSC TP 7.1.2R.												
7.1.2	R	<p>Table: Application of SYSC TP 7</p> <table> <thead> <tr> <th>Type of firm</th><th>Parts of SYSC TP 7 that apply</th></tr> </thead> <tbody> <tr> <td>An <i>SMCR insurance firm</i> except one in the following row</td><td>All applies except SYSC TP 7.7</td></tr> <tr> <td>An <i>SMCR insurance firm</i> that is a <i>Solvency II firm</i> (including a <i>large non-directive insurer</i>)</td><td> <p>All applies except as follows:</p> <ul style="list-style-type: none"> (1) SYSC TP 7.4.2R to SYSC TP 7.4.3G do not apply. (2) Subject to (3), SYSC TP 7.4.4R and SYSC TP 7.4.5G do not apply. (3) SYSC TP 7.4.4R and SYSC TP 7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification). (4) SYSC TP 7.7 does not apply. </td></tr> <tr> <td>A <i>core SMCR firm</i>, an <i>enhanced scope SMCR firm</i> and a <i>limited scope SMCR firm</i> other than a <i>pure benchmark SMCR firm</i></td><td>All applies, subject to the adjustments in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies).</td></tr> <tr> <td>A <i>pure benchmark SMCR firm</i></td><td>All applies, except that SYSC TP 7.2 (except as explained in the following paragraph), SYSC TP 7.3, SYSC TP 7.4.1R and SYSC TP 7.7.3G to SYSC TP 7.7.6G do not apply.</td></tr> <tr> <td>All other firms</td><td> <p>The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an <i>SMCR firm</i>. The material about obtaining references does not apply as the certification regime does not apply to a <i>pure benchmark SMCR firm</i>.</p> <p>Does not apply, except as follows.</p> <p>The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an <i>SMCR firm</i>.</p> <p>SYSC TP 7.6 applies.</p> </td></tr> </tbody> </table>	Type of firm	Parts of SYSC TP 7 that apply	An <i>SMCR insurance firm</i> except one in the following row	All applies except SYSC TP 7.7	An <i>SMCR insurance firm</i> that is a <i>Solvency II firm</i> (including a <i>large non-directive insurer</i>)	<p>All applies except as follows:</p> <ul style="list-style-type: none"> (1) SYSC TP 7.4.2R to SYSC TP 7.4.3G do not apply. (2) Subject to (3), SYSC TP 7.4.4R and SYSC TP 7.4.5G do not apply. (3) SYSC TP 7.4.4R and SYSC TP 7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification). (4) SYSC TP 7.7 does not apply. 	A <i>core SMCR firm</i> , an <i>enhanced scope SMCR firm</i> and a <i>limited scope SMCR firm</i> other than a <i>pure benchmark SMCR firm</i>	All applies, subject to the adjustments in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies).	A <i>pure benchmark SMCR firm</i>	All applies, except that SYSC TP 7.2 (except as explained in the following paragraph), SYSC TP 7.3, SYSC TP 7.4.1R and SYSC TP 7.7.3G to SYSC TP 7.7.6G do not apply.	All other firms	<p>The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an <i>SMCR firm</i>. The material about obtaining references does not apply as the certification regime does not apply to a <i>pure benchmark SMCR firm</i>.</p> <p>Does not apply, except as follows.</p> <p>The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an <i>SMCR firm</i>.</p> <p>SYSC TP 7.6 applies.</p>
Type of firm	Parts of SYSC TP 7 that apply													
An <i>SMCR insurance firm</i> except one in the following row	All applies except SYSC TP 7.7													
An <i>SMCR insurance firm</i> that is a <i>Solvency II firm</i> (including a <i>large non-directive insurer</i>)	<p>All applies except as follows:</p> <ul style="list-style-type: none"> (1) SYSC TP 7.4.2R to SYSC TP 7.4.3G do not apply. (2) Subject to (3), SYSC TP 7.4.4R and SYSC TP 7.4.5G do not apply. (3) SYSC TP 7.4.4R and SYSC TP 7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification). (4) SYSC TP 7.7 does not apply. 													
A <i>core SMCR firm</i> , an <i>enhanced scope SMCR firm</i> and a <i>limited scope SMCR firm</i> other than a <i>pure benchmark SMCR firm</i>	All applies, subject to the adjustments in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies).													
A <i>pure benchmark SMCR firm</i>	All applies, except that SYSC TP 7.2 (except as explained in the following paragraph), SYSC TP 7.3, SYSC TP 7.4.1R and SYSC TP 7.7.3G to SYSC TP 7.7.6G do not apply.													
All other firms	<p>The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an <i>SMCR firm</i>. The material about obtaining references does not apply as the certification regime does not apply to a <i>pure benchmark SMCR firm</i>.</p> <p>Does not apply, except as follows.</p> <p>The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an <i>SMCR firm</i>.</p> <p>SYSC TP 7.6 applies.</p>													

7.1 Application, purpose and definitions

SYSC TP 7.5 applies to the firms specified in SYSC TP 7.5.

7.1.3 G SYSC TP 7:

- (1) explains how the certification regime described in SYSC 27 applies during the **certification transitional periods** described in SYSC TP 7.2.1G;
- (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references) and with benchmark activities;
- (3) has certain other transitional provisions relating to the amendments made to the FCA Handbook by the Individual Accountability (Dual-Regulated Firms) Instrument 2018, the Individual Accountability (FCA-Authorised Firms) Instrument 2019 and the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020;
- (4) is adjusted and supplemented by SYSC TP 8 in relation to certain claims management *firms*; and
- (5) does not apply to a *firm* that becomes an *SMCR firm* after 31 March 2021 except that:
 - (a) it may apply after then in relation to certain claims management *firms* covered by SYSC TP 8; and
 - (b) the parts of SYSC TP 7 that are described in the table in SYSC TP 7.1.2R (Table: Application of SYSC TP 7) as applying to "All other *firms*" might apply although in practice the material about employment references will not normally apply because of the time period in which SYSC TP 7 operates as described in SYSC TP 7.1.4G.

7.1.4 G (1) The main time period for which SYSC TP 7 operates is 2018 to 2021.

(2) There are transitional provisions that can apply beyond that period. They are based on events occurring during that period.

7.1.5 R The terms in the first column of the table in SYSC TP 7.1.6R, where they appear in bold in SYSC TP 7, have the meaning in the corresponding row of column 2 for the purposes of SYSC TP 7.

7.1.6 R Table: glossary of bespoke terms used in SYSC TP 7

Part One: General

Defined term Meaning

commencement SIs the insurance firms commencement SI and the solo firms commencement SI

insurance firms commencement SI the Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018 (SI 2018/990)

solo firms commencement SI The Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) Regulations 2019 (SI 2019/1136) as amended by The Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) (Amendment) Regulations 2020 (SI 2020/929)

[deleted] [deleted]

Part Two: Dates

(1)

(2)

(3)

(4)

Meaning:
Benchmark
firms

Defined term	Meaning: Insurers	Meaning: Others
certification transitional period	the one year period beginning on 10 December 2018 and ending on 10 December 2019 referred to in regulation 2 of the insurance firms commencement SI (Appointed days for the coming into force of section 21 and Schedule 4 for insurers)	the period beginning on the general commencement date and ending on 31 March 2021 (as referred to in regulation 2(6) of the solo firms commencement SI)
general commencement date	10 December 2018	9 December 2019 (as referred to in regulation 2(4) of the solo firms commencement SI)
		7 December 2020 (as referred to in regulation 2(5) of the solo firms commencement SI)

Note (1): Column (2) (Insurers) applies to an *SMCR insurance firm* (to the extent that **SYSC TP 7** applies to such *firms*).

Note (2): Column (3) (Others) applies to a *core SMCR firm*, an *enhanced scope SMCR firm* and a *limited scope SMCR firm* but not to a *pure benchmark SMCR firm*.

Note (3): Column (4) (Benchmark firms) applies to a *pure benchmark SMCR firm*.

7.2 Certification: The certification transitional period

- 7.2.1 G Under the **commencement SIs**, the obligation in **section 63E(1)** of the Act for an *SMCR firm* to take reasonable care to ensure that no *employee* of the *firm* performs an *FCA certification function*, unless the *firm* has issued the *employee* with a valid certificate, does not apply until the end of the **certification transitional period**.
- 7.2.2 G However, other parts of the *FCA Handbook* and the *Act about certification employees* apply in the **certification transitional period**.
- 7.2.3 G The table in **SYSC TP 7.2.4G** explains how the requirements of the *FCA Handbook* and the *Act about certification employees* apply in the **certification transitional period**.

7.2.4 G Table: How the certification regime applies in the certification transitional period

Provision in the Act or the Handbook	What that provision is about	How it applies in the certification transitional period
<i>Glossary definition of certification employee</i>		During the certification transitional period , the <i>Glossary definition of certification employee</i> covers everyone who would need a certificate to perform their job if the obligation to issue certificates were in force

7.2.4 G	Table: How the certification regime applies in the certification transitional period		
	Provision in the Act or the Handbook	What that provision is about	How it applies in the certification transitional period
	SYSC 27.2 and the parts of the Act on which it gives guidance	Issuing certificates and fitness	<p>Does not apply except as follows.</p> <p>A <i>firm</i> may issue a certificate during the certification transitional period. The reason it may wish to do this is so that when the requirement in the <i>Act</i> to issue certificates comes into force, the <i>firm</i> will have issued all the certificates that it needs to have issued to allow its <i>certification employees</i> to carry on their jobs after the certification transitional period.</p> <p>If it does issue a certificate during the certification transitional period, that certificate is valid after the end of the certification transitional period for the twelve-month period provided for in Section 63H of the <i>Act</i> (Issuing of certificates). That twelve-month period runs from the date of issue, even though it was issued during the certification transitional period.</p> <p>This means that a certificate issued before 31 March 2020 will not be effective.</p> <p>All the provisions of the <i>Act</i> and the <i>FCA Handbook</i> about certificates apply to a certificate issued in the certification transitional period.</p>
	SYSC 27.3	Territorial scope of the certification regime	
	SYSC 27.4	General material about the scope of the certification regime	
	SYSC 27.5	Exclusions for emergency and temporary appointments	Applies for the purpose of those parts of the <i>FCA Handbook</i> and the <i>Act</i> that are in force as described in this table
	SYSC 27.6	Other exclusions	

7.2.4 G	Table: How the certification regime applies in the certification transitional period		
	Provision in the Act or the Handbook	What that provision is about	How it applies in the certification transitional period
	SYSC 27.7	Specification of functions	
	SYSC 27.8	Definitions of the FCA certification functions	
	SYSC 27.9	Material relating to several FCA certification functions	
	SYSC 22	Regulatory references	Except as explained later in this row about SYSC 22, the obligation to obtain a reference does not apply because the obligation to get a reference is triggered by issuing a certificate.
			SYSC TP 7.4 has exemptions that apply after the certification transitional period.
			If a firm wishes to issue a certificate during the certification transitional period as described in the row of this table column 1 of which is titled "SYSC 27.2 and the parts of the Act on which it gives guidance" the obligation on the firm to ask for a reference and the obligation of other firms to give one apply.
	SYSC 25	SYSC 25 says that the management responsibilities map should say whether persons described or identified in the management responsibilities map are certification employees	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force

Table: How the certification regime applies in the certification transitional period			
	Provision in the Act or the Handbook	What that provision is about	How it applies in the certification transitional period
7.2.4 G	COCON		<p>Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.</p> <p>This applies even if they have not been notified:</p> <ul style="list-style-type: none"> (a) that COCON applies to them; or (b) of the <i>rules</i> that apply to them. <p>COCON also applies to those who would have been excluded from the certification regime by SYSC 27.5.1R (Emergency appointments) or SYSC 27.5.3R (Temporary UK role).</p>
	Section 64B of the Act	<i>Firm</i> should ensure that all persons subject to COCON are notified	
	The parts of SUP 15.3 that deal with COCON breaches	<i>Firm</i> should take reasonable steps to ensure that those persons understand how COCON applies to them.	
	Section 64C of the Act and SUP 15.11	<p>Notifying a significant breach of COCON to the FCA</p> <p>Notifying the FCA of disciplinary action</p>	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force

7.3 General material about certification

- 7.3.1 G (1) **SYSC 27.5.1R** (Emergency appointments) allows a *firm* to appoint someone (P) to perform a function which would normally be an *FCA certification function* without P becoming a *certification employee*. There is a maximum period for which the appointment can last.
- (2) When calculating the maximum time period in (1), the *firm* need not take into account any time spent by P before the **general commencement date** performing what will become the *FCA certification function* in (1).
- (3) When a *firm*, after the end of the **certification transitional period**, is calculating the maximum time period in (1), the *firm* should take into account any time spent by P during the **certification transitional period** performing the *FCA certification function* in (1).
- 7.3.2 G (1) **SYSC 27.5.1R** only applies where P (as referred to in **SYSC TP 7.3.1G**) is providing cover for a *certification employee* whose absence is reasonably unforeseen.
- (2) **SYSC 27.5.1R** may still apply if the absence referred to in (1) began before the **general commencement date** or during the **certification transitional period**.
- 7.3.3 G (1) Some *FCA certification functions* only apply where the place of performance of the function has a connection with the *United Kingdom* (for example, it is carried on there).

- (2) SYSC 27.5.3R (Temporary UK role (the 30-day rule)) allows a person (P) to carry on a function for a firm that would normally be an FCA certification function because of its connection with the United Kingdom without P becoming a certification employee. There is a time limit on how long the firm can allow P to do this.
- (3) When calculating the time limit in (2), the firm need not take into account any time spent by P before the general commencement date performing functions with a United Kingdom connection.
- (4) When a firm, after the end of the certification transitional period, is calculating the maximum time period in (1), the firm should take into account any time spent by P during the certification transitional period performing functions with a United Kingdom connection.

7.4 Transitional provisions about regulatory references

- 7.4.1 R (1) If on the general commencement date an employee (P) is already performing an FCA certification function for an SMCR firm (A), the obligation under SYSC 22 (Regulatory references) for A to obtain a reference when issuing a certificate (including reissuing a certificate) for P for that FCA certification function does not apply during, at the end of or after the end of the certification transitional period.
- (2) If there has been a significant change in P's responsibilities forming part of that FCA certification function as compared to the position on the general commencement date, paragraph (1) ceases to apply from that time.
- 7.4.2 R SYSC 22.2.1R (Obligation to obtain a regulatory reference) does not apply to an application for approval as an approved person that:
- (1) is made before the general commencement date and is continued in force by SUP TP 11.7 or SUP TP 11A.7 (In-flight applications: Conversion); or
 - (2) is made under SUP TP 11.15 or SUP TP 11A.15 (Applications of approved persons to take effect from the commencement date).
- 7.4.3 G SYSC 22.2.4R (Obligation to revise references) does not apply to references given before the general commencement date.
- 7.4.4 R Question (F) (disciplinary action) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) does not require disclosure of breaches of individual conduct requirements referred to in question (F) if:
- (1) the disciplinary action referred to in that item took place before the general commencement date; and
 - (2) the firm's records do not show whether the conduct that was subject to disciplinary action amounted to a breach of those individual conduct requirements.
- 7.4.5 G The term individual conduct requirements in SYSC TP 7.4.4R is defined in Section One of Part Two of SYSC 22 Annex 1R.
- 7.4.6 R If:
- (1) a firm (A) asks another firm (B) for a reference before the general commencement date; but
 - (2) B gives the reference after that date;
- SYSYC 22 (Regulatory references) in the form it is in at the time in (2) applies to B.
- 7.4.7 G SYSC 22 in the form it is in after the general commencement date applies to a reference requested or given after the general commencement date even if the matters covered by the reference occurred before then.
- 7.4.8 R [deleted]
- 7.5 Transitional provisions about benchmarks and the certification regime
- 7.5.1 G SYSC 27.6.4R excludes benchmark activities from the certification regime. SYSC TP 7.5 brings certain activities in relation to benchmarks back into the certification regime.

7.5.2 R **SYSC 27** (Senior managers and certification regime: Certification regime) applies to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.

7.5.3 G As a consequence of the *benchmarks regulation*, the *regulated activities* referred to in **SYSC TP 7.5.2R** will cease to apply in certain circumstances (see **SUP TP 10** for an explanation of those circumstances).

7.5.4 G The effect of **SYSC TP 7.5.2R** is that **SYSC 27** continues to apply to firms which still have permission to carry on the regulated activity in **SYSC TP 7.5.2R** when carrying on that activity.

7.6 Miscellaneous

Common platform requirements

7.6.1 G The Individual Accountability (Dual-Regulated Firms) Instrument 2018 renumbered material that used to be in **SYSC 4** and **SYSC 5** so that it now appears in **SYSC 24** to **SYSC 27**. That instrument updated FCA Handbook cross-references accordingly.

7.6.2 G The requirements of chapters **SYSC 24** to **SYSC 27** no longer form part of the *common platform organisational requirements* and a reference to anything in **SYSC 4** or **SYSC 5** does not include any material referred to in **SYSC TP 7.6.1G**.

7.7 Qualification conditions for FCA-authorised firms

Firm classification: Effect of pre-commencement events

7.7.1 R If a firm is treated as a *core SMCR firm*, an *enhanced scope SMCR firm* or a *limited scope SMCR firm* immediately before the **general commencement date** for the purposes of **SUP TP 11A** (*Bank of England and Financial Services Act 2016*) Approved persons in solo-regulated firms) it retains that status after the **general commencement date** unless and until it changes under **SYSC 23 Annex 1** (Definition of SMCR firm and different types of SMCR firms).

7.7.2 G For example if before the **general commencement date** a firm has opted up to be an *enhanced scope SMCR firm* it remains an *enhanced scope SMCR firm* after the **general commencement date**. It may then elect to cease being an *enhanced scope SMCR firm* using a Form O under the procedure in **SYSC 23 Annex 1** unless it also meets one of the other qualifications for being an *enhanced scope SMCR firm*.

7.7.3 G A calculation period, an averaging period or a reporting period as referred to in Part Eight of **SYSC 23 Annex 1** (Part Eight: Financial qualification condition for being an enhanced scope SMCR firm) may begin or end before the **general commencement date**.

Financial qualification conditions for enhanced scope SMCR firms

7.7.4 R (1) This rule applies to a firm that:

(a)

does not meet one of the qualification conditions for being an *enhanced scope SMCR firm* in Part 8 of **SYSC 23 Annex 1** (Financial qualification condition for being an enhanced scope SMCR firm) at the date in **SUP TP 11A.23.3R(2)** (Deciding which category a firm is in); but

(b)

meets it between that date and the **general commencement date**.

- (2) The one-year period referred to in Part 10 of SYSC 23 Annex 1 (When a firm becomes an enhanced scope SMCR firm) begins on the date the *firm* met that qualification condition, even though that date is before the **general commencement date**.

7.7.5 G The situation in SYSC TP 7.7.4R may apply to a *firm* because, for example, its accounting reference date falls between the date in SUP TP 11A.23.3R(2) and the **general commencement date**.

Consumer credit reporting

7.7.6 G (1) SYSC 23 Annex 1 8.15R deals with cases in which the period in relation to which the financial calculations are made to test whether a *firm* meets one of the financial qualification conditions for being an *enhanced scope SMCR firm* is adjusted because the relevant reporting requirements did not apply for the whole period. SYSC 23 Annex 1 8.16G gives examples of why this may happen.

- (2) One example in SYSC 23 Annex 1 8.16G is that the relevant reporting requirements have not existed for the whole of the period. A particular example of this is consumer credit reporting requirements. At the time the financial qualification conditions for being an *enhanced scope SMCR firm* first came into force in 2019, the relevant reporting requirements had not existed for a full three years.

Bank of England and Financial Services Act 2016: Certification and regulatory references

SYSC TP 8

Bank of England and Financial Services Act 2016: Application to claims management companies

Application, purpose and definitions		
8.1.1	R	Subject to SYSC TP 8.1.2R, SYSC TP 8 applies to a <i>firm</i> if it met the following conditions on the general solo firms' commencement date :
	(1)	the only <i>regulated activities</i> in its <i>permission</i> were <i>regulated claims management activities</i> ;
	(2)	it still had a <i>claims management temporary permission</i> ; and
	(3)	it would have been an <i>SMCR firm</i> but for SYSC TP 8.2.1R.
8.1.2	R	SYSC TP 8.1.1R does not apply to SYSC TP 8.6.1R. Instead, SYSC TP 8.6.1R sets out the <i>firms</i> to which it applies.
8.1.3	G	SYSC TP 8:
	(1)	deals with the application of certain aspects of the senior managers and certification regime to claims management <i>firms</i> brought into regulation under the <i>Act</i> by the <i>Claims Management Order</i> in April 2019;
	(2)	explains how the transitional provisions in SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) are amended for certain claims management <i>firms</i> ;
	(3)	in particular, describes a transition period (the individual transitional period) that applies for the purposes of the certification regime in place of the one described in SYSC TP 7; and
	(4)	has certain other transitional provisions relating to the application of the senior managers and certification regime to claims management <i>firms</i> .
8.1.4	R	The terms in the first column of the table in SYSC TP 8.1.5R, where they appear in bold in SYSC TP 8, have the meaning in the corresponding row of column 2 for the purposes of SYSC TP 8.
8.1.5	R	Table: glossary of bespoke terms used in SYSC TP 8

Part One: General

Defined term	Meaning
general solo firms' commencement date	9 December 2019
individual transitional period	the period of fifteen <i>months</i> and twenty two <i>days</i> referred to in regulation 3(2) of the solo-regulated firms' commencement SI . If a <i>firm's permission</i> is varied to include <i>regulated activities</i> in addition to <i>regulated claims management activities</i> , it means the shorter period (if any) provided for by regulations 3(2) and 3(3) of the solo-regulated firms' commencement SI .

Part One: General		
solo-regulated firms' commencement SI		
The Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) Regulations 2019 (SI 2019/1136) as amended by The Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) (Amendment) Regulations 2020 (SI 2020/929)		
Exclusion from the SMCR		
8.2.1	R	<p>A <i>firm</i> is not an <i>SMCR firm</i> (and is included in Part Three of SYSC 23 Annex 1 (Definition of exempt firm)) for as long as</p> <ul style="list-style-type: none"> (1) the only <i>regulated activities</i> in its <i>permission</i> are <i>regulated claims management activities</i>; and (2) it only has a <i>claims management temporary permission</i>.
Transitional period for certification for claims management firms		
8.3.1	G	<p>The effect of the solo-regulated firms' commencement SI is that the obligation in section 63E(1) of the Act, for an <i>SMCR firm</i> to take reasonable care to ensure that no employee of the <i>firm</i> performs an <i>FCA certification function</i> unless the <i>firm</i> has issued the employee with a valid certificate, does not apply during its individual transitional period.</p>
8.3.2	G	<p>(1) A <i>firm's individual transitional period</i> is the period that:</p> <ul style="list-style-type: none"> (a) begins on (and includes) the date on which the <i>firm's claims management temporary permission</i> comes to an end under the <i>Claims Management Order</i> and the <i>firm's full authorisation for regulated claims management activities</i> comes into effect; and (b) ends on (and excludes) the day falling fifteen <i>months</i> and twenty two days later. <p>(2) If other activities are included in a <i>firm's permission</i> part of the way through the period in (1), its individual transitional period ends at once.</p> <p>(3) If other activities are included in a <i>firm's permission</i> before it receives full authorisation for its <i>regulated claims management activities</i>, the transitional arrangements described in SYSC TP 8 do not apply and the <i>firm</i> will have no individual transitional period. However, the transitional arrangements in SYSC TP 7 (Bank of England and Financial Services Act 2016 Certification and regulatory references) will still apply if it is authorised before 31 March 2021.</p>
8.3.3	R	<p>During a <i>firm's individual transitional period</i> the definition of "<i>certification employee</i>" is amended to mean an employee (as defined in section 63E of the Act) of the <i>firm</i> who performs a <i>certification function</i> under an arrangement entered into by the <i>firm</i> in relation to the carrying on by the <i>firm</i> of a <i>regulated activity</i>, even though the obligation of the <i>SMCR firm</i> to issue a certificate under section 63F of the Act does not yet apply to the <i>firm</i>.</p>
Application of SYSC TP 7		
8.4.1	R	<p>SYSC TP 7 (Bank of England and Financial Services Act 2016 Certification and regulatory references) applies to a <i>firm</i> with the adjustments set out in this section.</p>
8.4.2	R	<p>A reference in SYSC TP 7 to the "certification transitional period" is a reference to a <i>firm's individual transitional period</i>.</p>
8.4.3	R	<p>(1) A reference in SYSC TP 7 to the "general commencement date" is a reference to the start of a <i>firm's individual transitional period</i>, except in the following provisions:</p> <ul style="list-style-type: none"> (a) SYSC TP 7.4.6R (Giving references); and (b) SYSC TP 7.4.7G (Form of references). <p>(2) The definition of "general commencement date" is unchanged in the provisions listed in (1)(a) and (b).</p>

8.4 Application of SYSC TP 7		
8.4.4	G	SYSC TP 8.3.1G applies in place of SYSC TP 7.2.1G (Certification: The certification transitional period).
8.4.5	G	SYSC TP 7.5 (Transitional provisions about benchmarks and the certification regime) is not relevant.
8.4.6	G	SYSC TP 7.7 (Qualification conditions for FCA-authorised firms) is not relevant as it covers <i>firms</i> that are <i>SMCR firms</i> on the general solo firms' commencement date .
8.5 Additional material about regulatory references		
8.5.1	R	The provisions of SYSC 22 (Regulatory references), except those listed in SYSC 22.8.4R, apply to a <i>firm</i> excluded from being an <i>SMCR firm</i> by SYSC TP 8.2.1R as they apply to an <i>SMCR firm</i> .

Updates to reflect CRD V

SYSC TP 9

Updates to reflect CRD V

Material to which the transitional provision applies	R/G	Transitional Provision	Transitional Provision: dates in force	Handbook Provision: coming into force
1 SYSC 19D.3		<p>A firm subject to SYSC 19D.1.3 on 28 December 2020, must apply the rules and guidance in SYSC 19D.3 as it stood on the 28 December 2020 in relation to:</p> <ul style="list-style-type: none"> (a) remuneration awarded, whether pursuant to a contract or otherwise, in relation to the performance year active on the 28 December 2020; (b) remuneration due on the basis of contracts concluded before 29 December 2020 which is awarded or paid in relation to the performance year active on the 28 December 2020; and (c) remuneration awarded, but not yet paid, before 29 December 2020, for services provided in the performance year active on the 28 December 2020. 	From 29 December 2020	29 December 2020

Operational resilience

SYSC TP 10 Operational resilience

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions: dates in force
10.1	SYSC 15A.2.9	R	The provision in column (2) does not apply. However, a <i>firm</i> must ensure that, as soon as reasonably practicable after 31 March 2022, and in any event no later than 31 March 2025, it can remain within its <i>impact tolerance</i> for each <i>important business service</i> in the event of a severe but plausible disruption to its operations.	From 31 March 2022 to 31 March 2025	31 March 2022
10.2	SYSC 15A.4.1 and 15A.5.3	R	A <i>firm</i> is not required to have performed the mapping and testing exercises as required by the provisions in column (2) to the full extent of sophistication by 31 March 2022. A <i>firm</i> is required to have carried out the mapping and testing exercises as required by the provisions in column (2) by 31 March 2022 to the extent necessary to identify important business services, set impact tolerances and to identify any vulnerabilities in its operational resilience. After that date, a <i>firm</i> must continue the mapping and testing exercises so that it is able to remain within its <i>impact tolerance</i> for each <i>important business service</i> as soon as reasonably practicable, and in any event no later than 31 March 2025.	From 31 March 2022 to 31 March 2025	31 March 2022

Operational resilience

SYSC TP 11

MIFIDPRU Remuneration Code transitional provision

Application

- 11.1 R **SYSC TP 11** applies to an undertaking to whom the *MIFIDPRU Remuneration Code* will apply for the first time in the performance period beginning on or after 1 January 2022.

Duration of transitional

- 11.2 R **SYSC TP 11** applies to *remuneration* awarded for performance or services provided in the performance period before the performance period to which the *MIFIDPRU Remuneration Code* first applies.

- 11.3 G While the *MIFIDPRU Remuneration Code* comes into force on 1 January 2022, it only applies to performance periods that begin on or after that date (see SYSC 19G.1.30R). This transitional provision therefore addresses the position for remuneration for performance or services provided in any performance period prior to the performance period to which the *MIFIDPRU Remuneration Code* first applies.

Transitional

- 11.4 R (1) Where an *undertaking* was subject to any of the remuneration codes listed in (2) immediately before the *MIFIDPRU Remuneration Code* came into force, that remuneration code (and any related reporting requirements) continues to apply in accordance with **SYSC TP 11.2**.

- (2) The remuneration codes referred to in (1) are:
- (a) **SYSC 19A** (IFPRU Remuneration Code); and
 - (b) **SYSC 19C** (BIPRU Remuneration Code).

- 11.5 G (1) The effect of the transitional provision in **SYSC TP 11.4** is to preserve the application of the IFPRU and BIPRU remuneration codes to performance or services provided in any performance period prior to the performance period to which the *MIFIDPRU Remuneration Code* first applies.

- (2) This means, for example, that remuneration paid to a member of the *Remuneration Code staff* of an *IFPRU investment firm* for performance in a performance period from 2019 to 2020 would continue to be subject to the remuneration rules in **SYSC 19A** (the IFPRU Remuneration Code).

- (3) As the application of the transitional provision is determined by the date of the performance period in which the performance or services were provided (not when the *remuneration* was awarded or paid out) this would remain the case even if the member of the *Remuneration Code staff* was paid the remuneration after the *MIFIDPRU Remuneration Code* applied to a *firm*.

- 11.6 R The reference in **SYSC TP 11.4R(1)** to an *undertaking* being subject to a remuneration code includes the situation in which those *rules* include an obligation for a *firm* to ensure a *parent undertaking* complies with certain requirements.

- 11.7 G Under previous remuneration codes, certain obligations were not applied directly to unregulated *parent undertakings* but were applied indirectly through the imposition of an obligation on a *firm* within the *group* to ensure compliance by the *parent undertaking*. **SYSC TP 11.6R** makes clear that the transitional provision in **SYSC TP 11.4R** also applies to those indirect obligations on the *parent undertaking*. This means that where provisions in **SYSC 19A** or **SYSC 19C** applied on an indirect basis to a *parent undertaking* before the *MIFIDPRU Remuneration Code* began to ap-

ply, those remain the relevant obligations for performance or services provided during the performance period in which the *MIFIDPRU Remuneration Code* began to apply.

Updates to the dual-regulated firms Remuneration Code transitional provision

SYSC TP 12

Updates to the dual-regulated firms Remuneration Code transitional provision

	Material to which the transitional provision applies	R/G	Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
1	The changes made to SYSC 19D by the Senior Management Arrangements, Systems and Controls Instrument 2023.	R	A firm must apply SYSC 19D in the form in which it applied on 7 December 2023 to remuneration awarded in respect of a performance year starting before 8 December 2023.	8 December 2023	8 December 2023

Senior management arrangements, Systems and Controls

Schedule 1 Record keeping requirements

Sch 1.1 G

The aim of the guidance in the following table is to give the reader a quick over-all view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SYSC 2.2.1 R	Arrangements made to satisfy SYSC 2.1.1 R(apportionment) and SYSC 2.1.3 R(allocation)	Those arrangements	On making the arrangements and when they are updated	6 years from the date on which the record is superseded by a more up-to-date record
SYSC 3.2.20 R	Matters and dealings (including accounting records) which are the subject of requirements and standards under the <i>regulatory system</i>	Adequate	Adequate time	Adequate
SYSC 4.1.8DBR	The firm's most recent P2P resolution manual	As stated in rule	When the P2P resolution manual is made or updated	None specified (but see SYSC 4.1.8DCR)
SYSC 9.1.1R	Business and internal organisation	Details of the firm's orderly records of services and transactions undertaken	Within a reasonable time	Adequate
SYSC 9.1.1AR	Business and internal organisation	Details of the firm's orderly records of services and transactions undertaken	Within a reasonable time	Adequate

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SYSC 9.1.2AR, SYSC 3.3.16R	Suitability or appropriateness in relation to an <i>insurance-based investment product</i>	(1) In relation to suitability: (a) why the recommendation is considered suitable; and	(1) From the date of: (a) recommendation; and	5 years
		(b) client information for <i>suitability report</i> and <i>suitability report</i> .	(b) the <i>suitability report</i> .	
		(2) In relation to appropriateness, client information obtained in making assessment of appropriateness and the appropriateness assessment.	(2) Date of assessment.	
SYSC 10.1.6 R	Conflict of interest	Kinds of service or activity carried out by or on behalf of	Not specified	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		the <i>firm</i> in which a conflict of interest entailing a material risk of damage to the interests of one or more <i>clients</i> has arisen or, in the case of an ongoing service or activity, may arise.		
SYSC 10A.1.6R	Telephone conversations and electronic communications in relation to stipulated activities in <i>financial instruments</i> (see SYSC 10A.1.1R)	Those activities in <i>financial instruments</i>	At the time of the conversation or communication	Five years from the date of the conversation or communication unless the FCA requests a period of seven years
SYSC 14.1.53 R	Prudential risk management and systems and controls	Accounting and other records that are sufficient to enable the <i>firm</i> to demonstrate to the PRA: (1) that the <i>firm</i> is financially sound and has appropriate systems and controls; (2) the <i>firm's</i> financial position and exposure to risk (to a reasonable degree of accuracy); (3) the <i>firm's</i> compliance with the <i>rules</i> in GENPRU, INSPRU and SYSC.	Not specified	3 years, or longer as appropriate
SYSC 22.9.1R	Employment history of <i>employees</i>	As specified in the <i>rule</i> in column 1	Not specified	As specified in SYSC 22.9.2G
SYSC 25.8.1G	Past versions of a <i>firm's management responsibilities maps</i>	Past versions of a <i>firm's management responsibilities maps</i>	SYSC 25.8.1G does not itself impose requirements but says that past versions of a <i>firm's management responsibilities maps</i> are an important part of its records	SYSC 25.8.1G does not itself impose requirements but says that past versions of a <i>firm's management responsibilities maps</i> are an import-

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
				ant part of its records
SYSC 25.8.3R	Past versions of a firm's management responsibilities maps	Past versions of a firm's management responsibilities maps	None specified	10 years from the date superseded, or 6 years for large non-directive insurers
SYSC 25.9.5R	Steps taken to comply with SYSC 25.9.4R (Information to be made available to new manager)	Adequate	Adequate time	None specified
SYSC 28.4.1R	Arrangements made to demonstrate compliance with knowledge, ability and good repute requirements in relation to the carrying out of insurance distribution activities.	As required to demonstrate compliance.	As required to demonstrate compliance.	As required to demonstrate compliance.
SYSC 28.4.2R	Matters dealing with knowledge and competence and completed continued professional training and development in relation to the carrying out of insurance distribution activities.	The firm must record the professional training or development completed by each relevant employee in each 12 month period.	As required to demonstrate compliance.	As required to demonstrate compliance but at least 3 years after the relevant employee stops carrying on the activity.

Senior management arrangements, Systems and Controls

Schedule 2 Notification requirements

Sch 2.1 G

- (1) The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification requirements.
- (2) It is not a complete statement of those requirements and should not be relied on as if it were.
- (3) Table

Handbook reference	Matter to be notified	Content of the notification	Trigger event
[deleted]			
[deleted]			
SYSC 19D.3.51R	The decision by the shareholders, members or owners of the <i>firm</i> to approve a higher maximum ratio between the fixed and variable components of total <i>remuneration</i>	Matter as described in SYSC 19D.3.51R	Matter as described in SYSC 19D.3.51R

Senior management arrangements, Systems and Controls

Schedule 3 Fees and other required payments

Sch 3.1 G

There are no requirement for fees or other payments in SYSC.

Senior management arrangements, Systems and Controls

Schedule 4 Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

Senior management arrangements, Systems and Controls

Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in SYSC contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

Sch 5.2 G

If a 'Yes' appears in the column headed 'For private person', the *rule* may be actionable by a 'private person' under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A 'Yes' in the column headed 'Removed' indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed 'For other person' indicates whether the rule may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the *rule* may be actionable is given.

Sch 5.4 G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
SYSC 2 and SYSC 3			No	Yes SYSC 1 An- nex 1.1.12R	No
SYSC 4 to SYSC 10			No	Yes SYSC 1 An- nex 1.2.19R	No
SYSC 11 to SYSC 14, SYSC 18 to SYSC 21			No	Yes SYSC 1.4.2 R	No
SYSC 15A			Yes	No, SYSC 1.4.2R	No
SYSC 22			Yes (apart from SYSC 22.8.1R and SYSC 22.9.1R -)	No (apart from SYSC 22.8.1R and SYSC 22.9.1R -)	No

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
			see SYSC 1.4.2R)	see SYSC 1.4.2R)	
SYSC 23 to SYSC 28A			No	Yes, SYSC 1.4.2R	No

Senior management arrangements, Systems and Controls

Schedule 6 Rules that can be waived

Sch 6.1 G [deleted]

Sch 6.1A G

As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its *rules*, other than *rules* made under section 64A (rules of conduct), 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the Act.

