

Markets in Financial Instruments Directive II Implementation – Policy Statement II

Policy Statement

PS17/14

July 2017

This relates to

Consultation Papers: 15/43, 16/19, 16/29, 16/43, 17/8 and 17/19 which are available on our website at www.fca.org.uk/publications

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1 Overview

Introduction

- 1.1** This Policy Statement (PS) on the implementation of MiFID II sets out final rules on conduct of business, client assets and final rules and guidance on certain other matters. It follows PS17/5¹, published in March this year, which covered mainly markets and organisational requirements.
- 1.2** The rules in this PS are final. We have also finalised the near-final rules we published in PS17/5 taking account of some technical changes arising from the finalisation of the Treasury's implementing legislation and the rules in this PS. All our rules implementing MiFID II are included in Appendix 1. In CP15/43 and CP16/19 we published Handbook guides on, respectively, the implementation of the markets provisions in MiFID II and the organisational requirements in MiFID II. We will publish final versions of these guides in due course, taking account of comments in response to the consultations.
- 1.3** Alongside this PS, we are publishing a short sixth Consultation Paper (CP17/19) dealing with a small number of residual issues.

Context

- 1.4** As we have previously noted in publications on MiFID II, we think that its implementation will be important in helping us to achieve our operational objectives which relate to consumer protection and market integrity. Most of what is in the MiFID II conduct provisions is familiar in the context of the existing UK regulatory framework. But, as well as the specific adjustments firms will need to make, their implementation presents an opportunity for firms to consider their existing approach to compliance and their efforts to put the interests of clients at the heart of what they do. In this regard, having an effective governance structure and the right culture are crucial to implementing MiFID II successfully.
- 1.5** In relation to the conduct provisions, we have previously highlighted the connection between the provisions in MiFID II and those in the Insurance Distribution Directive (IDD). Following this PS, we will consult on our implementation of the detailed conduct rules in the IDD.
- 1.6** We recognise that in implementing MiFID II there are some areas where we have gone beyond what the legislation requires us to do. This reflects a conscious choice on our part to ensure that we have the right regulatory regime for the UK. The following chapter highlights those areas and our rationale.
- 1.7** In implementing MiFID II requirements we have taken account, in particular where we have gone beyond what the legislation requires us to do, of our obligation to have

¹ <https://www.fca.org.uk/publication/policy/ps17-05.pdf>



regard to the Government's economic policy in advancing our operational objectives. We have considered the benefits to consumers and to the integrity of the UK market of our proposals set against the costs for firms and therefore overall the extent to which the UK remains attractive as a location for internationally active financial institutions.

Summary of feedback and our response

- 1.8** In this PS, we summarise feedback received to issues from across CP15/43², CP16/19³, CP16/29⁴, CP16/43⁵, and CP17/8⁶, but most notably the client asset rules from CP16/19 and the conduct rules from CP16/29. We group our responses into sections which relate to each of the CPs, and the issues raised, including areas where we have made changes to our proposals as a result. Much of what is covered is detailed and technical. There are a small number of areas where we make discretionary policy decisions.
- 1.9** There are a small number of the conduct areas, covered by CP16/29, where we received the majority of our feedback.⁷ In response, we have made significant policy changes to some proposals, but for others we maintain the approach we proposed. Points of particular note include:
- **Inducements in relation to research.** We will apply these provisions to collective portfolio managers and not only to the investment firms that are subject to MiFID II. Other than this discretionary extension of scope, we are not going beyond the MiFID II regime. In response to consultation feedback we are amending our guidance on how quickly research charge deductions should be passed into a research payment account (RPA), allowing greater flexibility, and are clarifying that we do not intend to require investment managers to have a single RPA per research budget.
 - **Client categorisation.** We are revising our proposals for criteria for local authorities opting up to professional client status. The revised criteria have a lower threshold for the size of portfolio that a local authority has to have, and makes it easier for local authorities investing on behalf of a LGPS pension fund to opt-up to professional client status if they wish to.
 - **Best execution.** We will not, contrary to the proposals we consulted on, apply the changes in the best execution rules in MiFID II to Alternative Investment Fund Managers (AIFMs).
 - **Appropriateness.** We maintain our view that collective investment undertakings other than Undertakings for Investments in Transferable Securities (UCITS), including non-UCITS retail schemes (NURS) and investment trusts, are neither automatically non-complex nor automatically complex.
 - **Taping.** We will not apply a requirement for recording phone conversations and electronic communication ('taping') to all investment services and activities carried

2 www.fca.org.uk/publication/consultation/cp15-43.pdf – which received 26 responses

3 www.fca.org.uk/publication/consultation/cp16-19.pdf – which received 27 responses

4 www.fca.org.uk/publication/consultation/cp16-29.pdf – which received 211 responses

5 www.fca.org.uk/publication/consultation/cp16-43.pdf – which received 14 responses

6 www.fca.org.uk/publication/consultation/cp17-08.pdf – which received 2 responses to date

7 CP16/29 attracted the most responses, 211, when compared to all the other MiFID II CPs which numbered a further 69 in their entirety.

out in relation to corporate finance business. We will, as proposed, remove the current partial exemption in our taping rules for discretionary investment managers, albeit making some modifications to the way the rule applies. We have also decided that where Article 3 firms decide to take a note rather than record a telephone conversation we expect the note to include key details of any orders taken and the key substance of the main points of the conversation.

Who does this policy statement affect?

1.10 This PS affects a wide range of firms we authorise and recognise, particularly:

- interdealer brokers
- stockbrokers
- financial advisers
- corporate finance firms and venture capital firms
- trading venues including regulated markets (RMs), recognised investment exchanges (RIEs), multilateral trading facilities (MTFs), and prospective organised trading facilities (OTFs)
- prospective data reporting service providers (DRSPs)
- banks
- investment managers, including individual and collective portfolio managers
- tied agents and appointed representatives
- trustee firms
- firms trading commodity derivatives including energy and oil market participants
- firms conducting corporate finance business or stock-lending activities
- occupational pension scheme (OPS) firms
- firms conducting Lloyd's market activities
- depositaries
- investment companies with variable capital (ICVCs)
- service companies
- authorised professional firms (APFs)



Is this of interest to consumers?

- 1.11** This PS covers the MiFID II rules of most relevance to consumers. The conduct of business rules including inducements, adviser charging and the taping of retail financial advisers (RFAs) and the client asset rules, will be of particular interest to consumers, together with the client assets rules. Consumers have a clear interest in financial markets that operate fairly and transparently. This is the basis for the decisions we make in this PS.

Equality and diversity considerations

- 1.12** We have considered the equality and diversity issues that may arise from the decisions made in this PS.
- 1.13** Overall, we do not consider that the policy approaches in this PS adversely impact any of the groups with protected characteristics ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

Next steps

What you need to do next

- 1.14** Firms need to continue with their preparations for the application of MiFID II on 3 January 2018. We expect firms to take reasonable steps to meet this deadline. Implementation of MiFID II represents a significant challenge for firms, particularly given that important issues concerning the interpretation of the legislation are still being resolved. As set out below, we will continue to support firms with their implementation.
- 1.15** We are considering internally our approach to supervising against the new standards in MiFID II. But several of the supervisory priorities that we highlighted in our Business Plan for 2017/18, both on a cross-sector basis and in relation to some of the specific sectors, are relevant to the changes that MiFID II will bring.
- 1.16** Firms who still need to apply for authorisation or variation of permission should prioritise as a matter of urgency their submission of complete applications. We cannot, however, guarantee that these applications will be determined by 3 January 2018. Such firms must have contingency plans in the event that by 3 January 2018 they do not have the required permissions.
- 1.17** Firms' responses to CP17/19, published today are also welcomed. The deadline for responses is 7 September 2017.

What will we do

- 1.18** We remain committed to helping firms with the implementation of MiFID II. Our staff will continue to liaise with industry to assist with implementation and will offer targeted firm sessions to educate and support their implementation of MiFID II throughout this year, and ensure that their preparations go as smoothly as possible.

- 1.19** In CP17/8, we made some proposals in relation to business conducted by occupational pension scheme (OPS) firms. The feedback on these proposals is not included in this PS and will be published separately later this year. We will also publish later this year our feedback on responses to the issues we are consulting on in CP17/19.



2 Additional requirements

Introduction

- 2.1** In many areas, our implementation of MiFID II delivers, through changes to the Handbook, the minimum requirements in the directive and accompanying standards. We have sought to achieve this through an 'intelligent copy-out' approach.⁸ However, in three broad categories we have gone beyond applying the minimum MiFID II standards. These are where we apply:
- the minimum standards in MiFID II to a wider range of firms or business than required by the legislation to achieve consistency of regulatory standards and to avoid arbitrage
 - standards above the minimum in MiFID II to those covered by the legislation to preserve existing UK regulatory standards
 - standards above the minimum in MiFID II to those covered by the legislation as a result of new policy decisions
- 2.2** We think that the additional requirements we are imposing will help to promote investor protection and market integrity and avoid distorting competition between different types of firms conducting designated investment business, thereby helping to deliver the outcomes that MiFID II envisages.
- 2.3** There will be some additional costs for firms arising from going beyond the minimum, but we consider that the benefits will ensure the costs do not impair the attractiveness of the UK as a location for financial services. Clients will want to use firms that are adhering to regulatory standards that support their efforts to act in their clients' best interests, to focus on good outcomes for clients and to act with integrity. There are also some areas where we have chosen not to extend new MiFID II provisions to firms that were covered by our implementation of MiFID, for example some enhanced best execution requirements. This is because we thought that costs would exceed benefits.
- 2.4** Information about the additional requirements that we will have in our Handbook which go over and above the minimum requirements in MiFID II is contained in the many MiFID II implementation policy documents. It is mainly contained within the cost benefit analysis (CBA) annexes that accompany each CP we have published.
- 2.5** There is one area in which we applied the standard in MiFID to non-MiFID firms but where we will not do so when MiFID II is implemented. Portfolio managers and firms operating pension funds, that are not authorised under MiFID, must currently transaction report. We recognise that these firms would experience a significant

⁸ An 'intelligent copy out' approach means adhering closely to the wording of MiFID II when drafting the relevant provisions in the Handbook, but using alternative wording where appropriate to align with UK law and practice.

increase in the burden of transaction reporting were we to subject them to the new rules under MiFID II. We will therefore remove the obligation to transaction report from these firms for the time being.

- 2.6** This remainder of this chapter explains our overall approach, and summarises this information to provide clarity on the details of what we have done.

The minimum standard

- 2.7** MiFID II is intended to help improve the functioning of the European Union (EU) single market by achieving a greater consistency of regulatory standards. By design, therefore, it is intended that Member States should have very similar regulatory regimes in relation to the matters covered by MiFID II.
- 2.8** A significant part of MiFID II is maximum harmonising (with a significant part of the legislation taking the form of directly applicable regulations) leaving us with no discretion as to the standard that is imposed on those subject to the provisions. We have, however, as explained further below, extended some of these standards to firms or business to which they are not directly applicable.
- 2.9** There are, however, explicit clauses in Article 16 of MiFID II (dealing with client assets) and Article 24 of MiFID II (dealing with certain conduct rules) which, subject to certain conditions, allow us to retain or impose standards going beyond the minimum standard in MiFID II. We explain further below how we are exercising the discretion MiFID II provides to impose additional standards.
- 2.10** As we made clear in our various MiFID II implementation CPs, we interpret MiFID II as requiring us to apply the standards in the legislation to firms based outside of the EU that have a branch based in the UK which we authorise and which conducts investment services and activities.

The minimum standard but with a wider scope (to achieve consistency of regulatory standards and to avoid regulatory arbitrage)

- 2.11** The Financial Services Authority (FSA, our predecessor regulatory organisation) sought to have consistent regulatory standards and to avoid arbitrage across key areas covered by MiFID, in particular organisational requirements, client asset rules and conduct of business rules. MiFID standards were applied to non-MiFID firms, such as alternative investment fund managers and UCITS management companies. They were also applied to non-MiFID business conducted by MiFID firms, such as business involving insurance-based investments and pensions.
- 2.12** Consistency of regulatory standards is an issue that has concerned us in implementing MiFID II and has influenced how we have implemented the organisational requirements, client asset rules and conduct of business rules. In these areas we have, in many cases, retained the wider application of MiFID standards that the FSA introduced and we have applied the MiFID II standards in these areas to non-MiFID firms and non-MiFID business where taking this approach (which generally involves making incremental Handbook changes) does not result in significant additional burdens on industry.



- 2.13** In implementing MiFID, the FSA created a 'common platform' for organisational requirements. This sought to ensure that firms subject to MiFID and the Capital Requirements Directive (CRD) could comply with a single set of systems and controls requirements. The common platform was then used as the basis for systems and controls requirements for various types of non-MiFID business, albeit applied as a mixture of rules and guidance.
- 2.14** We are updating the common platform in implementing MiFID II. Aspects of the enhanced organisational requirements in MiFID II are therefore being applied to non-MiFID firms as guidance, and we are introducing a new rule extending the application of a number of aspects of the MiFID II organisational requirements to all of a UK investment firm's designated investment business, including business which is not covered by MiFID II.
- 2.15** Where the MiFID II requirements on client assets enhance the standards in our Client Assets Sourcebook (CASS) we have applied the enhanced standards to non-MiFID designated investment business. The original approach of having a single sourcebook for client assets rules for designated investment business was supported by industry and most respondents to our consultation on the implementation of MiFID II supported continuing this approach.
- 2.16** We will not in the main apply the conduct requirements in MiFID II to business involving pensions and insurance-based investments. Parts of the Insurance Distribution Directive (IDD) package remain to be finalised, and we will consult separately on the application of its conduct standards to insurance-based investments. But there are areas where we are extending aspects of the MiFID II conduct standards to certain non-MiFID business. These include:
- **Inducements in relation to research.** We will be applying the MiFID II research and inducement rules to non-MiFID discretionary investment management business. This is consistent with the scope of application of our existing use of dealing commission rules, on which the rules in MiFID II build and we think the same issues, such as ensuring value for money in spending clients' money on research, arise in relation to the consumption of research to discretionary investment managers whether or not they or their business is covered by MiFID II.
 - **Client categorisation.** We will be applying the same criteria establishing the scope of clients who can be classified as eligible counterparties and the same client categorisation of local authorities for MiFID and non-MiFID designated investment business. This is to ensure that the same basic protections apply to local authorities across all of the designated investment business they undertake.
 - **Disclosure requirements.** We will apply aspects of the MiFID II rules on communicating with clients to non-MiFID designated investment business where these can be inferred from the existing provisions and do not impose an additional burden. This should ensure that the overall approach to the presentation of information to clients is consistent across all types of designated investment business, helping clients to compare information from different firms.
 - **Independence.** We will adopt the MiFID II independence standard for personal recommendations to retail clients in relation to or non-MiFID retail investment products (such as insurance-based investments and personal pensions). In our view

it would be confusing for clients to have different standards across different types of business.

- **Best execution.** We will apply the MiFID II best execution standards to firms authorised under the UCITS Directive and, with the exception of the reporting obligation in RTS 28, to Article 3 firms (although we are not now intending, contrary to our proposals in CP16/29, to apply the new requirements in MiFID II rules to AIFMs, small authorised AIFMs and residual CISs). UCITS are a key retail product and we think it is appropriate that firms managing these products are held to high standards when dealing on behalf of their funds.
- **Investment research.** We will apply the MiFID II provisions on the production and dissemination of investment research to certain types of non-MiFID firm. The MiFID II standards are very similar to those under the existing directive that we apply to non-MiFID firms and we believe the production of research by non-MiFID firms raises the same regulatory risks, chiefly around conflicts of interest, as does production of research by MiFID firms.
- **Product governance.** We will apply the MiFID II rules on product governance as guidance to firms undertaking non-MiFID designated investment business. The MiFID II standards are similar to our existing expectations in relation to product governance and many firms will conduct both MiFID and non-MiFID designated investment business.

2.17 Firms have expressed concerns that we are not only applying the MiFID II inducement and research rules to a wider scope of firms but that we are interpreting them in a stricter fashion than other Member States. As we have consistently made clear, however, we consider it important to have a common approach across the EU to the interpretation of key aspects of the MiFID II research and inducement rules. Therefore we actively participated in ESMA work on interpretative Q&A on inducements in relation to research, and we agree with and will abide by the interpretations in those Q&A that ESMA has published.

2.18 We have, however, also had a lot of requests from industry to provide comment to assist interpretation and the practical application of the inducements in relation to research rules. Responding to this, we therefore cover in this PS a small number of practical issues about the application of the regime. We believe that what we say is consistent with both MiFID II and the ESMA interpretative Q&A on this topic, and responds to the requests we have had to provide more information about the practical implementation of the regime.

Above the minimum to preserve existing UK standards

2.19 MiFID and MiFID II both contain provisions that enable Member States to apply requirements which are additional to those contained in the EU legislative package, subject to meeting certain conditions. MiFID II enables us to retain, and apply new, additional requirements which can be shown to be justified and proportionate in the areas of client asset and investor protection. New additional requirements have to be notified to the Commission which then has to make public an opinion on whether it thinks the requirements are justified.



2.20 In implementing MiFID II we will need to use these provisions to:

- Maintain our existing Retail Distribution Review (RDR) adviser charging and platform rules which we believe are crucial to managing conflicts of interest and the potential for bias in the sale of retail investment products.
- Extend the MiFID II inducement bans for firms providing independent investment advice and portfolio management. For firms providing services to retail clients, we will: (i) extend the inducement ban to the provision of restricted (as well as independent) advice; and (ii) prohibit the acceptance of commission and benefits, rather than their acceptance and retention (ie to ban rebating of inducements). Again we believe this is necessary to ensure that retail clients are sold the investment products they need to meet their investment requirements rather than just the products firms want to sell. Both of these will require notifications of new additional requirements to the Commission under MiFID II.
- Keep existing CASS rules, specifically in the two areas that go beyond MiFID II: first, a requirement for a daily report on clients' assets from prime brokers to their clients; and second, a restriction on set-off rights relating to client money. The former helps to ensure that there is more effective control of client assets and should help to assist with a more timely return of those assets in the event of an insolvency. The latter, which will require a notification of new additional requirements to the Commission under MiFID II, is a means of ensuring that clients' assets are not diminished in an insolvency as a result of being set off against obligations not directly related to their business.

2.21 There are also some aspects of our regulatory framework that we intend to retain as part of maintaining a high standard of regulation in the UK.

2.22 MiFID II requires that firms benefiting from the optional exemption in Article 3 are subject to requirements which are at least analogous to certain provisions in MiFID II. This list of requirements does not cover all the organisational and conduct requirements we currently apply to these firms, for example it does not include best execution. In implementing MiFID II we have not cut back the obligations and conduct requirements on Article 3 firms to just those contained in the list in MiFID II. We did not think it was the intention of the changes to Article 3 to lower the conduct standards that individual Member States applied to these firms, as opposed to ensuring that each Member State was imposing at least a certain set of requirements. It is also our view that the obligations we impose on such firms that go beyond those listed in Article 3 help to ensure a more rounded regime of investor protection for clients receiving services from these firms.

2.23 MiFID II Article 25(1) introduces a requirement that firms must ensure that individuals providing advice or information to clients possess the necessary knowledge and competence to ensure that firms meet their investor protection obligations (under Articles 24 and 25).

2.24 ESMA has published guidelines setting criteria for the assessment of knowledge and competence. These guidelines acknowledge that they only establish minimum standards and that national regulators 'can require greater levels of knowledge and competence for staff giving advice and/or for staff giving information'. We have certain specific standards in our Training and Competency sourcebook that go beyond the minimum standards in the guidelines, in particular the requirements we have for those

providing financial advice on retail investment products (RIPs). We will be retaining these requirements because we believe that they are important to ensure that staff have adequate knowledge to be able to act in the best interests of clients when providing financial advice.

2.25 We are in the process of implementing the senior managers and certification regime (SMCR) for all FSMA authorised firms, including investment firms. This will help firms and us to be clear about which individuals in senior management are responsible for what aspect of a firm's business. Greater personal accountability will focus minds and drive up standards. There is no direct equivalent to SMCR in MiFID II. However, we believe that because MiFID II does not directly address this area, there is scope for Member States to have their own rules for their firms. A recital in the MiFID II implementing regulation says that the legislation's organisational requirements: '... should be without prejudice to systems established by national law for the registration or monitoring by competent authorities or firms of individuals working within investment firms'.

2.26 There are two important aspects of the FSA's implementation of the organisational requirements in MiFID that we are retaining in our implementation of MiFID II. These are:

- **SYSC 4** – When implementing MiFID, the FSA retained a rule that firms needed to apportion responsibility for significant responsibilities relating to the operation of the firm amongst senior management and we are not changing this as part of MiFID II implementation. This rule predates the implementation of MiFID and, whilst there is no direct equivalent to this rule in MiFID (or MiFID II), we continue to believe that this is an important part of effective governance of investment firms and accountability of senior management. It is also consistent with the enhanced emphasis on accountability as part of the senior managers and certification regime.
- **SYSC 6** – When implementing MiFID, the FSA applied the bedrock organisational requirement that a firm should have adequate policies and procedures sufficient to ensure compliance with its obligations, not just to its obligations under MiFID but with '*...its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.*' We continue to believe that this is important to ensure that firms are adequately organised across all their business and pay particular attention to arrangements to counter the risk of financial crime and are not changing this approach in implementing MiFID II.

Modifications to the minimum through policy choice

2.27 As explained above, in most cases our decisions to apply requirements which are additional to those contained in MiFID II, or to exercise discretions afforded by the legislation, are driven by a desire to preserve existing domestic standards. However, in a small number of cases, we have taken decisions to reflect new policy positions. Whilst we have exercised discretion to provide additional consumer protections through some of our decisions, in others, we are seeking to tailor certain obligations to the specific attributes of UK markets.

2.28 The main areas where we have made new discretionary policy decisions are as follows:



- **Client categorisation.** MiFID II requires local authorities to be categorised as retail clients by default to ensure that they benefit from the greatest level of investor protection. However, such clients may request to be treated as elective professional clients subject to satisfying certain criteria. MiFID II allows us to adopt alternative or additional criteria for local authorities requesting categorisation as elective professional clients. The criteria we will apply, set out in detail in Chapter 8, are intended to ensure that the quantitative opt-up criteria are more appropriately aligned to the structure and nature of UK local authorities, both when undertaking treasury management and pension administration activities. We believe the criteria appropriately balance the ability of local authorities to access the financial services they require whilst securing an appropriate degree of investor protection.
- **Taping.** Applying our taping rules, as amended by MiFID II, to discretionary investment managers (currently they only have to tape when they have significant dealings with brokers based outside the UK) is an extension of scope rather than substance. But as it diverges from our current approach to taping by investment managers (and MiFID II does not require us to apply taping requirements to firms when conducting portfolio management), we list it as a new policy choice.
- **Inducements.** Following the Financial Advice Market Review (FAMR) the regulated activity of advising on investments has been amended. We now plan to consult again on amendments to our inducement rules to make clear that advisory firms cannot continue to receive significant hospitality (or other inducements) from product providers and claim that this is compatible with the rules on the grounds that the relevant benefit is not in connection with services provided to individual clients. There is no specific rule to this effect in MiFID II, although the policy position is consistent with the legislation's efforts to ensure that third-party payments do not cause firms to act contrary to the best interests of their clients. If we go ahead with this following the consultation, it will require a notification to the Commission under MiFID II.
- **Principles for Businesses.** In implementing MiFID, the FSA limited the application of our Principles for Businesses (PRIN) to MiFID business involving ECPs. This was to align with EU legislation. We are reversing this in implementing MiFID II. This reflects the fact that MiFID II applies certain conduct standards to dealings with ECPs and therefore we believe it is consistent with what MiFID II is trying to achieve. But because PRIN does not derive directly from MiFID II, this is a policy choice.

Table 1 – Additional requirements in the FCA implementation of MiFID II

Handbook reference	Approach				Notes
	apply MiFID II requirements only	apply MiFID II requirements to wider scope of business	apply additional requirements to preserve existing standards	apply modified requirements following new policy decisions	
High Level Standards					
PRIN				X	<ul style="list-style-type: none"> Application to business with eligible counterparties to reflect the extended scope of MiFID II's conduct requirements
SYSC		X			<ul style="list-style-type: none"> Retention of the common platform (which includes non-MiFID firms) for the application of organisational requirements
			X		<ul style="list-style-type: none"> Retention of the apportionment of responsibility rule in SYSC 4 Retention of the requirement in SYSC 6 to maintain policies and procedures to ensure compliance with obligations under the regulatory system
				X	<ul style="list-style-type: none"> MiFID-derived taping rules applied to investment managers (exemption removed)
APER			X		<ul style="list-style-type: none"> Retention of the approved persons regime and the senior managers and certification regime
FIT			X		<ul style="list-style-type: none"> Retention of the approved persons regime and senior managers and certification regime
TC			X		<ul style="list-style-type: none"> The requirements in MiFID II for the assessment of knowledge and competence of staff are explicitly minimum harmonising. We have therefore retained our existing requirements in TC which go beyond the minimum requirements specified in ESMA guidelines
GEN	X				<ul style="list-style-type: none"> Part of the implementation of the requirement in MiFID II for third-country firms to be treated no more favourably than EU firms
Business Standards					
COBS		X			<ul style="list-style-type: none"> Certain aspects of COBS are applied to non-MiFID firms and business including research and inducements, client categorisation, describing advice services and best execution
			X		<ul style="list-style-type: none"> RDR rules on adviser charging and platforms are maintained MiFID II's new inducement bans are extended to reflect the scope of existing RDR rules
				X	<ul style="list-style-type: none"> Use of discretion to introduce bespoke opt-up criteria for local authorities seeking categorisation as professional clients
CASS		X			<ul style="list-style-type: none"> Application of MiFID requirements to all designated investment business (including non-MiFID business) is maintained
CASS			X		<ul style="list-style-type: none"> Maintaining the requirement for a daily report on clients' assets from prime brokers Restricting set-off rights relating to client money
MAR	X				<ul style="list-style-type: none"> Following the regimes in MiFID II
PROD	X				<ul style="list-style-type: none"> PROD is only applied as guidance in relation to non-MiFID business
Regulatory Processes					
SUP			X		<ul style="list-style-type: none"> Retention of the approved persons regime and senior managers and certification regime
DEPP	X				
Redress					
DISP			X		<ul style="list-style-type: none"> Retaining certain aspects of our complaint handling rules for MiFID complaints
COMP	X				
Other					
Article 3 firms			X		<ul style="list-style-type: none"> Maintaining certain existing requirements for Article 3 firms which are beyond the scope of at least analogous requirements MiFID requires us to apply
Structured deposits	X				



Consultation paper 15/43 response

3

Perimeter Guidance Manual (PERG)

Introduction

3.1 This chapter summarises the feedback we received on the changes proposed to the Perimeter Guidance Manual (PERG) in CP15/43, CP16/29 and CP16/43. The chapter is relevant to regulated and unregulated firms, and individuals performing investment services and activities.

Draft perimeter guidance in CP15/43

3.2 In CP15/43, we proposed to issue guidance on the scope changes imposed by MiFID II, including various topics such as:

- the new service of operating an OTF and the associated definition of 'multilateral system'
- the extension of the MiFID service of executing client orders to cover issuance of securities including why the issue of its own securities by an ordinary commercial company should not be within the MiFID perimeter
- the fact that the matched principal exclusion no longer applies to the MiFID dealing on own account definition, although it remains relevant for prudential capital purposes
- structured deposits and how they fit into the MiFID and RAO perimeters
- changes to the exemptions from the MiFID perimeter

3.3 We asked users of PERG whether they agreed with our proposal to continue to offer perimeter guidance on the scope of EU legislation by updating PERG 13. More specifically, we asked whether they agreed with our interpretation of a multilateral system.

3.4 All respondents welcomed the updating of PERG to take account of MiFID II related scope changes. On the detail of the changes to PERG 13, including the topics identified above, we received a range of responses, the most detailed of which concerned the definition of multilateral system and related issues.

3.5 Whilst some respondents welcomed the draft guidance, there were differences of opinion as to whether the scope of the definition of multilateral system should be construed more broadly or more narrowly. The principal comments made in the responses included the following as being examples of what should not amount to operating a multilateral system:



- internal crossing by asset managers
- ad hoc crossing of client orders in the course of principal brokerage activity
- matched principal trading effected through voice trading
- post-trade risk reduction activities
- off-venue arranging in relation to block trading where the blocks are executed on a trading venue

3.6 There were also comments to the effect that although the definition of multilateral system does not explicitly require contract conclusion, this is implicit in the definition by virtue of Article 1(7) MiFID II. This provision provides that all multilateral systems must operate either in accordance with the authorisation and other requirements relating to MTFs or OTFs, or those applicable to regulated markets.

3.7 We also received comments on other aspects of the draft guidance. As regards the extension of the MiFID service of executing client orders to cover issuance of securities, it was suggested by one respondent that it would be helpful to make clearer in the guidance that execution of orders involves a service provided to the client, so that the extension to the activity of executing orders applies only in the context of providing a service.

3.8 There were some drafting suggestions provided on the guidance on dealing on own account, new exemptions and regulated activities relating to structured deposits. Other detailed suggestions included requesting more explicit guidance in regard to local firms and revising the ESMA Q&A relating to market-making.

Our response on the draft perimeter guidance in CP15/43

We will update PERG to take account of MiFID II related scope changes, giving guidance on the scope of the directive.

We are grateful for the various suggestions for clarifying the scope of the meaning of 'multilateral system'. Since providing the draft guidance for consultation, ESMA has produced Q&A addressing issues regarding multilateral and bilateral systems⁹, including answers relating to issues identified in paragraph 3.5 above. A number of responses to our consultation concerning the issue of multilateral systems stressed the need for a common approach across Member States and ESMA is well placed to help deliver this outcome. On reflection, we think that it is best to rely on achieving a common convergent approach through ESMA Q&A.

We may opt to make perimeter guidance on the question of what is a 'multilateral system' at a later stage, but for the time being have focused our Q&A on the scope of operating an OTF or an MTF, with a view to enabling firms to consider whether and what authorisation they require.

⁹ See ESMA Questions and Answers on MiFID II and MiFIR market structures topics
https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38_qas_markets_structures_issues.pdf

As for Article 1(7) of MiFID II, we have included a rule in the Market Conduct Sourcebook (MAR) giving effect to this provision. We remain of the view that any system that merely receives, pools, aggregates and broadcasts indications of interest, bids and offers or prices should not be considered a multilateral system, although this may amount to activity under Article 25(2) of the RAO. Our guidance in MAR implementing Article 1(7) of MiFIR reflects this. We have revisited our guidance on flexible forward contracts to express our view that the length of the delivery period is not relevant to whether or not an instrument is an option, although it is a relevant factor when considering whether the contract is likely to be a means of payment.

As regards the extended definition of the MiFID service of executing client orders to cover issuance of securities, we do not consider that it is necessary or helpful to address issues concerning investment services or activities in this respect, as the definition itself makes no such distinction. We remain of the view, however, that the issue of its own securities by an ordinary commercial company should not be within the MiFID perimeter and that no further clarification is needed in this respect.

We appreciate and have taken note of several of the drafting suggestions and observations received and have reflected this in the amendments to PERG 2 and PERG 13. As for local firms and authorisation issues more generally, whilst we have not amended the corresponding PERG text, we note that issues relating to these firms were considered as part of the FCA's MiFID II Application and notification user guide.¹⁰

Draft perimeter guidance in CP16/29

3.9 In CP15/43, we commented that we would issue a subsequent CP addressing scope issues contained in the MiFID II delegated acts that were not available at the time of our first consultation. Amongst the matters on which we proposed guidance for in CP16/29 were:

- what is a personal recommendation for the purposes of MiFID II?
- what is the scope of the expanded category of financial derivatives, notably in relation to FX products?
- what is the scope of the amended categories of commodity derivatives?
- how are emission allowances treated under MiFID II?
- what is the scope of the exemptions for professional firms and commodity trading firms under MiFID II?

¹⁰ See 3.24-3.25 <https://www.fca.org.uk/publication/documents/mifid-ii-application-notification-guide.pdf>



- 3.10** We asked whether readers agreed with the proposed amendments to PERG 2 and PERG 13 and if not, where and why they disagreed.
- 3.11** The text was positively received by most respondents although there were some suggestions as regards the content of the perimeter guidance, notably on the following themes:
- In the case of flexible forward contracts, the guidance should be revisited noting that the length of the delivery period has no bearing on whether an instrument is a future or an option, although it may be used to determine whether the means of payment exclusion for FX products in the MiFID II delegated regulation applies.
 - The PERG guidance should take account of the future development of similar products to binary bets albeit with more than two possible outcomes.
 - Clarity as to what is meant by 'use of the internet' in connection with the giving of 'personal recommendations'.
 - The use of a narrative approach as opposed to Q&A in PERG 13.

Our response on the draft perimeter guidance in CP16/29

We have revisited our guidance on flexible forward contracts to express our view that the length of the delivery period is not relevant to whether or not an instrument is an option, although it is a relevant factor when considering whether the contract is likely to be a means of payment.

As regards products similar to binary bets with multiple outcomes, we would expect these contracts to fall within the definition of contracts for differences prior to the MiFID II increases in scope. We have clarified what is meant by 'use of the internet' in connection with the giving of 'personal recommendations' in Q20.

So far as adopting a narrative approach as opposed to Q&A in PERG 13 is concerned, we remain of the view that for guidance on EU directives, a Q&A approach remains the most effective approach for ensuring accessibility to the widest audience.

Draft perimeter guidance in CP16/43

- 3.12** The consequential amendments to PERG set out in CP16/29 were accepted by respondents although one respondent noted that the amendments to PERG 2 should refer to Annex 1 Section C of MiFID II where they relate to futures.
- 3.13** We also included guidance on the MiFID II exemption for professional firms in PROF to be read in conjunction with PERG 13. We received no objections to this proposed guidance.

Our response on draft perimeter guidance in CP16/43

We will make the consequential amendments, revisiting PERG 2.6.22A to take account of the feedback we received.

- 3.14** We will make the guidance in the Professional Firms sourcebook (PROF) relating to professional firms subject to the Part XX FSMA regime and the effect of the Article 2 MiFID II exemption for professional firms.



Consultation paper 16/19 response

4

Client Assets Sourcebook (CASS)

Introduction

- 4.1** This chapter covers responses to the questions in Chapter 7 of CP16/19 and Chapter 18 of CP16/29 on the proposed amendments to our Client Assets Sourcebook (CASS) arising from the MiFID II implementation.

CP16/19

- 4.2** In CP16/19 we consulted on changes to CASS to implement the safeguarding of client assets provisions in MiFID II. We noted that our implementation proposals would not mean significant changes to the existing CASS regime because MiFID II is broadly aligned with CASS: we think most new MiFID II requirements are broadly implemented already.

Maintaining a single rulebook

- 4.3** We proposed continuing our single rulebook approach, implementing MiFID II for all designated investment business to ensure the same standards and investor protections. We also proposed that professional clients of non-MiFID firms¹¹ could continue to opt-out of the client money rules (CASS 7).
- 4.4** In CP16/19 we asked:
- Q17 – Do you agree with our proposal to implement MiFID II requirements for MiFID and non-MiFID business maintaining a single rulebook? If not, please give reasons.
- 4.5** All respondents agreed with our proposal on the basis that it would maintain simplicity, clarity, high standards of investor protection and manageable costs for firms. One noted that it would continue to place an additional regulatory burden on UK non-MiFID firms (eg certain UCITS management companies and AIFMs) compared to firms in other EU member states (in particular, requirements to appoint a client assets oversight officer and maintain a CASS resolution pack).

Our response on maintaining a single rulebook

In light of the feedback received, we are continuing the approach proposed in consultation. The overwhelming majority of responses to our pre-consultation survey and the CP did not think the new rules would be burdensome, including for non-MiFID firms. Our consultation concerned incremental changes to CASS to implement

11 CASS 7.10.12R.



MiFID II and applying these to all designated investment business. In our pre-consultation survey, we concluded that these changes do not materially impact firms conducting non-MiFID business, including UCITS management companies and AIFMs, either because they are not engaged in the relevant activity or the new requirements are already covered by CASS. UCITS management companies and AIFMs are subject to a limited set of the CASS rules in certain circumstances. We did not consult on removing any existing requirements for non-MiFID firms and will continue to maintain a consistent standard of protection for client assets for all designated investment business.

Implementing MiFID II safeguarding of client assets provisions

4.6 We proposed the following changes to the existing CASS rules for all designated investment business, including non-MiFID business:

- prohibit title transfer collateral arrangements (TTCAs) with retail clients and require firms to consider the appropriateness of TTCAs for non-retail clients
- only allow firms to agree with a third party that custody assets can be used to satisfy a firm's obligations to that third party (for example, under a lien) if required by law, and to record such arrangements in client contracts
- extend safeguarding provisions to third party custodians who delegate to further sub-custodians
- when placing a client's money in a qualifying money market fund (QMMF), require firms to make internal assessments and obtain express client consent
- provide an exemption for firms from the prohibition on depositing over 20% of client money in a group bank if they meet certain conditions
- require firms to have measures in place to prevent unauthorised use of client assets, and
- require firms to ensure appropriate collateral is provided and monitor its continuing suitability when arranging securities lending for clients

4.7 We also proposed to keep existing CASS provisions that are being implemented by MiFID II and update the drafting as required.

4.8 In CP16/19 we asked:

- Q18 – Do you agree with our proposals to implement MiFID II safeguarding of client assets provisions? If not, please give reasons.

4.9 Most respondents broadly supported the proposals. Some said they agreed that most new MiFID II requirements were already covered by CASS and where MiFID II goes further, there would be minimal impact.

Prohibition on transfer collateral arrangements (TTCAs) with retail clients

- 4.10** One respondent suggested allowing firms to retain existing TTCAs with retail clients. Another respondent suggested that the CBA did not account for the widespread use of TTCAs with retail clients.

Inappropriate use of TTCAs with non-retail clients

- 4.11** A few respondents considered this proposal provided less flexibility to firms than under MiFID II by requiring them to consider the 'extent by which' rather than 'whether' the amount subject to TTCA is in excess of a client's obligations. They were concerned that the draft rules might prevent them from taking margin or collateral in advance, maintaining a buffer of collateral to counter market fluctuations and client trading decisions, and managing credit appropriately or conservatively. They also suggested that firms should not be prevented from considering the appropriateness of TTCAs per class of client, rather than individually. One respondent highlighted that the proposed risk disclosure to clients overlaps with disclosure requirements under client reporting and information rules (CASS 9) and Article 15 of the Securities Financing Transactions Regulation (SFTR).

Custody and client money liens

- 4.12** The following comments were made, in most cases by a single respondent:

- The proposed rules do not accommodate a situation where a client instructs the firm to grant a security interest, lien or right of set-off to a third party over the client's safe custody assets.
- The interpretation of the MiFID II text implied in the draft rules could disrupt the operation of omnibus accounts in custody chains and require a firm to negotiate away liens by Central Securities Depositories (CSDs), Central Counterparty Clearing Houses (CCPs) and other market infrastructures.
- Requests for clarification on the level of risk disclosure of liens over client assets. The same respondent questioned whether the proposal addresses liens required by rulebooks of local market infrastructures (eg CCPs and CSDs). They also said the cost of updating firm books and records could be significant.
- Suggestion to amend the proposed guidance¹² on clearing and settlement debts to include 'properly incurred liabilities' arising on behalf of clients when providing services to them.
- Asking whether granting a third party a lien over client assets in respect of discretionary credit extended by that third party to a firm's clients could be said to be needed in order "to facilitate settlements". The respondent suggested that clients would otherwise have to prefund all transactions if third parties did not provide such liquidity.
- Drafting suggestions to address a concern that the third party's right to exercise the lien could be interpreted as being contingent on the firm recording it in the client contracts and its own books and records.

12 CASS 6.3.6BG.



- The proposed rules on client money liens were unnecessary, as MiFID II is already implemented in CASS 7.¹³
- Removing the exemption to allow firms to agree to liens with third parties to 'access to the local market' would require renegotiation of existing custodian liens in a global custodian network. One respondent said that if firms need local legal advice for each jurisdiction they hold assets in, they would incur significant costs.
- The proposed guidance¹⁴ on requiring firms to disclose in the client contracts 'all the terms' under which liens may be granted would not be beneficial for firms with multiple sub-custodians and could result in lengthy client disclosures.

Delegation of safekeeping duties to a third party

- 4.13** Some respondents asked if firms could rely on their sub-custodians' due diligence to ensure appropriate control over delegation. Others questioned the level of oversight firms need over the custody chain. One respondent suggested it was not practicable to require only regulated sub-custodians in the custody chain for safekeeping duties.

Internal firm assessments of qualifying money market funds (QMMFs) and express client consent

- 4.14** No comments were received on the proposed internal firm assessments when depositing client money in a QMMF. One respondent questioned the types of money market funds that would be considered a QMMF in light of the ESMA guidance on the common definition of money market funds¹⁵ and the forthcoming Money Market Funds Regulation. They also questioned whether placing cash in a QMMF requires permissions under the custody rules (CASS 6) and is subject to the COBS rules for investments.
- 4.15** On express client consent when depositing money in a QMMF, one respondent asked if agreements with existing clients who had not opted out under existing rules need to be repapered. Another asked if the existing rules¹⁶ relate to situations where the firm *itself* makes the decision to place client money into a QMMF, rather than the individual clients making these investment decisions.

Depositing client money in a group bank

- 4.16** Some respondents suggested the exemption from the prohibition on depositing over 20% of client money in a group bank could apply to CASS medium and CASS large firms (in addition to CASS small firms) where their client money holdings fall into the CASS small threshold.
- 4.17** A few respondents also felt the timing of notifying the FCA on diversification assessments should be changed from "without delay" to "one month" in line with other notification requirements.

13 The respondent pointed to the provisions on client money held by third parties (CASS 7.14), record keeping (CASS 7.15) and acknowledgement letters (CASS 7.18; CASS 7 Annex 2R to 4R).

14 CASS 6.3.6CG and CASS 7.11.60G.

15 CESR/ESMA guidelines on common definition of European money market funds
https://www.esma.europa.eu/sites/default/files/library/2015/11/10-049_cesr_guidelines_mmfs_with_disclaimer.pdf

16 CASS 7.13.

Preventing unauthorised use of assets

4.18 Some respondents requested clarity on the following:

- The meaning of 'appropriate measures' and 'close monitoring', and to what the requirement to take remedial measures applies.
- The level of detail that client contracts should contain regarding omnibus account risk and how a firm can clearly set out what their clients have agreed.
- The way in which firms need to consider the settlement of trades and the risk of settling one client's trade with other clients' assets, including guidance around the use of commercial settlement systems (eg CREST) and that the inclusion of disclosures required by COBS 6.1.7R in the firm's terms of business may not be sufficient to meet the 'express prior consent' requirement for use of assets.
- Whether new CASS 6.4.1CR (appropriate measures to prevent use) and CASS 6.4.1R(3) (express prior consent of a client) are mutually exclusive.
- Whether 'express prior consent' is only required when firms intend to use client assets and do not envisage the unintended consequences of an omnibus structure.
- Whether unauthorised use of client assets as a result of an omnibus structure is a rule breach if appropriate controls are in place to prevent such an occurrence and appropriate actions are taken to fund any shortfall arising.

4.19 One respondent felt firms with an appointed global sub-custodian will struggle to meet the proposed rules especially where contractual settlement is offered on pooled assets. They felt this proposal would push the industry to pre-fund any trading which is not carried out through their own nominee.

Taking collateral when arranging securities lending

4.20 One respondent was unclear on whether this proposal was placing responsibility on the firm to determine the appropriateness of collateral at the individual security level. They also questioned whether the proposed guidance¹⁷ will apply to both bilateral and trilateral collateral arrangements. Another respondent was concerned that the proposed rules may bring nearly all securities lending activities within the scope of the custody rules (and, if so, that this was not reflected in the CBA).

Appointment of a single officer for safeguarding of client assets

4.21 A number of respondents suggested the proposed rules were more restrictive than MiFID II, as the drafting restricts the single officer from undertaking additional responsibilities. One requested guidance on 'small and non-complex firms'. Another requested that, given the Senior Managers and Certification Regime, (SMCR) a single job title is defined within the rules (such as 'CASS Oversight Officer' or similar) with a Glossary definition explaining the scope.

Recitals

4.22 One respondent commented that the recitals give helpful insight into the meaning of the MiFID II text and suggested incorporating these into the Handbook rules.

17 CASS 6.4.2BG.



Our response on implementing the MiFID II safeguarding of client assets provisions

Client consent

We agree that where there are new requirements or new standards for consent in MiFID II, this will require repapering client agreements.

Comments on the CBA

As with the CBA for proposed rules in other policy areas, the CASS-specific CBA dealt with instances where the MiFID standard would be extended to non-MiFID business under our single rulebook approach, rather than the areas where we do not have discretion over implementation. We did not receive any cost data or evidence from consultation respondents of the proposals being a significant impact on MiFID or non-MiFID business. Our pre-consultation survey confirmed that the majority of CASS firms conduct both MiFID and non-MiFID business, and therefore would already be implementing the new requirements for both their MiFID and non-MiFID business.

Prohibition on TTCAs with retail clients

Firms must terminate existing TTCAs with retail clients – retaining them is contrary to MiFID II.

Inappropriate use of TTCAs with non-retail clients

We believe the wording 'extent by which' is in accordance with the MiFID II requirement for an assessment of whether collateral taken 'far exceeds' the client's obligation, not just 'whether' it exceeds it. The rules do not prevent taking margin or collateral in advance, maintaining a buffer to counter market fluctuations and client trading decisions, or appropriate credit risk management (subject to the arrangements being justifiable as appropriate under the new rules). It may also be possible for firms to satisfy themselves that it is appropriate to enter into a TTCA on a 'class of client' basis, but compliance with the relevant rules will be determined on a per client basis as individual clients within a class may have varied obligations to the firm. We have introduced guidance stating that a firm may choose to combine its client communication regarding TTCA risks with communications made under SFTR Article 15 or CASS 9.

Custody and client money liens

In response to the comments on custody and client money liens:

- The final rules implement the prohibitions set out in MiFID II with only the permitted exceptions stated in MiFID II. MiFID II does not include an exception for where a client has instructed the firm to grant a lien on its behalf that extends wider than the recovery of debts permitted under MiFID II, so we have not included this in the new rules.
- We have deleted the reference to 'at the time' in the new rules. There is a separate requirement on the firm to ensure that the ownership status of the assets is clear in client contracts and in the firm's books and records.

- On the level of risk disclosure required to clients around liens, this is only required for a general, wide-reaching lien required by applicable law in a third country jurisdiction in which the client assets are held. We consider a firm can determine the best way to record a lien in its books and records, but this should be clear in a way that allows ownership rights to be readily established on insolvency, as per MiFID II.
- The final drafting of the rules is not intended to disrupt the use of omnibus accounts in custody chains. We have added guidance explaining how 'applicable law' should be understood in this context.
- We agree that the MiFID II rules on client money liens are already implemented in the CASS 7 acknowledgement letter rules. As a result we have deleted the client money lien rules¹⁸ on which we consulted.
- Regarding expanding the guidance¹⁹ to include 'properly incurred liabilities' and whether discretionary credit extended by a third party can properly be said to be needed to facilitate clearing and settlement, the guidance is only to make it clear that firms are able to grant security interests or liens over client debts relating to clearing or settlement.
- We are not adopting any transitional provision for existing lien arrangements as the acceptable circumstances for general liens has been clearly identified since the ESMA technical advice to the Commission on MiFID II in December 2014.²⁰ Firms will also have time in between this publication and 3 January 2018 (when MiFID II comes into force) to amend existing arrangements as necessary.
- MiFID II does not require firms to obtain local legal advice in each jurisdiction in which client assets are held. However, it does require firms to consider their arrangements with third parties and, broadly speaking, if it appears that any lien or set-off arrangements over client assets cover debts other than client debts, the rules do not permit this unless the applicable law in the third country jurisdiction requires it.
- We expect firms to record any security interest, lien or right of set-off in client contracts and in their books and records, ultimately in a way that allows ownership rights to be readily established on insolvency. We expect these records to evidence that the client has agreed to the firm being able to grant a third party a lien over the client's assets (and not necessarily list all the terms in the client contracts) and to allow the firm to identify all the client assets that are subject to a lien (including where this involves the firm being informed by a third party) at all times.

18 CASS7.11.59R – CASS7.11.60G.

19 CASS6.3.6BG.

20 <https://www.esma.europa.eu/document/technical-advice-commission-mifid-ii-and-mifir>



Delegation of safekeeping duties to a third party

In line with MiFID II, we expect a firm subject to CASS to ensure its custody agreements only provide for further delegation that complies with the MiFID requirements on where assets can be held. MiFID II continues the existing MiFID requirement²¹ to ensure the custody chain comprises only regulated custodians. We are retaining this requirement in our rules with the existing exception that allows a firm to deposit a safe custody asset with an unregulated sub-custodian in a third country if:

- required by the nature of the asset or the investment services connected with the asset require it to be deposited with a third party in that third country; or
- the asset is held on behalf of a professional client and the client requests in writing that the asset is deposited with a third party in that third country.
- Under MiFID II, if a firm delegates any of its holding and safekeeping functions, the same exceptions will apply to the delegate.

Internal firm assessments of QMMFs and express client consent

We are keeping the proposed QMMF definition, which tracks the MiFID II definition. The ESMA guidance on the common definition of money market funds is separate from MiFID II and we are not adopting it here.²²

When a firm places client money in a QMMF as part of its requirement to comply with CASS 7.13.3R on segregation, the firm will need to have the relevant permissions to hold any units pursuant to CASS 6 and to comply with those rules.²³ When doing so, a firm will have to comply with other applicable rules, including COBS.

We are not allowing firms to grandfather clients who did not opt out of QMMFs previously as though they have given 'express client consent', as MiFID II does not permit this. However, if a firm's agreements with clients amounted to the firm having obtained express consent then repapering may not be required.

In accordance with MiFID II, client money may be placed in a QMMF.²⁴ Any QMMF units created must be held as the client's safe custody assets in accordance with CASS 6. However, money deposited in a QMMF is still treated as 'client money' for the purposes of meeting the obligation to segregate client money. Accordingly, we expect a firm to report money placed in the QMMF as client money and the units in the QMMF as safe custody assets. When any QMMF units are liquidated and held as money, the money must be paid into a client bank account, and is only reportable as client money.

21 CASS 6.3.4R(1) states that "...a firm must only deposit safe custody assets with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of safe custody assets for the account of another person with a third party who is subject to such regulation."

22 The ESMA guidance on the common definition of money market funds is transposed in COLL 5.9.

23 CASS 7.13.26R to CASS 7.13.27G.

24 CASS 7.13.3R.

Depositing client money in a group bank

MiFID II does not specify the exact nature of 'small balances' of client money, so we have interpreted this as a balance that meets the existing concept of the CASS small client money threshold. We agreed with feedback that this should be regardless of any value of custody assets held and amended the rules accordingly. Firms meeting these requirements should therefore be able to make use of the exemption from the prohibition on depositing over 20% of client money in a group bank provided they also meet the remaining MiFID II conditions.

Firms must already undertake an annual CASS classification exercise²⁵ so firms should use these parameters to evaluate whether they meet the 'small balance' of client money requirement in the context of this rule. Diversification assessments for the purpose of this rule could be done at the same time as the classification exercise for efficiency and we have amended the guidance accordingly. Firms should be mindful of the need to review their assessments if their circumstances change so that they no longer meet the criteria. MiFID II requires firms to notify the FCA of their assessments. Making the notification at the time of the assessment represents no additional burden to the MiFID II standard and increases the effectiveness of supervision.

Preventing unauthorised use of assets

In response to comments on preventing unauthorised use of assets:

- A firm should ensure it takes 'appropriate measures', which may include more than those listed in new CASS 6.4.1CR. We expect firms to be able to evidence that they are taking appropriate measures, for example, this may include having a policy for dealing with trades that do not settle as expected. We have amended the rules to make it clear that the requirement on remedial measures applies if the firm cannot deliver on the settlement date.
- Client contracts should allow clients to make an informed choice. Firms should agree with their clients the actions they will take, in accordance with MiFID II.
- In respect of commercial settlement systems, the existing rules prevent use of one client's assets for another's trade unless the relevant client has given express prior consent.²⁶ A firm cannot use a retail client's assets except for securities financing transactions and with express prior consent.²⁷ The combination of existing and new rules requires a firm to put in place appropriate measures to prevent unauthorised use of client assets. We consider it is clear that the disclosures required by COBS 6.1.7R in a firm's terms of business are not sufficient to meet the 'express prior consent' requirement, as these disclosures do not involve obtaining any consent from the client.

25 CASS 1A.2.

26 CASS 6.4.1R.

27 CASS 6.4.1G.



- CASS 6.4.1CR and CASS 6.4.1R (3) are not mutually exclusive.
- We expect firms to evidence their appropriate measures to prevent unauthorised use of client assets. This could, for example, include a policy to address unintended consequences occurring in omnibus account structures. The use of one client's assets for other clients' transactions is a breach of the rules.
- MiFID II does not require a firm to pre-fund transactions to ensure prevention of unauthorised use of assets. The firm could put in place other measures, such as appropriate controls over executing client orders to prevent sales transactions from being executed before assets are received.

Taking collateral when arranging securities lending

MiFID II places responsibility on the firm for ensuring that a borrower of safe custody assets provides appropriate collateral and that the firm monitors the continued appropriateness of such collateral. The guidance²⁸ applies where the firm is party to the securities lending agreement under MiFID II. In a trilateral agreement, we consider this requirement applies if the firm is still arranging for the lending to take place. The new rules require appropriate collateral to be provided, but do not require the firm itself to take the collateral, which could be another party.

These rules apply to securities lending in respect of safe custody assets. Responses to our pre-consultation costs survey and the ESMA MiFID II consultation²⁹ indicated that the clear majority of firms already take collateral in these circumstances. We therefore do not believe these changes have a large impact.

Appointment of a single officer for safeguarding of client assets

We agree that the single officer for safeguarding of client assets can undertake additional responsibilities where appropriate and we have amended the rules accordingly to clarify this in line with the MiFID II requirement. Certain firms (eg banks) are currently subject to the Senior Managers and Certification Regime (SMCR) and we have taken this in to account in drafting our final rules.

We will consider the interaction of the CASS single officer requirement with the SMCR in the context of investment firms when this is consulted on in the future.

Recitals

We continue to have regard to the recitals in interpreting our rules that implement MiFID II but will not copy all of them into our Handbook.

28 CASS 6.4.2BG.

29 <https://www.esma.europa.eu/document/technical-advice-commission-mifid-ii-and-mifir>

Changes in CP16/29 – consequential changes in CASS

4.23 In CP16/29, we consulted on consequential changes to CASS 9 which arose from the proposed amendments to COBS which in turn came from new disclosure rules in MiFID II.³⁰ The amendments were largely administrative, incorporating CASS cross-references to MiFID II disclosure requirements. We asked:

- Q66 – Do you agree with our proposed consequential changes to CASS? If not, how could we amend them?

4.24 Nearly all respondents supported our proposed changes. One said there was not enough information in the consultation about the aims of the proposal to enable them to reach a view.

Our response to consequential changes in CASS

In light of the feedback received, we are implementing this as proposed in the CP. The changes were made to ensure consistency with the amendments to COBS 6 and 16 required under the new disclosure rules under the MiFID II delegated regulation, whilst continuing the existing level of consumer protection.

30 Article 49 and Article 63 respectively, of the MiFID II delegated regulation



5 Complaints handling

Introduction

- 5.1** In this chapter we summarise the responses we received to changes that we proposed in CP16/19 and CP16/43 to our Dispute Resolution: Complaints sourcebook (DISP) arising from the implementation of MiFID II.
- 5.2** In CP 16/19 we proposed copying out the complaint handling requirements of MiFID II into DISP, and creating a new section for the complaints handling rules for MiFID complaints.
- 5.3** CP16/43 consulted on changes to further align the requirements that apply to MiFID complaints with the existing rules in DISP. Specifically, we proposed that firms should be able to apply an approach similar to that which applies to non-MiFID complaints which are resolved within three business days, in terms of the response that is sent to consumers.

Scope of application of MiFID II complaints handling rules

- 5.4** Some respondents felt that separate rules for the handling of MiFID II scope complaints could present operational challenges and that there should be one set of rules for all complaints. Other respondents welcomed the separate rules and said that they would find this helpful in that their business is entirely within the scope of MiFID so they would only need to follow the one set of rules. As there are additional requirements for MiFID investment firms in relation to MiFID complaints that are directly applicable under EU law, we have set these out separately for ease.
- 5.5** Respondents queried how different provisions of the MiFID complaint handling rules apply to different types of firms. The application of the MiFID II complaint handling rules varies depending on the type of firm. For example, application of a provision may depend on whether the complaint relates to the MiFID business of a branch of a European Economic Area (EEA) firm in the UK.

Our response on the scope of application of the MiFID II complaints handling rules

We propose not to extend the MiFID II complaint handling requirements to all complaints, as we do not intend to make rules where they are not required. We also think that separate rules should make it easier for firms to identify which rules apply to MiFID complaints. Although there may be challenges in the early stages of the implementation of these rules, we expect complaints to be dealt with impartially, and without undue

delay. We generally intend for the same rules to apply to firms' complaint handling regardless of subject matter, and respondents agreed that similar rules to those in DISP 1.5, relating to resolutions within the close of three business days, should also apply to MiFID complaints.

We have included a table in DISP 1.1A.7R that sets out which provisions apply to different types of firms. This should help firms to identify which provisions apply to their business. It may be helpful for firms to note that we do not have sets of discrete complaint handling rules for other kinds of business, though some of the rules in DISP only apply to certain kinds of business, eg managing UCITS.

Access to the Financial Ombudsman Service

- 5.6** Respondents also queried who can complain to the Financial Ombudsman Service, and stated that the Financial Ombudsman Service's jurisdiction should be extended to match the scope of MiFID II.

Our response on access to the Financial Ombudsman Service

The MiFID II complaint handling requirements apply to retail clients, professional clients and eligible counterparties (in relation to eligible counterparty business). The Financial Ombudsman Service may only look into complaints from or on behalf of an eligible complainant, and was set up to resolve certain disputes quickly and informally.

We do not intend to revise the definition of 'eligible complainant' so that it specifically covers all retail clients, professional clients and eligible counterparties (in relation to eligible counterparty business) because we do not believe that it is appropriate that the Financial Ombudsman Service should handle complaints from professional clients and eligible counterparties unless they are consumers or small businesses.

It should be noted that an individual who is acting outside of their trade, business, craft or profession is already included within the definition of 'eligible complainant'³¹ and so may be able to refer a complaint to the Financial Ombudsman Service regardless of whether the individual is a retail client, a professional client or an eligible counterparty.

Complaints reporting and publication

- 5.7** Respondents asked if we are going to change the complaint returns form and the complaints publication report.

31 See DISP 2.7.9AR for further details.



Our response on complaints reporting and publication

The general complaints reporting rules and complaints data publication rules apply to MiFID complaints. We do not think we need to make any changes to the way that this information is submitted as part of implementing MiFID II. However, we will update how we publish complaints data so that it is clear whether or not the data is specific to complaints from eligible complainants.



Consultation paper 16/29 response



6 Inducements, including adviser charging

Introduction

- 6.1** In this chapter, we provide our response to feedback received to our proposals in Chapter 2 of CP16/29. Our approach to inducements in relation to research is set out in the next chapter.
- 6.2** We did not receive any substantive feedback on the relevant CBA section for the discretionary aspects of our proposals.³²
- 6.3** As noted in CP16/29, we proposed separating the inducement rules into two sections:
- a new COBS 2.3A which implements the new MiFID II inducement bans and will apply to MiFID, equivalent third country and Article 3 firm business
 - the existing (but revised) COBS 2.3 which will apply to other designated investment business – ie business that is not MiFID, equivalent third country or Article 3 business
- 6.4** We also proposed retaining our existing domestic adviser charging rules in COBS 6.1A and 6.1B.
- 6.5** We consider that it is important to have a consistent inducements regime (and indeed a consistent conduct regime) for business involving MiFID financial instruments, insurance-based investments and pensions. However, we will need to take into account the Insurance Distribution Directive (IDD) implementing measures once these are final. Therefore, we will retain our existing rules for the time being for insurance-based investments and pensions.
- 6.6** Since CP16/29 was issued, the Treasury has published the response to its consultation on changing the definition of 'advising on investments' in Article 53(1) of the Regulated Activities Order (RAO). The effect of this change is that a regulated firm with permission to carry out a regulated activity other than, or in addition to, the permissions of 'advising on investments' and/or 'agreeing to advise on investments' will only require the Article 53(1) permission to 'advise on investments' where that firm provides a personal recommendation. We have published a technical note explaining this change.³³

32 Set out in paragraphs 2-37 on pages 137-142 of Annex 2 of CP16/29.

33 www.fca.org.uk/firms/financial-advice-market-review-famr/changes-regulated-activities-order

Providing investment advice and portfolio management services to retail clients

- 6.7** Respondents to DP15/3³⁴ supported a consistent inducements standard across all advisers.
- 6.8** In CP16/29, our broad proposals for implementing MiFID II's inducement ban, in relation to retail clients, were to:
- extend the MiFID II requirements to restricted advice given to retail clients
 - prohibit the acceptance of commission and benefits (ie to ban rebating), rather than banning their acceptance and retention, and
 - amend the adviser charging rules and MiFID II inducement rules to apply the ban on soliciting and accepting inducements in connection with the firm's business of providing advice – rather than only to inducements provided in relation to the provision of a particular personal recommendation

Extending the MiFID II inducement ban to restricted advice provided to retail clients

- 6.9** In CP16/29, we proposed applying the MiFID II inducement ban for independent advice to all advice (ie independent and restricted advice) provided to retail clients, in line with our existing national standards which were introduced by the RDR. This would apply in relation to MiFID, equivalent third country and Article 3 firm business – as well as advising on retail investment products (RIPs), in line with existing requirements under the RDR.
- 6.10** We asked:
- Q2: Do you agree with our proposal to apply the MiFID II inducement rules for independent advice to all advice provided to retail clients? If not, please give reasons why, including evidence as to why, in your view, the costs of such an approach would outweigh benefits.
- 6.11** All, but one, respondents commenting directly on this question agreed with our proposal. The main reasons provided for agreeing were:
- that the rules already apply under the RDR, and are in line with the RDR objectives (mainly to mitigate the consumer detriment created by commission payments)
 - it will ensure a standard approach between restricted and independent advice; and between advice on MiFID financial instruments and non-MiFID RIPs, and
 - there should be consistent rules for restricted and independent advice, and also for vertically integrated firms

34 www.fca.org.uk/publication/discussion/dp15-03.pdf



Our response on extending the MiFID II inducement ban to restricted advice provided to retail clients

We are taking forward the changes necessary to implement the MiFID II inducement ban in relation to independent advice, and are extending these requirements to the provision of restricted advice but only where restricted advice is provided to retail clients in the UK (see further below).

Prohibiting acceptance of commission and benefits

- 6.12** In CP16/29, we proposed applying our existing RDR rules, which ban advisers from accepting inducements in relation to advice on RIPs to retail clients, in our implementation of the relevant MiFID II requirements.
- 6.13** We also proposed extending this ban on accepting inducements to both independent and restricted advice, and portfolio management, provided to retail clients for all MiFID financial instruments and structured deposits, including such advice given by Article 3 firms and equivalent third country firms.
- 6.14** We asked:
- Q3: Do you agree with our proposal to ban firms providing advice or portfolio management services to retail clients from receiving and rebating monetary benefits to such clients? If not, please give reasons why, including evidence as to why, in your view, the costs of such an approach would outweigh benefits.
- 6.15** Of those respondents commenting directly on this question, virtually all agreed with our proposals.
- 6.16** The main reasons provided for agreeing were:
- Even if these payments are rebated to the client, they could still potentially impact the advice provided by the adviser, or the decisions made by the portfolio manager
 - This reflects the current RDR ban on inducements
 - If firms are permitted to receive and then rebate benefits, this could both create confusion for customers, and would be likely to lead to opaque charging structures
 - The practical difficulties and costs involved in accounting to clients for third party payments received outweigh any likely benefits
- 6.17** One respondent suggested that the ban should have the same territorial application as the RDR adviser charging rules, which do not apply where the retail client is outside the UK.

Our response on prohibiting acceptance of commission and benefits

We are proceeding with our CP proposals – including the additional requirements of banning firms that provide independent or restricted advice or portfolio management services to retail clients from accepting and rebating monetary benefits to such clients. We consider that this is a necessary alignment with our existing RDR approach.

As suggested in the responses, we will limit the territorial application of our additional domestic requirements so that they are the same as for the domestic adviser charging rules and so will only apply where the retail client is in the United Kingdom. This means that firms providing independent advice or portfolio management services to retail clients outside the United Kingdom will be subject to the same MiFID II requirements as those providing independent advice or portfolio management services to professional clients; and firms providing restricted advice to retail clients outside the United Kingdom will be subject to the MiFID II inducement rules as they apply to firms with the exception of those providing portfolio management or independent investment advice (as is the case for firms providing restricted advice to professional clients).

Inducements provided in relation to providing advice (RDR adviser charging rules)

- 6.18** In CP16/29, we proposed retaining the existing RDR adviser charging rules, despite the introduction of the new MiFID II inducements rules. The RDR rules would continue to have a different scope from the MiFID requirements, and RIPs which fall within MiFID will be subject to both MiFID II and RDR requirements.
- 6.19** However, we proposed amending the RDR adviser charging rules to:
- clarify that the inducements ban applies to any inducements received in connection with a firm's business of providing advice, and not just in relation to specific personal recommendations, and
 - confirm that only minor non-monetary benefits can be accepted in relation to advice on RIPs, whether these fall under MiFID or not
- 6.20** In addition, and similar to our approach under the RDR adviser charging rules, for MiFID business not falling under the RDR rules, we proposed that the MiFID inducement ban would apply to a firm's wider business of providing advice and not just to the provision of particular services.
- 6.21** We asked:
- Q6: Do you agree with our proposal to extend the MiFID II limitation on non-monetary benefits to the wider business of providing advice in respect of RIPs?



- Q7: Do you think we should extend the MiFID limitation on non-monetary benefits to the wider business of providing advice for all MiFID products, and not just RIPs?

6.22 All respondents to these questions supported the proposed approach, with the exception of one trade body which answered 'No' to Question 7 because of the change to the definition of 'advising on investments' in the RAO proposed by the Treasury.

6.23 Other respondents asked whether:

- legacy trail commission payments permitted by the RDR rules (COBS 6.1A.4AR and 6.1A.4AAG) could continue once the new rules were in force, and
- discretionary portfolios would be captured if not structured as funds

Our response on inducements provided in relation to providing advice (RDR adviser charging rules)

We are taking forward the changes necessary to implement MiFID II, with the extension of the inducements ban to restricted as well as independent advice where it is given to retail clients in the United Kingdom. We will also take forward the changes necessary to apply the limitation on non-monetary benefits to advice given on all RIPs, not just those falling under MiFID.

After the consultation on CP16/29 closed, the Treasury published a response to its consultation on changing the scope of the 'advising on investments' activity in article 53(1) of the RAO. As stakeholders were not aware of the final outcome of the Treasury's consultation when responding to CP16/29, we propose to consult again on our proposal to apply our inducements ban more widely to a firm's business of providing advice – for both RIPs (under the RDR rules) and MiFID products which are not RIPs – in a forthcoming CP dealing with consequential changes arising from the RAO change. These changes have not, therefore, been included in the rules in the Appendix to this PS.

On the detailed questions posed by firms:

- The new rules will not affect the provisions in COBS 6.1A.4AR and COBS 6.1A.4AAG on continued payment of trail commission. To assist firms we have sought to clarify the relationship between the MiFID II inducement requirements and the RDR rules. We have also introduced a new transitional provision to make clear that the new MiFID II requirements in COBS 2.3A only apply to inducements which are paid, provided or received in respect of services that are provided to clients on or after 3 January 2018. For these purposes, it is important to note that the date on which the relevant commercial relationship is initiated is not relevant. The relevant consideration is the date on which the service is provided.
- Firms providing the MiFID service of portfolio management cannot, under the new rules, receive commission, regardless of whether

assets they manage for a client have or have not been put into a fund structure.

Providing independent investment advice and portfolio management services to professional clients

- 6.24** In CP16/29, we said we would implement MiFID II's ban on the receipt and retention of all monetary and non-monetary benefits from third parties, other than 'minor non-monetary benefits', for both independent advice and portfolio management (discretionary investment management), in relation to professional clients (as required by MiFID II).
- 6.25** We also said we did not intend:
- to extend the inducement ban to restricted advice provided to professional clients, or
 - to apply the rebating ban to independent advice provided to professional clients
- 6.26** In effect, this would mean that firms will be able to accept, but not retain, payments in relation to independent advice provided to professional clients; and to receive commissions for restricted advice provided to professional clients.
- 6.27** But we also said we would consider feedback on extending the rebating ban to portfolio managers when dealing with professional clients, as it may be more practical for firms and will help to prevent bias in investment decisions.
- 6.28** We asked:
- Q4: Do you consider that the ban on receiving and rebating monetary benefits to clients should also apply to professional clients? If so, please explain why and provide cost -benefit data. If not, please give reasons why.
- 6.29** Respondents were almost evenly split on this matter.
- 6.30** In the main, those agreeing noted that a uniform approach would create a level playing field; and that, in the advice space, from a practical point of view, there is no significant reduction in the duties of the intermediary when dealing with a professional client, and therefore there is no practical reason why business with professional clients should be treated differently, and the costs borne by the adviser are largely unaffected.
- 6.31** Those disagreeing noted that rebating to professional clients is common practice, and, if disallowed, could impact the ability of fund managers to negotiate reduced management charges in respect of funds in which they invest on behalf of those clients.



Our response on providing independent investment advice and portfolio management services to professional clients

While we will not extend the ban on receiving and rebating monetary benefits in relation to services to professional clients, we note that, from a practical point of view, firms may take a commercial decision not to accept and rebate third party payments in relation to these clients so that they are able to apply consistent standards across their business.

Acceptable minor non-monetary benefits – all clients

- 6.32** The RDR sought to eliminate commission bias as a feature of the retail distribution market, removing as far as possible product provider persuasion or influence over adviser remuneration, and thereby reducing product bias.
- 6.33** Our supervisory thematic reviews conducted since the implementation of the RDR adviser charging rules found widespread provision of non-monetary benefits, such as hospitality, which appeared to be in breach of our rules and which were, in many cases, excessive.³⁵

We are aware that the provision of hospitality within the MiFID 'acceptable minor non-monetary benefits' framework remains an issue with stakeholders, and that this is especially the case in the wholesale context. However, MiFID II tightens the acceptable hospitality perimeter. It states that hospitality is acceptable if it is "*of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events ... [such as] ... participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service*". This is reflected in the new COBS 2.3A.

- 6.34** In addition, firms are reminded of their general obligations to identify, prevent, or manage conflicts of interest – including those caused by third party inducements or by a firm's own remuneration and other incentive structures.
- 6.35** One respondent suggested that post-trade delegated reporting services provided by a broker to fund managers could constitute an acceptable minor non-monetary benefit.

Our response on acceptable minor non-monetary benefits – all clients

We consider that post-trade delegated reporting services could be considered, subject to certain limitations set out in Chapter 7, as part of the overall execution service provided, rather than being treated as a separate benefit.

However, as we discuss more fully in the next chapter, we have exercised the limited discretion we have in this area by adding two new

³⁵ www.fca.org.uk/publications/thematic-reviews/inducements-and-conflicts-interest-thematic-review-key-findings

types of acceptable minor non-monetary benefits: one in relation to research trial periods, and the other in relation to connected research.

Article 3 firms

- 6.36** In CP16/29, we proposed subjecting Article 3 firms to the same requirements in relation to inducements as those that apply to MiFID firms. In essence, this means that the MiFID II inducement ban (other than minor non-monetary benefits) in relation to independent and, for retail clients, restricted advice will apply also to Article 3 firms providing advice, as will both the restriction on rebating inducements to retail clients and the core MiFID II inducement rule set out in Article 24(9).
- 6.37** We asked:
- Q5: Do you agree that we should apply MiFID II's requirements in relation to inducements to Article 3 firms? If not, please explain why, and also provide cost-benefit data to support your explanation.
- 6.38** Of those respondents that commented directly on this aspect of our proposals, all but one agreed.
- 6.39** The main reasons for agreeing included:
- applying the MiFID II requirements is the most practical and least complicated way of complying with the MiFID II requirement for Article 3 firms to be subjected to at least analogous requirements
 - this would ensure consistency with MiFID firms, and equal treatment across the industry, putting all distributors on a level playing field and thereby preventing regulatory arbitrage between MiFID and non-MiFID firms
 - Article 3 firms are already broadly operating within these requirements, and
 - from a consumer perspective, there is little reason why Article 3 firms should not need to comply with the same rules as other firms

Our response on Article 3 firms

We are finalising the rules on the basis that Article 3 firms will be subject to the same requirements in relation to inducements as MiFID firms. We appreciate that our implementation of MiFID II introduces new layers of application to COBS. We will be considering what further steps we can take to assist firms in navigating the sourcebook.



Advising on structured deposits

6.40 In CP16/29, we asked whether we should apply only the MiFID II inducement requirements to advice on structured deposits, rather than making them subject to the RDR adviser charging rules.

6.41 We asked:

- Q8: Do you agree with our proposal not to subject advice on structured deposits to our existing RDR adviser charging rules and, instead, to apply only the MiFID II inducement requirements to such business? If not, please give reasons why.

6.42 The majority of those respondents that commented directly on this question disagreed, and felt that we should rather apply all the RDR rules to structured deposits, and not only the MiFID inducements rules.

6.43 The main reasons for disagreeing with our proposal included that this:

- would likely create confusion for the industry, and for clients – where structured deposits are often considered alongside RIPs in the advice process
- would be costly in terms of implementing segregated systems and controls to maintain compliance (respondents did not provide specific cost estimates)
- may create a disparity between the requirements for different product types designed to meet the same or similar customer needs – where a consistent approach would better serve both industry and consumers alike and avoid the additional complexity arising from having different standards applying to different product types, and
- would not help to mitigate the potential risk of market distortions arising from regulatory arbitrage

Our response on advising on structured deposits

Structured deposits are not included in the definition of RIP. This means that, although they may be considered alongside RIPs when firms are providing advice, advice on such products is not subject to all the adviser charging rules (including detailed disclosure requirements). We are not aware of any significant consumer confusion or detriment arising from this position; and respondents did not provide specific cost estimates of complying with different approaches. Therefore, we do not propose requiring firms to comply with the adviser charging rules for advice on structured deposits – although the MiFID II inducement rules will apply to firms when selling, or advising on, a structured deposit. However, firms are free to go further than our rules in order to have a single process for selling investments should they wish, and treat structured deposits as if they were within the scope of the adviser charging rules.

Other changes

- 6.44** We have also taken the opportunity to more closely align the wording of the inducements rule with the wording of the core MiFID II inducement rule set out in Article 24(9). In particular, we have clarified – in line with the revised text of MiFID II – that the inducements rule concerns inducements received from parties other than the client or a person on behalf of the client.
- 6.45** Additionally, we have copied out the presumption in MiFID II that a firm which fails to comply with the inducements rule is to be regarded as not having fulfilled its obligations in relation to conflicts of interest and the requirement that the firm must act honestly, professionally and in accordance with the best interests of the client.



7

Inducements relating to research

Introduction

- 7.1** This chapter summarises our responses to feedback received in relation to our consultation on inducements and research within CP16/29. As part of our response, we detail any changes we are proposing or point to other relevant material, such as ESMA Q&A material that has been published since CP16/29.
- 7.2** Chapter 3 contained our proposals for implementation³⁶ through new sections of the Handbook – COBS 2.3B and COBS 2.3C.
- 7.3** Using an intelligent copy out approach, we mostly replicated the MiFID II requirements. However, in line with the current scope of the dealing commission regime, we proposed that we extend MiFID II requirements to collective portfolio managers (CPMs). We also provided additional guidance and discussion in CP16/29 linked to the new MiFID II requirements to provide further clarity on operational aspects of research payment accounts (RPAs) and what can constitute a minor non-monetary benefit. We indicated we would retain certain guidance provisions from our existing use of dealing commission regime in COBS 11.6, where we considered they remained relevant in the context of the new MiFID II approach.
- 7.4** We asked a number of questions seeking views on our general approach to implementing these MiFID II provisions, extending them to CPMs; additional guidance we had proposed, whether any further guidance was necessary, and if any modifications were needed in applying these standards to Alternative Investment Fund Managers (AIFMs).
- 7.5** Please read this chapter alongside Chapter 20, where we also discuss our final policy on certain modifications of the research rules for other CPMs.

Implementation of core MiFID II requirements and scope

- 7.6** We proposed two new COBS sections:
- COBS 2.3B sets out requirements that, if met, allow a firm to receive third party research without it constituting an inducement.
 - COBS 2.3C sets out requirements on firms that supply both execution and research to provide discrete pricing for each of those services (and any other services) to ensure greater transparency to recipient firms, particularly those that may wish to

36 These link to the main inducements rules set out in Article 24 of MiFID II, and Articles 12 and 13 of the MiFID II delegated directive.

avail themselves of the option of paying for research from their own resources or through a RPA.

7.7 We asked:

- Q9: Do you agree with our approach to transpose (implement) the MiFID II proposals for the receipt of research linked to the new MiFID II inducement rules as a new COBS 2.3B? If not, please state why and provide any suggestions for an alternative approach.

7.8 Most respondents agreed with our proposals. However, several responses queried the intended scope of the requirements in COBS 2.3C. Specifically, those respondents suggested it was unclear whether a MiFID investment firm supplying execution and research services was required to offer separate pricing to third country firms (ie those firms outside the EEA, without a UK presence).

7.9 On a similar theme, a couple of stakeholders also queried whether we had intended to require brokers to price services separately to all MiFID firms, or only to recipients that offer independent investment advice or portfolio management services. These responses argued that MiFID II implied a narrower application of requirement in Article 13(9) of the MiFID II delegated directive to price services separately, linking it to the enhanced restrictions on the receipt of inducements set out in Article 24(7) and (8) of MiFID II, and recommending that the FCA should not seek to apply this more broadly.

7.10 Another scope issue raised by respondents was how certain execution-related services would need to be treated for the purpose of the new inducements requirements given the deletion of COBS 11.6. Stakeholders expressed a concern that the removal of the explicit provision in COBS 11.6 that permits services directly related to the execution of trades on behalf of the investment manager's customers³⁷ to be received in return for dealing commissions, implied that certain execution-related aspects of services provided by brokers may no longer be acceptable or would have to be separately charged and paid for under MiFID II.

7.11 In particular, industry responses queried whether brokers' activities such as working large orders, taking trades on risk, and structuring derivative trades, as well as their use of standard connectivity services³⁸, could be treated as being part of the execution service provided to the underlying client in return for execution fees, rather than a separate 'benefit' to the firm that would be subject to the inducements rules.

7.12 Another similar issue that was raised was whether brokers could provide transaction reporting for buy-side firms in order for them to meet their obligations under MiFIR without an additional charge. Most stakeholders felt this should be acceptable either on the basis it is 'paid' for within existing charges or costs for execution services, or alternatively it could be considered as a minor non-monetary benefit.

³⁷ See COBS 11.6.3R(3)(c)(i) and COBS 11.6.4E.

³⁸ Such as the Financial InformationExchange service (FIX).



Our response on the implementation of core MiFID II requirements and scope

We have clarified the scope of COBS 2.3C – the requirement on brokers to price execution and research or other services separately – to make clear that investment firms do not have to price separately to third country firms based outside the EEA, although they may choose to do so voluntarily. However, we will proceed with our approach that pricing should be provided to all MiFID investment firms regardless of the activities they are carrying out. We view this as consistent with the specific provisions in MiFID II as well as the wider emphasis on transparency over costs and charges.

Our policy intention is to reduce inducements risks and improve transparency and accountability over costs passed to investors, as well as ensuring a priced research market that enhances competition. Discrete pricing of execution services by UK-based firms on an EU-wide basis is a key part of achieving well-functioning, more transparent markets in execution and research services. It would also seem impractical and undesirable for firms only to offer separate pricing depending on the type of service or activity the recipient investment firm is carrying out in turn.

We acknowledge points raised by respondents that it could be unclear as to how certain 'execution-related' services or functions should be treated under MiFID II, following the deletion of our use of dealing commission rules. We take the view that certain activities can be considered as inherent to the provision of execution services and received by the underlying client in return for execution costs and charges. This would include activities inherent to facilitating an order and that take place between the point at which an order is received and executed by a firm, and the final settlement, in a similar way to the existing provision in COBS 11.6.4E. For example, we accept that working large orders, taking trades on risk, or structuring a series of derivatives transactions would form part of the execution service itself and are not a separate benefit received by a firm. However order transmission systems used by a broker³⁹, do not appear to be provided to either the firm or its clients as a distinct benefit.

Since MiFID II already provides a definition for the service of executing orders on behalf of clients, we are not making any changes to our implementation of MiFID II into the Handbook.

We think that a MiFID investment firm could accept transaction reporting offered by a broker as part of the execution service provided to its clients, provided it does not influence best execution and is offered as a standard term of business by the broker (eg it is not selectively provided for free to some firms but not others). We view this as consistent with the nature of the execution service, which should generally result in a transaction that is settled and reported as necessary in line with regulatory requirements to the benefit of the client.

39 Such as FIX connections.

Our interpretation does not extend to services that are not related to the execution of an order and its proper settlement and reporting. For example, provision of third party trade analytic tools, order management systems, or RPA administration services to a MiFID investment firm, should not be considered as inextricably linked to an execution service. Firms subject to the enhanced inducements restrictions would need to procure such services separately using their own resources, and could not pay for them through enhanced execution costs or research charges passed to their clients.

Extension to firms carrying out CPM activities

- 7.13** We proposed to extend the MiFID II inducements approach, including provisions on receipt of research, to UK-based firms carrying out CPM. This includes UCITS management companies, full-scope UK AIFMs, incoming EEA AIFM branches, small authorised UK AIFMs, and residual collective investment scheme (CIS) operators.
- 7.14** We sought views both on this overall approach, and on whether any modifications were necessary or desirable to the MiFID II provisions to ensure they made sense and were appropriate in a CPM context. We also asked whether we should apply requirements to non-discretionary portfolio management, to the extent this occurs. The FCA definition of investment management currently includes both discretionary and non-discretionary investment management, and we were keen to understand whether 'non-discretionary' activity warrants similar investor protection standards or not. Specifically, we asked:
- Q10: Do you agree with our approach to extending the research and inducements requirements to firms carrying out collective portfolio management activity? If not, please give reasons why.
 - Q14: Should we consider any modifications to the requirements linked to the use of RPAs under the inducements and research provisions for full-scope UK AIFMs of internally managed AIFs? If so, please provide details on what modifications we should consider and why.
 - Q15: Should we apply the new MiFID II inducements standards to firms carrying out non-discretionary portfolio management activity (as defined in our Handbook glossary), including where they receive third party research, in the same way as for other types of portfolio management? Please provide evidence to support your views.
- 7.15** Those who supported our approach welcomed common standards for the UK asset management sector regardless of the legal structure of a portfolio or fund. A trade body considered that there would be competition benefit from broadly applying both the separation of payments for research by UK investment managers and the discrete pricing of research services by brokers as introduced under MiFID II.
- 7.16** Among those respondents that did not support the approach, a common theme linked competitiveness concerns with a view that UK-based fund managers may be disadvantaged and made less competitive if we applied MiFID II standards to their



businesses. This was particularly linked to the fact the other EU member states may not choose to take the same approach as the FCA. However, evidence was not provided to challenge our CBA or indicate specifically what negative effects these reforms would have on firms' ability to compete for business.

- 7.17** We also received views from representatives of CPMs that specialise in private equity funds or venture-capital business. These responses noted that for such activities, research was generally purchased as part of conducting due diligence to support transactions intended to take controlling stakes in companies that are not public. These responses queried the relevance of the MiFID II approach to their model and stated it was unclear whether the research they acquired was caught by the glossary definition of 'research' for the purposes of these measures.
- 7.18** Representation from private equity firms argued that third party research they procured was generally paid for separately from a transaction, although it may be charged to the fund based on pre-agreed terms on costs and charges and ex post disclosures detailing costs invoiced to the investors. Where they did receive more general research from brokers, they argued it was incidental to their activities, had marginal, if any, value for their business, and would be disproportionate to require them to establish a research charge and RPA structure.

Our response on the extension to firms carrying our CPM activities

We will proceed with our proposals to extend the MiFID II requirements on inducements and research to most forms of CPM, including UCITS management companies, full-scope AIFMS and most small authorised UK AIFMs and residual CIS operators. We view the MiFID II reforms as bringing important transparency and accountability over research costs, which are equally relevant to investors in funds. MiFID also makes some key enhancements compared to our current dealing commission rules. As we set out in our CBA CP16/29, we think the changes will benefit consumers by improving CPM firms' oversight and control of research costs passed to investors, and also result in wider efficiencies in the market for research. We view the potential benefits are likely to outweigh the costs to firms. Our analysis was not challenged in responses.

We did not receive any specific evidence to suggest these reforms would materially impact the competitiveness of UK firms. Since we already apply domestic dealing commission rules to all forms of CPM, we do not view the incremental strengthening of standards in the MiFID II derived rules as imposing a significant additional compliance burden for firms who already comply with the existing UK framework. We also continue to believe that applying these reforms broadly to all forms of investment management will be operationally and commercially easier for many UK firms that manage both MiFID portfolios and various types of funds.

If, as we expect, these reforms lead to UK asset managers becoming more efficient and effective in their procurement of research, and also allow better scrutiny and control over execution services, this will result in lower-cost funds and / or better net performance. This will make UK-managed funds more attractive to investors both in the UK and internationally. There is also a possibility that EU standards in sectoral

legislation for UCITS management companies and AIFMs will converge to the MiFID II standards in due course. In the interim, we believe it is important to maintain robust and consistent investor protection standards for UK consumers and firms in this area.

We also, however, accept the arguments for exempting certain CPM activities, including those relating to private equity or venture capital business. We have proposed in our final rules to exempt AIFs or CISs whose core investment policy does not generally involve investing in financial instruments that can be registered in a financial instruments account opened in the books of a depositary or physically delivered to the depositary or generally invests in issuers or non-listed companies in order to acquire control over such companies from the extended MiFID II inducements standards. This is designed to provide both a clear exemption for private equity business and also makes clear that collective funds investing in non-MiFID financial instruments, such as commercial property, are not captured.

We view this exemption as providing proportionality for these types of activity. The conduct risk of a firm over-paying for research through poorly scrutinised, bundled transaction fees or having their trading behaviour influenced by their ability to obtain research from a certain broker appears reduced in the private equity model, where transactions are generally infrequent and often carried out on a negotiated basis. Inducement risks are also mitigated by existing conventions of directly invoicing the fund for specific research / due diligence services, and requirements in AIFMD for managers to agree ex ante with investors the scope of charges that can be deducted from the fund. For these reasons, we view extending the MiFID II inducements approach as disproportionate for this type of business.

As the CBA for CP16/29 was conservative in its approach to calculating costs, and so included all CPM firms, we believe that this change in approach should result in lower one-off and on-going costs for firms than we estimated in CP16/29. Based on figures from a trade association that suggest there are 137 UK-based private equity firms, the exemption proposed here could reduce one-off costs from extending the MiFID II standards to CPM firms by a range of between £1.6m to £3.7m, with on-going costs reduced by between £860,000 to £2m compared with our original CBA estimates.⁴⁰ This represents an approximate 30% reduction in estimated costs.

Guidance on our interpretation of MiFID II provisions

7.19 In CP16/29, we proposed guidance to help firms by making clear our interpretation of certain aspects of the MiFID II delegated directive requirements. In some cases, we took the view that certain existing guidance from our existing use of dealing

⁴⁰ These cost reduction figures have been calculated using: the same average firm cost estimates; and the same assumptions on the proportion of firms who will incur costs as utilised in CP16/29.



commission regime would remain pertinent and relevant to how we would interpret elements of the new MiFID II proposals. We proposed retaining such provisions in substance as part of the new COBS 2.3B section.

7.20 We also set out in CP16/29 our views on certain operational elements of the new regime, while not necessarily proposing specific drafting in the Handbook instrument at that stage.

7.21 We sought views from stakeholders on the guidance we had proposed, and also if there were any areas market participants felt would benefit from FCA. We asked:

- Q11: Do you agree with proposals to retain some guidance provisions from the existing COBS 11.6 in the new COBS 2.3B section, where they continue to be relevant under the new proposals? If not, please give reasons why.
- Q12: Do you have any views on areas where we have proposed new guidance provisions to clarify our interpretation of steps firms could take to ensure compliance with the new inducements and research proposals and the detail of the proposals? If not, please give reasons why and any alternative suggestions.
- Q13: Do you have any views on whether further guidance provisions are needed to clarify other aspects of the new inducements and research proposals and how firms should interpret and implement changes to comply with these provisions? If so, please detail specific aspects on which you think FCA guidance is desirable.

7.22 We also noted that we expected ESMA would produce supervisory convergence Q&As on some aspects of the MiFID II requirements in this area to encourage a harmonised approach by national competent authorities (NCAs) across the EU. We stated we would review and if necessary revise any guidance we have proposed in light of such material and would seek to align with ESMA's views.

7.23 Generally stakeholders welcomed additional guidance from us to provide greater clarity, although many provided detailed comments on specific areas or proposals. To provide specific feedback to discrete points raised, this feedback section is split into further sub-headings and responds to issues under each heading in turn.

Operational aspects of RPAs – status of RPA funds and frequency of sweeps

7.24 CP16/29 included Handbook guidance on the status of the funds kept in an RPA where we provided details on the client money treatment of these funds.

7.25 Some respondents felt that the guidance went beyond the requirements in the MiFID II delegated directive and queried how it would impact the operational arrangements of firms with complex international footprints looking to adopt a commission sharing agreement (CSA)-like mechanisms to collect research charges from execution commissions.

7.26 Several respondents provided feedback on what an appropriate and workable time frame for transferring funds to an RPA should be. We had suggested that research charges should be 'swept' to an RPA either immediately or within the settlement period

of the transaction, although no time period was specified in the draft guidance itself, which simply stated 'without undue delay'.

- 7.27** Typically, stakeholders argued for longer timeframes and cited the operational difficulties, including increased costs, that a requirement to transfer the research charge within short timescales would entail. In particular, they noted that the amounts of research charge deductions may be quite small on a per trade basis, making it inefficient to move funds immediately or within a few days. Respondents also noted that current market practice is for a CSA provider to 'reconcile' the precise amounts that an investment firm has requested to be deducted alongside execution for research on a periodic basis across a number of trades to streamline this process.
- 7.28** The most common alternative timeframe suggested by respondents for the 'sweep' was 30 days (one month). A few argued for a longer period (two months or quarterly) or suggested that no set timeframe was necessary.
- 7.29** A further point of discussion raised was whether an investment firm was required to have only a single RPA per budget or could have several RPAs, provided they had a consolidated 'virtual' account to ensure total RPA balances can be managed to meet the budget and to provide a single audit trail of payments made from RPA funds. While in CP16/29 we indicated that a single consolidated RPA appeared to be more efficient and consistent with the intention of the MiFID II reforms, we did not prescribe this in the proposed Handbook drafting.

Our response on the operational aspects of RPA – status of RPAs funds and frequency of sweeps

Since the publication of CP16/29, ESMA has published a series of supervisory convergence questions and answers on inducements and research (IR Q&As) in section 7 of its document 'Questions and Answers: On MiFID II and MiFIR investor protection topics'.⁴¹ The ESMA IR Q&As provide a common interpretation of how research charge deductions into an RPA should be treated, in line with the MiFID II delegated directive. ESMA's IR Q&A2 makes clear that once a charge is deducted from a client's funds into an RPA, those monies belong to the investment firm – although they must retain full discretion and control over the use of the RPA if they choose to use a third party to administer those funds. Furthermore, ESMA considers that the money in an RPA should be ring-fenced, clearly separated from other funds of the RPA administrator and legally owed to the investment firm. The third party provider should also 'have no right of set-off over the money or be entitled to use it as collateral or otherwise for its own benefit'.

We view ESMA's IR Q&A2 as consistent with the guidance on the legal status and protection of the RPA funds that we consulted on. We are therefore confirming this guidance. We remain of the view that it is an important safeguard to ensure that the funds held in an RPA are fully under the control of the portfolio manager, even when the administration of the RPA is outsourced to third parties. It also provides

41 ESMA 'Questions and Answers on MiFID II and MiFIR investor protection topics', see: https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf



a strong behavioural incentive for the portfolio manager to take full responsibility for allocating the research budget in the best interest of its clients.

In response to feedback on how quickly research charge deductions should be passed into an RPA, we have amended the proposed guidance. We have decided to include in the final guidance that the investment firm should ensure that the transfer of research charges into an RPA where using a third party to facilitate the deduction from its clients should be effected without undue delay, but, in any case, within 30 calendar days from a transaction taking place. We view this approach provides certainty for firms as to what our minimum expectations are, which aligns with current industry good practice where firms are using CSAs. We think it is important to set a maximum limit given the safeguards afforded to the RPA, including the explicit requirements set out in Article 13 of the MiFID II delegated directive and the emphasis in Recital 28 on the need for portfolio managers to retain sufficient control over the collection of client research charges and the payments to research providers.

Notwithstanding the maximum limit of 30 days, we expect firms making research deductions from their clients through third parties to consider earlier movement of funds into an RPA where appropriate to ensure full control over funds. For example, this may be the case if a significant amount of research charges are generated prior to 30 days or if RPA arrangements allow more frequent transfers without disproportionate costs or resource implications.

We have carefully considered views received on whether a single RPA should be required per budget or if a 'virtual' RPA that gives a consolidated view of funds held in multiple underlying RPAs with different brokers could be acceptable. While we continue to view a single consolidated RPA as likely to be more efficient in practice, we do not intend to prevent a virtual RPA with multiple underlying RPAs provided that each individual RPA is still adequately protected in line with COBS 2.3B.19G and ESMA's Q&A2, as cited above (ie each RPA's funds must be ring-fenced and legally owed to the investment firm to which the research charges belong).

RPA funding and payment mechanisms

- 7.30** Portfolio managers with international business models highlighted the potential complexities of operating research budgets and funding arrangements spanning more than one jurisdiction, especially when firms decide to adopt a transaction-based deduction method for the collection of the research charges from its clients.
- 7.31** Stakeholders also requested further clarity as to whether firms could adopt a combination of different research funding methods to pay for research. One respondent also queried whether payment netting arrangements could be allowed where research charges are being passed from a broker's CSA account in to an RPA,

while on the same date the investment firm wishes to allocate a payment from an RPA to that same broker for research services received.

Our response on RPA funding and payment mechanisms

MiFID II provides flexibility on the approach firms can adopt to fund research. We consider that firms should have the ability to implement a combination of RPA-based methods and use of their own resources (ie profit & loss) to pay for external research. This flexibility may be helpful for firms to choose the best model to fit the types of assets being managed (eg an equity portfolio versus fixed income), or depending on operational and regulatory constraints they may face in any other jurisdictions where they also operate.

This freedom of choice may, however, translate into firms implementing complex arrangements. MiFID II requires firms to put in place appropriate controls and management oversight to ensure that the research budget is used in the best interest of their clients and that those controls should include clear audit trails of the payments made. A firm must also set out in its research policy how it intends to allocate costs fairly across clients and portfolios. The complexity of a firm's operational arrangements does not allow a dilution of these MiFID II obligations. Firms will also need to identify whether a mixed funding approach gives rise to any potential conflicts of interest between itself and its clients, or between two groups of clients, which they would need to take all reasonable steps to prevent or manage.

We consider that payment netting is not consistent with the clear requirement in MiFID II that research payments can only be made from an RPA where such costs are being passed to clients by a firm, and that RPA payments must be made in the name of the firm even when using a third party to administer them. We also view netting as having the potential to reduce both the transparency and oversight applied by the investment firm and our ability to supervise such arrangements. Netting may reduce the incentive on the investment firm to scrutinise research payments and controls over budget allocations, and could result in fully bundled execution and research fees continuing with only superficial re-paperying by firms.

Valuation and pricing of research

- 7.32** A number of respondents queried our expectations around ex ante valuation or pricing agreements required by investment firms seeking to receive research. This followed a general discussion of the implications of the reforms in CP16/29. Many respondents wished to maintain a predominantly ex post valuation approach.
- 7.33** Others queried whether comments about ex-ante agreements meant an annual budget had to be pre-allocated to providers, in which case they argued this may not be in the best interests of clients. It was noted that investment firms would vary the



amount of research they consume and value from any given provider over time, and the quality of service provided may also materially change (eg if key analysts at a provider firm left mid-year through the budget period).

Our Response on valuation and pricing of research

In ESMA's IR Q&A 10, sets out clear expectations around the approach that firms should adopt to ensure that their research budget is allocated in the best interest of their clients. While not requiring ex ante agreements to allocate fixed budgets to specific providers, this should entail, as a minimum, that a firm formulates, ex-ante, 'a clear methodology to establish what they expect to pay providers for research before they receive and consume services.'

ESMA's IR Q&A 10 suggests this could include a firm setting 'measurable ex ante criteria as to how it will value the types, level and quality of service. This can provide the basis for agreements with each service provider on the level of payment expected for the anticipated provision of services.' We view these points as particularly important for investment firms to consider in order to ensure the total amount of payments to a given provider are justifiable on behalf of its clients and to ensure relative consistency in what different research providers are paid based on services received. ESMA's IR Q&A 10 is also clear that any ex post variation in payments made to the research firm based on actual services received should be made 'in a proportionate and predictable manner based on those [ex ante] criteria.'

As we indicated in CP16/29 and as reinforced by ESMA's related IR Q&A material, firms should have in place clear frameworks to evaluate the type, level and quality of research services before reception and consumption. Payments to third party research providers from a set budget must also be subject to management control and oversight. It remains the case that firms should perform regular ex post assessments of the overall quality of the research services they have received, which should, in particular, be used to inform future procurement decisions and agreements with providers. While firms should have agreements in place with research providers prior to receiving substantive services, these should provide scope for service and payment levels to be reviewed on a regular basis (eg in-year) to ensure that research procured remains in the best interests of the client.

Trial Periods and connected research linked to new issuances

- 7.34** Many respondents queried whether free trial periods of research services were acceptable and a number of stakeholders strongly argued that these were necessary in order to allow new entrants to access the research market. It was argued that buy-side firms needed to be able to assess whether to establish a new relationship with a provider and it would not be in the client's best interests if an investment firm

had to commit immediately to a contract and payment terms, with costs potentially passed onto clients, without sampling a research provider's service.

- 7.35** Where respondents suggested trial periods be allowed, most also acknowledged that these would need to be limited in nature to avoid undermining the MiFID II inducements regime. Limiting the length of time for which material could be received under a trial rather than requiring a research agreement and payments was a common suggestion. Periods suggested varied from a few months to up to a year. Others also suggested that a trial could be subject to a non-repeat clause to limit the scope for trials to be exploited.
- 7.36** In the context of wider stakeholder concerns expressed about the continued availability of research on small and medium sized corporates under the new regime, specific points were raised around the ability of investment firms to receive 'connected' investment research provided by analysts of a syndicate bank acting on behalf of a corporate issuer in a primary issuance context. Respondents noted that while they felt the minor non-monetary benefit exemption in Article 12(3) (b) of the MiFID II delegated directive (which we proposed to copy out in COBS 2.3A.15R(5)(b)) was potentially intended to cover this type of material, it was unclear whether it had this effect. This is because 'connected research' is still produced as 'investment research' and hence is not directly commissioned or paid for by an issuer. These respondents felt 'connected research' should not be considered as a material inducement, in order to allow investment firms interested in a new issuance receiving it without charge.

Our response on trial periods and 'connected' research linked to new issuances

We have considered carefully views on trial periods. MiFID II provides limited legal discretion in this area, since although member states can indicate other types of acceptable minor non-monetary benefit, these still have to be reasonable and proportionate, and of such a scale and nature that they are unlikely to influence an investment firm's behaviour in any way that is detrimental to its clients.

However, we have taken a view that a limited trial period for a research service subject to other strict conditions could constitute an acceptable minor non-monetary benefit for firms. We have amended COBS 2.3A.19R on this basis. The conditions include that an investment firm (a) can only receive a trial for up to three months; (b) should not be required to provide any monetary or non-monetary consideration to the research provider for research received during the trial; and (c) should not accept a new trial with the same provider within a 12 month period from the date on which a previous trial, or existing research agreement, ceased.

An investment firm must also ensure that receiving research for a trial period is consistent with the other conditions for acceptable minor non-monetary benefits, as noted above, and should keep adequate records to allow them to demonstrate that each research trial received is compliant with these conditions. At the end of a trial period, in order to avoid further research from a provider constituting an inducement, a firm would need to either cease receiving it or establish a research agreement and payment terms. An investment firm supplying free



research trials should also consider their own inducements obligations. In particular, where a firm is subject to COBS 2.3C, it should ensure that the supply of a free trial is not unduly influenced or conditioned by levels of payment for execution services.

We view this approach as balancing the valid comments received around promoting competition and new entrants into the research market, while ensuring trials are consistent with and will not undermine the MiFID II inducements framework, and the risk that firms do not act in their clients' best interests.

We agree with views that 'connected research' written by a bank's analyst on an issuer in the specific context of a primary market capital raising event should be acceptable as a minor non-monetary benefit where it is clearly circulated to inform potential investors about that specific issuance prior to a deal being completed. We view it as comparable in nature and scale to issuer-commissioned research coverage in this limited scenario, which is already permitted under Article 12(3) (b) of the MiFID II delegated directive.

We have therefore created an additional 'minor non-monetary benefit' provision in COBS 2.3A.19R. This is designed to indicate 'connected' research can be provided and accepted without being considered as material research that would not be receivable by those firms subject to the enhanced inducements regime, or would have to be separately paid for from their own resources or an RPA. This is a very limited exemption, and does not extend to any on-going provision of research outside a specific capital-raising context.

We believe that these targeted easements provide sufficient and appropriate flexibility to support the continued production of SME research in line with prevailing market mechanisms across that market segment.

We also consider that a more transparent and priced market should be supportive of a more diverse and competitive landscape for the generation and supply of value-adding research across the whole market.

We however remain open to considering the need for, and merit of, further clarifications to support SME research where robust evidence from stakeholders suggests that such clarification would help to support the functioning of markets without distorting execution decisions.

Payments for RPA administration and mixed use services

- 7.37** One respondent queried whether the concept of 'mixed use' services, which we address in our existing dealing commission rules, remained relevant under the MiFID II inducements and research rules. They suggested that COBS 11.6.8AG could be usefully retained within the new COBS 2.3B.
- 7.38** Another respondent queried how an investment firm would be expected to pay for a third party providing an RPA administration service under MiFID II. They queried whether this could be paid for from a deduction from the RPA itself or execution fees.

Our response on payments for RPA administration and mixed use services

We think the MiFID II inducements and research rules remove the need for our existing guidance on 'mixed use' services. An investment firm can only pay for research from an RPA and must apply appropriate controls and senior management oversight to ensure it manages and uses its research budget in the best interest of its clients. Going forward, we also expect that providers of research and other services should be more transparent in identifying the charges for research, even if they are not directly subject to the pricing requirement that applies to firms providing order execution services alongside research. We would expect investment firms to bear costs from their own resources where they cannot clearly identify a research element of a broader service, rather than use RPA funds. We also continue to consider that items such as market data services do not constitute research, as we have previously stated in relation to our use of dealing commission regime, and we do not expect such services to be funded from RPAs in future.

We consider that administering an RPA will be a discrete service provided to an investment firm. Since it would clearly not meet the description of research under the new rules, such a service cannot be paid for from an RPA. Since the use of an RPA is dependent on the research model chosen by an investment firm, any third party provision of an RPA administration service is neither inherent to executing transactions nor is it a minor non-monetary benefit, and so cannot be deemed as being paid for using execution commissions.

We therefore view that an investment firm should pay a discrete charge to an RPA administrator for that service from the firm's own resources. How such charges or fees are determined is a commercial decision for the investment firm and RPA administrator. A broker does not need to charge for facilitating research charge deductions and temporarily holding these before transferring them into an RPA, but only needs to identify a separate charge if it provides an RPA itself (which they are permitted to do under MiFID II).



Further guidance requests and wider issues

- 7.39** Several responses were received on the arrangements that firms should seek to put in place to avoid receiving unwanted or unsolicited research. Some stakeholders said that the language around 'blocking' research in CP16/29, if taken literally, would impose a requirement that would not be workable in practice especially in light of the various means of communication that can be used to transmit research (post, email, telephone and messaging tools).
- 7.40** Other respondents asked for additional guidance as to what constitutes research.
- 7.41** A number of stakeholders also provided feedback on research on financial instruments other than equities and how this could be funded. Several of them saw parallels between fixed income research and macroeconomic analysis and suggested that they should both be treated as minor non-monetary benefits.
- 7.42** Many who answered CP16/29 also highlighted the potential tensions arising from MiFID II reforms in relation to the US regulatory framework.

Our response on further guidance requests and wider issues

Some of the clarifications that respondents sought have since been provided by ESMA through its IR Q&As.

ESMA's IR Q&A 3 clarifies how investment firms can deal with unrequested research provided free of charge by explaining that firms have to have in place mechanisms to determine the nature of any service, benefit or material paid or provided by third parties to decide whether it can be deemed acceptable. If they do not wish to pay for it, firms should take reasonable steps to either stop receiving or cease benefiting from the content of this research. Ways to achieve this may include automatic filtering of senders and materials where practicable or using the compliance function to monitor, assess and determine whether the incoming material can be consumed in compliance with the MiFID II rules. Training of front-office staff to recognise what research or other material can be accepted or not is also likely to be appropriate.

While we will not provide list of what may constitute research, ESMA's IR Q&As 6, 7 8 and 9 tackle relevant issues and provides guidance as to what can be considered a minor non-monetary benefit, clarifies the nature of corporate access and defines what should be considered macroeconomic research. However, firms will still have to exercise judgement on the specific nature and content of material, rather than rely on how research is labelled or where it originates from within a supplier's organisation.

In particular, as a starting point, ESMA's IR Q&A8 says that most macroeconomic analysis is likely to be capable of suggesting, implicitly or explicitly, an investment strategy and, as such, we would expect it to be discretely priced and paid for. ESMA's IR Q&A 9 notes that research on fixed income, currencies and commodities (FICC) is also not carved out from the MiFID II inducements restrictions, unless research providers

choose to make it available to the public free of charge. ESMA's IR Q&A 9 also suggests that some FICC research, where similar to macroeconomic research, may lend itself to being priced and paid for through subscription agreements.

MiFID II's interaction with the US and other third countries' regulatory frameworks

We are aware of the issues that the MiFID II reforms create with US regulation which will affect, in particular, whether US broker dealers will be willing to receive separate payments for research due to the implications of the Investment Advisors Act. However, as ESMA's IR Q&A 4 clarifies, there is no exemption to the MiFID II obligations for an investment firm. This is to ensure, that should it wish to receive material third party research, a firm must either pay for it from its own resources or from an RPA. We understand that US brokers are in discussions with the US SEC to explore the potential for arrangements that would allow US broker dealers to accept research payments by EU firms once MiFID II applies from 3 January 2018. It is not yet clear whether this will provide a solution to the issues, so we will continue to monitor the situation and if necessary provide an update in due course.



8

Client categorisation

Introduction

8.1 This chapter summarises the feedback we received on the changes we proposed to make to the client categorisation rules in respect of local authorities, and our response.

8.2 In CP16/29 we proposed to:

- Clarify that only a national government or a public body dealing with public debt at national level can be categorised as a per se eligible counterparty (ECP).
- Clarify that only a national or regional government or a public body which manages public debt at national or regional level can be categorised as a per se professional client.
- Give effect to MiFID II's bar on opting-up elective professional clients to ECP status.
- Give effect to MiFID II's retail categorisation of local authorities.
- Exercise our discretion to introduce either additional or alternative quantitative opt-up criteria for local authorities, so that certain local authorities can potentially be categorised as elective professional clients. As part of this, we proposed the separate application of opt-up criteria for local authorities' treasury management functions and pension fund administration functions, and to apply consistent rules across MiFID and non-MiFID business.

8.3 In CP15/43 we proposed to:

- update PRIN 1 Annex 1 to remove the possibility of firms categorising local authorities as ECPs for non-MiFID investment business when applying the FCA Principles for Businesses, (PRIN).

8.4 We modified our approach following feedback, and have now:

- added a fourth quantitative criterion to COBS 3.5.3BR(2), that the local authority is using investment services as part of administration of a pension fund within the local government pension scheme (LGPS);
- decided to apply the same requirements to both MiFID and non-MiFID investment business conducted with local authorities; and
- made further changes to the discretionary criteria, which should allow a greater number of local authorities to be able to opt-up to professional client status.

8.5 Our proposed approach remains the same to:

- prevent smaller local authorities from being able to opt-up to professional client status (particularly when exercising their treasury management functions), while allowing larger ones to be able to exercise this option;
- have a common approach to categorisation of clients across MiFID and non-MiFID business for this type of client; and
- exclude local authorities from the list of eligible counterparties in PRIN 1 Annex 1 for the purposes of applying PRIN in respect of non-designated investment business.

Categorising local authorities as 'retail' or 'elective professional' clients

8.6 Most respondents agreed that smaller local authorities should be categorised as retail clients and be given extra regulatory protections, but felt larger authorities and local authority pension business should not be the subject of these rules given their sophistication and existing statutory protections.

8.7 Others asked whether we could continue to allow local authorities administering LGPS pension funds to be categorised as per se professional clients.

8.8 Many noted that being categorised as 'retail' may prevent local authorities from making certain investments (eg private equity and infrastructure funds, and certain forms of derivatives). They felt this may increase investment costs, hamper investment returns, prevent effective risk management and result in having to purchase higher cost alternatives.

8.9 Finally, some asked for a definition of what a 'local public authority or municipality' is, and highlighted potential difficulties of distinguishing between treasury management and pension scheme administration business.

Our response on categorising local authorities as 'retail' or 'elective professional' clients

It is a MiFID II requirement that local authorities are categorised as 'retail' clients. We have chosen to exercise a discretion we have to set 'alternative or additional quantitative criteria' for local authorities requesting to be opted-up to professional client status. We discuss these criteria in the following sections.

We would note more generally that being a 'retail' client when receiving investment services is intended to provide appropriate additional protections, not necessarily to exclude parties from certain products or services. However, we recognise that this may be a practical consequence of the categorisation in some limited cases, due to the interplay with other regulatory requirements and/or the commercial decisions of investment firms.



A 'local public authority or municipality' is not defined in MiFID or MiFID II, given the many different types of these bodies across the EU. To ensure legal consistency with MiFID II, we will not introduce our own definition. It is our view that firms should be able to distinguish between treasury management and pension fund administration, given the need for pension funds to be separately recorded and funds held in segregated accounts. However, we recognise that investment firms may need to modify their processes to provide appropriate treatment to different functions of the same entity.

The opt-up process

- 8.10** Many firms and local authorities commented that, compared with being categorised as *per se* professional clients, the need to go through an opt-up process to become an elective professional client would be time-consuming, burdensome and costly. However, we received little challenge to our CBA or alternative assessments of the time, cost and burden involved with opting up.
- 8.11** Respondents thought that the process may be inconsistently applied in practice, leading to varied outcomes. A few queried our view that investment firms should apply the rules on client categorisation of local authorities as implemented in the client's jurisdiction, rather than that of the firm. They further noted that a non-harmonised approach would hamper the cross-border provision of services in the EU.

Our response on the opt-up process

It is a MiFID II requirement that local authorities are categorised as 'retail' clients, with the ability to opt-up upon satisfying a set of qualitative and quantitative criteria, using the procedure described. We recognise that having to opt-up to a professional client status, rather than automatically being a professional client, will involve some extra work from investment firms and their local authority clients. We looked at this as part of our CP16/29 CBA, and we received no new evidence to challenge our assumptions that the impact would likely be proportionate and relatively small.

We intend that the process and criteria for opting up should be clear and transparent, to make it as easy to apply as possible. The tests must be carried out by the investment firm and it will need to gather sufficient evidence to satisfy itself that the tests have been met in relation to each client. We recognise that individual firms may make different judgements about the same local authority client, but such judgements may be appropriate with respect to the qualitative test depending on the specific products or services a firm intends to offer.

The client categorisation rules in COBS 3 will apply to firms authorised to do business in the UK, and our rules are designed to give appropriate levels of regulatory protection to UK local authorities. MiFID II specifically allows for a non-harmonised approach to opting up

local authorities in different member states, depending on the specific needs of those clients in each jurisdiction. EEA member states are thus given discretion to set alternative or additional quantitative criteria to those in the fifth paragraph of Annex II (II.1) of MiFID II. Therefore, we continue to believe it is in line with the intention behind MiFID II that firms should defer to the criteria deemed appropriate for local government in the territory in which they are located. Where such member state discretion is not used, or the client is located in a third country, we would expect firms to use the quantitative test in the fifth paragraph of Annex II (II.1).

The qualitative test

- 8.12** Respondents supported the application of the qualitative test, as a broader assessment by firms on the expertise, experience and knowledge of their clients regarding the types of investment or service being offered and the risks involved. Many asked for more detail about how this should be applied in practice, including who (eg which individual(s) or group of individuals within an entity) needs to be assessed for this purpose.
- 8.13** Explanations were provided of typical arrangements for the governance of, and decision-making in relation to, local authorities' pension funds, including the role of elected officials on pension committees, section 151 officers⁴², other staff and external advisors. Some respondents noted their adherence to the CIPFA Code of Practice for Treasury Management, which they suggested may help demonstrate treasury managers' ability to understand the risks of certain investments.

Our response on the qualitative test

MiFID II requires the qualitative test to be applied to local authorities seeking to opt-up to professional client status, with the test itself unchanged from MiFID. It is important that an investment firm is confident that a client can demonstrate their expertise, experience and knowledge such that the firm has gained a reasonable assurance that the client is capable of making investment decisions and understanding the nature of risks involved in the context of the transactions or services envisioned.

COBS 3.5.4 requires that the qualitative test should be carried out for the person authorised to carry out transactions on behalf of the legal entity. 'Person' in this context may be a single person or a group of persons. We understand that the persons within a local authority who invest on behalf of pension funds are elected officials acting as part of a pensions committee. In those circumstances, firms may take a collective view of the expertise, experience and knowledge of committee members, taking into account any assistance from authority officers and external advisers

⁴² Section 151 of the Local Government Act 1972 requires appointment by a local authority of an officer who has responsibility for the proper administration of their financial affairs (eg, a chief financial officer).



where it contributes to the expertise, experience and knowledge of those making the decisions. We also understand that typically the person(s) within local authorities who invest the treasury reserves of those authorities are likely to be officers of the authorities, who are delegated authority from elected members and act under an agreed budget and strategy.

Given different governance arrangements, we cannot be prescriptive, but we would stress the importance of firms exercising judgement and ensuring that they understand the arrangements of the local authority and the clear purpose of this test. It remains a test of the individual, or respectively the individuals who are ultimately making the investment decisions, but governance and advice arrangements supporting those individuals can inform and contribute to the firm's assessment.

We agree that adherence to CIPFA Codes or undertaking other relevant training or qualifications may assist in demonstrating knowledge and expertise as part of the qualitative test.

The quantitative test – approach for Local Government Pension schemes (LGPS)

- 8.14** Respondents particularly queried the need to re-categorise local authorities as retail clients under MiFID II in respect of their administration of their authorities' employee pension scheme. It was noted that although there had been previous failings in treasury management at some authorities as outlined in CP16/29, there were contrasting examples of successful and appropriate investment of local authority pension funds.
- 8.15** Information was provided on the LGPS of which larger authorities in England & Wales are members, with similar schemes in Scotland and Northern Ireland. Respondents also directed us to the LGPS Regulations⁴³ which make express provision for authorities being assisted to appropriately fulfil this role (eg the requirement to take 'proper advice'⁴⁴). It was explained that in England and Wales, the LGPS is undergoing changes to create eight 'pooled' investment vehicles that would each invest on behalf of a number of local authorities to reduce costs and bring scale to investments. Further, the UK Government's hope that such funds would include increased investment in UK infrastructure was noted. There was a concern that MiFID II and our proposals would hold back or hamper the pooling agenda.

Our response on the quantitative test – approach for Local Government Pension Schemes (LGPS)

We recognise that local authority pension schemes are established within the framework of the LGPS Regulations and are subject to the oversight of the Pensions Regulator, as well as the broader public policy

43 Eg, The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016.

44 Ibid, Regulation 7.

goals of the pooling agenda. These measures have similar goals to those in MiFID II, such as ensuring that local authority pension schemes receive appropriate investment services, and that they understand the costs and risks involved with such service.

Some expressed concerns about interpreting the quantitative criteria in light of the common governance of local authority pension scheme administration, and recognise that the drafting of our proposed rules was not sufficient to achieve our policy intention of allowing all local authorities administering LGPS pension funds to have the ability to successfully opt up. Therefore, our rules will add a **fourth criterion** that the client is subject to the LGPS Regulation for their pension administration business. Local authorities must continue to meet the size requirement, as well as one of the two previous criteria or the new fourth criterion. This will assist all local authority pension fund administrators who wish to opt-up to meet the quantitative test, but maintain the need for local authorities to qualitatively demonstrate their sophistication to become professional clients. We agree with views that compliance with the LGPS Regulations, including taking proper advice, will contribute to the assessment of knowledge and expertise of the local authority client when making decisions.

The quantitative test – undertaking 10 transactions on average per quarter

- 8.16** In CP16/29 we thought that in respect of local authority pension business, all local authorities (with the exception of a handful of internally managed funds) would not undertake an average of 10 transactions per quarter in their pension business. This is largely because local authorities investing pension fund money tend to invest in collective investment schemes or delegate management of their portfolio to an external portfolio manager, and this form of investment occurs infrequently.
- 8.17** It was also suggested that many treasury managers would not undertake 10 or more transactions per quarter, owing to their agreed budgeting and financing strategy. A few respondents felt that local authorities may be tempted to 'churn' their portfolio (buying and selling, and re-buying investments) in order to hit the 10 transactions per quarter level to achieve or retain elective professional client status.

Our response on the quantitative test – undertaking 10 transactions on average per quarter

We accept that some local authorities will not be able to meet this part of the quantitative test (particularly when investing pension funds). However, it continues to be our view that regular and recent experience of carrying out relevant transactions remains a useful proxy for assessing sophistication. We have received no arguments against this view, and so confirm that we will retain this test as one of the four available criteria for enabling a local authority body to opt up.



While theoretically this criterion could be 'gamed' by firms and clients by churning portfolios, we believe it is an unlikely course of action for local authorities who are accountable to the electorate and have specific statutory duties requiring prudent management of their financial affairs.⁴⁵ In future, we could scrutinise any firm who appeared to be recommending this course of action to its client and question whether the firm was acting in the client's best interest and whether the firm believed that an artificially higher number of trades contributed to the expertise, experience and knowledge of their client.

The quantitative test – employment in the financial sector for at least 1 year in a professional position

8.18 Many respondents expressed concern and confusion about how firms were supposed to apply the test that the client works or has worked in the financial sector for at least 1 year. In those responses, it was asked whether the test should apply to the local authority as a legal entity, the relevant local elected officials responsible for the decision, the section 151 officer, or the professional advisor.

8.19 Some questioned what constituted the 'financial sector' within our proposed rules. They noted that local authority staff in treasury or pension management functions are professional treasury managers and accountants, but have often not worked for FCA authorised firms, and elected officials typically are not expected to have experience working at financial institutions. Many also believed that the 'financial sector' was limited to the regulated financial sector, but noting that we did not define the term.

Our response on the quantitative test – employment in the financial sector for at least 1 year in a professional position

We accept we could be clearer about who this test is applied to, while ensuring it can be applied flexibly to different governance arrangements. We also recognise that employment in the financial sector is a criterion that can only apply to a natural person.

In response, we have amended the proposed drafting in COBS 3.5.3BR(b)(ii) to note that 'the person authorised to carry out transactions on behalf of the client 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'. This should allow local authorities to delegate authority to make investment decisions on their behalf to professional staff with at least one year's experience. We recognise that this redrafted criterion may not be useful for assessing the collective decision making involved in investing local authority pension funds. However, we think this will be less problematic given our new fourth criterion aimed at LGPS administering authorities.

45 Section 12, Local Government Act 2003

We do not interpret the term 'financial sector' in a limited way for the purposes of COBS 3.5.3BR(2)(b)(ii), and firms may reasonably assess that a professional treasury manager has worked in the financial sector for at least one year, if their role provides knowledge of the provision of services envisaged. This meets the purpose of the test, to ensure the person acting on behalf of a client has the expertise, experience and knowledge necessary in relation to the investment or service being sold and the risks involved.

The quantitative test – portfolio size threshold

8.20 In CP16/29, we asked:

- Q16: Do you agree with our approach to revise the quantitative thresholds as part of the opt-up criteria for local authorities by introducing a mandatory portfolio size requirement of £15m? If not, what do you believe is the appropriate minimum portfolio size requirement, and why?

8.21 We received a range of responses to this question extending from full support for the £15m mandatory portfolio size requirement to suggestions that the UK should not use its discretion provided and retain the default £500,000 threshold in Annex II (II.1) of MiFID II. A common alternative proposal was to set the threshold at £10m.

8.22 Many respondents quoted the size of their own financial portfolio balances, in relation to their treasury management activities and their pension fund administration. A number of respondents questioned the basic assumption of our analysis leading to the £15m threshold, and felt that this number restricted many more authorities than just small town and parish councils, with some believing it captured "half" of all local authorities.

8.23 It was noted that local authorities could 'game' this requirement by borrowing extra funds with which to invest, so as to meet the minimum threshold.

Our response on the quantitative test – portfolio size threshold

We have changed the portfolio size threshold to £10m. This follows further data and case studies provided by local authorities, Department for Communities and Local Government (DCLG) new data, and wider CP responses.

We believe £10m is closer to our policy goal of restricting the ability of the smallest, and by implication the least sophisticated, local authorities (town and parish councils, and the smallest county and district councils) to opt-up, but giving larger ones the ability to do so more readily, (provided they meet the other criteria).

Based on the number of local authorities we estimated were investing in MiFID scope instruments and understanding the quoted portfolio size in the DCLG dataset for 2014/15, in CP16/29 we estimated that 63



additional local authorities would not be able to opt-up to professional client status for the purposes of engaging in MiFID business as a result of our consulted upon policy.

At a £15m portfolio size threshold, this increased to 78 additional local authorities which would not be able to opt-up to professional client status for the purposes of engaging in MiFID business when we used the new 2015/16 DCLG dataset.⁴⁶

Applying the £10m threshold to data over the following years:

- 2014/15 – 27 local authorities would not be able to opt-up to professional client status; and the estimated one-off costs for investment firms would decrease from £1.7m to £0.8m and on-going costs from £0.8m to £0.3m.
- 2015/16 – 42 local authorities would not be able to opt-up, and the one-off costs for investment firms would decrease from £2.0m to £1.1m, and on-going costs would reduce from £0.9m to £0.5m.⁴⁷

While a local authority's ability to borrow extra funds to 'game' this requirement may be possible, it is questionable whether local authorities would be able to justify this approach while at the same time making budgets and investment strategies available for public scrutiny.

Application to non-MiFID scope business

8.24 In CP16/29, we asked:

- Q17: Do you agree with our approach to extend these proposals to non-MiFID scope business? If not, please give reasons why.

8.25 Most respondents supported extension of our proposals to cover the provision of non-MiFID scope investment services to local authorities, on the proviso that we establish a sensible and workable regime. A minority felt that we should not extend our approach to non-MiFID business given the limits of our approach as set by MiFID II, which they believed to be inappropriate. These respondents typically favoured retention of the automatic 'per se' professional client categorisation of a 'local authority or public authority' as a large undertaking under COBS 3.5.2R(3)(f). Similar comments were made in response to Q26 in CP15/43 regarding a change to the client categorisation of local authorities for MiFID and non-designated investment business in relation to the application of PRIN.

⁴⁶ The 2015-16 DCLG data did not become available until after the publication of CP16/29. Now available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612305/Borrowing_and_Investment_Live_Table_Q4_2016_17.xlsx

⁴⁷ Where respondents quoted that "half" of all local authorities would be unable to opt-up to professional client status, we believe this refers to the absolutely number of local authorities potentially impacted, rather than only those who are currently believed to use MiFID services but may not be able to in the future.

Our response on the application to non-MiFID scope business

Given most support our proposal and view that clients receiving similar investment products or services should receive similar protections, we will extend the same criteria for the categorisation of local authority clients to MiFID and non-MiFID investment business. We believe this establishes common criteria, and requires investment firms to provide retail investor protections to local authorities, unless following an assessment they find that the client is sophisticated enough to understand the nature and risks of the proposed investments as professional clients. We believe we have addressed questions about the clarity of the application of our rules, as noted above.

Principles for Businesses (PRIN)

8.26 In CP15/43, we asked

- Q26: Do you agree with our proposal to update PRIN 1 Annex 1 to delete the possibility of local authorities being treated as ECPs for the purposes of PRIN in respect of non-designated investment business? If not, please give reasons why.

8.27 Respondents to this question made similar comments and expressed similar concerns to those that were made to Q16 of CP16/29. These included concerns about transitional arrangements for re-categorising local authority clients, who may no longer be eligible counterparties. On balance, most respondents supported this proposal and felt that it was appropriate to apply consistent treatment in respect of MiFID and non-designated investment business when applying PRIN.

Our response on the Principles for Businesses (PRIN)

Considering all feedback received to both consultations, we have decided to apply our changes to PRIN 1 Annex 1 to both designated and non-designated investment business. This means that local authorities should not be considered as eligible counterparties for the purposes of those rules. We discuss transitional arrangements below. As noted above, we continue to believe that clients receiving similar investment products or services should receive similar protections, particularly between MiFID and non-MiFID investment business and we set out our case for this in CP16/29.

Transitional arrangements

8.28 Although we did not cover the issue of transitional arrangements in CP16/29, many respondents requested an appropriate transitional arrangement so that firms would have time to assess their local authority clients after 3 January 2018. Additionally, they questioned whether, if an existing investment product had been previously sold or



service provided, they would need to sell the assets or cease the service if the client could not be opted-up under the proposed new criteria.

Our response on transitional arrangements

MiFID II gives us very limited discretion with regard to transitional arrangements for applying these rules in respect of local authorities and provides no ability to extend the deadline for compliance with this requirement beyond 3 January 2018. We consulted in CP16/43 on proposed transitional arrangements that would allow investment firms to re-assess the categorisation of local authority clients between the 3 July 2017 implementation deadline and 3 January 2018. These proposals are being taken forward (see Chapter 24). However, firms will not be expected to re-consider categorisation of existing clients other than local authorities, where MiFID II rules are the same as existing MiFID rules transposed at COBS 3.

Otherwise, we have made further consequential drafting changes to transitional provisions at COBS TP 1 that were added when MiFID was implemented in 2007, but that are no longer carried across into MiFID II.

More generally, COBS 3.5.8G notes that professional clients have the responsibility to keep investment firms informed about any changes that affect their current categorisation. Further, at COBS 3.5.9R, if the firm becomes aware that the client no longer fulfils the initial conditions that made the client eligible to be an elective professional client, it must take "appropriate action". Neither MiFID II, nor our rules specify what 'appropriate action' is, which will depend on the facts of the case and what would be in the client's best interest. Firms must exercise judgement and consider what would be in the best interests of the client. For example, if a client no longer meets the quantitative test to opt up to professional client status, a firm may decide it is appropriate to cease providing investment services but to do so in a way that minimises losses to the client.

9

Disclosure requirements

Introduction

- 9.1** This chapter summarises our responses to feedback received in relation to our proposals in CP16/29 to implement the MiFID II disclosure requirements. We proposed updates to the disclosure provisions in two sourcebooks, General Provisions (GEN) and the Conduct of Business sourcebook (COBS).⁴⁸
- 9.2** In particular, we proposed new provisions in: COBS 2.2A, COBS 4.5A, COBS 6.1ZA, COBS 14.3A and COBS 16A in relation to MiFID business.
- 9.3** The revised disclosure framework should provide for appropriate investor protection, detail the information to be provided to clients and potential clients, and detail how firms should report to clients. Our approach to the disclosure requirements (suitability reports) applying in relation to the provision of advice is discussed in Chapter 11.
- 9.4** Our final proposals affect firms that carry on investment business that is MiFID business and, as relevant rules are amended slightly, firms that undertake non-MiFID business. In this chapter, 'MiFID business' refers to MiFID or equivalent third country business, or business undertaken by Article 3 firms. And, 'non-MiFID business' refers to business undertaken by firms that is not MiFID business, or Article 3 firm business.
- 9.5** In this chapter we publish new rules:
- for firms doing MiFID business⁴⁹
 - for Article 3 firms⁵⁰
 - relating to how firms doing MiFID business must disclose information to professional clients and ECPs. For non-MiFID firms, unless the firm is an Article 3 firm carrying on MiFID-scope business, the rules that apply in relation to professional clients and ECPs are unchanged.
- 9.6** For all firms, we publish amended application provisions to make it clear which chapter, or section of a chapter, applies in relation to a firm's MiFID business or non-MiFID business.

48 These provisions are in: GEN 1 (Appropriate regulator approval and emergencies), COBS 1 (Application), COBS 2 (Conduct of business obligations), COBS 4 (Communicating with clients, including financial promotion), COBS 6 (Information about the firm, its services and remuneration), COBS 14 (Providing product information to clients), and COBS 16 (Reporting information to clients).

49 that implement the MiFID II provisions in Articles 24(3), 24(4) first and last paragraphs, 24(4)(b) and (c), 24(5), 24(6), 24(11), 25(6) and 30(1) second paragraph; and we publish provisions that copy out MiFID Org regulation provisions in Articles 44, 46 to 51, 59 to 63, and recital 73.

50 those that are detailed in MiFID II Article 24(3), 24(4) first and last paragraphs, 24(4)(b) and (c), 24(5), and 25(6).



- 9.7** We publish new and more detailed costs and charges disclosure requirements for firms doing MiFID business. For non-MiFID firms, unless the firm is an Article 3 firm, the rules that apply in relation to costs and charges are unchanged.
- 9.8** We publish new disclosure provisions relating to firms doing MiFID business that apply in relation to:
- cross-selling/bundled products or services
 - some more detailed post-sale reporting requirements
 - a revised requirement to retain records for at least five years
- 9.9** For firms doing non-MiFID business, the rules that apply in relation to cross-selling/bundled products or services, and record-keeping are unchanged; the rules in relation to post-sale reporting obligations are also substantially unchanged.⁵¹
- 9.10** We also clarify that:
- We will not, for now, consider proposing a standardised format setting out how firms should calculate and disclose point-of-sale or post-sale information, including information on costs and charges (so firms will need to develop their own approach to disclosure that will meet the needs of their clients and reflect their business propositions).
 - Unless the firm is an Article 3 firms carrying on MiFID-scope business, our existing disclosure rules will continue to apply to firms doing non-MiFID business in the same way they do now. However, these rules may have been re-cast slightly to ensure consistency with the equivalent rules that apply to firms carrying on MiFID business, and some flexibility will now apply in relation to periodic statements provided online.

Information to clients and potential clients

- 9.11** In CP16/29 (Q18) we asked whether respondents agreed with our approach to implementing the MiFID II disclosure requirements. Most respondents agreed with our approach. One thought the new provisions would create difficulties for clients who do not use the internet and prefer to transact in part or exclusively by using the telephone or paper. Another thought the introduction of new or updated client agreements would result in costs to firms who would need to send out revised client agreements or terms of business. There were mixed responses to providing separate rules for MiFID and non-MiFID business. One asked how firms should disclose charges pre-sale, before the advisory service is given and the recommended products and service are known.

Our response on information to clients and potential clients

We could have applied the revised MiFID II disclosure provisions to all investment firms, an approach which would have led to simpler

⁵¹ We are introducing an exemption to the post-sale reporting obligations so a firm doing non-MiFID business can avoid the need to provide periodic statements if clients can, and do, access up-to-date statement online. (See para 9.28)

drafting. However this would have resulted in costs arising to deliver new disclosure standards that would not necessarily improve investor protection for clients of firms carrying on non-MiFID business. Having considered the responses we consider that having separate regimes is the most appropriate and cost-effective approach.

We recognise, and covered this in our CBA, that firms may need to review their business models in order to ensure they comply with the new requirements and give their clients the information required. In particular, we recognise that firms will need to make changes if they have clients who transact using only paper and telephone communications.

Fair, clear and not misleading information requirements

- 9.12** In CP16/29 we proposed to amend our existing rules or introduce new provisions that would impose, align with or reference the new requirements in MiFID II Article 24(3) and Article 30(1), second paragraph. These provisions contain the conditions with which firms must comply in order to ensure the information they disclose is fair, clear and not misleading, including information disclosed in relation to the past and future performance rules. Although we proposed to introduce some updated detail into existing provisions, we considered the amended text to impose substantially the same requirements as the existing text.
- 9.13** In CP16/29 (Q19) we asked about the proposal not to extend the 'fair, clear and not misleading' information requirements to firms communicating with an eligible counterparty in relation to non-MiFID business. Although some of the respondents who commented agreed with this proposal, a number of respondents argued that communications to ECPs by firms doing non-MiFID business, including Article 3 firms, should also be subject to the fair, clear and not misleading rule in the same way as it applies to firms doing MiFID business.

Our response on fair, clear and not misleading information requirements

We accept that a level playing field for all firms that communicate with ECPs may appear to be desirable. However, no evidence has come to our attention to suggest harm in relation to non-MiFID firms' communications to ECPs, and so extending this provision, that would involve such firms in increased compliance costs, could not be justified. At present all firms need to ensure that their communications to ECPs are not misleading⁵², and this is the position that will continue to apply to firms doing non-MiFID business.

52 Given PRIN 3.4.1R, although Principle 7 requires firms to communicate with clients in a way that is fair, clear and not misleading, the only requirement of Principle 7 relating to ECPs is that a firm must communicate information to ECPs in a way that is not misleading.



Information disclosure, timing, and costs and charges

- 9.14** In CP16/29 we proposed rules that would impose, align with, or reference the new requirements in MiFID II Article 24(4) first and last paragraphs, 24(4)(b) and (c), and that would apply different requirements to firms doing MiFID business and firms doing non-MiFID business. In particular, we proposed applying requirements that would require firms doing MiFID business to provide, in good time, more detailed, aggregated and on-going information about costs and charges that go beyond what is currently required. We did not propose applying similar detailed costs and charges disclosure and timing requirements to firms doing non-MiFID business.
- 9.15** In CP16/29 (Q20) we asked about the proposal not to extend the MiFID requirements in relation to costs and charges to non-MiFID business (that is not the business of an Article 3 firm). We were interested in identifying whether firms would face difficulties if they needed to provide different costs and charges disclosure for their MiFID and non-MiFID business.
- 9.16** Several respondents agreed with our decision to avoid gold-plating and not propose to level-up standards applying to non-MiFID firms to align with MiFID II. Others disagreed with this proposal. They indicated that different MiFID and non-MiFID costs and charges disclosure requirements could be confusing, and stated that they would prefer a consistent costs and charges disclosure approach applying to all firms. A couple of firms mentioned that they would like it if firms that carry out both MiFID and non-MiFID business could operate a single, compliant disclosure regime.

Our response on information disclosure, timing, and costs and charges

We realise the MiFID II provisions will result in firms doing MiFID business needing to alter their approach to providing cost and charges disclosures. In relation to firms that carry out non-MiFID business, we are not convinced, and were provided with no specific evidence, that there are benefits to consumers which justify imposing the more detailed MiFID II disclosure requirements. So, we will make the rules as proposed.

We recognise that many firms carry out both MiFID and non-MiFID business. Where this is the case, a firm may want to consider an approach that involves complying with the MiFID disclosure requirements in relation to both the MiFID and non-MiFID aspects of its business. A firm should only apply a MiFID disclosure requirement to its non-MiFID business where it is satisfied that it imposes an equivalent requirement or a higher standard compared to the otherwise applicable non-MiFID disclosure requirement, and compliance with the MiFID disclosure requirement would also entail compliance with the otherwise applicable non-MiFID requirement.⁵³

53 For example, a non-MiFID disclosure rule may require a firm to disclose information about A, B and C while the equivalent MiFID disclosure rule requires disclosure about, A, B, C, D and E. In this example the MiFID disclosure requirement can be said to be "higher" than the equivalent non-MiFID requirement and, in this type of situation, a firm complying with the higher MiFID requirement will comply with the applicable non-MiFID requirement.

Comprehensible information about a firm, its services and investments: standardised format

- 9.17** In CP16/29 we proposed a new rule⁵⁴ to give effect to MiFID II Article 24(5). This rule will require firms to provide information referred to in MiFID II Article 24(4) and (9) in a comprehensible form and in such a manner that clients are 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. MiFID Article 24(5) also states that we can allow for this information to be presented in a standardised format. In CP16/29 we referred to feedback we received to DP15/3, and reiterated that we recognise the importance of consistency across the various disclosures consumers receive. However, for a number of reasons, we do not consider it appropriate to develop a standardised format for disclosure of costs and charges at the current time. We maintain this view.
- 9.18** In CP16/29 (Q21) we asked about our proposal not to propose a standardised format for point-of-sale and post-sale disclosures. A number of respondents agreed with this approach, others disagreed. It was generally accepted that, ideally, all competing firms would calculate and disclose information, including information about costs and charges, using both consistent and comparable methodologies, and consistent and comparable formats. The potential benefit for consumers, aiding comparability if firms take a uniform approach to disclosures, was noted. However, several respondents accepted that any proposal for standardised disclosure formats would need to reflect the MiFID II disclosure requirements, the Packaged Retail and Insurance-based Investment Products (PRIIPs) key information document (KID) and the new disclosure requirements that will be required for insurance-based investment products as part of the Insurance Distribution Directive (IDD). Several respondents stated that they would welcome an indication from us on the point-of-sale and post-sale disclosures that will be expected, and the degree of costs and charges granularity that would be required. Others recognised that, given the various products affected and the diverse costs and charges firms apply in practice, developing a standardised approach that could be used to give a fair and comparable impression of all the different outcomes would be challenging.

Our response on comprehensible information about a firm, its services and investments: standardised format

We do not propose standardised format for point-of-sale or post-sale disclosures, including costs and charges disclosures, at the current time.

We realise that the absence of a standardised format, although it gives firms flexibility to develop disclosures that suit their target customers and business models, will mean different firms will most likely develop different approaches to disclosure, and this will make it harder for consumers to compare alternatives.

However, given the practical challenges that exist for developing a standardised disclosure format, the fact that a viable standardised form does not yet exist, and the need to consider the different requirements



in MiFID II, the PRIIPs Regulation and the IDD, we plan to proceed as proposed.

In the near-term, we will continue to engage with any industry-led development of a standardised format.

Changes to reporting to clients and periodic statements

- 9.19** In CP16/29 we proposed rules that would implement or reflect the MiFID II requirements for the provision of reports to clients on the service provided, including the costs and charges incurred, and the new 10% depreciation reporting requirements applying to a client's managed portfolio, or position in leveraged financial instruments or contingent liability transactions. In CP17/8 we also proposed a consequential amendment to our rules⁵⁵ so that, regarding reporting obligations, our rules would apply to firms carrying on non-MiFID business as they do now.⁵⁶
- 9.20** We also proposed introducing an exemption, in line with MiFID II provisions, to allow firms doing non-MiFID business to avoid the need to provide periodic statements. This exemption would apply if the firm provided its clients with access to an online system containing their up-to-date statement, and had evidence that the client accessed the online statement at least once during the previous quarter. In CP16/29 (Q22) we asked if respondents agreed with our proposal to introduce this exemption.

Our response on reporting to clients and periodic statements

Most respondents agreed with this proposal. However, some respondents disagreed with this approach, as they favoured a consistent approach to periodic disclosure by MiFID and non-MiFID firms to benefit clients. One respondent stated that, although they supported the proposal in principle, they believed the system functionality to support the evidencing of the required online access was likely to be expensive (no specific figure was mentioned). We appreciate this and accept that some firms will choose to continue to provide clients with periodic statements, in addition to providing access to statements online which will not be monitored. There were no objections to the consequential amendments proposed in CP17/8. We will make the rules as proposed.

55 COBS 16.2 and 16.3.

56 In CP17/8 we consulted on consequential amendments to COBS 16 Annex 1R to reflect policy proposed in CP16/29.

10

Independence

Introduction

- 10.1** This chapter summarises the feedback we received on the changes we proposed to independence rules in CP16/29. We provide our response to that feedback and indicate our final approach to transposing MiFID II.
- 10.2** In CP16/29, we provided feedback to DP15/3, which compared our current independence requirements to the new MiFID standard and asked for feedback on how we should incorporate the new standard in our Handbook. We also proposed a new standard of independence for advice in respect of MiFID financial instruments, structured deposits and non-MiFID RIPs (such as insurance-based investments and personal pensions).

Comparison of Retail Distribution Review (RDR) and MiFID II standards

- 10.3** In CP16/29, we provided our analysis of the MiFID II and UK standards for independence. The approach we proposed sought to achieve a similar outcome and level of consumer protection in respect of our current independence standard (ie that personal recommendations must be based on a comprehensive and fair analysis of the relevant market and be unbiased and unrestricted).
- 10.4** We did not expect there to be widespread, significant implications for firms arising from the implementation of MiFID II's independence standard. However, we considered that it would allow some independent advisory firms to more often narrow the scope of their advice and to provide more specialist or specific advice (provided this is made clear to consumers).
- 10.5** We asked in Q23:
- Do you agree with our analysis of the two (MiFID II and RDR) independence standards?
- 10.6** All those who responded to this question agreed with our approach and analysis of the two independence standards, and noted that there was likely to be little practical difference between them. A few respondents also considered that guidance on the MiFID standard would be helpful.

Our response on the comparison of RDR and MiFID II standards

We will adopt the MiFID standard as proposed, and add the guidance we consulted on to help firms demonstrate that they are meeting the



standard and ensure firms interpret it consistently. We will also import some additional guidance from the current COBS 6.2A into new COBS 6.2B.

Scope of application of the new standard

- 10.7** The scope of MiFID II differs from the RDR, as such, in CP16/29 we set out the implications of possible alternative policy options including maintaining the RDR standard for advice on RIPs alongside the MiFID II standard on shares, bonds and derivatives. We explained how this would specify two, near identical standards for independence in COBS, one for MiFID products and one for non-MiFID products. This could create complexity and confusion for consumers and create significant uncertainty for no clear benefit, particularly given the extent of the similarity between the standards. We therefore proposed that the new MiFID standard should be applied to MiFID financial instruments, structured deposits and non-MiFID RIPs.
- 10.8** We asked in Q24:
- Do you agree with our proposal to apply the MiFID standard of independence to financial instruments, structured deposits and other non-MiFID RIPs for UK retail clients?
- 10.9** All those who responded agreed with our proposed approach, mainly citing reasons of avoiding complexity and potential consumer confusion, while maintaining consistent regulatory standards.

Our response on the scope of application of the new standard

We will apply the MiFID standard across the board to advice on financial instruments, structured deposits and other non-MiFID RIPs (when advising retail clients in the UK). This means that for advice that falls outside the scope of MiFID II, with certain limited exceptions, we propose to apply as rules the provisions of the MiFID II delegated regulation. This will be relevant to, amongst others, non-MiFID (including Article 3) firms and MiFID firms providing advice to retail clients on RIPs which are not financial instruments.

Application of detailed MiFID II delegated regulation requirements

- 10.10** In CP16/29 we explained that while most of the detailed requirements on independence within the MiFID II delegated regulation reflect current COBS requirements, there are a small number of new, obligations on firms which, in our view, are unlikely to generate sufficient benefits to consumers to merit being extended to advice on non-MiFID products.

- 10.11** The first of these is a requirement preventing an individual adviser from providing both independent and restricted advice. The MiFID II delegated regulation explains that this is intended to reduce potential consumer confusion about the type of advice they are receiving. We explained our view that it should be possible to ensure that the client is aware of the type of advice being provided and so proposed not to read this across to advice which falls outside of MiFID II.
- 10.12** We asked in Q25:
- Do you agree with our approach to implementing MiFID II's requirements around providing both independent and non-independent (restricted) advice?
- 10.13** The majority of respondents agreed with our approach, but some were concerned about the MiFID restriction on an individual adviser offering both independent and restricted advice and did not see the rationale for it. Some explained that it would prevent smaller firms from offering a range of different services to their clients to best meet their needs.
- 10.14** CP16/29 also proposed that we do not apply two other requirements to non-MiFID business, for firms to:
- distinguish, when recommending their own products (or those provided by entities with close links) the range of products provided by entities which do not have any links with them
 - avoid giving undue prominence to their independent advice services over non-independent advice services in client communications
- 10.15** This was on the basis that the potential benefits arising from these obligations were unlikely to outweigh the costs. Also in respect of the second requirement above, it was not clear what specific consumer detriment this was intended to guard against, given that any communications must be fair, clear and not misleading.
- 10.16** We asked in Q26:
- Do you agree with our approach to reading across these further requirements from the MiFID II delegated regulation?
- 10.17** A majority of respondents supported our approach, whereas a few trade associations preferred a consistent approach for both MiFID and non-MiFID business.

Our response on the application of detailed MiFID II delegated regulation requirements

We recognise that the MiFID II requirement preventing an adviser providing both independent and restricted advice is likely to be an issue for firms who give both types of advice and a particular difficulty for firms with only one adviser. However, since this requirement is stipulated in the MiFID II delegated regulation, we are required to implement it. As we explained in the CP16/29, we are limiting the impact of the requirement as far as possible, by not applying it to non-MiFID business more broadly. This will allow advisers who do not advise on MiFID Financial Instruments



or structured deposits to continue to provide both independent and restricted advice.

In respect of the two requirements detailed in paragraph 10.14 above the majority of respondents agreed with our proposal not to read them across more broadly and no evidence has been provided to alter our view. We have therefore not extended these obligations to non-MiFID business, as proposed in the CP.

11

Suitability

Introduction

- 11.1** This chapter summarises our responses to feedback received in relation to our proposals in CP16/29 to implement the MiFID II suitability requirements.
- 11.2** MiFID II expands on existing suitability provisions and adds some new requirements. Most of the suitability requirements are contained in regulations, making them directly applicable, with limited scope for us to exercise any discretion in our implementation.
- 11.3** We proposed including the new requirements in a separate chapter (COBS 9A) for MiFID business, and leaving the current requirements in place for non-MiFID business pending consultation on implementation of the IDD.
- 11.4** In CP16/29 we asked in Q27, Q28 and Q29:
- Do you have any comments on our proposal to keep the current rules for non-MiFID products pending implementation of the IDD?
 - Do you have any comments on the new COBS 9A in Appendix 1?
 - Do you agree that the new COBS 9A should apply in full to Article 3 firms?
- 11.5** Suitability rules for MiFID and non-MiFID business
- 11.6** Respondents generally supported our approach; they understood our rationale of not wanting to implement MiFID requirements which may, in the near future, conflict with the IDD, until the IDD outcomes became known.
- 11.7** There were very few comments on the detail of the new COBS 9A, and respondents generally agreed that the new COBS 9A should apply in full to Article 3 firms. The new requirement relating to switching has led trade bodies to request guidance on the costs and benefits to be assessed on switching. There were some further requests for guidance on other parts of the MiFID II delegated regulation.

Our response on suitability rules for MiFID and non-MiFID business

We will finalise the rules on the basis of the split Handbook approach – ie a new suitability COBS chapter for MiFID business, and leaving the existing requirements in place for non-MiFID business at least until we consult on the implementation of the IDD and will also apply the new COBS 9A to Article 3 firms.



We have raised stakeholder concerns around the practicalities of complying with the new switching requirements (Article 54(11) of the MiFID II delegated regulation), and the more general need for guidance on the suitability provisions, with ESMA. ESMA is updating its existing suitability guidelines, and we expect these matters to be covered. ESMA is aiming to consult on these updated guidelines in the summer, and to finalise them around the time MiFID II comes into force in January 2018. We would encourage all stakeholders to respond to ESMA's consultation.

12

Appropriateness

Introduction

- 12.1** This chapter summarises our responses to feedback received in relation to our proposals in CP16/29 to implement the MiFID II appropriateness requirements.
- 12.2** Under MiFID, there is a distinction between ‘complex’ products and other ‘non-complex’ products. The appropriateness test (for non-advised sales) must be carried out when a firm executes, or receives and transmits, a client order in relation to a complex product.
- 12.3** Because MiFID II narrows the scope of products deemed automatically non-complex, the appropriateness test needs to be carried out in relation to a wider range of products.
- 12.4** Firms will also need to record the results of a test, including
- when a warning has been given, but the client wishes to proceed with the transaction regardless, and
 - whether the firm decided to carry out the client’s request in spite of its warning

Updated rules on the appropriateness test

- 12.5** In CP16/29, we said that, in our view, investment trusts and non-UCITS retail schemes (NURS) are neither automatically non-complex nor automatically complex, but must be assessed against the criteria set out in the MiFID II delegated regulation. We also said that when firms apply these criteria, they should adopt a cautious approach if there is any doubt as to whether a financial instrument is non-complex. This remains our view of how this part of MiFID II should be interpreted, and how firms should apply these rules.
- 12.6** The new provisions for MiFID products were set out in a draft COBS 10A, while the current rules will continue to apply to a non-MiFID firm when it arranges or deals in a non-readily realisable security, derivative or warrant for a retail client and (through COBS 22.2) where a retail client wishes to buy mutual society shares.
- 12.7** We asked:
- Q30: Do you agree that, for non-MiFID firms, we should limit the current rules in COBS 10 to direct offer financial promotions relating to a non-readily realisable security, derivative or a warrant (and also, through COBS 22.2, to mutual society shares)?



- Q31: Do you agree with our proposal to limit the new COBS 10A to MiFID products?
- Q32: Do you have any comments on the new draft of COBS 10A?

12.8 There were very few replies, and little comment, to Q30 and Q31. On Q32, the following issues were raised by respondents, in particular whether:

- the appropriateness test should cover substitutable products?
- clarity could be provided around which firm is responsible for determining whether a product is complex or non-complex, the product provider or distributor?

Our response on the updated rules on the appropriateness test

We have not made any substantive changes to the draft rules we consulted on in CP16/29. On the first issue raised, as noted in the CP, we are leaving the question of consistency for insurance-based investment products until we consult on the IDD. Regarding the second issue, the distributor is responsible for ensuring compliance with the relevant rules. PROD 3.3.1R, for example, states that a distributor must understand the financial instruments it distributes to clients and assess the compatibility of the financial instruments with the needs of the clients to whom it distributes investment services, taking into account the manufacturer's identified target market of end clients. PROD 3.3.17R states that distributors must have in place procedures and measures to ensure that when deciding the range of financial instruments and investment services to be distributed, and the target market, all applicable rules are complied with, including appropriateness.

13

Dealing and managing

Introduction

- 13.1** This chapter covers our final decisions for implementing the MiFID II requirements on best execution. This includes the requirements on client order handling, record keeping of client orders and decisions to deal, limit order display transactions and personal account dealing.

Best execution

Introduction

- 13.2** In this section we summarise the responses we received on our proposals for implementing the MiFID II best execution rules to both MiFID and non-MiFID business, and summarise our final policy approach.
- 13.3** **Implementing MiFID II best execution standards for MiFID firms**
In implementing the MiFID II best execution rules, we consulted on deleting the existing COBS 11.2 chapter and replacing this with the new COBS 11.2A. The proposed COBS 11.2A chapter reflects the MiFID II best execution rules as detailed in MiFID II as well as some of the existing Handbook guidance we proposed to retain.
- 13.4** In clarifying the application of the new MiFID II RTS 27 reporting requirements to trading venues (regulated markets, MTFs, OTFs and SIs), we proposed to include references to RTS 27 in the MAR sourcebook and cross-references to these in the new COBS 11.2A. We have similarly included appropriate references to the RTS 27 reporting obligations in COBS 11.2C in order to clarify the application of these requirements to investment firms (such as market makers and other liquidity providers) that are categorised as execution venues.
- 13.5** In CP16/29 we asked:
- Q33: Do you agree with our proposed approach to implementing the MiFID II requirements on best execution? If not, how could we amend our proposed approach?
 - Q34: Do you agree with our proposal to add new guidance to the Handbook Chapter on best execution? If not, please explain why.
- 13.6** The majority of respondents agreed with, or raised no substantive comments on, our proposed approach for implementing the MiFID II best execution requirements for MiFID-scope firms. We received only a few comments on our proposed approach, mainly pointing out some minor errors or inconsistencies in the draft legal instrument which we have amended in the final draft version.



- 13.7** We were asked to clarify how some of the best execution rules that are derived from the MiFID II legislation apply to firms receiving and transmitting orders. This is because some of the language contained in the MiFID II delegated regulation and the RTS 28 reporting requirements (which apply to portfolio managers and receivers and transmitters of orders by virtue of Article 65(6) of the MiFID II delegated regulation) is not tailored to their activities but rather is framed in the context of direct execution of client orders.
- 13.8** We also received some requests for clarification regarding whether the provision in Article 27(3) of MiFID II (proposed through changes to COBS 11.2A.50 R in CP16/29) to inform the client where an order was executed, relates to existing regulatory requirements or alternatively imposes a new obligation on firms.
- 13.9** The large majority of respondents agreed with our proposals for including new guidance on best execution and provided no comments on our approach.

Our response on implementing MiFID II best execution standards for MiFID firms

We intend to implement the MiFID II best execution rules for MiFID business as consulted on, subject to very limited changes to address the minor inconsistencies pointed out in the CP responses. We have also re-ordered the sequencing of the provisions for greater clarity and readability of the new COBS 11.2A and have moved the provisions relating to UCITS management companies to a separate section COBS 11.2B. As a consequence, the provisions relating to the obligation on investment firms to produce RTS 27 reports on execution quality when acting as market makers or liquidity providers has been re-numbered as COBS 11.2C.

To clarify how some of the MiFID II requirements apply to firms that do not directly execute clients orders but rather place or transmit client orders for onward execution (ie they do not directly execute on a venue), we note that the relevant provisions should be interpreted in light of Article 65 of the MiFID II delegated regulation. This provision imposes best execution requirements on portfolio managers and firms that receive and transmit orders for execution, and places an obligation on them to provide disclosures in relation to the entities or intermediaries to which they pass orders in the chain of execution. This is consistent with Article 65(6) of the MiFID II delegated regulation, which obliges firms to provide information on the entities it selects for the execution of orders.

We also clarify that Article 27(3) of MiFID II, requiring a firm to inform the client where an order was executed, does not impose a further reporting obligation. Instead, it is referring to the existing reporting obligations in Article 25(6) of MiFID II.

In CP16/29 we proposed deleting the existing best execution Handbook provisions contained in COBS 11.2. Following consultation responses, we will however retain a number of the existing best execution provisions in COBS 11.2 (with appropriate modifications) and apply these to non-

MiFID firms to which we will not be extending the enhanced MiFID II best execution standards at this stage (discussed further below).

We will go ahead with our proposals to include new Handbook guidance for best execution as consulted on.

Application to non-MiFID business

13.10 In CP16/29, we asked in Q35:

- Do you agree with our proposals for non-MiFID business? If not, what alternative approach could we consider?

13.11 In CP16/29 we consulted on our discretionary proposals to extend the MiFID II best execution rules to non-MiFID business where they execute, receive and transmit orders or take decisions to deal (with appropriate modifications to take account of the specific business models of certain firms). We clarified that best execution obligations already apply to non-MiFID firms and business where it involves the execution of orders, placing orders for execution as part of portfolio management activities, or the reception and transmission of orders to other entities for execution in MiFID financial instruments.

Article 3 firms

13.12 We consulted on extending some of the improved MiFID II best execution standards to financial advisers exempt from MiFID II under Article 3. However, we proposed to do this on a modified basis by exempting them from the obligation to produce an annual report consistent with the RTS 28 publication requirements (under Article 65(6) of the MiFID II delegated regulation). We explained that the incremental improvements to the regime build upon current requirements that these firms must already comply with where they receive and transmit client orders to other entities for execution.

13.13 The majority of respondents agreed with or raised no substantive issues on our proposal to extend some of the MiFID II incremental enhancements of the best execution regime to Article 3 financial advisers on a modified basis in view of the investor protection and transparency benefits. We did receive some requests to clarify our expectations regarding application of the updated best execution rules to Article 3 firms. We also received some views expressing concern that this could be more onerous for small scale Article 3 financial advisers, though respondents did not challenge what we said in our CBA in CP16/29.

Our response on Article 3 firms

We will extend the MiFID II best execution regime to Article 3 financial advisers, as consulted in CP16/29. This means that Article 3 firms will be subject to the enhanced MiFID II best execution standards, aside from the requirement to produce an annual report on execution quality and order routing activities consistent with RTS 28. We explained in CP16/29 that given that most Article 3 firms are typically servicing retail clients, our proposed approach would ensure that consumers benefit from consistent disclosure and investor protection standards, whilst also calibrating this to take account of the specific activities of the majority



of Article 3 firms. We received no evidence or cost data challenging the CBA in CP16/29.

In CP16/29 we explained that Article 3 financial advisers are already subject to the MiFID best execution rules since we decided to apply these standards to such firms when implementing the MiFID best execution requirements to put them on an equal footing with MiFID financial advisers. Therefore Article 3 financial advisers already owe a duty of best execution in all circumstances when receiving and transmitting orders for the sale and purchase of financial instruments (including units in collective investment schemes).

We explained in CP16/29 that we expect our proposals to have a minimal incremental impact on these firms, given that the MiFID II obligations build on the existing best execution framework. Also, given that the majority of Article 3 firms' activities are limited to the reception and transmission of client orders in units in collective investment schemes, a number of the MiFID II best execution provisions would not be relevant to their activities.

Firms should already comply with their current best execution obligations. Going forward, firms must consider how they reflect the enhanced standards, particularly in relation to execution arrangements and policies in their practices, as relevant. As we stated in CP 16/29, Article 3 firms will need to update their execution arrangements to meet the strengthened overarching best execution obligation on firms to take all sufficient steps to obtain the best possible results for clients. Firms will also need to include additional disclosures in their execution policies in relation to costs, fees and venue selection. Article 3 firms are already required to review annually their execution arrangements and policies, so they can reflect any updates in the course of this review. However, given the nature of their services and activities, some of the enhanced best execution requirements will not be relevant to their activities e.g. the obligation to check the fairness of price in relation to OTC products.

Collective portfolio management (CPM) firms

13.14 In CP16/29 we consulted on our approach to levelling up non-MiFID CPM firms to the enhanced MiFID II best execution standards where these firms perform economically equivalent activities to MiFID portfolio managers. In this regard, we proposed to:

- apply the MiFID II best execution standards to UCITS management companies subject to some modifications to tailor the provisions for collective portfolio management
- apply the MiFID II best execution standards to small authorised UK AIFMs and operators of residual CISs subject to the modifications as consulted on for UCITS management companies and retaining the current concession in COBS 18.5.4R (which does not apply the best execution rules for non-retail funds for these firms)

- supplement the existing best execution obligations for full-scope UK AIFMs and incoming EEA AIFM branches with the MiFID II best execution reporting requirements on execution quality and order routing behaviour (as set out in RTS 28)
- make consequential changes to the additional COBS best execution provisions (set out in COBS 18.5.4AR) that currently apply to full scope UK AIFMs to reflect the MIFID II changes (while noting that in substance these remain largely the same)

13.15 Due to practical timing constraints and legal complexity, we did not include drafting to apply other MIFID II changes to best execution standards to full-scope UK AIFMs and incoming EEA AIFM branches in CP16/29. Instead, we stated that we would undertake further analysis to consider whether to apply additional aspects of the MIFID II best execution regime to full-scope UK AIFMs, pending a further review of how these are best applied in the context of AIFM activity and the existing EU legislative framework.

UCITS firms

13.16 Many respondents commented on our approach to extending the MiFID II best execution provisions to non-MiFID CPM activity. A number of responses expressed support for the overall approach of maintaining consistent standards across both MiFID and non-MiFID investment management activities. None of the CP responses challenged the cost benefit analysis contained in CP16/29.

13.17 Some disagreed with the proposal to extend the MiFID II best execution standards to UCITS management companies arguing that the additional reporting requirements would be of less relevance and therefore of limited value to investors in collective portfolios, where assets are managed on behalf of the scheme, rather than segregated or individual mandates.

13.18 Several agreed with our proposal to level up UCITS management companies to the MIFID II standard in line with MIFID portfolio managers. However, some requested further clarification on when and how the RTS 28 reporting requirements apply to UCITS management companies, particularly where CPM activities is delegated to a MiFID firm. One respondent suggested delaying the implementation date for first RTS 28 report by one year for non-scope CPM business given that ESMA had not provided any interpretative guidance on certain aspects of the regime at that time.

13.19 A few pointed out minor drafting inconsistencies in the legal instrument.

Our response on UCITS firms

We will extend the MiFID II best execution provisions to UCITS management companies as consulted on in CP16/29, with some modifications, which take account of technical drafting comments provided in some responses.

Our view of the investor protection and market integrity benefits of extending these standards to managers of UCITS funds, as a common retail investment vehicle, as outweighing potential costs remains. In practice, many firms manage both collective funds and segregated mandates and will in any case apply common standards across their MiFID and non-MiFID business activities, thereby reducing the implementation burden.



To clarify further the provisions for UCITS management companies, we have moved the UCITS-related best execution provisions to a separate section in COBS 11.2B. We have also grouped similar topics together. These drafting changes are not intended to alter the substantive effect of the provisions.

We have also included in the final rules a requirement for UCITS management companies to provide information in their execution policies to explain any differences in fees applied to different execution venues such that the advantages and disadvantages of a particular choice of venue are clear. While this particular provision was not included in the legal instrument consulted on in CP16/29 for UCITS management companies, this omission was unintentional. We view its inclusion in the final rules as necessary in order to ensure consistency in standards between UCITS management companies and their MiFID counterparts, in line with our policy intention. The application of this provision is incremental to the other disclosure requirements that will be extended to UCITS management companies and should not result in any additional burden or costs.

We clarify that the annual reporting requirements in line with RTS 28 under Article 65(6) of the MiFID II delegated regulation and Article 27(6) will apply (as a result of COBS 11.2B.36R) where the firm itself performs portfolio management activities. We mentioned in CP16/29 that where firms delegate portfolio management activities, the burden of compliance with the incremental improvements to the best execution regime would be borne by the MiFID portfolio manager to which it delegates this activity, including the publication of the RTS 28 reports. We note that the RTS 28 reporting requirements apply at the level of the firm rather than with respect to individual funds.

We will maintain the timing of the first set of RTS 28 reports for UCITS management companies to coincide with the MiFID II timeframe. Since many firms manage UCITS funds alongside individual portfolios subject to MiFID, they will be producing these reports in any case and will face limited additional costs. Moreover, ESMA has now provided additional clarity on key aspects of the RTS 28 reporting requirements, including the level of detail firms are expected to provide in their first set of reports.⁵⁷

Full-Scope UK AIFM and incoming EEA AIFM branches

- 13.20** CP responses expressed stronger push back to our proposals to apply the MiFID II RTS 28 reporting requirements to full-scope UK AIFMs and incoming EEA AIFM branches (particularly where they do not carry out any MiFID related portfolio management activities). Respondents cited the general regulatory burden for this sector. Some responses also raised concerns regarding the potential competitive disadvantage they may face in comparison to their counterparts based in other EU jurisdictions that

⁵⁷ See Chapter 1 of ESMA's 'Questions & Answers MiFID II and MiFIR on investor protection topics'.

would not be subject to the higher best execution standards pending any changes to the sectoral legislation for AIFs in AIFMD. No specific evidence was provided on this point.

Our response on full-scope UK AIFMs and incoming EEA AIFM branches

We have decided not to apply the MIFID II RTS 28 reports and other aspects of the enhancements of the best execution rules to full-scope UK AIFMs and incoming EEA branches, at the current time. This means full-scope UK AIFMs and incoming EEA AIFM branches will remain subject to the existing best execution standards as set out in the AIFMD delegated regulations and supplemented by the existing COBS 18.5.4AR (which will be moved to COBS 18.5A.8R).

We have reconsidered our approach in order to enable us to take better account of the diversity in nature and scale of this set of firms, given respondents' concerns about applying these obligations to certain types of business models. A delay will also allow us to consider the overall legislative framework for AIFMs. In particular, we will consider the outcome of the European Commission's review of AIFMD (which is due to commence later this year), which could propose enhancements to the best execution standards for AIFMs. However, we may still consider extending the MiFID II standards at an earlier stage if we detect evidence of poor outcomes in this sector linked to execution practices that could be addressed by such reforms.

Our response on small authorised UK AIFMs and residual CIS operators

We will also delay the extension of the MIFID II best execution rules (including the RTS 28 reporting requirements) to small authorised UK AIFMs and residual CIS operators (as consulted on in CP16/29). This will ensure this set of generally smaller firms are not subject to higher standards (where they do not make use of the concession in COBS 18.5.4R) than full-scope AIFMs. Given the level of retail investment in funds managed by small authorised UK AIFMs and residual CIS operators is generally lower than in more mainstream UCITS funds, we take the view that the investor protection risk from not applying the incremental improvements to best execution standards under MiFID II is reasonably limited. Professional investors should be sufficiently sophisticated to scrutinise execution performance based on the existing standards that we apply to these firms.



Our response on cost implications arising from our previous two responses on full-scope UK AIFMs and incoming EEA branches, and small authorised UK AIFMs and residual CIS operators

Our decision not to extend the MiFID II best execution requirements to full-scope UK AIFMs, incoming EEA AIFM branches, small authorised UK AIFMs and residual CIS operators reduces the cost estimate provided for the discretionary proposals in the CBA in CP16/29. In CP16/29 we estimated that, as a result of our discretionary proposals, the one-off industry costs would approximately range between £7.5 million – £17.1 million whilst the on-going costs would range between £2.8 million and £6.4 million. As a result of the changes to our proposals we now estimate the revised one-off industry costs to approximately range between £1.4 million – £3.1 million with the on-going costs ranging between £0.5 million and £1.2 million.⁵⁸

However, in situations where a CPM firm manages both UCITS schemes and AIFs subject to best execution obligations (eg non-UCITS retail schemes), the firm may adopt a single approach to best execution by applying the MiFID II standards to AIFs. We have added guidance to clarify that where a firm does so, it will be considered to meet the respective best execution rules applicable to full-scope UK AIFMs and incoming EEA AIFM branches, or to small authorised UK AIFMs and residual CIS operators, notwithstanding the slight differences in the standards.

Client order handling

Introduction

- 13.21** In CP16/29 we consulted on implementing MiFID II rules on client order handling and displaying limit orders. We noted that MiFID II does not make any material changes to these provisions.
- 13.22** MiFID II adds the term ‘trading venue’ alongside ‘regulated market’, which slightly widens the scope of shares subject to the limit order rules, to reflect wider changes to market structure. But MiFID II also allows additional methods for making client limit orders public and clarifies that the choice of venue must be made in line with a firm’s execution policy. We also noted that MiFID II applies client order handling rules when firms advise on or sell structured deposits.
- 13.23** We proposed amendments to COBS 11.3 and COBS 11.4 to align with the changes in MiFID II, principally by deleting provisions derived from MiFID and replacing those with provisions in MiFID II. We also applied the updated client order handling provisions to certain non-MiFID firms to which COBS 11.3 already applies. This includes investment advisers exempt from MiFID under Article 3 and firms carrying out collective portfolio

⁵⁸ The revised cost figures have been estimated using the same methodology and assumptions utilised in CP16/29 but accounting for the reduced number of firms who will incur costs as a result of our decision to not extend the MiFID II best execution requirements to full-scope UK AIFMs, incoming EEA AIFM branches, small authorised UK AIFMs and residual CIS operators. As a result of this change we now estimate that 81 firms will incur costs from our discretionary proposals. This is composed of 71 firms that perform only CPM activity without IPM permissions and 10 firms with both CPM and IPM permissions but that would not voluntarily choose to level up to the MiFID II standards across their business regardless of our decision.

management, including UCITS management companies, small authorised UK AIFMs and residual CIS operators. It applies where their activity involves the execution of orders, or the transmission or placing of orders in MiFID financial instruments to other entities for execution.

- 13.24** We consulted on maintaining the current disapplication of these rules for non-MiFID corporate finance business, non-MiFID energy and oil market activities and full scope UK AIFMs and incoming EEA AIFM branches.
- 13.25** Respondents to CP16/29 either made no comments or agreed to our proposed approach to amending COBS 11.3 and COBS 11.4 based on changes in MiFID II to client order handling and display of limit order rules. No changes were suggested.

Our response on client order handling

We are finalising the amendments to COBS 11.3 and COBS 11.4 as consulted on in CP16/29.

Record keeping of client orders and decisions to deal, and limit order display transactions

- 13.26** Here we summarise the feedback we received on the changes we proposed to make to the record keeping chapter in COBS in order to implement MiFID II, and provides our response to that feedback.
- 13.27** In Chapter 9 of CP16/29 we proposed to:
- delete the existing text in COBS 11.5 and copy the text in the MiFID II delegated regulation into a new chapter entitled COBS 11.5A
 - apply the MiFID II record keeping requirements for client orders, decisions to deal, transactions and order processing to Article 3 firms providing retail investment advice
 - apply the MiFID II record keeping requirements for orders and transactions as rules to UK branches of third country firms
- 13.28** We also asked:
- Whether we should apply the revised MiFID II requirements to non-MiFID firms or business that the existing COBS 11.5 currently applies to, including small authorised UK AIFMs, residual CIS operators, non-MiFID business related to commodity or exotic derivative instruments, occupational pension schemes firms in relation to non-MiFID business, and authorised professional firms with respect to activities other than non-mainstream regulated activities.
 - Whether we maintain the current disapplication of COBS 11.5 to Article 3 exempt corporate finance firms, full-scope UK AIFMs, incoming EEA AIFM branches and UCITS management companies.

Our response on record keeping of client orders and decisions to deal, and limit order display transactions

Feedback received was supportive of our main implementation proposals and we will implement this approach without further modifications. Most respondents to the two questions were keen for us to maintain the status quo for the relevant firms or type of business.

Applying the MiFID II transaction record keeping provisions to Article 3 retail investment advisers

13.29 In CP16/29, we asked:

- Q39: Do you agree with our proposed approach to implementing the MiFID II requirements on record keeping of client orders, decisions to deal, transactions and order processing to Article 3 firms? If not, please give reasons why.

13.30 Respondents in general supported the proposal to apply the revised requirements to Article 3 firms providing retail investment advice to bring improved transparency on order execution and processing. Other respondents noted that applying the requirements to these Article 3 firms will be consistent with the approach for financial advisers who are MiFID investment firms.

Our response on applying the MiFID II transaction record keeping provisions to Article 3 retail investment advisers

We confirm that we will proceed to apply the core MiFID II requirements for the record keeping of client orders, decisions to deal and transactions to Article 3 financial advisory firms. This is because we view the MiFID II changes as providing important additional detail and transparency in these records that is relevant to their business model. The transaction record keeping requirements in the MiFID II delegated regulation have been revised to align with the taxonomy and content of the new transaction reporting regime under MiFIR. The new measures will require firms to record more granular details on the client instruction, the security traded and the different parties involved in the execution of the order. Firms will also be required to record all necessary order references that will allow their records to be matched to the new transaction reporting requirements applicable to trading venues and the exact sequence of the order execution.

Applying the MiFID II transaction record keeping provisions to third country firms

13.31 In CP16/29 we asked:

- Q40: Do you agree with our proposal to apply the requirements to UK branches of third country firms? If not, please give reasons why.

13.32 There was significant support amongst all respondents who answered this question to apply the MiFID II requirements to UK branches of third country firms.

Our response on applying the MiFID II transaction record keeping provisions to third country firms

Our approach to implementing MiFID II for branches of non-European Economic Area firms (third-country firms) is to apply the same conduct rules to these firms as we do to MiFID investment firms to ensure they are treated no more favourably than branches of EEA firms. We are therefore confirming that we will require UK branches of third country firms to adhere to the same MiFID II record keeping requirements as will apply to MiFID investment firms.

Whether to extend the new MiFID II transaction record keeping provisions to other firms subject to COBS 11.5

13.33 In CP16/29 we asked:

- Q41: Please give us your views on whether we should apply the new MiFID II transaction record keeping standard to the following firms, for whom we currently propose to maintain the existing requirements in COBS 11.5 for
 - i. Occupational pension schemes
 - ii. Non-MiFID business related to commodity or exotic derivatives
 - iii. Small authorised UK AIFMs and residual CIS operators
 - iv. Authorised professional firms with respect to activities other than non-mainstream regulated activities

13.34 Most respondents did not support elevating these firms to the MiFID II standard as they felt it would be disproportionate in terms of outcomes and cost.

Our response on whether to extend the new MiFID II transaction record keeping provisions to other firms subject to COBS 11.5

For the time being, we have decided not to consult further on extending the MiFID II requirements on record keeping of client orders, decisions to deal and transactions to these firms. We intend to wait and see how the MiFID II requirements are being implemented before taking any further action. It may be the case that the landscape will evolve to the extent that these firms voluntarily adopt the new standards. However, for the meantime this means the current MiFID requirements will continue to apply to the firms identified above. These rules have moved from COBS 11.5 to COBS 18 Annex 2.



Extending the new MiFID II transaction record keeping provisions to firms not currently subject to COBS 11.5

13.35 In CP16/29, we asked:

- Q42: Please give us your views on whether or not we should consider applying new MiFID II standards on transaction record keeping to the following firms which are not currently subject to COBS 11.5, namely:
 - i. Article 3 exempt corporate finance firms
 - ii. UCITS Management companies
 - iii. Full-scope UK AIFMs and incoming branches of EE AIFMs

13.36 Most respondents did not support applying the MiFID II transaction record keeping to these firms. They did not view the benefits of the proposal as proportionate to the potential costs.

Our response on extending the new MiFID II transaction record keeping provisions to firms not currently subject to COBS 11.5

Further to our original analysis and feedback from industry we have decided to leave the current arrangements in place. This means that we will not consult further on extending the MiFID II requirements on transaction recordkeeping to these firms.

Personal account dealing

Introduction

- 13.37** MiFID II does not introduce any changes in the rules currently governing personal transactions compared with MiFID. However it does extend these provisions to investment firms or credit institutions selling or advising clients in relation to structured deposits.
- 13.38** In CP16/29, we proposed creating a new COBS 11.7A to copy out the MiFID II provisions, which would apply to MiFID investment firms, equivalent third country business and firms exempt from MiFID under Article 3.
- 13.39** We suggested retaining COBS 11.7 with minor modifications for other non-MiFID firms that are currently subject to these requirements, including UCITS management companies.
- 13.40** All responses except one made no comment or agreed with our proposed approach. The single response queried the fact that our new COBS 11.7A section copying out the MiFID II changes did not include COBS 11.7.6R (which defines a 'relevant person'), which is currently included in COBS 11.7 and applies to MiFID firms. The respondent asked whether this was an oversight or denoted any change in the policy approach to personal account dealing.

Our response on personal account dealing

We will proceed with the changes to COBS 11.7 and COBS 11.7A as consulted on in CP16/29. The provisions on personal account dealing are included in the MiFID II delegated regulation, which also includes a definition of 'relevant person'. We omitted COBS 11.7.6R from COBS 11.7A since we view the substantive provisions in MiFID II as having the same policy effect, without requiring an additional provision. As such, while we purposefully did not include COBS 11.7.6R within COBS 11.7A, it does not denote any change in the application of the personal account dealing rules.



14

Underwriting and placing

Introduction

- 14.1** This chapter summarises our responses to feedback received in relation to our proposals in CP16/29 to implement the MiFID II underwriting and placing requirements.
- 14.2** MiFID II introduces new requirements for firms carrying out underwriting and placing activities, linked to the MiFID II organisational and conduct requirements. Under our existing conflicts of interest provisions in SYSC 10, we provide some guidance for firms on the management of securities offerings through SYSC 10.1.13G to SYSC 10.1.15G. The new specific MiFID II provisions on underwriting and placing are consistent with our existing regulatory expectations under SYSC 10.
- 14.3** In CP16/29 we proposed to copy out the new MiFID II provisions on underwriting and placing into a new chapter in COBS (COBS 11A). To maintain a level playing field between MiFID firms and third country firms, we also proposed to apply the new provisions as rules to the latter. Given that the new MiFID II provisions are more thorough than the existing guidance in SYSC 10, we proposed deleting SYSC 10.1.13G to SYSC 10.1.15G.
- 14.4** In CP16/29, we asked in Q44 and Q45, respectively:
- Q44: Do you agree with our proposed approach to implementing Articles 38 to 43 of the MiFID II delegated regulation on underwriting and placing? If not, please give reasons why.
 - Q45: Do you agree with our proposed approach to apply Articles 38 to 43 of the MiFID II delegated regulation on underwriting and placing to third country branches? If not, please give reasons why.
- 14.5** There were a limited number of responses to our proposed approach. All respondents either positively supported our proposals or had no comments on the approach.

Our response on underwriting and placing

In light of the positive feedback we received, we are confirming our proposed approach in CP16/29 to implementing the MiFID II provisions on underwriting and placing.

15

Investment research

Introduction

- 15.1** This chapter summarises our responses to feedback received in relation to our proposals in CP16/29 to implement the MiFID II investment research requirements.
- 15.2** MiFID II provisions on investment research and non-independent research are consistent with those currently in COBS 12.2 and 12.3, with the exception of two changes:
- An explicit requirement for firms to introduce a physical separation between financial analysts and other persons whose responsibilities or business interests may conflict with the interests of the persons to whom the research is disseminated. Physical separation should exist unless it is not considered to be appropriate to the size and organisation of the firm, as well as the nature, scale and complexity of its business. In these circumstances, the firm is required to establish and implement appropriate alternative information barriers.
 - That MiFID II explicitly applies certain conflicts of interest requirements under Article 34(4) of the MiFID II delegated regulation to producers of non-independent research.

Approach to implementing MiFID II provisions on the production and dissemination of investment research

- 15.3** In CP16/29 we proposed to copy out the MiFID II provisions on investment research into a single new COBS chapter (COBS 12.2), rather than retaining the current structure of COBS 12.2 and 12.3, since MiFID II does not split investment research and non-independent research in the way we currently do in COBS. In CP16/29 we also proposed retaining the reference to SYSC 10 currently in COBS 12.3.4G, to remind producers of investment and non-independent research of their wider obligations to identify and manage conflicts of interest under SYSC 10.
- 15.4** In line with our approach to implementing MiFID, in CP16/29 we proposed to apply the MiFID II provisions on investment research as rules to firms conducting equivalent third country business, non-MiFID energy market participants (EMPs) and oil market participants (OMPs), and Article 3 firms carrying out corporate finance business.
- 15.5** In CP16/29, we asked in Q46 and Q47, respectively:
- Q46: Do you agree with our proposed approach to implementing Articles 36 and 37 of the MiFID II delegated regulation on investment research? If not, please give reasons why.



- Q47: Do you agree with our proposed approach to apply Articles 36 and 37 of the MiFID II delegated regulation to third country firms, non-MiFID OMPs and EMPs, and Article 3 firms carrying out corporate finance business, in the same way as the current COBS 12 applies them? If not, please give reasons why.

15.6 Respondents agreed with the proposed approach to implement the MiFID II provisions on investment research, and acknowledged that there is little change to the existing COBS 12 provisions on investment research.

15.7 Two respondents stated that the new COBS 12.2 could be clearer on which provisions apply to producers of both investment research and non-independent research, and which only apply to investment research. It was requested that we make clear that the requirement for firms to maintain physical separation of analysts does not apply to producers of non-independent research. One respondent also requested clarification that producers of non-independent research are not prohibited from participating in investment banking activities, such as pitches for new business with corporate issuers or road shows for new issues of financial instruments.

15.8 Two respondents requested further clarity on our regulatory expectations in relation to the proportionality clause within the 'physical separation' provision, specifically on when it might not be proportionate for a firm to maintain physical separation and what might be examples of alternative information barriers.

15.9 One respondent referenced so-called 'sales notes' produced within a firm, noting that these can sometimes be distributed in email form. It argued that this type of material should not necessarily be classified as non-independent research, even if it contains a recommendation and is intended for the public.

Our response on approach to implementing MiFID II provisions on the production and dissemination of investment research

In light of the positive feedback we received, we are confirming our approach as consulted on in CP16/29 to implementing the MiFID II provisions on the production and dissemination of investment research.

We remind firms to carefully consider the application of the provisions set out in the new COBS 12.2, particularly in light of requests from some respondents for greater clarity on which provisions apply to producers of investment research and non-independent research. As set out in the new COBS 12.2, the requirement for firms to maintain physical separation between analysts and other persons, as well as the provision stating that analysts should not participate in investment banking activities, apply only to producers of investment research. That said, producers of non-independent research should consider their general conflicts of interest obligations under SYSC 10. Firms should also be aware that, in CP17/5, we are currently consulting on changes to COBS 12 to address conflicts of interest that arise during the production of research around the time that investment banking pitching efforts take place.

It is ultimately for firms to make a judgement on circumstances when it might not be proportionate to maintain physical separation of analysts

from other persons, and on the types of alternative information barriers that could be maintained when physical separation is not proportionate. Firms should be mindful of their obligations under SYSC 10.2 if establishing and maintaining a Chinese wall, which requires them to have policies in place permitting certain individuals to withhold information from other persons.

As stated in Article 36(2) of the MiFID II delegated regulation and the new COBS 12.2, an investment recommendation defined by Article 3(1)(35) of the Market Abuse Regulation that is not presented as objective or independent must be treated as a marketing communication (non-independent research in COBS 12). As such, any communication that meets the criteria of the definition of an investment recommendation, irrespective of its label (eg 'sales note') or the medium through which it is delivered, must be classified as investment research or non-independent research. When making this judgement, firms should be mindful of the relevant ESMA Q&A on this topic.⁵⁹

59 See Q&A 1 in Section 3 of ESMA's Questions and Answers on the Market Abuse Regulation: https://www.esma.europa.eu/sites/default/files/library/2016-1664_mar_qa_december_2016.pdf



16

Client agreements

Introduction

- 16.1** This chapter summarises our responses to feedback received in relation to our proposals set out in Chapter 12 of CP16/29 to implement the MiFID II client agreement requirements.
- 16.2** MiFID II requires firms to enter into a basic written agreement with professional as well as retail clients, and this must be done for each investment service or ancillary service, not just for new clients. It details what must be included in a client agreement, and simplifies the record keeping requirement, so that the record must be retained for 'at least the duration of the relationship with the client', so there is no obligation to keep records for at least 5 years, if longer than the relationship with the client.
- 16.3** In the CP, we proposed implementing the more detailed requirements only for MiFID business and retaining the current COBS 8 for non-MiFID business. However, we proposed introducing the new record keeping requirement for non-MiFID business other than pension transfers, pension conversions, pension opt-outs or free standing additional voluntary contributions (FSAVCs), for which records will continue to be required to be kept indefinitely.
- 16.4** In Q48 we asked:
- Do you agree with our proposed approach for client agreements?
- 16.5** All respondents supported our proposed approach.

Our response on client agreements

We have not made any substantive changes to the rules on which we consulted.

17

Product governance

Introduction

- 17.1** This chapter sets out our feedback to the responses to Chapter 13 of CP16/29. It also confirms our final rules which will be set out in the new PROD sourcebook.
- 17.2** PROD sets out our product governance requirements for manufacturers and distributors and applies to firms within the categories listed at PROD 1.3.1R.⁶⁰ A firm that complies with PROD does not have to apply the guidance set out in the 'Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)'.⁶¹ This is because PROD is intended to achieve the same aims. However, the RPPD will remain applicable for firms not within the scope of PROD.
- 17.3** In addition, ESMA has published (in June 2017) its Final Report on product governance guidelines under MiFID II. These guidelines focus on target market assessment by manufacturers and distributors of financial products. We will be considering what further steps we need to take to address these guidelines as part of our overall product governance regime.

Third country (non-EEA) branches

- 17.4** In CP16/29, we proposed applying the MiFID II product governance requirements to UK branches of third country (non-EEA) firms. We proposed this in order to ensure that we do not treat non-EEA firms 'more favourably' than EEA firms.
- 17.5** We asked:
- Q50: Do you agree with our proposal to apply MiFID II product governance requirements as rules to UK branches of third country firms, on the basis that these requirements have a strong conduct-focus? If not, please give reasons why.
- 17.6** All respondents supported our approach.

Our response on third country (non-EEA) branches

We are taking forward the rules on which we consulted. Not only will this ensure branches of third country firms are not treated more favourably than EEA firms, but we consider that it will also protect investors and the integrity of our markets.

60 A MiFID investment firm; a CRD credit institution; a MiFID optional exemption firm and branches of third country investment firms.

61 The RPPD is a regulatory guide for providers and distributors on applying our Principles for Businesses and rules to treat customers fairly.



Product governance rules for MiFID business

17.7 In CP16/29, we consulted on applying the product governance rules to firms undertaking MiFID business, and distribution firms using the Article 3 exemption. We asked:

- Q51: Do you agree with our proposal to apply the MiFID II product governance provisions as rules for firms engaged in MiFID business? If not, please give reasons why.

17.8 The majority of respondents agreed with our approach.

17.9 More specifically, some respondents sought clarity on the following range of issues, either in response to Q51, or as stand-alone comments.

- Application of the proportionality principle: One respondent suggested we should consider developing proportionality rules for certain categories of target market.
- Product governance requirements for discretionary portfolio management services: A respondent suggested that the product governance provisions do not apply to portfolio management services. Others had raised concerns with ESMA that their draft guidelines limit deviation from the target market which might be needed to meet overall client objectives. Others commented on the difficulty of applying target market assessments to individual products in a portfolio management strategy.
- Guidance on target market assessment at PROD 3.2.12G: A respondent suggested that PROD 3.2.12G was more aligned to product testing than to the assessment of the target market, and that the reference to 'client' was inconsistent with the MiFID emphasis on the 'end client'. Another respondent suggested that PROD 3.2.12G could mean that the manufacturer cannot design a complex instrument for retail clients even where it may be suitable. They said the guidance does not account for decisions taken on a client's behalf by discretionary advisors. Other respondents suggested replacing PROD 3.2.12G with RPPD 1.19. Respondents asked for the ESMA target market categories to be included in PROD, and that we set out examples of a target market assessment for a mass retail product. They asked for clarity on what we would expect from manufacturers receiving and processing sales information from distributors.
- Stress testing and scenario analysis: Respondents suggested that PROD 3.2.15G only applies to structured products. They also said our guidance was super-equivalent because it referenced 'stress testing' as well as 'scenario analysis' so would impose additional burdens on UK firms.
- Information sharing requirements: Respondents raised concerns about meeting information sharing requirements when the distributor has no direct relationship with the manufacturer, when dealing with non-MiFID entities, and when issuing products on a secondary market where there is no prior relationship with the manufacturer. They suggested that it is not possible to identify the 'final' distributor in the chain once securities enter the secondary market.
- Cost Benefit Analysis (CBA): One respondent queried our CBA in CP16/29. The respondent had understood that the 220 firms quoted in the CBA represented all

firms impacted by the product governance proposals. They said that more than 220 firms would be impacted. They also said that advice costs will increase.

Our response on product governance rules for MiFID business

On the application of the proportionality principle: PROD 3.1.2R states that a firm must comply with the PROD rules in a way that is proportionate and appropriate. In doing so, the firm must take into account the nature of the instrument or service and the target market.

On product governance requirements for discretionary portfolio management services: PROD will apply to firms providing portfolio management as this investment service is within the definition of distributing, in accordance with Recital 15 and Article 10(1) of the MiFID II delegated directive. There is no exemption for such a service in MiFID II, but firms should apply these requirements in a proportionate manner that is appropriate to the underlying service.

On the guidance on target market assessment in PROD 3.2.12G: Since our CP16/29 consultation, ESMA has published guidelines which cover target market assessments for mass retail products. We have therefore not replicated this content. We have considered respondents' comments on PROD 3.2.12G and have deleted it to address the concerns raised. PROD 3.2.11R sets out how firms should determine target market needs which is different to the content at RPPD 1.19 which is focused on information for customers.

On stress testing and scenario analysis: PROD 3.2.15G aimed to help firms apply the requirements at PROD 3.2.14R (now PROD 3.2.13R). We have deleted this guidance to address the concerns raised by respondents. We would however note that the FSA's FG12/09⁶² remains relevant for firms developing structured investment products and structured deposits. The guidance focuses on key governance issues in the development and marketing of structured products.

On information sharing requirements: We emphasise that firms should take a proportionate and appropriate approach to meeting the PROD requirements, as noted in Article 10(1) of the MiFID II delegated directive and transposed in PROD 3.1.2R and PROD 3.3.6R. Distributors must take all reasonable steps to obtain adequate and reliable information from non-MiFID manufacturers (PROD 3.3.5R). This obligation applies proportionately depending on the degree to which publicly available information is obtainable and the complexity of the instrument (PROD 3.3.6R).

As explained in CP15/43, in implementing MiFID II our general approach has been to provide detailed CBA where we exercise discretion in our implementation. We provide a high-level CBA for matters where we have little discretion, which includes our proposals for firms subject to MiFID II and firms exempt from MiFID II scope



under Article 3. This latter group are firms providing investment advice and/or receiving and transmitting client orders for a restricted range of financial instruments. These firms do not hold client assets or money and do not do business outside the UK. MiFID II requires these firms to be subject to 'at least analogous' requirements for each of the individual organisational and conduct requirements listed in Article 3(2)(a) to (c) of MiFID II and corresponding implementing measures. The figure of 220 quoted in the product governance CBA in CP 16/29 is our estimation of non-MiFID firms manufacturing and distributing MiFID instruments. This includes for example, AIFMs and UCITS managers. We did not receive alternative estimates of costs from respondents. We are satisfied that this accurately reflects the impact of these proposals.

Product governance for non-MiFID firms

17.10 We asked:

- Q52: Do you agree with our proposal to apply the MiFID II product governance provisions as guidance for non-MiFID firms involved in the manufacture or distribution of MiFID products? If not, please give reasons why.

17.11 The majority of respondents supported this proposal. While agreeing with our approach, one respondent questioned whether MiFID distributors would provide non-MiFID manufacturers with sales information, and suggested this is of limited use when non-complex products are sold to the mass market through execution only platforms.

Our response on product governance for non-MiFID firms

We expect the product governance provisions in MiFID II to lead to improved customer outcomes. Non-MiFID firms that manufacture and distribute MiFID products should apply the provisions proportionately. This will help to deliver a consistent approach to the application of product governance provisions. The related ESMA guidelines provide detail on how to address the information sharing requirements when non-MiFID firms are involved.

Other matters

17.12 Although not in response to a consultation question, a couple of respondents made the following comments.

- One respondent commented on eligible counterparties (ECPs), suggesting we should dis-apply PROD for ECPs because otherwise we would be extending the scope of the MiFID II requirements.

- Respondents asked about co-manufacturing and whether the definition of 'manufacturer' in PROD replaces the RPPD 'co-manufacturer'. This query was raised particularly in the context of reverse enquiry scenarios and asked for examples of what might constitute 'co-manufacturing'. One respondent suggested PROD 3.2.1R does not accurately reflect the MiFID II text because the additional words "for sale to clients" are not included. They suggested that this omission implies an obligation for manufacturers to ensure products are distributed to the identified target market even when they are not involved in distribution, which in their view was not the correct application of MiFID II.

Our response on comments on other matters

We have dis-applied PROD 3.3.1R in relation to ECP business. The remaining provisions in PROD (including PROD 3.3) that are relevant to transactions with ECPs will apply in a proportionate and appropriate manner. We have done this to accurately reflect the MiFID II text. Article 30(1) of MiFID II dis-applies Article 24(2) where a firm that is authorised to carry out certain investment services brings about or enters into transactions with eligible counterparties.

PROD 3.2.6R and 3.2.7R set out the requirements for firms which co-manufacture. We have not amended PROD 3.2.1R to include the words "for sale to clients" because we believe that the overarching aim of the product governance provisions is addressed here. In addition, PROD 3.2.1R is consistent with Recital 71 in MiFID II and Recital 15 and Article 9 in the MiFID II delegated directive.

Role of the compliance oversight function

- 17.13** In CP16/29, PROD 3.2.35R (now 3.2.32R) required that the person who was allocated the compliance oversight function must oversee product governance arrangements. Some respondents suggested that we ought to have used the same terminology in PROD 3.2.35R as in the MiFID II delegated directive (where it refers to product governance arrangements being 'monitored' rather than 'overseen').

Our response on role of the compliance oversight function

We have amended PROD 3.2.35R (now PROD 3.2.32R) accordingly.



PROD 2

- 17.14** We did not receive any comments on PROD 2. However since consulting, the Treasury has made an Order for the purposes of section 137D of the Financial Services and Markets Act 2000 (FSMA). This is to enable the FCA to make permanent or temporary product intervention rules to advance our market integrity objective. This objective is set out in section 1D of FSMA. We have therefore amended the guidance in PROD 2 to reflect this.

18

Knowledge & competence

Introduction

- 18.1** This chapter summarises the feedback we have received on the changes we proposed to the Training and Competence (TC) and Senior Management Arrangements, Systems and Controls (SYSC) sourcebooks to implement Article 25(1) of MiFID II and arising from our decision to comply with ESMA's MIFID II guidelines⁶³ on knowledge and competence, and provides our response to that feedback.
- 18.2** Specifically, for firms undertaking MIFID or equivalent third country business which provide investment advice and information to clients, in Chapter 14 of CP16/29 we proposed to:
- reflect ESMA's view that in order to ensure a proportionate application of knowledge and competence requirements firms should ensure that relevant individuals have the necessary levels of knowledge and competence to fulfil their obligations, reflecting the scope and degree of the relevant services provided
 - update both TC and SYSC content on the FCA website, to reflect the ESMA guidelines
 - introduce a maximum time period of four years during which relevant individuals providing advice or information in a MiFID context need to acquire knowledge and competence
 - introduce a minimum time period of six months for such relevant individuals to be considered eligible to have acquired appropriate experience
- 18.3** In CP16/43 we proposed minor consequential amendments to TC, primarily to clarify the territorial application of that sourcebook.

ESMA guidelines on knowledge and competency

- 18.4** In Q53 we asked:
- Do you agree with our approach to implementing the guidelines in TC and SYSC 5? If not, please give reasons why.
- 18.5** All respondents agreed with our proposals.

⁶³ <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-report-mifid-ii-guidelines-assessment-and-knowledge>



18.6 In Q20 we asked:

- Do you agree with our proposal to amend several sourcebooks to clarify our responsibility as a competent authority in relation to matters falling under articles of MiFID? If not, please give reasons why.

18.7 We received no responses specific to our TC proposals.

Our response on ESMA guidelines on knowledge and competency

We will proceed to make the changes to our TC sourcebook as proposed for minor consequential amendments.

Whilst we have not modified our proposals to implementing the ESMA guidelines, we thought it helpful to clarify our approach in a couple of areas, and have improved the drafting to clarify a number of points raised.

Supervision of staff

18.8 A few respondents asked what level of supervision we expected when supervising staff subject to the ESMA guidelines, including a query on whether this can be outsourced. Another respondent stated that the requirement for supervisors to hold an appropriate qualification is new and should be emphasised to firms in feedback.

Our response on supervision of staff

Supervisors

The ESMA guidelines at paragraph 20(d) provide that firms should ensure that '...The level and intensity of supervision should reflect the relevant qualification and experience of the staff member being supervised and this could include, where appropriate, supervision during client meetings and other forms of communication such as telephone calls and e-mails...' Our existing rules and guidance in TC and SYSC are consistent with this.

Firms should note that compliance with the ESMA guidelines require that those individuals who supervise relevant individuals should attain an appropriate qualification as defined by the ESMA guidelines and we have amended our new rule in SYSC that implements Article 25(1) of MIFID, to make this clear.

Outsourcing of supervision

General outsourcing requirements for firms are detailed in our SYSC sourcebook.⁶⁴ The overall aim of the high-level regulatory obligations on outsourcing, and the detailed requirements that

64 <https://www.handbook.fca.org.uk/handbook/SYSC/8/?view=chapter>

underpin them, is to ensure that a firm appropriately identifies and manages the operational risks associated with its use of third parties, this would include undertaking due diligence before making a decision on outsourcing the supervision of staff. We would also expect that the firm carries out regular evaluation of the effectiveness of the supervision being provided. Our approach is risk-based and proportionate, taking into account the nature, scale and complexity of a firm's operations. While the rules allow outsourcing of the activity, regulated firms retain full responsibility and accountability for discharging all of their regulatory responsibilities. Firms cannot delegate any part of this responsibility to a third party.

Transitional arrangements and grandfathering

- 18.9** Some respondents asked about transitional and grandfathering arrangements, noting that ESMA made no arrangements for grandfathering in the final guidelines. We also received a query about whether transitional arrangements exist for qualifications, as referred to in paragraph 14.17 and TP 1.1A of CP16/29.

Our response on transitional arrangements and grandfathering

The ESMA guidelines do not provide for grandfathering. Firms should ensure they are in a position to comply with the guidelines by the intended implementation date of 3 January 2018, in line with the implementation of MiFID II. This includes ensuring that those relevant individuals who are working 'under supervision' do so only for a maximum period of four years. There are no transitional arrangements and firms will need to ensure compliance with the guidelines with respect to those individuals.

Information and advice boundaries

- 18.10** A few respondents asked for clarity on the difference between personal recommendations and giving information as well as when the guidelines are considered not to apply.

Our response on information and advice boundaries:

MiFID's definition of investment advice involves the provision of a 'personal recommendation'⁶⁵ to a client.

65 <https://www.handbook.fca.org.uk/handbook/glossary/G877.html?filter-title=personal>



To help firms and relevant individuals understand the difference between information and a personal recommendation the guidelines provide the following reference points:

- The ESMA adopted Committee of European Securities Regulators (CESR) guidance on 'Understanding the definition of advice under MiFID.
- Examples in Annex VII of what ESMA considers constitutes relevant individuals giving information to clients, compared to those who give investment advice.
- Feedback on the CP in Annex V of the finalised guidelines, together with a definition of 'giving information' in Annex VI.
- The definition of 'giving information' in the guidelines requires an assessment of whether the staff member directly interacts with a client and whether the staff member provides services or activities listed in sections A or B of Annex 1 of MiFID II. As such, the nature of the staff interaction and the service and activities provided are relevant. ESMA's Final Report on the Assessment of Knowledge and Competence also confirms that 'whenever there is a direct interaction between an employee and a client, the discriminating factor should be whether that employee is, or not, in the process of providing an investment service to the client'.⁶⁶

18.11 We have previously issued guidance FG15/1: Retail investment advice: Clarifying the boundaries and exploring the barriers to market development⁶⁷, which is consistent with the CESR document referred to above. This guidance, which we plan to update following the changes announced by HMT to Article 53(1) of the Regulated Activities Order as a result of FAMR, may also be helpful to firms who give information or investment advice to professional clients.

18.12 In the UK the regulated activity of advising on investments (for the purposes of Article 53 RAO) is wider in scope than the MiFID definition of personal recommendation. From 3 January 2018, the requirements for advising on investments will change following an amendment to Article 53 of the Regulated Activities Order. The FCA has published a note explaining the changes⁶⁸ and will consult on this change in the summer.

Qualifications and continuous professional development

18.13 Several respondents sought clarity on the criteria and characteristics of appropriate qualifications and the type of continuous professional development necessary to maintain knowledge and competence.

66 Page 26, paragraph 51 Final Report on MiFID II Guidelines on assessment and knowledge of competence
67 <https://www.fca.org.uk/publications/finalised-guidance/fg15-1-retail-investment-advice-clarifying-boundaries-and-exploring>
68 <https://www.fca.org.uk/firms/financial-advice-market-review-famr/changes-regulated-activities-order>

Our response on qualifications and continuous professional development

We are not extending our list of retail qualifications in TC as a result of the guidelines and we are also not proposing to list mandatory qualifications in SYSC. Firms need to consider the ESMA requirements and ensure that the qualifications (or other test or training course) meet the ESMA guidelines criteria.

We have updated our web-site setting out the characteristics required for ESMA appropriate qualifications. We have also confirmed that the review of whether a relevant individual's qualification meets the criteria or characteristics may be carried out by the firm or an external body.

SYSC already provides guidance that firms not subject to TC may nevertheless wish to take it into account in complying with the competence requirements in SYSC, including in respect of qualifications and continuous professional development (CPD). Based on the feedback received we have clarified this.

Overall we consider that our expectations are consistent with MIFID's objective of strengthening the protection of investors in a context of increasing complexity of investment products and continuous innovation in their design, as well as broader developments relevant to standards of knowledge, competence and professionalism such as the Fair and Effective Markets Review⁶⁹, and the creation of the Banking Standards Board⁷⁰ and the Chartered Body Alliance.⁷¹

The Senior Manager and Certification Regime (SM&CR)

- 18.14** We received a small number of responses querying whether firms should take compliance with the ESMA guidelines into account when certifying relevant individuals for the purposes of the current and future Senior Manager & Certification Regime (SM&CR).

Our response on the senior manager and certification regime (SM&CR)

The Certification Regime applies to employees who could pose a risk of significant harm to the firm or any of its customers (for example, employees who give investment advice). Where such an employee is subject to the Certification Regime firms must carry out an assessment of that individual as described in more detail in section 63E (1) of FSMA. This includes an assessment of whether the individual has: a) obtained a qualification; b) has undergone, or is undergoing, training or; c)

69 <http://www.bankofengland.co.uk/markets/Documents/femrjun15.pdf>

70 <http://www.bankingstandardsboard.org.uk/>

71 <http://charteredbodyalliance.org/>



possesses a level of competence. Firms need procedures for assessing for themselves the fitness and propriety of employees, for which they will be accountable to the regulators.

Where a relevant individual is subject to the Certification Regime, for example a function requiring a qualification requirement as per SYSC 5.2.30, we would expect a firm to have regard to their employee's compliance with the ESMA guidelines, where relevant⁷², when making a determination in respect of their fitness and propriety under the Certification Regime. Consistent with the ESMA guidelines firms should adopt a proportionate approach: they need to be satisfied that a person is fit and proper to perform a particular certification function, reflecting the skillset involved.

Staff knowledge and experience

- 18.15** We received a response seeking confirmation that previous work experience is relevant for the purposes of appropriate experience in the guidelines.

Our response on staff knowledge and experience:

The guideline definition of 'appropriate experience' includes that a 'member of staff has successfully demonstrated the ability to perform the relevant services through previous work'.

We consider that previous employee work experience could be relevant for the purposes of the ESMA guidelines but that the work experience must be relevant to the role being performed.⁷³

Article 3 firms

- 18.16** We received a response querying whether excluding Article 3 firms from complying with the guidelines will place consumers at risk.

Our response on Article 3 firms

Article 3 firms can exercise the optional exemption provided in MiFID II if they do not hold client funds and only perform limited activities (advice and receiving and transmitting orders). However, they are still subject to FCA authorisation and, as such, to a detailed set of

72 <https://www.handbook.fca.org.uk/handbook/glossary/G3552c.html?filter-title=certification>

73 TC 2.1.23 expects that continuous professional development should not be taken into account unless it is relevant to the role being performed.

rules⁷⁴ and guidance relevant to the activities being performed. This includes the SYSC 'competent employees' rules and our detailed professionalism requirements in TC for certain retail activities, including the need to attain an appropriate qualification where relevant. This is consistent with the proportionate application of the guidelines and our risk-based approach to regulation.

74 The Bank of England and Financial Services Act 2016 also extends the Senior Manager and Certification Regime (SMCR) to all sectors of the financial services industry. We intend that our extended regime will be clear, simple and proportionate. We expect implementation to begin from 2018.



19

Taping

Introduction

19.1 This chapter summarises our responses to feedback received in relation to our proposals in CP16/29 and CP16/43 to implement the MiFID II taping requirements. This chapter is relevant to a wide range of firms, including firms conducting MiFID or equivalent third country business, Article 3 firms, non-MiFID investment managers, energy market participants and oil market participants, those trading in commodity and exotic derivative instruments, and consumers and consumer organisations.

Recording of telephone conversations and electronic communications (taping)

19.2 MiFID II introduces, for the first time, an EU-wide harmonised requirement on firms to record telephone conversations and electronic communications relating to (or intended to relate to) transactions concluded when dealing on own account and when providing client order services that relate to the reception, transmission and execution of orders. This will replace the FCA's domestic taping regime that has been in place since 2009.

19.3 In CP16/29 and CP16/43, we consulted on implementing the MiFID II taping requirements. MiFID II requires us to include certain additional activities not currently covered by the existing regime. In particular, we are required to apply a taping obligation to retail financial adviser firms (RFAs) that are investment firms, and to MiFID firms undertaking corporate finance business where that business relates to the activities captured above. MiFID II also sets out a number of more prescriptive organisational requirements for firms. We are also required to extend 'analogous requirements' to MiFID optionally exempt (Article 3) firms.

19.4 We consulted on applying the MiFID II taping standard to all Article 3 firms, in addition to a wider range of activities than those required by the Directive, namely:

- corporate finance business generally (where the activities are not already caught by the Directive)
- the service of portfolio management, including removing the current domestic qualified exemption for discretionary investment managers
- energy market activities and oil market activities
- UK branches of non-EEA firms
- commodity and exotic derivative instruments

19.5 There was a considerable response from industry on a number of these proposals. In our initial policy statement on MiFID II, PS17/5, we gave early clarity on our approach to taping for RFAs. This chapter now sets out the finalised rules for these firms and for the other firms that we consulted on applying the taping requirements to. It will address the proposals in relation to the firms which they impact.

Extending the taping regime to all of corporate finance business

19.6 In CP16/29 we proposed to extend the MiFID II taping requirements to include all aspects of corporate finance business, as a result of the market abuse and conduct risks that may arise during the provision of these services. We stated that this type of business broadly involves advice and arranging activities in respect of underwriting new debt or equity issuances, corporate restructuring, takeovers and acquisitions, and business strategy.

19.7 In CP16/29, we asked:

- Q57: Do you agree with our approach to extend the MiFID II requirements to corporate finance business and the service of portfolio management and to remove the exemption for discretionary investment managers?

19.8 The investment banking community raised a number of concerns with the breadth of corporate finance business that would be caught by the proposal, how the regime would work in practice, its proportionality, and how it would impact the competitiveness of the UK. In particular, respondents noted the following.

- The proposal as drafted in CP16/29 is significantly broader than the MiFID II requirements to tape.
- Issuers and corporate finance clients are likely to prefer not to conduct business on a recorded line. Respondents believe that since no other NCA is proposing to extend taping to corporate finance business, this proposal may lead to a competitive disadvantage for the provision of corporate finance services in the UK.
- Discussions between banks and clients routinely involve deliberations about potentially difficult and nuanced interpretations of specific issues. These conversations may be misinterpreted when taken out of context or reviewed in hindsight. This may lead to increased legal scrutiny and concerns relating to legal liability or legal privilege.
- Corporate finance transactions typically take place over a long period of time, and the volume of conversations to be captured would be vast. However, few estimates of the scale of this were given within the responses. Some respondents therefore thought that the proposal could be disproportionate to the risks identified in CP16/29.
- Relevant phone conversations may occur with multiple participants in multiple jurisdictions and on many different devices. This raises data privacy concerns in countries with differing data privacy laws, as well as difficulties in implementing these proposals.



- There are already record keeping requirements that exist for many activities that are caught by corporate finance business (for example underwriting agreements between the banks and the issuer). Respondents did not think there was a significant gap in the keeping of effective records. The wide range of services that can be characterised as corporate finance business makes interpreting the taping regime particularly complex. Firms may take a cautious interpretation of the obligation which could make it very broad.

19.9 The investment banking community noted that certain key aspects of regulated corporate finance activities, such as 'market soundings', are already typically recorded. The taping of these interactions is a more manageable process as there is a discrete, specific interaction that can be recorded in a targeted way. The provision of other corporate finance services, such as advice, may not involve inside information or present material conduct risks for which a taping obligation would be appropriate.

19.10 Some concerns were also raised by representatives of the corporate issuer community. In particular, they noted that the taping requirements may act in such a way as to slow down corporate decisions. This could make the UK's capital markets a less attractive route to raise finance, especially since other EU jurisdictions are not extending the taping regime to the provision of corporate finance business. It was however noted by some in the corporate issuer community that taping would help to ensure that corporate finance firms were acting in the best interests of their corporate clients, rather than their own interest. This reflects our contention that taping could help to make the UK a more attractive place to do business.

19.11 General requests were also made by a number of respondents for the FCA to clarify the scope of the proposal as currently drafted. These are addressed in the last section of this chapter. Several respondents also requested additional time or a further CP on the detail of our proposals.

Our response on extending the taping regime to all corporate finance business

We have carefully considered the feedback we have received on our proposal to extend the taping requirements to corporate finance business (in CP16/29). Stakeholders raised concerns about the broad scope of the proposal. We recognise that extending the taping regime to all aspects of corporate finance business may capture certain activities beyond the scope of MIFID II where conduct or market abuse risks are not as prevalent, and this may be difficult to implement.

MiFID II⁷⁵ requires in-scope firms to record telephone conversations and electronic communications that occur when providing client order services that relate to the reception, transmission or execution of client orders, or when dealing on own account. We are also required to impose analogous requirements on MiFID optionally exempt firms.

In response to the feedback received:

- we will **not** extend the MiFID II taping regime to capture all aspects of corporate finance business; but
- communications occurring during corporate finance business **would** be in-scope of the taping requirement insofar as they are automatically captured by MiFID II as set out in the above paragraph.

We expect this change of policy will reduce the costs imposed on firms from those set out in our cost benefit analysis in CP16/29. The extent of cost savings will depend on the proportion of a firm's business that is directly caught by the activities set out in Article 16(7) of MiFID II.

Conversations that firms must record

Firms must record telephone conversations and electronic communications that are in scope of Article 16(7). In other words only those resulting in (or that are intended to result in) transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders.

Some communications that occur when firms provide corporate finance services may fall within the MiFID II taping requirements. The focus of the recording requirement is on the end of the process leading to a transaction where the transaction is agreed or there is a reasonable prospect of the transaction being agreed.

For example, in a capital-raising context, there will be conversations and communications between the syndicate banks, issuer and/or investor clients about pricing and allocating securities. Firms providing underwriting and placing services⁷⁶ are not within the scope of the taping requirement unless the firm is involved in providing client order services alongside these. Such client order conversations and communications will be in scope of Article 16(7). As the focus of the recording requirement is on the end of the process, in practice this is likely to be limited to communications in relation to key elements of the final intended transaction, such as price.

Other communications that may fall within the MiFID II taping requirements include, but are not limited to, those between:

- a bank and its corporate client and between a bank and sellers related to purchases of securities in buy-back transactions for the corporate client
- a bank and selling shareholder and between a bank and buyers relating to the purchase of a block of securities by the bank and the subsequent resale of the securities in a block trade 'bought deal' transaction
- a bank and buyers relating to the re-selling of shares purchased by an underwriting bank when underwriting an issue of securities



- a bank and its clients and the bank and a third-party broker or sellers in relation to the purchase of securities as part of a stakebuilding exercise

We would encourage firms to look at our perimeter guidance, particularly PERG 13.3 and PERG 13 Annex 2 for further detail on some of the activities which may come within scope.

Please see the final section of this chapter, on 'recurrent issues in consultation responses' for further detail on how we have transposed the MiFID II requirements in our Handbook.

Record-keeping obligations

Firms must create and maintain effective records, including when they are providing corporate finance business (see SYSC 9 and COBS 11.5A for general record-keeping obligations). Taping sits within the context of these broader obligations.

Taping helps to promote higher standards of conduct and reinforces our ability to supervise and enforce our wholesale conduct and market abuse regimes. Higher standards of conduct by firms when providing corporate finance services should help to enhance confidence among issuers and investors, improve the effectiveness of the UK's primary capital markets, and ultimately make this a more effective route for issuers to raise finance.

We understand from responses on behalf of the investment banking community that it is already common market practice to record conversations when a firm is gauging the level of interest in a corporate finance transaction from prospective investors ('market sounding'). Other activities such as research services a firm provides alongside corporate finance business, and the pricing and allocation of a securities offering, are also areas where material conduct risks can, and do, arise in practice. If conversations and communications relating to these services are not already directly caught by the telephone recording requirements, we would encourage firms to consider whether, in similar vein to 'market soundings', they could be captured in a manageable way.

Where such recordings can be captured in a manageable and proportionate way, we would regard it as good practice for firms to tape as a means of maintaining effective records.

Portfolio management and proposal to remove the qualified exemption available for discretionary investment managers

- 19.12** In CP16/29, we proposed to extend the MiFID II taping requirements to portfolio management activity and to remove the current qualified exemption for discretionary investment managers. Our domestic regime already requires firms to record

conversations related to this activity, but the MiFID II requirements differed in their application in a number of specific ways, as set out in our consultation paper.

19.13 In CP16/29, we asked:

- Q57: Do you agree with our approach to extend the MiFID II requirements to corporate finance business and the service of portfolio management and to remove the exemption for discretionary investment managers?

19.14 One significant difference from our current regime is that we proposed to remove the existing qualified exemption for discretionary investment managers (DIMs) as we have faced difficulties in obtaining the relevant records where we have only had access to those records from the sell-side firms. This exemption enables them not to have to record relevant conversations if they can reasonably presume that their counterparty is subject to a taping obligation.

19.15 Respondents provided the following feedback:

- Some respondents noted that many discretionary investment managers do not tape on account of the existing taping exemptions. They thought that there was not a large enough gap in the regulatory protection to justify the imposition of the full cost of taping, as records could be accessed from the relevant sell-side counterparty. One representative industry response noted that they were not aware of the difficulties that the FCA had had in accessing the relevant tapes, and so did not think that the removal of the exemption was sufficiently justified.
- The drafting of the rules is currently so broad that it covers the day-to-day operations of certain firms. One example that was given is that the activities referred to in draft SYSC 10A.1.1R include the activity of managing an AIF, which would include a very broad range of conversations. Concerns were raised that this would require the recording of all calls relating to on-going operations, which would be a significant expansion from the current requirement which defines what a relevant conversation is.
- The increased retention period of records from six months in the domestic rules to five years based on the MiFID II rules would have significant data costs, and the benefit of the extended length of recording had not been established.
- As currently drafted, the new taping regime will apply the taping obligation to all MiFID financial instruments, both for MiFID firms and for the discretionary extensions that the FCA consulted on. This may not be appropriate in the context of private equity firms, who are not currently subject to taping and would become so through the extension of the relevant instruments. Respondents noted that the concerns of market abuse and conduct risks cannot be as prominent in these transactions, and so justification for this extension was weaker.
- Some respondents representing smaller firms noted that these proposals may have a disproportionate effect on smaller firms who previously relied on the exemption. It was argued that this would especially be the case if firms are required to actively monitor the records that they make.
- Concerns were also raised that in a private equity context, communications raised in relation to a potential transaction may take place over a long period of time and



with a number of different relevant parties. If all of these conversations were to be in scope of the taping requirement the number of conversations that needed to be taped would be vast. This could mean that the regime would be disproportionate to its benefits.

Our response on portfolio management and proposal to remove the qualified exemption available for discretionary investment managers

Our proposal to continue to require firms to record conversations related to portfolio management activity and to remove the current exemption for discretionary investment managers was based on our supervisory and enforcement experiences. In particular, we faced difficulties when relying on sell-side records, and this meant we had to rely on those who may not have been the subject of the investigation. We also proposed to take a unified approach to those subject to the taping requirements, by implementing the MiFID requirements to those firms who are subject to a recording obligation through our domestic regime. We stated that the taping regime under MiFID II was in line with our regulatory expectations and that for those who were already subject to the taping obligation this baseline was already fairly close to the new proposals.

Removing the qualified exemption available for discretionary investment managers

We consider that there is a sufficient gap in records kept to justify removing the exemption for discretionary investment managers. Where the exemption is used, we have found that it has been very difficult to access the relevant tapes from the sell-side counterparts, given that orders may be placed with multiple brokers across different venues. Additionally, our proposal will ensure that the costs of supporting FCA supervision and investigation are met by those who are often the subject of our oversight and investigations, rather than counterparties.

We also stated in CP16/29 that our survey results suggest that a large proportion of discretionary investment managers already record in practice, and as such would face only limited costs in the application of the taping rules. This is particularly the case amongst larger firms, although less so for smaller ones as set out in the CP16/29 CBA. We do not therefore think that it is likely to be costly to introduce for many portfolio managers. For these reasons, we are confirming the original proposal to remove the qualified exemption available for discretionary investment managers.

Differences from current regime

We stated in CP16/29 that the MiFID II regime was in line with our current regulatory expectations and the differences are not unduly significant. With regards to the scope of the conversations that are captured by the proposed drafting of the rule, it is not our intention to require all conversations or other electronic communications to be caught by the taping requirement.

We do not agree with the suggestion in responses that the implication of the proposed drafting is that it would require a firm to record nearly all of its employees' daily telephone, videoconference and email, among other electronic communications in order to capture conversations that relate to the activity of managing an AIF. The activity of managing an AIF is defined in relation to the function of portfolio management in AIFMD. This means that the drafting relates to the performance of the particular function (ie when DIMs are actually undertaking portfolio management) rather than a more general understanding of what 'managing' an AIF entails. The focus of the regime is on the transactional side of portfolio management, where conversations that relate to transactions undertaken, or intended to be undertaken, are required to be recorded. This is similar to the focus of our current regime which defines a relevant conversation with reference to transactions. Further details on the scope of the requirement are provided at the end of this chapter. We do not expect this to be significantly broader than the current requirement that these firms are subject to.

One of the more prescriptive organisational requirements that MiFID II introduces is the extended retention period for taped records. Some consultation responses noted that they expected this to result in considerable data storage costs. However, there was a lack of specific costs that were quantified within these responses or comparisons to the cost benefit analysis included in CP16/29. We do not believe that the increased retention period will result in significant cost increases for firms who already have a taping telephony system in place. This is because data storage costs have come down significantly since the original introduction of the UK domestic taping regime, primarily due to the advent and benefit of cloud storage. This means that any costs are likely to be incremental in nature. Responses provided little evidence that the original data storage costings as set out in the cost benefit analysis of CP16/29 were incorrect. We were also not provided with strong evidence as to why this would have a disproportionate impact on smaller firms, particularly as any policies or monitoring of records that are introduced should be risk-based and proportionate. As such, we propose to continue with the requirement to hold records for a common period of five years after the creation of the record.

However, one concern that was raised was that as currently drafted the taping rules relate to all financial instruments for certain firms undertaking certain activities. This means that for non-MiFID firms also subject to the regime, where they undertake relevant transactions in certain securities (eg in the case of many private equity transactions), they will be captured by the requirement to tape where they may not currently be. We accept that the justification for taping these conversations on the grounds of preventing market abuse or raising conduct standards is weaker than for other extensions to the taping regime and may not be appropriate. We have therefore adjusted our scope to remove financial instruments not linked to trading on a trading venue from the scope of instruments required to tape by non-MiFID firms. This will ensure that the regime is more proportionate, and the right conversations are captured. It will also likely reduce the total cost of the proposed discretionary extensions estimated at



consultation. This is because some firms who would have otherwise been brought into scope through the change to the underlying financial instrument will not have to tape their relevant phone conversations. Aside from this change in scope our finalised rules otherwise remain the same as they were consulted on in this area.

Energy market participants (EMPs), oil market participants (OMPs) and firms conducting other non-MiFID commodity and exotic derivatives business

- 19.16** In CP16/29, we consulted on extending taping to firms undertaking energy market activities and oil market activities. This was on the basis that these firms are already subject to the domestic taping requirements. In the fourth consultation on the implementation of MiFID II (CP16/43), we consulted on also extending taping to other non-MiFID business related to commodity or exotic derivatives. By virtue of COBS18.2.5, these firms are already required to tape relevant conversations and communications.
- 19.17** In CP16/43, we asked:
- Q2: Do you agree with our approach to COBS 18.2? If not, please give reasons why.
- 19.18** A few respondents answered this question, with balanced of views between those in favour and those not.
- 19.19** Some thought that these firms are currently subject to a taping requirement for these relevant activities and that this should be carried over to the new taping regime.
- 19.20** Some respondents argued, however, that we did not sufficiently make the case that it is proportionate to apply the MiFID II taping requirements to firms undertaking this business. In particular, respondents argued that there was little justification for an increase in the retention period from six months to five years to be aligned with MiFID II, and that the CP16/29 CBA discussed the benefits of taping generally rather than the benefits of moving to the MiFID II standard.

Our response on energy market participants (EMPs), oil market participants (OMPs) and firms conducting other non-MiFID commodity and exotic derivatives business

We will continue with our approach as set out in CP16/29 and CP16/43 and apply the MiFID II taping requirements to energy market participants (EMPs), oil market participants (OMPs) and firms conducting other non-MiFID commodity and exotic derivatives business.

CP16/29 proposed applying the MiFID II taping regime to EMPs, OMPs, and firms conducting other commodity and exotic derivatives business. Under our current regime, these firms are required to already tape the same sorts of conversations. We also stated in CP16/43 that we believe the costs to meet the MiFID II organisational requirements are likely to be minimal, given that firms currently comply with our domestic regime.

One of the respondents queried whether the arguments for moving to the longer retention period in place under MiFID II had been sufficiently justified. As well as the benefits arising from consistency of standards, discussed below, the additional retention period for calls will give a longer period of time for internal review in the event of a dispute. It will also increase the availability of records for both supervisory and enforcement purposes, which can often take place more than six months after records were created.

We do not believe that this extension of the retention period from six months to five years will have significant costs attached to it. The main cost increases would come from an increase in data storage, and these are likely to be small given the falling costs of cloud-based storage. We did not receive detailed consultation responses that set out significantly different cost estimates to those included in our cost benefit analysis. We also believe that there are benefits in having consistent regulatory requirements in place for firms undertaking similar activities across different directives. As MiFID firms undertaking MiFID business will be directly captured by the five-year record retention period, it is important that other firms undertaking similar activities align with these requirements in order to ensure a consistent regulatory approach. This is especially the case where firms are undertaking mixed scope business, and as such some of their conversations are required to be recorded and kept for five years.

Third country branches

19.21 In CP16/29, we asked:

- Q58: Do you agree with our proposal to apply the MiFID II taping provisions to UK branches of third country firms?

19.22 Only a few respondents answered the CP question on the extension of the taping regime to UK branches of third country firms. The majority of respondents supported the proposals, with some noting that the taping regime proposed would be a useful source of evidence for market abuse and related regulatory breaches.

19.23 One respondent queried the extent to which this had been discussed in the consultation paper, however agreed with the proposals nonetheless.

Our response on third country branches

We believe that it is important to have consistent regulatory requirements in place for the same type of firms carrying out the same activities in the same markets. Given this, and that our proposals were supported by respondents, we are confirming the application of the MiFID II taping provisions to branches of third country firms.



Retail financial advisers (RFAs)

19.24 In PS17/5, we gave early clarity on our proposed approach to applying taping to Article 3 RFAs. We concluded that additional flexibility for all Article 3 RFAs was appropriate, and that we would allow these firms to either tape their relevant phone conversations or take a note of them. This policy statement now sets out the feedback received to the consultation questions on RFAs, and the detail of our finalised rules.

19.25 In CP16/29, we asked the following questions:

- Q55: Do you agree with our proposed approach for Article 3 firms including larger financial advisers? If not, please give reasons why. In your response, please identify the size of your firms eg provide details of the number of employees who will be subject to the new taping requirements.
- Q56: Do you agree with our approach for Article 3 financial advisers? If not, what other alternatives do you suggest that may meet the analogous requirements of Article 3.2(c) of MiFID II for smaller financial advisers? Please also provide your views on what an appropriate level to distinguish between larger and smaller financial advisers would be.

19.26 Respondents generally did not support the proposals to apply taping to RFA firms exempt from MiFID under Article 3. A number of concerns were raised by industry with regard to our proposal. In particular, respondents made the following arguments:

- The business model of these firms is such that the primary way in which advice is delivered to clients is through face-to-face meetings. Taping would fail to meet its objective of increased consumer protection as it would not capture the vast majority of conversations where advice is actually provided.
- The proposal to differentiate between smaller and larger RFAs is unworkable in practice. This is because there are two main business structures, large networks of appointed representatives (ARs) operating under one principal, and other directly authorised small firms. As the large networks are constituted by small ARs, it may create competitive distortions to make them tape whilst a similar sized directly authorised firm would have the choice not to.
- The number of complaints arising from RFAs that go to the Financial Ombudsman per year is very low, and so there are only minimal investor protection benefits that could be realised by introducing taping.
- The cost of implementing taping is considerable and is disproportionate from a cost-benefit perspective.
- Access to taped records may not necessarily benefit client outcomes, because if there is a dispute over what has been said on a phone, many firms' approach is to settle it in the client's favour.
- Clients currently receive a substantial audit trail after formal advice has been given, in the form of the suitability report. It is unclear whether further record keeping is necessary.

- 19.27** Many respondents queried the costs of implementing the regime. Some industry respondents argued that the likely total costs of the regime would be significant. Detailed alternative analyses were provided to support these claims.
- 19.28** Some respondents (notably smaller RFAs) favoured a distinction between smaller and larger RFAs. Of those who provided a specific size, most could not provide compelling reasoning as to why this threshold was appropriate.
- 19.29** Some respondents were more positive about our proposals. One representative consumer body that responded supported our proposal to apply taping to Article 3 financial advisers, noting that that it would help promote good market behaviour and enhance consumer protection. It was also argued that there was no suitable alternative to taping that would provide the same benefits.
- 19.30** Some respondents however did provide an alternative way of meeting the ‘analogous’ requirement for telephone recording to Article 3 MiFID optionally exempt firms (such as RFAs). Firms proposed that an analogous outcome can be achieved by requiring firms to document and retain a written record of any relevant calls. It was highlighted that this approach aligns with that set out in MiFID II for relevant face-to-face conversations, and that these should be considered as equivalent to those conversations.

Our response on retail financial advisers (RFAs)

In PS17/5, we concluded that additional flexibility for all Article 3 RFAs is appropriate. This was because feedback suggested the business model of many of these firms is such that a full taping obligation may not be proportionate.

We do not agree that the:

- Cost of the proposals would be as significant as has been suggested by some industry respondents. This is because the alternative analyses that were submitted typically took more expansive assumptions about the cost of storing phone records and the number of telephone lines that would need to be taped. We continue to think that the assumptions set out in the CP16/29 CBA are valid.
- Number of published Financial Ombudsman Service cases per year alone is a good indicator of the likely benefits that taping would bring. This is because taping has a wider range of benefits than just in the cases of these disputes, such as those highlighted in CP16/29. We also do not think that this number would capture all relevant cases for which taping could have benefits.

However, we accept that where firms only make few relevant telephone calls, and instead impart the majority of their advice in a face-to-face capacity, then it could be the case that the costs of the policy outweigh the benefits. This is more likely to be the case for the fairly considerable number of smaller firms in the market, where business between the firm and the client is almost all done face-to-face. Some larger firms emphasise the relationship-based nature of their business.



In these cases, it is our view that firms are more likely to routinely have relevant telephone conversations. We do not envision that this additional flexibility is likely to result in additional costs to the consulted on proposals as firms will choose the most cost effective approach for them.

The ability for retail financial advisers to choose between: making a written record, or recording relevant conversations, should enable these firms to make cost effective decisions⁷⁷ whilst preserving an appropriate level of investor protection. We expect the majority of the Article 3 population to fall within the category of retail financial advisers.

We do not agree that since these large firms are often comprised of networks of appointed representatives with one central principal, they should be considered as many small firms. The AR-principal model centralises the compliance and support functions for the ARs to operate, and so the taping policy would fall within the remit of the principal. It may be the case that ARs currently operate different telephony systems, but this does not mean that the AR should be considered a separate entity for which it would be disproportionate to apply taping. Economies of scale will exist due to the centralised compliance function. However, we consider there to be no workable, non-arbitrary distinction that could be drawn between a large and a small RFA. We therefore propose to apply our policy consistently across all sizes of firms in the market.

Taking into account proportionality concerns, and feedback that no fair distinction can be drawn between a large and a small RFA, we will allow Article 3 RFAs, irrespective of size, to comply with the 'at least analogous' requirement by either taping all relevant conversations or taking a written note of those relevant conversations. As stated in PS17/5, firms should develop and take a consistent approach in their decision to tape or take a note of relevant conversations. This is to ensure that the system could not be gamed by individual advisers or in particular situations. In exceptional and unplanned situations where a client contacts an adviser on a non-recordable line and it would not be reasonably practical for the adviser to continue the conversation on a recorded line, a note could instead be taken. The rule would not, however, allow a call-by-call choice on whether to record or take a note of these conversations. Further detail on which conversations are in scope of this requirement can be found at the end of this chapter.

Detail of an analogous note

We also stated in PS17/5 that in order for the note to meet the 'analogous' requirement under MiFID II, it must have an analogous

77 In CP16/29 we said the following about the costs of taping: 'As illustration of how these costs arise we can consider an example of a firm needing to record the communication of one of its staff. Initial hardware, installation and first year storage capacity would cost, between £391 and £441 per individual (£335 for telephone lines and installation and £6 for the first year's storage capacity. If the lines are used on average 70% of an 8 hour working day and speech is recorded at between 13-16k bits per second in WAV format. On that basis each line will generate about 40 mb of data. Across a 260-day working year the total data per user is 10.4 GB. Assuming that a backup copy is kept and this information is stored in a third party cloud, we estimate cost storage per user at £6 per year. We have also included between £50-100 per user per year for maintenance and other associated miscellaneous expenses including staff costs. Based on figures from previous analysis we estimate that for every landline recorded, there will be 0.44 mobile phones recorded. We estimate costs for the second and subsequent years will reduce to between £371 and £421 per user. However, we estimate that for firms that already record conversations and communications the largest expense will arise with retaining records from at least 6 months to a minimum of 5 years. We do not expect these storage costs to be material.

outcome in terms of advancing our consumer protection objective. We stated that this meant that firms would not be able to rely solely on their current record keeping obligations to meet the requirement. Certain details are required by the MiFID II delegated regulation (2017/565) to be recorded, as a minimum, when a firm has a relevant face-to-face conversation. The information to be recorded includes *at least* (i) the date and time of the meeting, (ii) the location of the meeting, (iii) the identity of the attendees, (iv) the initiator of the meetings, and (v) relevant information about the client order including the price, volume, type of order and when it shall be transmitted or executed. We would expect an analogous note taken of a relevant telephone conversation to include at least these details as a minimum.

A note based just on the minimum details listed above would not provide an analogous outcome to taping telephone conversations. This is because it does not provide the same degree of consumer protection. We are therefore including further guidance in the rules that, in addition to the above details, the note should capture all the main points of the full conversation that are relevant to the order. This approach will ensure that firms do not omit relevant details from the note, providing an accurate and contemporaneous record of the conversation.

We expect the note to capture any substantive points raised in the relevant conversation that provide material context and colour to the decision taken by the client. In other words, anything communicated from either the client or the adviser that could influence the client's decision should be captured. Good practice for firms would include sharing the notes made of relevant phone conversations with clients on a regular basis in order to ensure their accuracy.

Which conversations fall to be recorded (by tape or note)?

Some industry respondents noted the difficulty in understanding which conversations fall within the scope of the taping regime for RFAs. Whilst more details on this are provided at the end of the chapter, see the section on 'Recurrent issues in consultation responses', there is particular difficulty in an advisory context. This is because it is not the investment advice itself that must be taped but the client order services that are provided typically in conjunction with investment advice. In order to add further clarity to the detail set out at the end of the chapter, we have included a couple of examples below which show the sorts of conversations that we understand to be within the scope of the taping regime in the context of RFAs.

Firms are required to record conversations that result in a transaction being undertaken or that are intended to result in a transaction being undertaken. The investment advice is caught insofar as it relates to a specific transaction that the client wishes to undertake. As we discuss at the end of this chapter, the 'intention' of the client is a clear test.⁷⁸ In order for it to be the case that the client has an intention for a conversation to result in a transaction, they must not be feeling their way or reserving their decision for a later time. They must have a clear state

78 *Cunliffe v Goodman* [1950] 2 KB 237, at 253 (*Cunliffe*).



of affairs that they wish to bring about, and have a reasonable prospect of doing so. The client must have a clear idea of what order it is that they want to undertake, and be capable of conveying this to the adviser. It is not sufficient for the client to just be receiving advice, or debating between a number of different alternatives. The client must have a clear intention to undertake a particular transaction. In the case of RFAs, this could, for example, be the case where they agree with their adviser to proceed on the basis of the advice given.

As such, we would not expect firms to have to record conversations where advice is imparted unless that conversation leads to or is clearly intended (in the above sense) to lead to a subsequent 'order' from the client. If, for example, the adviser imparts advice to the client who says that they need to go away and think about it, we would not expect this conversation to be required to be recorded for the purposes of the telephone recording regime. There may be other record keeping requirements for this first meeting, for example for suitability report purposes. If, however, the client then later phones their adviser to state that they do want to proceed on the basis of the advice imparted at the meeting, we would expect this phone conversation to be recorded, or for an analogous note to be taken of it. This is because it is clearly the intention of the client that the adviser goes away and makes the necessary arrangements to bring about the wishes of the client, which in this case constitute the client order.

With regards to what details an adviser should put into this note, we would expect the things set out earlier in this section alongside any other relevant details. These other relevant details may simply be that the client thinks that the advice they received was indeed the most appropriate for them and as such they would like to continue on that basis. If, during this conversation, the client stated that they thought the advice was particularly suited to them for a given reason, it is this reason that must be included as the other relevant detail in the note of the conversation. A taped record would capture all of these details and so it is important that the note would also capture these details. They are essential aspects of consumer protection that provide an unambiguous account of the key points that led to a decision by the client.

If there was a more substantive discussion over the phone that resulted in the client making a particular decision then the record created should capture those main points that were discussed prior to the decision being made by the client. This will ensure that the note would be analogous to the taped record of the conversation which would clearly be within scope of the regime.

The above examples are illustrative and non-exhaustive only. Firms will have to use judgement as to whether or not certain conversations are within scope and what details of that conversation need to be captured. Clearly, all conversations where the client passes on a decision (an 'order') to the adviser that the adviser must carry out are within scope of the requirement. Certain other conversations, where the client clearly intends to undertake a particular decision will also be in scope. The bar for 'intention' is higher than merely contemplating

a particular course of action, as explained above. Finally, firms are encouraged to look at the ESMA Q&As on taping, and the further detail included in the end of this chapter for more information. These will help firms to use their judgement regarding whether particular conversations are within scope.

Costs of implementing the organisational requirements

- 19.31** We stated in the cost benefit analysis that the likely costs of implementing the new organisational requirements of the taping regime are likely to be small.
- 19.32** In CP16/29, we asked:
- Q59: Some respondents to the CBA we undertook last year indicated that the costs for adhering to the new taping organisational requirements are likely to be minimal. Do you agree with this view? If not, please provide further empirical information as to why.
- 19.33** A number of respondents answered this question, with the majority disagreeing with the view that the costs of implementing the organisational requirements of the taping regime were likely to be minimal. Most respondents answered depending on how the proposals were likely to impact certain types of firms. We have considered these firm-type specific responses in the section for which they are relevant.
- 19.34** One respondent who has had a taping system in place for a number of years stated that the costs that they had experienced were significantly more than what was suggested in the CP. It was stated that the estimated volume of data generated was much more significant than the estimates that were submitted as part of the cost benefit analysis attached to CP16/29. It was stated that the average volume of data per recorded line was around eight times greater than the basis of the CBA included in CP16/29.
- 19.35** Several respondents expressed concerns that the active monitoring of the records kept in accordance with this chapter would result in significant costs that had not been considered as part of the CP. Respondents were unsure of the extent that they would have to monitor these records in order to meet the organisational requirements.
- 19.36** Some respondents noted that for those who already have a taping system in place the costs were unlikely to be significant; however for those without such a system the costs would be more considerable. Where the taping requirement is already applied, authorised firms would already have most of the infrastructure in place.

Our response on the costs of implementing the organisational requirements

CP16/29 proposed that for firms not currently subject to a taping requirement, the costs of complying with the organisational requirements will be greater than for those who are subject to the domestic regime. Where firms do not currently tape, the changes to the



organisational requirements should however be seen as an extension of other record keeping requirements that firms are already subject to. Internal policies detailing the firm's approach to the recording of telephone conversations (as detailed in Article 76 of the MiFID II delegated regulation) should fit within a firm's broader record keeping policies. For firms who do currently tape, these changes are incremental in nature, and we continue to think based on our cost benefit analysis that the costs of adhering to the regime are likely to be small.

Whilst responses often mentioned 'the costs' of our proposals, we did not receive many examples of alternative expected costs. One disagreed with the assumption made about the amount of data that one recorded line would generate. We still think that our assumption in CP16/29 remains representative of likely data generation across impacted firms, as this was based on evidence from industry suppliers.

We do not believe that the additional organisational costs would be as significant. Whilst there will be certain additional costs from the more prescriptive organisational requirements of MiFID II, we still think these requirements are already in line with our existing regulatory expectations. The monitoring of records, for example, should be done on a risk-based and proportionate basis, taking into account the scale, nature and complexity of a firm's business and the corresponding materiality of the conduct risks its activities may give rise to. Further details on this are provided in the last section of this chapter. For firms who already tape, it is within our regulatory expectations that some monitoring of these calls already occurs and as such this should not result in a significant increase in the cost for firms. We do not therefore agree with the respondent who argued that there were significant additional costs related to processing and monitoring of records that were not considered as part of the cost benefit analysis of CP16/29.

As a result of this, we are confirming our proposals to have a single set of organisational requirements that are consistent with MiFID II and apply to all firms subject to the taping regime.

Recurrent issues in consultation responses

- 19.37** There were a number of recurrent issues that were raised by industry respondents in relation to various questions on the implementation of the taping regime. Some of the issues raised were generally applicable across the taping regime.
- 19.38** A common theme running through a number of the responses to the taping chapters in CP16/29 and CP16/43 was queries over the scope of the new taping regime. In particular, it was noted that the drafting in SYSC 10A.1.6R requires firms to record telephone conversations that "relate to the activities referred to in SYSC 10A.1.1R". Respondents queried how broad this requirement was and how much would therefore be in scope.

- 19.39** Respondents had concerns around how the activities set out in SYSC10A.1.1R(2) mapped to the MiFID II activities of client order services that relate to the reception, transmission and execution of client orders, and transactions concluded when dealing on own account. This was of particular relevance to firms responding to the extension of the taping regime to corporate finance business, to help determine which activities are required to be captured by MiFID II and which were discretionary extensions.
- 19.40** Respondents also queried the extent to which firms will be required to record internal calls, about which conversations should be considered to fall within scope of the taping requirement, and the extent to which firms have to engage in internal monitoring of records created in accordance with this requirement.

Our response on the recurrent issues in consultation responses

SYSC 10A.1.1R(2) begins the list of activities with a statement that firms need to tape when they carry out “any of the following activities, in investments that are *financial instruments*”. The taping requirement thus relates to when a firm undertakes transactions in financial instruments during the provision of these services or activities. In-scope conversations are those either directly related to the conclusion of the transaction or intended to result in a transaction. This means that the scope of the regime is similar to the domestic regime currently in place, which defines a relevant conversation in relation to an agreement to carry out a given activity. This understanding is closely linked and relevant to the extent to which firms are required to record calls. Insofar as those calls are linked to a reasonable prospect of the firm bringing about a transaction by its own volition they are in scope of the taping requirement.⁷⁹ Where calls fall into this category, they are subject to the taping requirement. Calls will not fall into this category where the firm is merely feeling its way and reserving its decision.⁸⁰

For corporate finance business, we have only implemented the minimum scope of the telephone recording requirement as required by MiFID II. Concerns were however raised during the consultation process that, as currently drafted, the SYSC 10A.1.1R(2)(a) activity of ‘arranging (bringing about) deals in investments’ would capture a wider range of activities than those caught by the MiFID II requirements to tape the activity of ‘the reception and transmission’ of client orders. This would result in more activities being captured than fall under MiFID. We believe that the current scope of the rules accurately reflects the MiFID II provisions. This activity only applies to arrangements that bring about or would bring about the transaction in question.⁸¹ This element is the same as the scope of the reception and transmission of a client order, extended by the meaning of Recital 44 in MiFID II to include situations where reception and transmission of an order includes arrangements between two or more investors which “thereby brings about a transaction between those investors”.

79 *Cunliffe v Goodman* [1950] 2 KB 237, at 253 (*Cunliffe*).

80 *Cunliffe*, at 254.

81 See PERG 8.32.2.



In the context of corporate finance business and Recital 44 MiFID noted in PERG 13 Q13D, reception and transmission could, subject to our comments at the top of this response section above, include negotiating terms for the acquisition or disposal of investments on behalf of a corporate client with a potential buyer or seller, for example as part of a merger or acquisition. Although we would not expect the recording obligation to relate to an investment firm's internal discussions at board meetings, the MiFID delegated regulation specifically refers to the recording of certain internal telephone conversations. This is likely in our view to include discussions, for example, in relation to key elements of the final intended transaction, notably price, when these discussions take place over the telephone and the same applies to similar discussions with the client.

As regards negotiations with other investors for the purposes of Recital 44, an issuer is not an investor for these purposes. By contrast, in the case of negotiations on behalf of a corporate client with a potential buyer or seller, as part of a merger or acquisition, we would expect there to be a record of telephone conversations in relation to key elements of the final intended transaction, notably price. A key purpose of the recording obligation is to help ensure that there is evidence to prove the terms of any orders given by clients and, as such, the record is beneficial to investors and firms alike, in ensuring that there is clarity and confirmation about the orders received and transmitted.

Firms must also comply with the MiFID II delegated regulation, which states that firms should 'periodically monitor the records of transactions and orders subject to these requirements'. The ESMA Q&As⁸² again give further detail to this, and highlight that this means that monitoring of records should be done regularly, and when necessary on an ad-hoc basis in order to ensure compliance with the recording procedures in place, the adequacy of those procedures, whether the records are readily accessible and whether they are sufficient to reconstruct accurately the audit trail of a transaction. We note in particular that such monitoring should be risk based and proportionate.

We also note that the recording obligation concerns the provision of client order services that relate to the reception and transmission and execution of client orders, as opposed to ancillary services. These are explicitly excluded in our current drafting. Ancillary services in Annex 1 Section B MiFID II include:

- advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and purchase of undertakings
- investment research and financial analysis or other forms of general recommendations relating to transactions in financial instruments

82 https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf



We have been careful in ensuring that the scope of the taping regime reflects the scope of the MiFID requirements, taking into account, in particular, the scope of the relevant investment services and longstanding perimeter guidance.



Consultation paper 16/43 response

20 Specialist regimes (COBS 18)

Introduction

20.1 This chapter summarises our responses to feedback received in relation to our proposals in CP16/43 to implement the MiFID II specialist conduct of business regime requirements in COBS 18, which include:

- Trustee firms (COBS 18.1)
- Energy market participants (EMPs) and oil market participants (OMPs) (COBS 18.2)
- Corporate finance business (COBS 18.3)
- Stock lending activity (COBS 18.4)
- Residual CIS operators, UCITS management companies and AIFMs (COBS 18.5)
- Lloyd's (COBS 18.6)
- ICVCs (COBS 18.9)
- Authorised professional firms (COBS 18.11)

20.2 OPS firms were consulted on separately, as such we will provide our response on the application of MiFID II to OPS firms – non scope business (COBS 18.8) in due course once we have considered the responses.

Trustee firms (COBS 18.1)

20.3 In Chapter 2 of CP16/43 we consulted on changes to COBS 18.1, which applies to trustee firms when they conduct MiFID business.

20.4 The proposed changes were not substantive and amounted to an update of the table indicating which COBS rules do not apply, or are unlikely to apply, to these firms.

20.5 In Q1 we asked:

- Do you agree with our approach to COBS 18.1? If not, please give reasons why.

20.6 We did not receive any responses to this question.

Our response on trustee firms (COBS 18.1)

We will change COBS 18.1 as proposed.

EMPs and OMPs (COBS 18.2)

- 20.7** In CP16/43 we consulted on changes to COBS 18.2, which applies to energy market participants (EMPs) and oil market participants (OMPs). We also consulted in CP16/29 on OMPs and EMPs conducting non-MiFID business regarding the application of the rules on taping and investment research. The proposed changes were dealt with in Chapter 2 of CP16/43 and our final approach is set out in the taping chapter.

Our response on EMPs and OMPs (COBS 18.2)

Our final approach in relation to the proposals in CP16/43 in relation to applying the MiFID II taping requirements to non-MiFID business related to commodity or exotic derivative instruments is also set out in Chapter 19 of this PS on taping.

Corporate finance business (COBS 18.3)

- 20.8** In Chapter 2 of CP16/43, we consulted on updating the existing tables in COBS 18.3 that identify the provisions that will apply to corporate finance business that undertake optional exempt business.
- 20.9** In Q3 we asked:
- Do you agree with our proposed changes to COBS 18.3? If not, please give reasons why.
- 20.10** Respondents agreed with our proposal to insert a new table in COBS 18.3 for optional exempt corporate finance business.

Our response on corporate finance business (COBS 18.3)

We will make the changes to COBS 18.3 as proposed.

Stock lending activity (COBS 18.4)

- 20.11** In Chapter 2 of CP16/43, we consulted on updating specific Handbook references following the proposals we made in CP16/29.

20.12 In Q4 we asked:

- Do you agree with our proposals to update COBS 18.4? If not, please give reasons why.

20.13 Respondents agreed with our proposal to update the table in COBS 18.4.

Our response on stock lending activity (COBS 18.4)

We will make the changes to COBS 18.4 as proposed.

Specialist regime for collective portfolio managers (COBS 18.5)

20.14 In CP16/29 we consulted on proposals to restructure COBS 18.5 in order to improve its accessibility to CPM firms without changing the substantive requirements. MiFID II does not apply directly to firms when they carry out the activity of CPMs but, as explained elsewhere in this paper, we consulted on extending certain MiFID II provisions to CPM business to maintain a consistent standard of investor protection. Because COBS 18.5 sets out the parts of COBS that apply to CPM activity, a number of consequential changes became necessary and we decided to take the opportunity to restructure this section to make it more accessible.

20.15 We proposed to move the material applicable to full-scope UK AIFMs and UCITS management companies to two new sections (18.5A and 18.5B respectively), retaining the original 18.5 for small authorised UK AIFMs and residual CIS operators.

20.16 In Q49 in CP16/29 we asked:

- Do you agree with our proposed approach to restructure and amend COBS 18.5 to make it clearer for firms carrying out CPM activity? If not, why not and what alternative approach would you propose?

20.17 All respondents to this question supported the proposal. One respondent commented that implementation should be subject to more detailed consultation with CPM firms.

Our response on the specialist regime for collective portfolio managers (COBS 18.5)

We have made the structural changes we consulted on together with some further consequential changes to reflect the outcome of the consultation. In particular, we have modified the draft versions of COBS 18.5A and 5B to reflect the final decisions about the application of MiFID II rules on best execution and investment research. Since any new or changed substantive obligations on firms carrying out CPM activity have been consulted on in CP16/29 and 16/43, there is no need for further consultation on the implementation of these rules.



Applying investment research rules to CPM firms (COBS 18.5, 18.5A and 18.5B)

- 20.18** In Chapter 2 of CP16/43 we consulted on making further changes to COBS 18.5, 18.5A and 18.5B and introducing a new COBS 18 Annex, to ensure the MiFID II rules on investment research (COBS 2.3B) can be applied effectively to firms carrying out CPM activity as proposed in CP16/29.
- 20.19** We proposed introducing an adaptation of the rules that will require firms to engage with their clients on the use of investment research and to disclose certain information to them. This adaptation takes account of the different needs of investors in a fund, who do not have the ability to influence the fund manager's use of research.
- 20.20** In Q5 we asked:
- Do you agree with our proposals to update COBS 18 Annex 1? If not, please give reasons why. In particular, are there any issues affecting internally-managed AIFs that we should consider?
- 20.21** We received several responses to this question. One respondent agreed with the proposals as drafted. The others reiterated general concerns about the justification for applying MiFID II standards to CPM activity and the resulting inconsistency with the rest of the EU, although one of them accepted the aim of ensuring sufficient transparency to investors about the use of research.
- 20.22** Some respondents raised specific concerns about the proposal to provide a periodic breakdown, in annual fund reports and accounts, of payments made to research providers during the previous year using a RPA. They suggested this is a disproportionate measure that gold-plates MiFID II rules and could harm the commercial relationships between fund managers and research providers, by revealing information that could be exploited in price negotiations between the parties. They also thought that the information was too detailed to be of interest or use to investors in funds, and suggested that a disclosure of the aggregate levels of research spending, to be made available at the investor's request, would be sufficient.
- 20.23** One respondent raised broader concerns about the application of the research rules to fund managers operating venture capital and private equity funds. They argued that consistency of approach is not a sufficient argument to justify imposing significant extra costs, especially as many firms managing these types of fund do not carry on MiFID business.
- 20.24** The same respondent stated that due diligence research carried out by venture capital or private equity fund managers or received by them, prior to acquiring a controlling stake in a company, should be treated as outside the scope of the COBS 2.3B requirements as it does not 'inform an investment strategy'. They also said such firms might use standard research when executing trades only a handful of times during the year if at all, so applying the RPA rules to them in full would result in disproportionate administrative costs.
- 20.25** Another respondent said funds that have a board of directors should not be required to agree a charge with the fund manager, as proposed.

Our response on applying investment research rules to CPM firms (COBS 18.5, 18.5A and 18.5B)

In response to stakeholders' feedback, we have aligned the periodic disclosure requirement for RPAs for residual CIS operators, UCITS management companies and AIFMs to those applicable to MiFID scope business. A firm using an RPA must, for each fund it manages, provide periodic information to investors on the total costs the fund has incurred for third-party research during the accounting period. However, firms will only have to make available on request to an existing investor a summary of the providers paid from an RPA, the amount each of them was paid, the benefits received by the firm, and how the total amount spent from the account compares to the budget set by the firm for that period, detailing any rebate or carry-over if residual monies are held in the RPA.

We also confirm that when a fund has its own governing body which is independent of the firm it will have to explicitly agree the research charge and the frequency with which this will be deducted from the fund into the RPA.

We have also provided a limited easement to firms carrying on private equity and venture capital business (see Chapter 7 for more details).

Lloyd's (COBS 18.6)

- 20.26** In CP16/43 we proposed that no changes be made to our existing COBS 18.6 rules for firms carrying on Lloyd's market activities. We received one response which agreed that no changes were necessary.

Our response on Lloyd's (COBS 18.6)

We will make no changes to COBS 18.6 as proposed.

Depositaries (COBS 18.7)

- 20.27** In CP16/43 we said that we do not intend to make any changes to COBS 18.7, for depositaries conducting non-MiFID business. Respondents agreed with our approach,

Our response on depositaries (COBS 18.7)

We will make no changes to COBS 18.7 as proposed.



Investment companies with variable capital (ICVCs), UCITS qualifiers, AIFM qualifiers and service companies (COBS 18.9 and 18.10)

- 20.28** In CP16/29 and Chapter 2 of CP16/43 we consulted on:
- changes to COBS 18.9 which applies certain COBS rules, such as the financial promotion rules, to an investment company with variable capital (ICVC) when it undertakes scheme management activity
 - retaining COBS 18.10 unchanged, while noting that there are some slight enhancements to the client communications rule in COBS 4 that will apply to UCITS qualifiers, AIFM qualifiers and service companies
- 20.29** The proposed changes to COBS 18.9 were not substantive. They reflect the proposed restructuring of COBS 18.5 and some minor enhancements to the financial promotion rules applicable to non-MIFID firms.
- 20.30** We asked in Q8 and Q9:
- Do you agree with our proposal to make no further changes to COBS 18.9? If not, please give reasons why.
 - Do you agree with our proposal for COBS 18.10? If not, please give reasons why.
- 20.31** We did not receive any responses to either of these questions.

Our response on investment companies with variable capital (ICVCs), UCITS qualifiers, AIFM qualifiers and service companies (COBS 18.9 and 18.10)

We will make the changes to COBS 18.9 as proposed, leaving COBS 18.10 unchanged.

Authorised professional firms (COBS 18.11)

- 20.32** In CP16/43, we proposed to make a small amendment to the specialist regime for APFs in COBS 18.11.
- 20.33** Specifically, we proposed inserting guidance to make it clear that the application of COBS to an APF 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.

Our response on authorised professional firms (COBS 18.11)

The response received supported our proposal and we will implement the rules as consulted on.

21

Small and medium-sized enterprise (SME) growth markets

Introduction

- 21.1** This chapter summarises our responses to feedback received in relation to our proposals in CP16/43 to implement the MiFID II Small and Medium-sized Enterprise (SME) growth markets requirements.
- 21.2** MiFID II introduces a new sub-category of multilateral trading facility (MTF) called SME growth markets, with the intention of raising the visibility and profile of growth markets or junior markets across the EU.

SME growth market regime

- 21.3** On CP16/43 we consulted on the changes we propose to make to MAR 5 to include a sub-chapter, MAR 5.10 with the provisions related to SME growth markets. We asked:
- Q17: Do you agree with our proposal to include SME growth markets as part of MAR 5. If not, please give reasons why?
- 21.4** Only two respondents answered the question, and both agreed with our proposal.

Our response on the SME growth market regime

Given the positive feedback from respondents on our approach we have decided to keep our proposal and include SME growth markets as part of MAR 5.

22

Supervision manual (SUP)

Introduction

- 22.1** In this chapter we provide our responses to the feedback received on our proposed changes to the supervision manual as set out in CP16/43 and in CP17/8.

Changes in CP16/43

- 22.2** We proposed various amendments in CP16/43 including categorisation for reporting purposes of OTF operators and changes to reflect the removal of the MiFID exemption for locals (proprietary trading firms covered by the exemption from authorisation as an investment firm in Article 2(1)(I) of MiFID). We have also updated SUP 13A and SUP Appendix 3 to deal with miscellaneous issues relating to passporting, including the application of the Handbook to EEA firms, home/host competent authority (CA) responsibilities and the mapping of MiFID scope elements to UK regulated activities and mechanical amendments to reflect that some passporting issues in relation to PRA-authorized firms are addressed in the PRA rulebook.
- 22.3** The responses received were supportive of our proposals.

Our response on changes in CP16/43

We will implement the SUP changes as proposed.

Changes in CP17/8

- 22.4** In CP17/08 we proposed that operators of trading venues and investment firms sending instrument reference data to our MDP can use third parties to send us the information. We also clarified that we expect Systematic Internalisers (SIs) that will be supplying us with financial reference data to establish a technology connection with our system.
- 22.5** We asked in Q11:
- Do you agree with our proposed guidance in SUP 17 on reporting of financial instrument reference data? If not, please give reasons why.
- 22.6** The only response received was supportive of our proposals.

Our response on changes in CP17/8

We received one supportive response in respect of our SUP 17A outsourcing provisions. We will allow operators of trading venues and investment firms to use third party technology providers when submitting financial instrument reference data to the FCA. Irrespective of whether a third party technology provider is involved in the submission of the instrument reference data, the FCA MDP on-boarding application form should be for the entity to which the obligation applies. If the third party is an entity that is authorised as an ARM, we would not regard the outsourced activity as being within the scope of the ARM's authorisation, the third party would be performing the outsourced activity as a technology provider rather than as an ARM.

We confirm that an SI has to arrange for a technology connection with the FCA's system to submit financial instrument reference data to the FCA. As explained in the previous paragraph, the SI can use a third party technology provider in order to submit that information.

PS17/5

22.7

In Chapter 9 of PS17/5 we referred to the transitional arrangements we are putting in place between 31 July 2017 and 3 January 2018 to help firms bring their passports into line with the changes of scope resulting from MiFID II. We are tweaking those transitional arrangements we outlined in PS17/5 which allowed firms to start submitting MiFID II passporting notifications from 31 July 2017. Our amendments will bring forward the date on which we will start accepting MiFID II passporting notifications via the FCA CONNECT system to 4 December 2017. Firms who will not be able to submit MiFID II passporting notifications via CONNECT will continue to be able to do so by email until 2 January 2018. We will stop receiving MiFID passporting notifications from 4 December 2017. All of these changes are reflected in the the final version of the rules published in near final form in PS17/5, which is published in the appendix to this Policy Statement.



23

Structured deposits

Introduction

- 23.1** In this chapter we provide our response to the feedback received to our proposals on structured deposits set out in CP16/29 and in CP16/43.
- 23.2** In CP16/29, we consulted on proposals for applying individual COBS rules to firms selling or advising on structured deposits. We proposed transposing MiFID II's requirements in relation to structured deposits into COBS, because we considered that it would make BCOBS unnecessarily complicated if we also copied out the MiFID II provisions relevant to structured deposits into BCOBS.
- 23.3** In CP16/43, we set out proposals for making consequential changes to the Handbook arising from the proposed amendments described in CP16/29. In this regard, we proposed amending the application of BCOBS through a new Annex applicable to firms which accept deposits when selling structured deposits (although certain BCOBS provisions will continue to apply to structured deposits). In effect, firms selling structured deposits which are within the scope of BCOBS will not, in future, be subject also to those BCOBS requirements which achieve similar outcomes to applicable COBS requirements.
- 23.4** In CP16/43, we asked at Q21:
- Do you agree with our proposal to amend BCOBS? If not, please give reasons why.
- 23.5** One respondent commented directly on this topic, and that respondent agreed with our proposal. None of the remaining respondents commented on this point.

Our response on structured deposits

We will make the changes to the application of COBS proposed in CP16/29, and the consequential changes to BCOBS proposed in CP16/43, in relation to structured deposits.

24

General provisions (GEN)

Introduction

- 24.1** In CP16/43, we consulted on making technical transitional changes to the GEN Handbook to assist firms with the practical steps they need to take when readying themselves for MiFID II regulation. We made a proposal for a transitional to enable firms to make changes related to MiFID II ahead of 3 January 2018. We also asked whether it would be helpful to make rules to support firms applying a single set of conduct standards across MiFID and non-MiFID business.
- 24.2** We asked the following question:
- Q24: Do you agree with our proposal for a transitional provision in GEN to enable firms to make changes related to MiFID II ahead of 3 January 2018? If not, please give reasons why.
- 24.3** There was a varied response. The responses ranged from strong agreement to concern that a transitional measure allowing firms to make changes in respect of client categorisation, prior to the finalising of rules relating to the treatment of local authority categorisation, might lead to mis-categorisation with adverse consequences notably in the case of local authority pension funds.

Our response on a transitional on early implementation

The proposal, amongst other things, offers firms the opportunity to opt up clients before 3 January 2018 rather than wait until then to go through the opt-up process. We will make the rules given the flexibility to firms that they provide and note that this Policy Statement at chapter 7 also contains the outcome of our proposals relating to local authority client categorisation.

- 24.4** We asked the following question:
- Q24: Do you think it would be helpful to have rules to support firms applying a single set of conduct standards across MiFID and non-MiFID business once MiFID II is implemented? If not, please give reasons why.
- 24.5** There was a single substantive response to this question. The respondent was strongly opposed to having such a rule, expressing concern that it could create confusion of what the FCA expected of firms and lead to over-implementation of EU legislation.



Our response on a rule to support a common approach to implementing conduct rules

The consultation indicated that there was no interest in having a rule that would support firms who wanted to have a common set of conduct standards across their MiFID and non-MiFID business. We will therefore not introduce such a rule. It was never our intention to suggest that firms should have a common set of conduct standards.



Consultation paper 17/8 response



25

Decision Procedure and Penalties Manual (DEPP)

Introduction

- 25.1** In CP17/8 we consulted on changes to DEPP and the Enforcement Guide (EG) setting out our approach to the exercise of our powers under the MiFID II implementing regulations, including the application of our penalty policy where relevant. We also consulted on how our decision making procedures would apply to decisions under those regulations. Our proposals were based on draft implementing regulations published by the Treasury in February 2017.
- 25.2** The final implementing regulations have now been published. These differ from the draft regulations published in February. We have therefore decided to consult again in CP17/19 on our proposals to update DEPP and EG in light of the final regulations.
- 25.3** However, as the provisions dealing with the authorisation and verification of persons carrying out a Data Reporting Service (DRS) activity, and the cancellation of any such authorisation or verification, have not materially changed, we are publishing our final statement of procedure for decision making by the FCA under these provisions.

Proposed amendments to DEPP in relation to decision making – DRSP authorisation and verification

- 25.4** In CP17/8 we set out our proposed decision making procedure for refusing an application for authorisation or verification to carry out a DRS activity, refusing a request to vary or cancel an authorisation or verification, imposing a restriction on an applicant for authorisation, and for cancelling an authorisation or verification on our own initiative.
- 25.5** We received one response in relation to our proposals in CP17/8. This response related to our proposed amendment to EG, which is subject to further consultation in CP VI. We will therefore address this response when we publish the remainder of our amendments to DEPP and EG following CP17/19.

Our response on DEPP in relation to decision making – DRSP authorisation and verification

We did not receive any responses relating to our proposed changes to DEPP in relation to authorisation and verification decision making. We will therefore make our amendments to DEPP as proposed, with



only minor consequential changes to our proposals in light of the final implementing regulations.

26 Consequentials

Introduction

- 26.1** This section covers consequential changes proposed in CP16/29, CP16/43, and CP17/8.

Consequential changes in CP16/29

- 26.2** In CP16/29 Q64 we discussed our proposed consequential changes. We received 7 respondents, with unanimous agreement to our proposed approach to consequential changes. No respondent offered any further comments.

Our response on consequential changes in CP16/29

We were pleased to see that respondents unanimously supported our proposals and that there were no further comments for us to consider. We therefore intend to move ahead with our proposals with a minor amendment to SUP 10A to clarify the wording of the consequential change.

Consequential changes in CP16/43

Changes to transparency waivers and deferrals

- 26.3** In CP16/43 we consulted on consequential changes to enable us to process RIE applications for waivers and deferrals using the same process proposed for MTFs and OTFs.
- 26.4** All respondents agreed with our proposal.

Our response on transparency waivers and deferrals

Given the positive feedback from respondents on our approach we have decided to keep our proposals for RIE transparency waivers and deferrals.

Changes to tied agents

- 26.5** On CP16/43 we consulted on consequential changes to SUP 12 to enable us to implement the tied agent regime.
- 26.6** The majority of respondents agreed with our proposal, one was concerned about other member states readiness and ability to implement on time.

Our response on tied agents

Given the positive feedback from respondents on our approach we have decided to keep our proposals for tied agents.

Consequential changes in CP17/8

Reporting commodity derivative and emission allowance positions

- 26.7** In CP16/43 we consulted on guidance concerning the use of third party interconnection with transaction reporting by investment firms and trading venues. In CP 17/8 we proposed guidance on related issues in SUP 17A (see Chapter 22) and in MAR 10 respectively.
- 26.8** In respect of MAR 10, one respondent commented on the cost of connection to the FCA reporting platform and how the substantial proposed cost of submitting such reports may act as a disincentive for firms who seek to undertake commodity trading.
- 26.9** The FCA consulted on the £10,000 connectivity fee in CP 16/19. In this consultation we clarified that the fee is intended to recover the costs associated with establishing connectivity with the MDP for secure file transfer, compatibility of systems, testing of data conformance and related matters.
- 26.10** In PS 17/5 we disclosed the responses to this consultation on fees. We did not receive any specific objections to the pricing structure.

Our response on reporting financial instrument reference data

We will implement our proposals as consulted, and we will include guidance in MAR 10 of our Handbook to clarify that there are a number of options available for persons that do not wish to undertake their own reporting.

Annex 1

Abbreviations used in this document

AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
APF	Authorised professional firm
ARM	Approved Reporting Mechanism
Article 3 firms	<p>Under Article 3 of MiFID II, Member States can exempt from authorisation as MiFID investment firms, firms (Article 3 firms providing investment advice and/or receiving and transmitting orders) that:</p> <ul style="list-style-type: none"> do not hold client funds or securities only receive and transmit client orders in relation to transferable securities and collective investment schemes (CIS) units and/or provide related investment advice, and only be allowed to transmit such orders to identified firms or funds do not do business outside of their home Member State
BoE	Bank of England
CA	Competent Authority
CASS	Client Assets Sourcebook
CBA	Cost benefit analysis
CCP	Central Counterparty Clearing House
CIS	Collective Investment Scheme
COBS	Conduct of Business Sourcebook
the Commission	European Commission
CRD	Capital Requirements Directive
CSA	Commission Sharing Agreement
CP	Consultation Paper
CPM	Collective Portfolio Management

CSA	Commission Sharing Agreement
CSD	Central Securities Depository
DEA	Direct Electronic Access
DEPP	Decision Procedure and Penalties Manual
DIM	Discretionary Investment Manager
DP	Discussion Paper
DRS	Data Reporting Service
DRSP	Data Reporting Services Provider
EEA	European Economic Area
ECP	Eligible Counterparty
EG	Enforcement Guide
EMIR	European Markets and Infrastructure Regulation
EMP	Energy Market Participant
ESA	European Supervisory Authority
ESMA	European Securities and Markets Authority
EU	European Union
ETF	Exchange Traded Fund
FAMR	Financial Advice Market Review
FCA	Financial Conduct Authority
FSA	Financial Services Authority (predecessor to the FCA)
FSMA	Financial Services and Markets Act 2000
FX	Foreign Exchange
GEN	General Provisions – FCA Handbook
IDD	Insurance Distribution Directive
IFPRU	Prudential sourcebook for Investment Firms



ITS	Implementing Technical Standard
IPM	Individual Portfolio Management
KID	PRIPs Key Information Document
MAR	Market Conduct Sourcebook
MDP	Market Data Processor
MiFID	Markets in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive II (includes MiFIR, where the context indicates)
MiFIR	Markets in Financial Instruments Regulation
MTF	Multilateral Trading Facility
NCA	National Competent Authority
NDA	Non-disclosure agreement
NURS	Non-UCITS Retail Scheme
OMP	Oil Market Participant
OTC	Over-the-Counter
OTF	Organised Trading Facility
Parliament	European Parliament
PERG	Perimeter Guidance
PRA	Prudential Regulation Authority
PRIIPs	Packaged Retail and Insurance-based Investment Products
PRIN	Principles for Businesses Sourcebook
PROF	The Professional Firms sourcebook
QMMF	Qualifying Money Market Fund
RAO	Regulated Activities Order
RDR	Retail Distribution Review
REC	Recognised Investment Exchange Sourcebook

RFA	Retail Financial Adviser
RIE	Recognised Investment Exchange
RIP	Retail Investment Product
RM	Regulated Market
RPA	Research Payment Account
RPPD	Responsibilities of Providers and Distributors for the Fair Treatment of Customers
RTS	Regulatory Technical Standard
SI	Systematic Internaliser
SME	Small and Medium-sized Enterprise
SUP	Supervision Manual
SYSC	Senior Management Arrangements, Systems and Controls – FCA Handbook
TC	Training and Competence – FCA Handbook
the Treasury	Her Majesty's Treasury
UCITS	Undertakings for collective investment in transferable securities

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS



Appendix 1

Handbook text

Appendix
Legal instruments

This appendix comprises four instruments:

1. Glossary (MiFID 2) Instrument 2017
2. MiFID 2 Fees (Data Reporting Applications) Instrument 2017
3. Markets and Organisational Requirements (MiFID 2) Instrument 2017
4. Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017

These instruments have been made in this order. The instruments come into force on the date(s) specified in the coversheet of each instrument.

GLOSSARY (MiFID 2) INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 64A (Rules of conduct);
 - (b) section 69 (Statement of policy);
 - (c) section 73A (Part 6 Rules);
 - (d) section 84 (Matters which may be dealt with by prospectus rules);
 - (e) section 89A (Transparency rules);
 - (f) section 96 (Obligations of issuers of listed securities);
 - (g) section 137A (The FCA’s general rules);
 - (h) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (i) section 137H (General rules about remuneration);
 - (j) section 137R (Financial promotion rules);
 - (k) section 137T (General supplementary powers);
 - (l) section 138C (Evidential provisions);
 - (m) section 138D (Action for damages);
 - (n) section 138N (Temporary product intervention rules: statement of policy);
 - (o) section 139A (Power of the FCA to give guidance);
 - (p) section 226 (Compulsory jurisdiction);
 - (q) section 247 (Trust scheme rules);
 - (r) section 248 (Scheme particulars rules);
 - (s) section 261I (Contractual scheme rules);
 - (t) section 261J (Contractual scheme particulars rules);
 - (u) section 293 (Power to make notification rules in respect of recognised bodies);
 - (v) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
 - (w) paragraph 19 (Establishment) of Schedule 3 (EEA Passport Rights);
 - (x) paragraph 20 (Services) of Schedule 3 (EEA Passport Rights); and
 - (y) paragraph 13(1), (3) and (4) (FCA’s rules) of Schedule 17 (The Ombudsman Scheme);
 - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001, (SI 2001/1228);
 - (3) paragraph 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001, (SI 2001/2326);
 - (4) paragraph 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000

(Transitional Provisions) (Complaints relating to General Insurance and Mortgages) Order 2004, (SI 2004/454);

- (5) regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, as inserted by the Financial Services and Markets Act (Markets in Financial Instruments) Regulations 2017, (SI 2017/701);
- (6) the powers of direction, guidance and related provisions in or under the following provisions of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, (SI 2017/701):
 - (a) regulation 16 (Position limits)
 - (b) regulation 17 (Exemption for non-financial entities)
 - (c) regulation 27 (Power to require information);
 - (d) paragraph 7 of Schedule 1 (Guidance); and
 - (e) paragraph 8 of Schedule 1 (Reporting requirements);
- (7) the powers of direction, guidance and related provisions in or under the following provisions of the Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2017, (SI 2017/699):
 - (a) regulation 7 (Application for authorisation);
 - (b) regulation 8 (Application for verification of compliance);
 - (c) regulation 11 (Cancellation of authorisation);
 - (d) regulation 12 (Variation of authorisation);
 - (e) regulation 20 (Guidance);
 - (f) regulation 21 (Reporting requirements); and
 - (g) regulation 40 (FCA: penalties, fees and exemption from liability in damages); and
- (8) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.

- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. Part 1 of this instrument comes into force on 3 July 2017.
- D. Part 2 of this instrument comes into force on 3 January 2018.

Amendments to the Handbook

- E. The Glossary of definitions is amended in accordance with the Annex to this instrument.

Notes

- F. In the Annex to this instrument, the notes (indicated by “Note:”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Glossary (MiFID 2) Instrument 2017.

By order of the Board
30 June 2017

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 3 July 2017

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>data reporting service</i>	(in accordance with regulation 2(1) of the <i>DRS Regulations</i>) the operation of an <i>APA</i> , an <i>ARM</i> or a <i>CTP</i> when carried out as a regular occupation or business activity.
<i>data reporting services provider</i>	a <i>person</i> operating one or more <i>data reporting service</i> .
<i>DRS Regulations</i>	the Data Reporting Services Regulations 2017 (SI 2017/699).
<i>FCA MDP on-boarding application form</i>	a form for approval to connect to the <i>FCA's market data processor system</i> .
<i>incoming data reporting services provider</i>	a <i>data reporting services provider</i> authorised or applying for authorisation under Title V of <i>MiFID II</i> in an <i>EEA State</i> , other than the <i>UK</i> , to provide a <i>data reporting service</i> in the <i>UK</i> .
<i>market data processor system</i>	the IT system set up and maintained by the <i>FCA</i> to receive data under <i>MiFID II</i> and <i>MiFIR</i> .
<i>markets data (other than transaction reports)</i>	(in relation to <i>FEES 3</i>) data that must be reported to the <i>FCA</i> under: <ul style="list-style-type: none"> (a) articles 22 and 27 of <i>MiFIR</i>; and (b) article 58 of <i>MiFID II</i>.
<i>market interface specification</i>	a document setting out the technical details required to format and submit <i>market data</i> to the <i>FCA</i> using the <i>market data processor system</i> .
<i>MiFI Regulations</i>	the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701).
<i>MIS</i>	<i>market interface specification</i> .
<i>MIS confidentiality</i>	an agreement between the <i>FCA</i> and a party receiving information regarding the <i>market data processor system market interface</i>

agreement *specification.*

Amend the following as shown.

transaction report (1) a report of a transaction which meets the requirements of *SUP*
~~17.4.1EU.1R~~ 17.4.1EU and *SUP* 17.4.2R (Information to appear
in transaction reports).

(2) (in relation to *FEES* 3) a report which meets the requirements
imposed by and under article 26 of *MiFIR*.

Part 2: Comes into force on 3 January 2018

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

algorithmic trading trading in *financial instruments* which meets the following conditions:

- (a) where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission; and
- (b) there is limited or no human intervention; but

does not include any system that is only used for the purpose of routing orders to one or more *trading venues* or the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions.

[Note: article 4(1)(39) of *MiFID*]

APA *approved publication arrangement.*

approved publication arrangement a *person* permitted under regulation 5 of the *DRS Regulations* to provide services to an *investment firm* for the *investment firm* to meet its obligations under articles 20 and 21 of *MiFIR*.

ARM *approved reporting mechanism.*

binary bet a derivative contract of a binary nature.

<i>branch passport notification</i>	a notification made in accordance with article 35(2) of <i>MiFID</i> and <i>MiFID ITS 4A</i> Annex VI.
<i>central competent authority</i>	(in <i>MAR 10</i>) in respect of a particular <i>commodity derivative</i> traded in significant volumes on <i>trading venues</i> in more than one <i>EEA</i> jurisdiction, the <i>competent authority</i> of the <i>trading venue</i> where the largest volume of trading in the <i>commodity derivative</i> takes place in the <i>EEA</i> .
<i>certificates</i>	(as defined in article 2(1)(27) of <i>MiFIR</i>), those securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments.
<i>commodity derivative</i>	those <i>financial instruments</i> defined in: <ul style="list-style-type: none"> (a) point (44)(c) of article 4(1) of <i>MiFID</i> which relate to a <i>commodity</i>; or an underlying referred to in Section C(10) of Annex I of <i>MiFID</i>; or (b) in points (5), (6), (7) and (10) of Section C of Annex I to <i>MiFID</i>. <p>[Note: article 2(1)(30) of <i>MiFIR</i>]</p>
<i>consolidated tape provider</i>	a <i>person</i> permitted under regulation 5 of the <i>DRS Regulations</i> to provide the service of: <ul style="list-style-type: none"> (a) collecting trade reports for <i>financial instruments</i> made in accordance with articles 6, 7, 10, 12, 13, 20 and 21 of <i>MiFIR</i> from <i>regulated markets</i>, <i>MTFs</i>, <i>OTFs</i> and <i>APAs</i>; and (b) consolidating them into a continuous electronic live data stream providing price and volume data per <i>financial instrument</i>.
<i>CSDR</i>	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the <i>EU</i> and on central securities depositories and amending the <i>Settlement Finality Directive</i> , <i>MiFID</i> and the <i>short selling regulation</i> .
<i>CTP</i>	<i>consolidated tape provider</i> .
<i>DEA</i>	<i>direct electronic access</i> .
<i>direct electronic access</i>	an arrangement where a member or participant or client of a <i>trading venue</i> permits a <i>person</i> to use its trading code so the <i>person</i> can electronically transmit orders relating to a <i>financial instrument</i> directly to the <i>trading venue</i> and includes arrangements which involve the use by a <i>person</i> of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a <i>person</i> (sponsored access).

	[Note: article 4(1)(41) of <i>MiFID</i>]
<i>distribute</i>	offering, recommending or <i>selling</i> an <i>investment</i> or providing an <i>investment service</i> to a <i>client</i> .
	[Note: recital 15 to the <i>MiFID Delegated Directive</i>]
<i>distributor</i>	a <i>firm</i> which offers, recommends or <i>sells investments</i> or provides <i>investment services</i> to <i>clients</i> .
	[Note: recital 15 to the <i>MiFID Delegated Directive</i>]
<i>economically equivalent OTC contract</i>	<p>(1) in respect of a <i>commodity derivative</i> traded on a <i>trading venue</i>, an <i>OTC derivative</i> which has identical contractual specifications and terms and conditions, excluding the following, to those of that <i>commodity derivative</i>:</p> <ul style="list-style-type: none"> (a) different lot size specifications; (b) delivery dates diverging by less than one calendar day; and (c) different post-trade risk management arrangements; and <p>(2) in respect of an <i>emission allowance</i> traded on a <i>trading venue</i>, a contract which has identical contractual specifications and terms and conditions, excluding the following, to those of that <i>emission allowance</i>:</p> <ul style="list-style-type: none"> (a) different lot size specifications; (b) delivery dates diverging by less than one calendar day; and (c) different post-trade risk management arrangements.
	[Note: article 6 of <i>MiFID RTS 21</i>]
<i>Emission Allowance Trading Directive</i>	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community, and amending Council Directive 96/61/EC.
<i>end client</i>	the <i>person</i> or group of <i>persons</i> at the end of the supply chain.
<i>ETF</i>	<i>exchange-traded fund</i> .
<i>EU regulation</i>	a regulation made pursuant to article 288 of the <i>Treaty</i> .
<i>exchange-traded fund</i>	a fund of which at least one <i>unit</i> or <i>share</i> class is traded throughout the day on at least one <i>trading venue</i> and with at least one market maker which takes action to ensure that the price of its <i>units</i> or <i>shares</i> on the

trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value.

[Note: article 4(1)(46) of *MiFID*]

investment advice the provision of *personal recommendations* to a *client*, either upon the *client's* request or at the initiative of the *firm*, in respect of one or more transactions relating to *designated investments*.

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

investment services and activities passport notification a notification made in accordance with article 34(2) of *MiFID* and *MiFID ITS 4 Annex I*.

manufacture creating, developing, issuing and/or designing an *investment*, including when advising corporate *issuers* on the launch of new *investments*.

[Note: recital 15 to the *MiFID Delegated Directive*]

manufacturer a *firm* which creates, develops, issues, and/or designs *investments*, including when advising corporate *issuers* on the launch of new *investments*.

[Note: recital 15 to the *MiFID Delegated Directive*]

market making strategy a strategy undertaken by a *person* where:

- (a) the *person* is a member or participant of one or more *trading venues*;
- (b) the *person's* strategy, when *dealing on own account*, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more *financial instruments* on a *trading venue*, or across different *trading venues*; and
- (c) the result provides liquidity on a regular and frequent basis to the overall market.

markets data (other than transaction reports) data that must be reported to the *FCA* under:

- (a) articles 22 and 27 of *MiFIR*; and
- (b) article 58 of *MiFID II*.

matched principal trading a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never itself exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a

previously disclosed commission, fee or charge for the transaction.

[Note: article 4 (1)(38) of *MiFID*]

member of the management body

(in relation to a *UK recognised body*) any one of the following:

- (a) its chairman or president; or
- (b) its *chief executive*; or
- (c) a member of its *governing body*; or
- (d) a *person* who, alone or jointly with one or more others, is responsible under the immediate authority of a *person* in (a), (b) or (c) or a committee of the *governing body* for the conduct of any *relevant function*.

MiFID complaint

any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a *redress determination*:

- (a) which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
- (b) either:
 - (i) to which article 26 of the *MiFID Org Regulation* applies; or
 - (ii) which concerns the *equivalent business of a third country investment firm*.

[Note: For the application of article 26 of the *MiFID Org Regulation*, see articles 1(1), 1(3), 1(4), 39 and 41 of *MiFID*, article 1 of the *MiFID Org Regulation*, *DISP* 1.1A.3G and *DISP* 1.1A.4G]

[Note: a *MiFID complaint* which falls within the jurisdiction of the *Financial Ombudsman Service* is a *complaint*]

MiFID Delegated Directive

Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing *MiFID* of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

MiFID, equivalent third country or optional exemption business

business which is:

- (1) *MiFID business*; or
- (2) the *equivalent business of a third country investment firm*; or

(3) *MiFID optional exemption business.*

<i>MiFID ITS 2</i>	Commission Implementing Regulation (EU) No 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communication and publication of the suspension and removal of financial instruments from trading on a regulated market, an MTF or an OTF according to MiFID.
<i>MiFID ITS 3</i>	Commission Implementing Regulation (EU) No 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications according to MiFID.
<i>MiFID ITS 4</i>	Commission Implementing Regulation (EU) No 2017/1093 of 20 June laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.
<i>MiFID ITS 4A</i>	Commission Implementing Regulation (EU) No [xxxx/xxx] laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with MiFID.
<i>MiFID ITS 5</i>	Commission Implementing Regulation (EU) No 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues according to MiFID of the European Parliament and of the Council on markets in financial instruments.
<i>MiFID ITS 19</i>	Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of MTFs and OTFs and the notification to ESMA according to MiFID.
<i>MiFID/MiFIR requirements</i>	any of the requirements applicable to an <i>RIE</i> or an applicant to become an <i>RIE</i> imposed by <i>MiFIR</i> and any directly applicable regulation made under <i>MiFID</i> or <i>MiFIR</i> .
<i>MiFID/MiFIR Systems Regulations</i>	<i>MiFID RTS 7</i> to <i>MiFID RTS 12</i> inclusive, <i>MiFID RTS 25</i> and <i>MiFID RTS 26</i> .
<i>MiFID optional exemption appointed representative</i>	an <i>appointed representative</i> that acts under the full and unconditional responsibility of a <i>MiFID optional exemption firm</i> and that would be a <i>tied agent</i> if its <i>principal</i> were a <i>MiFID investment firm</i> .
<i>MiFID optional exemption business</i>	<i>investment services and/or activities</i> and, where relevant, <i>ancillary services</i> carried on by a <i>MiFID optional exemption firm</i> .
<i>MiFID optional</i>	a <i>firm</i> that is an exempt investment firm for the purpose of regulation

<i>exemption firm</i>	8 of the <i>MiFI Regulations</i> .
<i>MiFID Org Regulation</i>	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing <i>MiFID</i> of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.
<i>MiFID Org Regulation firm</i>	a <i>firm</i> to which the <i>MiFID Org Regulation</i> is directly applicable.
<i>MiFID RTS 1</i>	Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and the obligation for investment firms to execute transactions in certain shares on a trading venue or a systematic internaliser.
<i>MiFID RTS 2</i>	Commission Delegated Regulation (EU) No 2017/583 of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.
<i>MiFID RTS 3</i>	Commission Delegated Regulation (EU) No 2017/577 of 13 June 2016 supplementing MiFIR with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations.
<i>MiFID RTS 3A</i>	Commission Delegated Regulation (EU) No 2017/1018 of 29 June 2016 supplementing MiFID with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions.
<i>MiFID RTS 6</i>	Commission Delegated Regulation (EU) No 2017/589 of 19 July 2016 supplementing MiFID with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading.
<i>MiFID RTS 7</i>	Commission Delegated Regulation (EU) No 2017/584 of 14 July 2016 supplementing MiFID with regard to regulatory technical standards specifying organisational requirements of trading venues.
<i>MiFID RTS 8</i>	Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing MiFID with regard to regulatory technical standards specifying the requirements on market making agreements and schemes.
<i>MiFID RTS 9</i>	Commission Delegated Regulation (EU) No 2017/566 of 18 May 2016 supplementing MiFID with regard to regulatory technical standards on the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions.

<i>MiFID RTS 10</i>	Commission Delegated Regulation (EU) 2017/573 of 6 June 2016 supplementing MiFID with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location and fee structures.
<i>MiFID RTS 11</i>	Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing MiFID with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds.
<i>MiFID RTS 12</i>	Commission Delegated Regulation (EU) No 2017/570 of 26 May 2016 supplementing MiFID with regard to regulatory technical standards on the determination of a material market in terms of liquidity relating to notifications of a temporary halt in trading.
<i>MiFID RTS 13</i>	Commission Delegated Regulation (EU) No 2017/571 of 2 June 2016 supplementing MiFID with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers.
<i>MiFID RTS 14</i>	Commission Delegated Regulation (EU) No 2017/572 of 2 June 2016 supplementing MiFIR with regard to regulatory technical standards on the specification of the offering of pre-trade and post-trade data and the level of disaggregation.
<i>MiFID RTS 17</i>	Commission Delegated Regulation (EU) No 2017/568 of 24 May 2016 supplementing MiFID with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets.
<i>MiFID RTS 18</i>	Commission Delegated Regulation (EU) No 2017/569 of 24 May 2016 supplementing MiFID with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.
<i>MiFID RTS 21</i>	Commission Delegated Regulation (EU) No 2017/591 of 1 December 2016 supplementing MiFID with regard to regulatory technical standards for the application of position limits to commodity derivatives.
<i>MiFID RTS 22</i>	Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing MiFIR with regard to regulatory technical standards for the reporting of transactions to competent authorities.
<i>MiFID RTS 23</i>	Commission Delegated Regulation (EU) No 2017/585 of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities.
<i>MiFID RTS 25</i>	Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing MiFID with regard to regulatory technical standards for the level of accuracy of business clocks.

<i>MiFID RTS 26</i>	Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing MiFIR with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.
<i>MiFID RTS 27</i>	Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing MiFID with regard to regulatory technical standards for the data to be published by execution venues on the quality of execution of transactions.
<i>MiFID RTS 28</i>	Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing MiFID with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.
<i>MiFIR</i>	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.
<i>MiFIR Delegated Regulation</i>	Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions.
<i>market interface specification</i>	a document setting out the technical details required to format and submit <i>market data</i> to the FCA using the <i>market data processor system</i> .
<i>multilateral system</i>	any system or facility in which multiple third-party buying and selling trading interests in <i>financial instruments</i> are able to interact in the system. [Note: article 4(1)(19) of <i>MiFID</i>]
<i>non-financial entity</i>	a natural or legal person other than: <ul style="list-style-type: none"> (a) an <i>investment firm</i> authorised in accordance with <i>MiFID</i>; (b) a <i>CRD credit institution</i>; (c) an <i>insurance undertaking</i> authorised in accordance with Directive 73/239/EEC; (d) an assurance undertaking authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council; (e) a <i>reinsurance undertaking</i> authorised in accordance with Directive 2005/68/EC of the European Parliament and of the Council;

- (f) a *UCITS* and, where relevant, its *management company*, authorised in accordance with the *UCITS Directive*;
- (g) an institution for occupational retirement provision within the meaning of article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council;
- (h) an *alternative investment fund* managed by *AIFMs* authorised or registered in accordance with the *AIFMD*;
- (i) a *CCP* authorised in accordance with *EMIR*; and
- (j) a central securities depository authorised in accordance with *CDSR*.

[Note: article 2 of *MiFID RTS 21*]

*reportable
financial
instrument*

in *SUP 17A*, those *financial instruments* in article 26(2) of *MiFIR*, namely:

- (a) *financial instruments* which are admitted to trading or are traded on a *trading venue* for which a request for admission to trading has been made;
- (b) *financial instruments* where the underlying is a *financial instrument* traded on a *trading venue*; and
- (c) *financial instruments* where the underlying is an index or a basket composed of *financial instruments* traded on a *trading venue*.

research

research material or services:

- (1) concerning one or several *financial instruments* or other assets; or
- (2) concerning the issuers or potential issuers of *financial instruments*; or
- (3) closely related to a specific industry or market such that it informs views on *financial instruments*, assets or issuers within that sector,

and which explicitly or implicitly recommends or suggests an investment strategy and provides a substantiated opinion as to the present or future value or price of such instruments or assets, or otherwise contains analysis and original insights and reaches conclusions based on new or existing information that could be used to inform an investment strategy or be capable of adding value to a *firm's* decisions on behalf of *clients*.

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

Securities

Regulation (EU) 2015/2365 of the European Parliament and of the

<i>Financing Transactions Regulation</i>	Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.
<i>SME growth market</i>	a <i>multilateral trading facility</i> that is registered as an SME growth market in accordance with article 33 of <i>MiFID</i> . [Note: article 4(1)(12) of <i>MiFID</i>]
<i>sovereign debt</i>	a debt instrument issued by a <i>sovereign issuer</i> . [Note: article 4 (1)(61) of <i>MiFID</i>]
<i>structured deposit appointed representative</i>	an <i>appointed representative</i> that is a party to a contract with a <i>MiFID investment firm</i> that permits or requires it to carry on only the business of selling, or advising <i>clients</i> in relation to, <i>structured deposits</i> in accordance with the <i>Appointed Representatives Regulations</i> .
<i>structured deposits regulated activities</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business in relation to <i>structured deposits</i> : (a) <i>dealing in investments as agent</i> ; (b) <i>arranging (bringing about) deals in investments</i> ; (c) <i>making arrangements with a view to transactions in investments</i> ; (d) <i>managing investments</i> ; and (e) <i>advising on investments (except P2P agreements)</i> .
<i>structured finance products</i>	(as defined in article 2(1)(28) of <i>MiFIR</i>) those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets. [Note: article 4(1)(48) of <i>MiFID</i>]
<i>temporary product intervention rule</i>	a <i>rule</i> made under sections 137D and 138M of the <i>Act</i> .
<i>third country firm</i>	(in <i>SYSC</i>) either: (a) a <i>third country investment firm</i> ; or (b) the <i>UK</i> branch of a <i>non-EEA bank</i> .
<i>tied agent passport notification</i>	a notification made in accordance with article 35(2) of <i>MiFID</i> and <i>MiFID ITS 4 Annex VII</i> .
<i>title transfer</i>	(1) (in <i>CASS 6</i>) an arrangement by which a <i>client</i> transfers full

collateral arrangement ownership of a *safe custody asset* (or an asset which would be a *safe custody asset* but for the arrangement) to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.

- (2) (in *CASS 7*) an arrangement by which a *client* transfers full ownership of *money* to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.

[Note: recital 52 to *MiFID*]

TTCA a *title transfer collateral arrangement*.

Amend the following as shown.

advising on investments (except P2P agreements) the *regulated activity*, specified in article 53(1) of the *Regulated Activities Order* (Advising on investments), which is in summary: advising a *person* if the advice is:

...

- (2) advice on the merits of their doing any of the following (whether as principal or agent):

- (a) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security, structured deposit or relevant investment* (that is, any *designated investment* (other than a *P2P agreement*), *funeral plan contract, pure protection contract, general insurance contract* or ~~or~~ right to or interests in a *funeral plan contract or structured deposit*); or

...

ancillary service (1) (except in *CONC*) any of the services listed in Section B of Annex I to *MiFID*, that is:

- (a) safekeeping and administration of *financial instruments* for the account of *clients*, including custodianship and related services such as cash/collateral management but excluding maintaining securities accounts at the top tier level, ('central maintenance service') referred to in point 2 of Section A of the Annex to *CSDR*;

...

approved reporting ~~a trade matching or reporting system approved by the FCA in accordance with Section 412A of the Act~~ a *person* permitted under

<i>mechanism</i>	<u>regulation 5 of the DRS Regulations to provide services to an investment firm in order for it to meet its obligations under article 26 of MiFIR.</u>
<i>arranging (bringing about) deals in investments</i>	<p>the regulated activity, specified in article 25(1) of the <i>Regulated Activities Order</i>, which is in summary: making arrangements for another person (whether as <i>principal</i> or agent) to <i>buy, sell</i>, subscribe for or underwrite a particular <i>investment</i> which is:</p> <p>...</p> <p>(e) <i>rights to or interests in investments</i> in (b), (c) or (d) ; <u>or</u></p> <p>(f) <u>a structured deposit.</u></p>
<i>auction regulation bidding</i>	<p>the regulated activity of <i>bidding in emissions auctions</i> where it is carried on by ÷</p> <p>(a) a firm that is exempt from <i>MiFID</i> under article 2(1)(i); or (j)</p> <p>(b) a MiFID investment firm (other than a UCITS investment firm) on behalf of its clients in relation to a two-day emissions spot .</p>
<i>branch</i>	<p>...</p> <p>(b) (in relation to an <i>investment firm</i>):</p> <p>(i) a place of business other than the head office which is a part of an <i>investment firm</i>, which has no legal personality and which provides <i>investment services and/or activities</i> and which may also perform <i>ancillary services</i> for which the firm has been authorized <u>authorised</u>;</p> <p>(ii) all the places of business set up in the same <i>EEA State</i> by an <i>investment firm</i> with headquarters in another <i>EEA State</i> are regarded as a single branch;</p> <p>[Note: article 4(1)(26) <u>4(1)(30)</u> of <i>MiFID</i>]</p>
<i>CAD investment firm</i>	<p>a firm that is subject to the requirements imposed by <i>MiFID</i> (or which would be subject to that Directive if its head office were in an <i>EEA State</i>) but excluding a <i>bank</i>, a <i>building society</i>, a <i>credit institution</i>, a <i>local firm</i> and an <i>exempt CAD firm</i> that meets the following conditions:</p> <p>...</p>
<i>close links</i>	<p>(1) (in relation to <i>MiFID business</i> or in <i>FUND</i>) a situation in which two or more persons are linked by:</p> <p>(a) participation which means the <u>in the form of</u> ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;</p>

- (b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in ~~Article 1~~ article 22(1) and (2) of ~~Directive 83/349/EEC~~ the Accounting Directive, or a similar relationship between any person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered to be a subsidiary of the parent undertaking which is at the head of those undertakings.
- (c) a permanent link of both or all of them to the same person by a control relationship.

~~A situation in which two or more persons are permanently linked to one and the same person by a control relationship is also to be regarded as constituting a close link between such persons.~~

[Note: ~~article 4(1)(34)~~ (35) of ~~MIFID~~ MiFID and article 4(1)(e) of AIFMD]

...

commodity

- (1) (except for (2) ~~and (3)~~) a physical asset (other than a financial instrument or cash) which is capable of delivery.
- (2) (for the purpose of calculating *position risk requirements*) any of the following (but excluding gold):
- (a) a commodity within the meaning of paragraph (1); and
- (b) any:
- (i) physical or energy product; or
- (ii) of the items referred to in paragraph 10 of Section C of Annex 1 of ~~the MiFID~~ as an underlying with respect to the *derivatives* mentioned in that paragraph;

which is, or can be, traded on a secondary market.

- (3) ~~(in relation to the *MiFID Regulation*, including the definitions of a *financial instrument* and an *ancillary service*)~~ (in relation to *MiFID* or *MiFIR*) any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity, ~~not including services or other items that are not goods, such as currencies or rights in real estate, or that are entirely intangible.~~

[Note: ~~article 2(1) of the *MiFID Org Regulation*~~ article 2(6) of the *MiFID Org Regulation*]

<i>common platform firm</i>	<p>...</p> <p>(c) a <i>UK MiFID investment firm</i> which falls within the definition of 'local firm' in Article 3.1P of the Capital Adequacy Directive <u>article 4(1)(4) of the EU CRR</u>; or</p> <p>...</p>
<i>common platform organisational requirements</i>	<p>(1) <u>SYSC 4 to SYSC 9; and</u></p> <p>(2) <u>those articles 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.</u></p>
<i>common platform record-keeping requirements</i>	<p>the record-keeping requirements applicable to common platform firms set out in <u>(in relation to common platform firms) the following:</u></p> <p>(1) <u>SYSC 9; and</u></p> <p>(2) <u>those articles 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.</u></p>
<i>common platform requirements</i>	<p>(1) <u>SYSC 4 to SYSC 10; and</u></p> <p>(2) <u>those articles 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.</u></p>
<i>competent authority</i>	<p>...</p> <p>(4) the authority, designated by each <i>EEA State</i> in accordance with Article 48 <u>article 67</u> of <i>MiFID</i>, unless otherwise specified in <i>MiFID</i>.</p> <p>[Note: article 4(1)(22) <u>article 4(1)(26)</u> of <i>MiFID</i>]</p> <p>...</p> <p>[Note: This definition is based on the definition contained in the CRD (Consequential Amendments) Instrument 2006 which was consulted on in the consultation paper Strengthening Capital Standards 2 (CP 06/3)]</p>
<i>competent employees rule</i>	<p>(a) for an <i>insurer</i>, a <i>managing agent</i> and the <i>Society</i>, <u>SYSC 3.1.6R;</u></p> <p>(b) for a <i>common platform firm</i>, SYSC 5.1.1R <u>article 21(1)(d) of the MiFID Org Regulation that applies in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR;</u></p>

- (ba) for a MiFID optional exemption firm and a third country firm, article 21(1)(d) of the MiFID Org Regulation that applies in accordance with SYSC 1 Annex 1 2.8R, SYSC 1 Annex 1 2.8AR and SYSC 1 Annex 1 3.2CR; and
- (c) for every other *firm*, SYSC 5.1.1R (where it applies).
- complaint* ...
- (2) (in ~~SUP 10 and DISP~~, except *DISP* 1.1 and ~~the complaints handling rules and the complaints record rule in relation to MiFID business~~ (in relation to *collective portfolio management*) in the consumer awareness rules, the complaints handling rules and the complaints record rule, and in *CREDS* 9) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a *redress determination*, which:
- ...
- (3) (in *DISP* 1.1, ~~the complaints awareness rules only and (in relation to collective portfolio management) and in the consumer awareness rules, the complaints handling rules and the complaints record rule only in relation to MiFID business and collective portfolio management~~) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a *redress determination*, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
- conflicts of interest policy* (1) (except in MAR 8) the policy established and maintained in accordance with SYSC 10.1.10R; and
- (2) (in *MAR* 8) the policy established and maintained in accordance with *MAR* 8.2.8G which:
- (a) identifies circumstances that constitute, or may give rise to, a conflict of interest arising from *benchmark submissions* and the process of gathering information in order to make *benchmark submissions*; and
- (b) sets out the process to manage such conflicts.
- control* (1) (except in (2) and (2A)) (in relation to the acquisition, increase or reduction of control of a *firm*) the relationship between a *person* and the *firm* or other *undertaking* of which the *person* is a controller.
- (2) (in SYSC 8 and SYSC 10) ~~control as defined in Article 1 of the Seventh Council Directive 83/349/EEC (The Seventh Company~~

~~Law Directive~~) :

- (a) the relationship between a parent undertaking and a subsidiary, in all cases referred to in articles 22(1) and (2) of the *Accounting Directive*; or
- (b) a similar relationship between any natural or legal person and an *undertaking*.

[Note: article ~~4(1)(30)~~ 4(1)(35)(b) of *MiFID*]

...

controller

...

- (4) *shares* and *voting power* that a *person* holds in a *firm* (“B”) or in a *parent undertaking* of B (“P”) are disregarded for the purposes of determining *control* in the following circumstances:

...

- (c) *shares* representing no more than 5% of the total voting power in B or P held by an *investment firm*, provided that:

- (i) it holds the *shares* in the capacity of a *market maker* (as defined in ~~article 4.1(8) of MIFID~~ article 4(1)(7) of *MiFID*);

- (ii) it is authorised by its *Home State regulator* under ~~MIFID~~ *MiFID*; and

...

...

- (e) *shares* held by a *credit institution* or an *investment firm* are disregarded, provided that:

- (i) the *shares* are held as a result of performing the *investment services* and activities of:

...

- (B) placing *shares* on a firm commitment basis in accordance with Annex I, section A.6 of ~~MIFID~~ *MiFID*; and

...

consumer

...

- (7) (in the definitions of *cross-border dispute*, *domestic dispute*, *sales contract* and *service contract*, and in DISP 1.1A.42R, DISP 2.7.3R and DISP 2.7.9AR) has the meaning in regulation 3 of the *ADR Regulations*, which is an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft, or profession.
- [Note: article 4(1) of the *ADR Directive*]
- ...
- customer*
- (A) ...
- (B) in the *FCA Handbook*:
- (1) (except in relation to *ICOBS*, a *credit-related regulated activity*, *MCOB 3A*, an *MCD credit agreement* and *CASS 5* and *PRIN* in relation to *MiFID* or equivalent third country business) a *client* who is not an *eligible counterparty* for the relevant purposes.
- ...
- (6) (for the purposes of *PRIN* in relation to *MiFID* or *equivalent third country business*) has the meaning given in *COBS 3.2*.
- dealing in investments as agent*
- the *regulated activity*, specified in article 21 of the *Regulated Activities Order* (Dealing in investments as agent), which is in summary: *buying*, *selling*, *subscribing for or underwriting designated investments* (other than *P2P agreements*), *pure protection contracts* ~~or~~, *general insurance contracts* or *structured deposits* as agent.
- derivative*
- (1) (other than in *REC*, *MAR 5* and *MAR 5A*) a contract for differences, a future or an option (see also *securitised derivative*).
- (2) (in *REC*, *MAR 5* and *MAR 5A*) has the meaning in article 2(1)(29) of *MiFIR*.
- designated investment*
- (1) a *security* or a ~~contractually based investment~~ contractually based investment (other than a *funeral plan contract* and a right to or interest in a *funeral plan contract*), that is, any of the following *investments*, specified in Part III of the *Regulated Activities Order* (Specified Investments):
- ...
- (ha) ...
- (hb) *emissions auction product* (article 82A) where it is a *financial instrument*;

(hc) emission allowance (article 82B);

...

...

*designated
investment
business*

any of the following activities, specified in Part II of the *Regulated Activities Order* (Specified Activities), which is carried on by way of business:

...

(da) ...

(daa) operating an organised trading facility (article 25DA);

...

*distribution
channels*

a channel through which information is, or is likely to become, publicly available. Information which is “likely to become publicly available” means information to which a large number of *persons* have access.

~~[Note: article 2(1) of the *MiFID implementing Directive*]~~

durable medium

(a) paper; or

(b) any instrument which enables the recipient to store information addressed personally to him or her in a way accessible for future reference and for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored. In particular, *durable medium* covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes ~~Internet~~ internet sites, unless such sites meet the criteria specified in the first sentence of this paragraph. ~~(In~~ In relation to ~~*MiFID or equivalent third country business*~~ the equivalent business of a third country investment firm, *MiFID optional exemption business* or *collective portfolio management*, if the relevant rule derives from the *MiFID Org Regulation* or implements the ~~*MiFID implementing Directive*, the *UCITS Directive*, the *UCITS implementing Directive* or the *UCITS implementing Directive No 2*~~) the instrument used must be:

- (i) appropriate to the context in which the business is to be carried on; and
- (ii) specifically chosen by the recipient when offered the choice between that instrument and paper.

For the purposes of this definition, the provision of information by means of electronic communications shall be treated as

appropriate to the context in which the business between the *firm* and the *client* is, or is to be, carried on if there is evidence that the *client* has regular access to the internet. The provision by the *client* of an e-mail address for the purposes of the carrying on of that business is sufficient.

[Note: article 2(f) of, and Recital 20 of to, the *Distance Marketing Directive*, article 2(12) of the *Insurance Mediation Directive*, articles 2(2), 3(1) and 3(3) of the *MiFID implementing Directive*, article 4(1)(62) of *MiFID* and article 3(1) of the *MiFID Org Regulation*, articles 75(2) and 81(1) of the *UCITS Directive*, article 20(3) of the *UCITS implementing Directive* and article 7 of the *UCITS implementing Directive No 2*]

EEA registered tied agent

a *tied agent* of a UK *MiFID investment firm* that is not an *appointed representative* and ~~would have been~~ is not an *FCA registered tied agent* but for the fact that it does business in an *EEA State* that permits *investment firms* authorised by the *competent authority* of that state to ~~appoint tied agents~~ because it is established in an *EEA State* other than the *United Kingdom*.

emissions allowance

- (1) an ‘allowance’, within the meaning of article 3(a) of ~~Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC~~ the *Emission Allowance Trading Directive*;
- (2) (in relation to *MiFID* business other than in *MAR 10* (Commodity derivative position limits and controls and position reporting)) the investment, specified in article 82B of the *Regulated Activities Order* (‘Emission Allowances’), which is in summary emission allowances:
- (a) consisting of any units recognised for compliance with the *Emission Allowance Trading Directive*; and
- (b) to which article 82B of the *Regulated Activities Order* applies; and
- (3) (in *MAR 10* (Commodity derivative position limits and controls and position reporting)):
- (a) an allowance consisting of any units recognised for compliance with Directive 2003/87/EC (Emission Trading Scheme), as specified in paragraph (11) of Section C of Annex I of *MiFID*; or
- (b) any derivative of such an allowance, whether falling under paragraph (4) or (10) of Section C of Annex I of *MiFID*.

employee

...

- (2) (for the purposes of:
- (a) *COBS* 11.7 and *COBS* 11.7A (Personal account dealing);

...

...

execution of orders on behalf of clients acting to conclude agreements to buy or sell one or more *financial instruments* on behalf of *clients* including the conclusion of agreements to sell *financial instruments* issued by an *investment firm* or a *credit institution* at the moment of their issuance.

[Note: article 4(1)(5) of *MiFID*]

execution criteria the criteria set out in *COBS* 11.2.6R, that is:

...

- (c) the characteristics of *financial instruments* that are the subject of that order; and
- (d) the characteristics of the *execution venues* to which that order can be directed.; ~~and~~
- (e) ~~for a *management company*, the objectives, investment policy and risks specific to the *UCITS scheme* or *EEA UCITS scheme*, as indicated in its *prospectus* or *instrument constituting the fund*.~~
[deleted]

execution venue for the purposes of the provisions relating to best execution in *COBS* 11.2, *COBS* 11.2A, *COBS* 11.2B and ~~in~~ *COLL*, execution venue means 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 functions performed by any of the foregoing.

[Note: article 44(1) of the *MiFID implementing Directive*]

- exempt CAD firm* (1) (except in *SYSC* and *IPRU(INV)*) a firm as defined in article 4(1)(2)(c) of the *EU CRR* that is authorised to provide only one or more of the following *investment services*:
- (a) investment advice;
- (b) receive and transmit orders from investors as referred to in Section A of Annex I of *MiFID*).
- (2) (in *SYSC* and *IPRU(INV)*) a *firm* in (1) whose head office (or, if it has a registered office, that office) is in the ~~United Kingdom~~

United Kingdom.*final response*

...

- (3) (in *DISP*) either:
- (a) in relation to a *MiFID* complaint, a response in accordance with *DISP* 1.1A.29EU, *DISP* 1.1A.30EU and *DISP* 1.1A.31R; or
- (b) in relation to all other complaints, has the meaning given in *DISP* 1.6.2R(1).

financial analyst

...

[Note: article 2(4) of the *MiFID implementing Directive* 2(1) of the *MiFID Org Regulation*]

financial instrument

- (1) (other than in (2) and (3) and (4)) instruments specified in Section C of Annex I of *MiFID*, that is:

...

- (d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- (da) (in relation to derivative contracts relating to a currency) has the meaning in article 10 of the *MiFID Org Regulation* (in summary):
- (i) an instrument which is not a contract within the meaning of paragraph 2 of that article; or
- (ii) a means of payment as described in paragraph 1(b) of that article;
- (e) options, futures, swaps, ~~forward rate agreements~~ forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (~~otherwise~~ other than by reason of a default or other termination event);
- (f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a *regulated market* ~~and/or~~ , an *MTF*, or an *OTF*, except for wholesale energy products (having regard to article 6 of the *MiFID Org Regulation*) traded on an *OTF* that must be physically settled where the conditions of article 5 of the *MiFID Org*

Regulation are met:

- (g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (f) and :
- (i) not being for commercial purposes, having regard to article 7(4) of the *MiFID Org Regulation*;
 - (ii) which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (see articles 38(1), (2) and (4) of the *MiFID Regulation*) having regard to article 7(1) of the *MiFID Org Regulation*; and
 - (iii) not being spot contracts having regard to articles 7 (1) and (2) of the *MiFID Org Regulation*;

...

- (j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to:

...

- (xii) a derivative contract to which article 8 of the *MiFID Org Regulation* applies;

where the conditions in ~~Articles 38~~ articles 7(3) and (4) of the *MiFID Regulation* *MiFID Org Regulation* are met - ;

[Note: ~~article 4(1)(17)~~ 4(1)(15) and section C of Annex I to *MiFID* and ~~articles 38 and 39 of the *MiFID Regulation*~~ articles 7 and 8 of the *MiFID Org Regulation*]

- (k) emission allowances consisting of any units recognised for compliance with the *Emission Allowance Trading Directive*;

...

- (4) (for a *UCITS custodial asset*) an instrument specified in Section C of Annex I to *MiFID H*.

*financial
promotion*

- (1) ...
- (2) (in relation to *COBS* 3.2.1R(3), and *COBS* 4.3.1R, ~~*COBS* 4.5.8R and *COBS* 4.7.1R~~) (in addition to (1)) a marketing communication

within the meaning of *MiFID* made by a *firm* in connection with its ~~*MiFID or equivalent third country business*~~ *MiFID, equivalent third country or optional exemption business*.

(3) ...

firm

...

(8) (in SYSC 18 with the exception of the ~~guidance~~ guidance in SYSC 18.3.9G):

...

(9) (in FEES 4) includes a recognised investment exchange and a data reporting services provider (other than an incoming data reporting services provider) in accordance with FEES 4.1.1AR.

Home State

...

(2) (in relation to an *investment firm*):

...

[Note: article ~~4(1)(20)~~ 4(1)(55)(a) of *MiFID*]

...

(16) (for a data reporting services provider):

(a) the EEA State in which its head office is situated, for a natural person;

(b) the EEA State in which its registered office is situated, for a legal person;

(c) if the data reporting services provider has, under its national law, no registered office, the EEA State in which its head office is situated.

[Note: article 4(1)(55)(c) of *MiFID*]

*Home State
regulator*

...

(4) (in REC) the competent authority (within the meaning of ~~Article (4)(1)(22)~~ article 4(1)(26) of *MiFID*) of the *EEA State* which is the *Home State* in relation to the *EEA market operator* concerned.

...

(6) (for a data reporting services provider) the competent authority (within the meaning of article 4(1)(26) of *MiFID*) of the *EEA State*

which is the Home State for that data reporting services provider.

<i>Host State</i>	<p>...</p> <p>(3) (in relation to <i>MiFID investment firms</i>) the <i>EEA State</i>, other than the <i>Home State</i>, in which an <i>investment firm</i> has a <i>branch</i> or performs <u>provides investment services and/or activities</u>, or the <i>EEA State</i> in which a <i>regulated market</i> provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same <i>EEA State</i>.</p> <p>[Note: article 4(1)(21) <u>(56)</u> of <i>MiFID</i>]</p> <p>...</p>
<i>IFPRU 125K firm</i>	<p>has the meaning in <i>IFPRU 1.1.9R</i> (Types of investment firm: IFPRU 125K firm), which in summary is an <i>IFPRU investment firm</i> that satisfies the following conditions:</p> <p>...</p> <p>(e) it does not operate a <i>multilateral trading facility</i> or <u>an organised trading facility</u>.</p>
<i>IFPRU 50K firm</i>	<p>has the meaning in <i>IFPRU 1.1.10R</i> (Types of investment firm: IFPRU 50K firm) which in summary is an <i>IFPRU investment firm</i> that satisfies the following conditions:</p> <p>...</p> <p>(d) it does not operate a <i>multilateral trading facility</i> or <u>an organised trading facility</u>.</p>
<i>incoming data reporting services provider</i>	<p>a <i>data reporting services provider</i> authorised or applying for authorisation under Title V of <i>MiFID H</i> in an <i>EEA State</i>, other than the <i>UK</i>, to provide a <i>data reporting service</i> in the <i>UK</i>.</p>
<i>independent advice</i>	<p>a <i>personal recommendation</i> to a retail client in relation to a retail investment product <u>client</u> where the <i>personal recommendation</i> provided meets the requirements of the <i>rule</i> on independent advice (<i>COBS 6.2A.3R 6.2B.11R</i>).</p>
<i>investment firm</i>	<p>(1) any person <u>person</u> whose regular occupation or business is the provision of one or more <i>investment services</i> to third parties and/or the performance of one or more investment activities on a professional basis.</p> <p>[Note: article 4(1)(1) of <i>MiFID</i>]</p> <p>...</p>
<i>investment research</i>	<p>research or other information recommending or suggesting an investment</p>

~~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) it 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 to be made by an *investment firm* to a *client*, it would not constitute the provision of a *personal recommendation*.~~

has the meaning in article 36(1) of the *MiFID Org Regulation*.

[Note: article ~~24(1)~~ 36(1) of the *MiFID implementing Directive Org Regulation*]

investment service any of the following involving the provision of a service in relation to a *financial instrument*:

...

(h) operation of ~~*multilateral trading facilities*~~ an *MTF*; and

(i) operation of an *OTF*.

...

investment services and/or activities any of the services and activities listed in Section A of Annex I to *MiFID* relating to any *financial instrument*, that is:

...

(h) operation of ~~*multilateral trading facilities*~~; and

(i) operation of an *OTF*.

...

investment services or activities any of the services and activities listed in Section A of Annex I to *MiFID* relating to any *financial instrument*, that is:

...

(h) operation of ~~*multilateral trading facilities*~~ an *MTF*; and

(i) operation of an *OTF*.

...

issuer

...

[~~Note: article 2(2) of the MiFID Regulation~~]

...

limit order an order to buy or sell a *financial instrument* at its specified price limit or better and for a specified size.

[~~Note: article 4(1)(16)~~ 4(1)(14) of *MiFID*]

local firm ~~a firm which falls within the definition of “local firm” in Article 3.1P of CAD, that is a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets~~

has the meaning in article 4(1)(4) of the EU CRR.

making arrangements with a view to transactions in investments the *regulated activity*, specified in article 25(2) of the *Regulated Activities Order* (Arranging deals in investments), which is in summary: making arrangements with a view to a *person* who participates in the arrangements *buying, selling, subscribing for or underwriting* any of the following *investments* (whether as *principal* or agent):

...

(g) *general insurance contract*; or

(h) a structured deposit.

management body (1) (other than in (2)) (in accordance with article 3(7) of *CRD* and article 4.1(36) of MiFID) the *governing body* and *senior personnel* ~~of a CRR firm~~ who are empowered to set the *firm’s person’s* strategy, objectives and overall direction, and which oversee and monitor management decision-making in the following:

(a) a common platform firm (in relation to the requirements imposed by or under MiFID or MiFIR); or

(b) a recognised investment exchange; or

(c) a data reporting services provider.

...

managing investments the *regulated activity* specified in article 37 of the *Regulated Activities Order* (Managing investments), which is in summary: managing assets belonging to another *person* in circumstances which involve the exercise of discretion, if:

	(a) the assets consist of or include any <i>security</i> , <u><i>structured deposit</i></u> or <i>contractually based investment</i> (that is, any <i>designated investment</i> (other than a <i>P2P agreement</i>), <i>funeral plan contract</i> , <u><i>structured deposit</i></u> or right to or interest in a <i>funeral plan contract</i>); or
	...
<i>market data processor system</i>	the IT system set up and maintained by the <i>FCA</i> to receive data under <i>MiFID II</i> and <i>MiFIR</i> .
<i>market maker</i>	...
	[Note: article 4(1)(8) 4(1)(7) of <i>MiFID</i>]
	...
<i>market operator</i>	a <i>person</i> who manages and/or operates the business of a <i>regulated market</i> . The <i>market operator</i> <u>and who</u> may be the <i>regulated market</i> itself.
	[Note: article 4(1)(13) (4)(1)(18) of <i>MiFID</i>]
<i>material interest</i>	(in <i>COBS</i>) (in relation to a transaction) any interest of a material nature, other than : (a) disclosable <i>commission</i> on the transaction ; (b) goods or services which can reasonably be expected to assist in carrying on <i>designated investment business</i> with or for <i>clients</i> and which are provided or to be provided in compliance with <i>COBS</i> 11.6.3R.
<i>MiFID</i>	The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC). <u>See also <i>MiFID Regulation</i> and <i>MiFID implementing Directive</i> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the <i>Insurance Mediation Directive</i> and <i>AIFMD</i>.</u>
<i>MiFID client money (minimum implementing) rules</i>	<u>CASS 7.11.1R, CASS 7.11.4AR, CASS 7.12.1R, CASS 7.12.2R, CASS 7.13.3R, CASS 7.13.8R, CASS 7.13.10R, CASS 7.13.12R, CASS 7.13.20R, CASS 7.13.21R, CASS 7.13.21AR, CASS 7.13.21CR, CASS 7.13.22R, CASS 7.13.26R, CASS 7.13.28R, CASS 7.15.2R, CASS 7.15.3R, CASS 7.15.20R.</u>
<i>MiFID investment firm</i>	(1) (in summary) <u>(except in <i>SUP 13</i>, <i>SUP 13A</i> and <i>SUP 14</i> in relation to notification of <i>passported activity</i>)</u> a <i>firm</i> to which <i>MiFID</i> applies including, for some purposes only, a <i>credit institution</i> and <i>collective portfolio management investment firm</i> . (2) (in full) a <i>firm</i> <u>(except in <i>SUP 13</i>, <i>SUP 13A</i> and <i>SUP 14</i> in relation to notification of <i>passported activity</i>)</u> which is:

- (1) an *investment firm* with its head office in the *EEA* (or, if it has a registered office, that office);
- (2) a *CRD credit institution* (only when providing an *investment service or activity* or when selling, or advising clients in relation to, structured deposits ~~in relation to~~ for the purposes of:
- (i) the *rules* implementing the ~~Articles~~ articles referred to in ~~article 1(2)~~ article 1(3) and article 1(4) of *MiFID* ;
 - (ii) the requirements imposed upon it by and under MiFIR; and
 - (iii) the requirements imposed upon it by EU regulations made under MiFID);
- (3) a *collective portfolio management investment firm* (only when providing the services referred to in article 6(4) *AIFMD* or ~~Article~~ article 6(3) of the *UCITS Directive* in relation to the *rules* implementing the articles of *MiFID* referred to in article 6(6) of *AIFMD* or article 6(4) of the *UCITS Directive* and for a *full-scope UK AIFM* or the *rules* implementing article 12(2)(b) of *AIFMD*);

unless, and to the extent that, *MiFID* does not apply to it as a result of ~~Article~~ article 2 (Exemptions) or ~~Article~~ article 3 (Optional exemptions) of *MiFID*.

- (3) (in SUP 13, SUP 13A and SUP 14 in relation to notification of passported activity) an investment firm with its head office in the EEA (or, if it has a registered office, that office) unless, and to the extent that, MiFID does not apply to it as a result of article 2 (Exemptions) or article 3 (Optional exemptions) of MiFID.

money-market instrument

...

- (2) those classes of *financial instruments* which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

[Note: article 4(1)~~(19)~~ (17) of *MiFID* and article 11 of the *MiFID Org Regulation*]

multilateral trading facility

~~a multilateral system, operated by an investment firm or a market operator, which brings together multiple third party buying and selling interests in financial instruments—in the system and in accordance with non-discretionary rules—in a way that results in a contract in accordance with the provisions of Title II of MiFID.~~

(in accordance with article 3(1) of the *Regulated Activities Order*):

- (a) a multilateral trading facility (within the meaning of article 4(1)(22) of *MiFID*) operated by an *investment firm*, a *credit institution* or a *market operator*; or
- (b) a facility which:
 - (i) is operated by an *investment firm*, a *credit institution* or a *market operator* which does not have a *Home State*; and
 - (ii) if its operator had a *Home State*, would be a *multilateral trading facility* within the meaning of article 4(1)(22) of *MiFID*.

[Note: article 4(1)(15) ~~4(1)(22)~~ of *MiFID*]

non-independent research

~~an *investment recommendation* which:~~

- (a) ~~relates to *financial instruments* (as specified in Section C of Annex 1 of *MiFID*, whether or not they are admitted to trading on a *regulated market*); and~~
- (b) ~~does not constitute *investment research*.~~

an *investment recommendation* that does not meet the conditions set out in article 36(1) of the *MiFID Org Regulation*.

[Note: article 24(2) ~~36(1)~~ of the *MiFID implementing Directive* *MiFID Org Regulation*]

operating a multilateral trading facility

...

In this definition “MiFID instrument” means any investment:

- (a) of the kind specified by articles 76, 77, 78, 79, 80, 81, 82B, 83, 84 or 85 of the *Regulated Activities Order*; or
- (b) of the kind specified by article 89 of the *Regulated Activities Order*, so far as relevant to an investment falling within (a);

that is a *financial instrument*.

operating an organised trading facility

~~(in relation to *FEES 3*),~~ the *regulated activity* in article 25DA of the *Regulated Activities Order*, which is in summary, the operation of an *organised trading facility* on which non-equity MiFID instruments are traded. In this definition “non-equity MiFID instrument” means any investment:

- (a) of the kind specified by articles 77, 77A, 78, 79, 80, 81, 82B, 83, 84 or 85; or

- (b) of the kind specified by article 89 of the *Regulated Activities Order*, so far as relevant to an investment falling within (a);

that is a bond, a structured finance product (within the meaning of article 2(1)(28) of *MiFIR*), an ~~emissions~~ *emission allowance*, or a derivative (within the meaning of article 2(1)(29) of *MiFIR*).

option the *investment*, specified in article 83 of the *Regulated Activities Order* (Options), which is in summary an option to acquire or dispose of:

...

organised trading facility (~~in relation to FEES 3~~), (in accordance with article 3(1) of the *Regulated Activities Order*):

- (a) an organised trading facility (within the meaning of article 4(1)(23) of *MiFID H*) operated by an *investment firm*, a *credit institution* or a *market operator*; or
- (b) a facility which:
- (i) is operated by an *investment firm*, a *credit institution* or a *market operator* which does not have a *Home State*; and
 - (ii) if its operator had a *Home State*, would be an *organised trading facility* within the meaning of article 4(1)(23) of *MiFID H*.

[Note: article 4(1)(23) of *MiFID H*]

OTF (~~in relation to FEES 3~~), *organised trading facility*.

outsourcing ...

- (2) (in *SYSC 8*, *COBS 11.7*, *SYSC 3* and *SYSC 13* to the extent applicable to the *Solvency II firm*, and the definition of *relevant person*) an arrangement of any form between a *firm* and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the *firm* itself.

[Note: ~~article 2(6) of the *MiFID implementing Directive*~~ article 2(3) of the *MiFID Org Regulation* and article 13(28) of the *Solvency II Directive*]

overseas firm (1) (in relation to *MAR 5* and *MAR 5A*) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom* excluding an *incoming EEA firm*.

...

periodic statement a report which a *firm* is required to provide to a *client* ~~under~~ pursuant to:

- (a) COBS 16.3 (Periodic reporting) where the *firm* is carrying on designated investment business other than *MiFID*, equivalent third country or optional exemption business;
- (b) article 60(1) of the *MiFID Org Regulation* where the *firm* is carrying on *MiFID* business;
- (c) GEN 2.2.22AR and COBS 16A.4.1EU where the *firm* is carrying on the equivalent business of a third country investment firm;
- (d) COBS 16A.1.2R and COBS 16A.4.1EU where the *firm* is carrying on optional exemption business.

[Note: see COBS 16A.4.1EU where article 60(1) of the *MiFID Org Regulation* is reproduced]

personal recommendation

- (1) (except in *CONRED*) a recommendation that is *advice on investments, advice on conversion or transfer of pension benefits, or advice on a home finance transaction* and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.

A recommendation is not a personal recommendation if it is issued exclusively ~~through distribution channels~~ or to the public.

For the purposes of this definition, references in the *Handbook* to making *personal recommendations* on, or in relation to, *P2P agreements* should be understood as referring to making *personal recommendations* involving *advice on P2P agreements*.

[Note: article ~~52~~ 9 of the *MiFID implementing Directive MiFID Org Regulation*]

- (2) (in *CONRED*) a recommendation ~~which~~ that is *advice on investments* and:

...

personal transaction

...

[Note: ~~article 2(7) and article 11 of the *MiFID implementing Directive*~~ article 16(2) of *MiFID* and article 28 of the *MiFID Org Regulation*]

portfolio management

managing portfolios in accordance with mandates given by *clients* on a discretionary *client-by-client* basis where such portfolios include one or more *financial instruments*.

[Note: ~~article 4(1)(9)~~ 4(1)(8) of *MiFID*]

professional client

a *client* that is either a *per se professional client* or an *elective professional client* (see COBS 3.5.1R).

[Note: article 4(1)(12) (10) of *MiFID*] :

qualifying holding ...

- (2) (otherwise) ~~any~~ a direct or indirect holding in an *investment firm* which represents 10% or more of the capital or of the voting rights, as set out in ~~Article 92~~ articles 9 and 10 of the European Parliament and Council Directive on the admission of securities to official stock exchange listing and on information to be published on those securities (No. 2001/34/EC) *Transparency Directive*, taking into account the conditions regarding aggregation in article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the *investment firm* in which that holding subsists.

[Note: article 4(1)(27) 4(1)(31) of *MiFID*]

qualifying money market fund

- (1) (in *COLL*, *CASS 7* and *BSOCS*) a ~~collective investment scheme~~ collective investment undertaking authorised under the *UCITS Directive*, or which is subject to supervision and, if applicable, authorised by an authority under the national law of ~~an EEA State~~ the authorising Member State, and which satisfies the following conditions:

...

- (2) For the purposes of (1)(b), a money market instrument ~~is to~~ may be considered to be of high quality if ~~it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency is not to be considered to be of high quality~~ the AIFM or UCITS management company of the collective investment undertaking performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality subject to the conditions below:
- (a) where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the AIFM's or UCITS management company's internal assessment must have regard to, inter alia, those credit ratings; and
- (b) while there can be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by ESMA that has rated the instrument will lead the AIFM or UCITS management company to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.

- (3) ~~For the purposes of (2), a rating agency is to be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECAI within the meaning of Article 81(1) of the BCD. [deleted]~~

~~[Note: article 18(2) of the *MiFID implementing Directive*] [Note: article 1(4) of, and recital 4 to, the *MiFID Delegated Directive*]~~

RAP recognition requirements

- (1) (in relation to an *RAP*) any of the requirements applicable to an *RAP* under the *RAP regulations*, the *auction regulation* or ~~the *MiFID Regulation*~~ *MiFIR* and any *EU regulation* adopted under *MiFID* or *MiFIR*.
- (2) (in relation to a *UK RIE* applying for recognition as an *RAP*) any of the requirements under the *RAP regulations*, the *auction regulation* or ~~the *MiFID Regulation*~~ *MiFIR* and any *EU regulation* adopted under *MiFID* or *MiFIR* which, if its application were successful, would apply to it.

recognised body requirements

- ...
- (2) (in relation to a *UK RIE*) the ~~*MiFID implementing requirements*~~ *MiFID/MiFIR requirements*;

...

regulated activity

in the *FCA Handbook*: (in accordance with section 22 of the *Act* (Regulated activities) the activities specified in Part II of the *Regulated Activities Order* (Specified Activities) which are, in summary:

...

(gg) ...

(gga) *operating an organised trading facility* (article 25DA);

(gh) ...

regulated market

- (1) a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with ~~the provisions of~~ Title III of *MiFID*.

[Note: article ~~4(1)(14)~~ 4(1)(21) of *MiFID*]

...

- regulatory system* the arrangements for regulating a *firm* or other *person* in or under the *Act*, including the *threshold conditions*, the *Principles* and other *rules*, the *Statements of Principle*, codes and *guidance*, or in or under the *CCA*, and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the ~~*MiFID implementing Directive*~~, ~~the *MiFID Regulation*~~, *MiFID Org Regulation* and the *EU CRR*.
- relevant person* any of the following:
- (1) (in *COMP*) a *person* for *claims* against whom the *compensation scheme* provides cover, as defined in *COMP* 6.2.1R;
 - (2) (otherwise) any of the following:
- ...
- [Note: ~~article 2(3) of the *MiFID implementing Directive*~~ article 2(1) of the *MiFID Org Regulation* and article 3(3) of the *UCITS implementing Directive*]
- remuneration*
- (1) (except where (2) applies) any form of remuneration, including salaries, *discretionary pension benefits* and benefits of any kind.
- [Note: article 92(2) of ~~the~~ *CRD*]
- (2) (in relation to those articles 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, *SYSC* 1 Annex 1 3.3R; *SYSC* 19F.1.3R; *SYSC* 19F.1.4R and *SYSC* 19F.1.5R) all forms of payments or financial or non-financial benefits provided directly or indirectly by a *firm* to *relevant persons* in the provision of one or more of *designated investment business*, *ancillary activities* and *ancillary services* to *clients*.
- [Note: article 2(5) of the *MiFID Org Regulation*]
- restricted advice*
- (a) a *personal recommendation* to a ~~*retail client* in relation to a *retail investment product*~~ *client* which is not *independent advice*; or
 - (b) *basic advice*.
- retail client*
- (1) (other than in relation to the provision of basic advice on stakeholder products or to *credit-related regulated activities*) in accordance with *COBS* 3.4.1R, a *client* who is neither a *professional client* or an *eligible counterparty*; or
- [Note: article 4(1)~~(12)~~ (11) of *MiFID*]
- ...

<i>retail investment product</i>	... [Note: Section 238 of the <i>Act</i> and <i>COBS</i> 4.12.3R set out restrictions on the promotion of <i>non-mainstream pooled investments</i> to <i>retail clients</i> . See also <i>COBS</i> 9.3.5G and <u><i>COBS</i> 9A.2.22G</u> (Non-mainstream pooled investments).]
<i>RRD early intervention condition</i>	the requirements of: ... (c) the laws, regulations and administrative provisions necessary to comply with title II of <i>MiFID II</i> ; or ...
<i>securities and futures firm</i>	... (h) a <i>firm</i> that is exempt from <i>MiFID</i> under article 2(1) (i) (j) whose <i>permitted activities</i> include <i>bidding in emissions auctions</i> .
<i>securities financing transaction</i>	(1) (in <i>COBS</i> , in CASS) an instance of stock lending or stock borrowing or the lending or borrowing of other <i>financial instruments</i> , a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction. [Note: article 2(10) of the <i>MiFID Regulation</i>] ... (1B) <u>(in CASS) a securities financing transaction as defined in article 3(11) of the <i>SFTR</i>.</u> <u>[Note: article 1(3) of the <i>MiFID Delegated Directive</i>]</u> (2) (in any other case) any of the following: ...
<i>security</i>	(1) (except in <i>LR</i> and <i>CONC</i>) (in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)) any of the following <i>investments</i> specified in that Order: ... (gb) <u><i>emission allowance</i> (article 82B); and</u>
<i>senior management</i>	(1) ...

- (2) (in *SYSC* (except *SYSC* 4.3A) and *IFPRU* and in accordance with article 3(9) of *CRD*) those *persons* who are a natural person and who exercise executive functions in an *institution* and who are responsible and accountable to the *management body* for the day-to-day management of the *institution*.
- (3) (in *SYSC* 4.3A and *COBS* 2.3B and in accordance with article 4.1(37) of *MiFID*) those *persons* who are a natural person, who exercise executive functions in *common platform firms* and who are responsible and accountable to the *management body* for the day-to-day management of the *firm*, including for the implementation of the policies concerning the distribution of services and products to *clients* by it and its personnel.
- senior personnel*
- (1) those *persons* who effectively direct the business of the *firm*, ~~or CBTL firm, recognised investment exchange or data reporting services provider~~ which could include ~~a firm's or CBTL firm's or the membership of the governing body~~ and other *persons* ~~individuals~~ who effectively direct the business of the *person* ~~firm or CBTL firm~~.
- (2) (in relation to a *management company*) and in accordance with article 3(4) of the *UCITS implementing Directive*) the *person* or *persons* who effectively conduct the business of the *management company*.
- small and medium-sized enterprise*
- (1) (in *MAR* 5) companies that had an average market capitalisation of less than €200,000,000 based on end-year quotes for the previous three calendar years.
- [Note: article 4(1)(13) of *MiFID*]
- (2) (in *PR*) (as defined in ~~Article~~ article 2.1(f) of the *prospectus directive*) companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €43,000,000 and an annual net turnover not exceeding €50,000,000.
- structured deposit*
- ~~a deposit paid on terms under which any interest or premium will be paid, or is at risk, according to a formula which involves the performance of:~~
- (a) ~~an index (or combination of indices) (other than money market indices);~~
- (b) ~~a stock (or combination of stocks); or~~
- (c) ~~a commodity (or combination of commodities).~~

(in accordance with article 3 of the *Regulated Activities Order*) a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:

- (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR; or
- (b) a financial instrument or combination of financial instruments; or
- (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
- (d) a foreign exchange rate or combination of foreign exchange rates.

[Note: article 4(1)(43) of *MiFID*]

subsidiary

...

- (2) (in relation to *MiFID business*) a subsidiary undertaking as defined in Articles 1 and 2 of ~~Seventh Council Directive on consolidated accounts (No. 83/349/EEC)~~ within the meaning of article 2(10) and article 22 of the *Accounting Directive*, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking.
- (3) (for the purpose of *IFPRU*) has the meaning in article 4(1)(16) of the *EU CRR*.

[Note: article 4 (1)(~~29~~)(33) of *MiFID*]

suitability report

a report which a *firm* must provide to its *client* ~~under COBS 9.4 (suitability reports)~~ which, among other things, explains why the *firm* has concluded that a recommended transaction is suitable for the *client* and which is provided pursuant to:

- (a) COBS 9.4 (Suitability reports) where the *firm* is carrying on designated investment business other than any *MiFID*, equivalent third country or optional exemption business;
- (b) article 54(12) of the *MiFID Org Regulation* where the *firm* is carrying on *MiFID business*;
- (c) GEN 2.2.22AR and COBS 9A.3.3EU where the *firm* is carrying on the equivalent business of a third country investment firm;
- (d) COBS 9A.1.2R and COBS 9A.3.3EU where the *firm* is carrying on *MiFID optional exemption business*.

<i>summary resolution communication</i>	<p><u>either:</u></p> <p>(1) <u>in relation to a <i>MiFID complaint</i>, a response in accordance with <i>DISP 1.1A.24EU</i>, <i>DISP 1.1A.25EU</i> and <i>DISP 1.1A.26R</i>;</u> <u>or</u></p> <p>(2) <u>in relation to all other <i>complaints</i>, has the meaning given in <i>DISP 1.5.4R</i>.</u></p>
<i>systematic internaliser</i>	<p><u>(has the meaning in article 4(1)(20) of <i>MiFID</i>) (in summary) an <i>investment firm</i> which, on an organised, frequent and, systematic <u>and</u> <u>substantial</u> basis, <i>deals on own account</i> by executing client <u>client</u> orders outside a <i>regulated market</i> or, an <i>MTF</i> <u>or an <i>OTF</i> without operating a <i>multilateral system</i>.</u></u></p> <p>[Note: article 4(1)(7) <u>4(1)(20)</u> of <i>MiFID</i>]</p>
<i>third country investment firm</i>	<p>a <i>firm</i> which would be a <i>MiFID investment firm</i> if it had its head office <u>or registered office</u> in the <i>EEA</i>.</p>
<i>third party prospectus</i>	<p>a communication made by a <i>firm</i> if the communication is a prospectus that has been drawn up and published in accordance with the <i>Prospectus Directive</i> and the <i>firm</i> is not responsible under that directive for the information given in the prospectus.</p> <p>[Note: recital 52 <u>73</u> to the <i>MiFID implementing Directive</i> <u><i>MiFID Org Regulation</i></u>]</p>
<i>tied agent</i>	<p>a <i>person</i> who, under the full and unconditional responsibility of only one <i>MiFID investment firm</i> or <i>third country investment firm</i> on whose behalf it acts, promotes <i>investment services</i> and/or <i>ancillary services</i> to <i>clients</i> or prospective <i>clients</i>, receives and transmits instructions or orders from the <i>client</i> in respect of <i>investment services</i> or <i>financial instruments</i>, places <i>financial instruments</i> and/or provides advice to <i>clients</i> or prospective <i>clients</i> in respect of those <i>financial instruments</i> or <i>investment services</i>.</p> <p>[Note: article 4(1)(25) <u>4(1)(29)</u> of <i>MiFID</i>]</p>
<i>trading day</i>	<p>(1) (in <i>MAR 7</i> (Disclosure of information on certain trades undertaken outside a regulated market or MTF) and <i>SUP 17</i> (Transaction reporting)) in relation to post-trade information to be made public about a share under <i>MAR 7.2.10EU</i>, any day of normal trading in a share on a <i>trading venue</i> in the <i>relevant liquid market</i> for this share. [Note: article 4(2) of the <i>MiFID Regulation</i>] [deleted]</p> <p>...</p> <p>(3) (in <i>FINMAR</i>) as defined in article 2(1)(p) of the <i>short selling regulation</i>, a trading day as referred to in article 4 of Regulation</p>

(EC) No 1287/2006.

trading venue

- (1) (except in *FINMAR* and *MAR*) a *regulated market*, an *MTF* or *systematic internaliser* acting in its capacity as such, and, where appropriate, a system outside the *EU* with similar functions to a ~~regulated market or MTF~~ an OTF.

[Note: ~~article 2(8) of the MIFID Regulation~~ article 4(1)(24) of MiFID]

- (2) (in *FINMAR*) (as defined in article 2(1)(1) of the *short selling regulation*) a *regulated market* or an *MTF*.

[Note: article 4(1)(24) of MiFID]

transaction

- (1) (except in *CONC* App 1.1 and *SUP 17A*) only the purchase and sale of a *financial instrument*. ~~For the purposes of the MIFID Regulation, excluding Chapter II, this does not include:~~
- (a) ~~securities financing transactions; or~~
 - (b) ~~the exercise of options or covered warrants; or~~
 - (c) ~~primary market transactions (such as issuance allotment or subscription) in financial instruments falling within Article 4(1)(18(a) and (b) of MiFID).~~
- (2) (in *CONC* App 1.3, except in *CONC* App 1.1.6R(1)(c)) a *credit agreement*, any transaction which is a *linked transaction*, any contract for the provision of *security* relating to the *credit agreement*, any *credit broking* contract relating to the *credit agreement* and any other contract to which the *borrower* or a *relative* of his the borrower is a party and which the *lender* requires to be made or maintained as a condition of the making of the *credit agreement*.
- (3) (in SUP 17A), a concluded acquisition or disposal of a reportable financial instrument, including those in articles 2(2) to 2(4) of MiFID RTS 22, but excluding those in article 2(5) of that EU regulation.

[~~Note: article 5 of the MiFID Regulation~~]

transaction report

- (1) ~~a report of a transaction which meets the requirements of SUP 17.4.1EU.1R and SUP 17.4.2R (Information to appear in transaction reports).~~
- (2) ~~in relation to FEES 3, a report which meets the requirements imposed by and under article 26 of MiFIR.~~ a report of a transaction:

- (a) for the purposes of SUP TP 9; or
- (b) which meets the requirements imposed by and under article 26 of MiFIR.

<i>transferable security</i>	... [Note: article 4(1)(18) 4(1)(44) of <i>MiFID</i>]
<i>UCITS management company</i>	... (2) (in relation to <i>MiFID business</i>) a <i>management company</i> as defined in the <i>UCITS Directive</i> . [Note: article 4(1)(24) article 4(1)(28) of <i>MiFID</i>]
<i>UK designated investment firm</i>	(in <i>BIPRU</i> 12 and <u>in SYSC 19D</u>) a <i>designated investment firm</i> which is a <i>body corporate</i> or <i>partnership</i> formed under the law of any part of the <i>UK</i> .
<i>website conditions</i>	the following conditions: ... [Note: article 3 of the <i>MiFID implementing Directive</i> <u><i>MiFID Org Regulation</i></u> and article 38(2) of the <i>KII Regulation</i>]

Delete the following definitions. The text is not struck through.

<i>common platform outsourcing rules</i>	<i>SYSC</i> 8.1.1R to <i>SYSC</i> 8.1.12G.
<i>key individual</i>	(in relation to a <i>UK recognised body</i>): (a) its chairman or president; (b) its <i>chief executive</i> ; (c) a member of its <i>governing body</i> ; (d) a <i>person</i> who, alone or jointly with one or more others, is responsible under the immediate authority of a <i>person</i> in (a), (b) or (c) or a committee of the <i>governing body</i> for the conduct of any <i>relevant function</i> .
<i>local</i>	(1) (except in <i>IFPRU</i> 1.1 (Application and purpose)) a <i>firm</i> which is a member of a <i>futures</i> and <i>options</i> exchange and whose <i>permission</i> includes a <i>requirement</i> that:

- (a) the *firm* will not conduct *designated investment business* other than:
 - (i) *dealing* for its own account on that *futures* or *options* exchange; or
 - (ii) *dealing* for the accounts of other members of the same *futures* and *options* exchange; or
 - (iii) making a price to other members of the same *futures* and *options* exchange; and
 - (iv) *dealing* for its own account in financial *futures* and *options* or other *derivatives* in the capacity of a customer; and
- (b) the performance of the *firm's* contracts must be guaranteed by and must be the responsibility of one or more of the clearing members of the same *futures* and *options* exchange.

(2) [deleted]

(3) (in *IFPRU* 1.1 (Application and purpose) has the meaning given in the definition of “local firm” in article 4(1)(4) of the *EU CRR*.

MiFID II Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the *insurance mediation directive* and *AIFMD* (http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?url=OJ:JOL_2014_173_R_0009&from=EN).

MiFID implementing Directive Commission Directive No. 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

MiFID implementing requirement

- (1) (in relation to a *UK RIE*) any of the requirements applicable to that body under the *MiFID Regulation*.
- (2) (in relation to a body applying for recognition as a *UK RIE*) any of the requirements under the *MiFID Regulation* which, if its application were successful, would apply to it.

MiFID outsourcing rules SYSC 8.1.1R to SYSC 8.1.11R.

normal trading hours (in relation to a *trading venue* or an *investment firm*) those hours which the *trading venue* or *investment firm* establishes in advance and makes public as its trading hours.

[Note: article 2(5) of the *MiFID Regulation*]

<i>person with whom a relevant person has a family relationship</i>	<p>any of the following:</p> <ul style="list-style-type: none"> (a) the spouse of the <i>relevant person</i> or any partner of that person considered by national law as equivalent to a spouse; (b) a child or stepchild of the <i>relevant person</i>; (c) any other relative of the <i>relevant person</i> who has shared the same household as that person for at least one year on the date of the personal transaction concerned. <p>[Note: article 2(7) of the <i>MiFID implementing Directive</i>]</p>
<i>portfolio trade</i>	<p>a transaction in more than one security where those securities are grouped and traded as a single lot against a specific reference price.</p> <p>[Note: article 2(6) of the <i>MiFID Regulation</i>]</p>
<i>related financial instrument</i>	<p>means a <i>financial instrument</i>, the price of which is closely affected by price movements in another <i>financial instrument</i> which is the subject of <i>investment research</i>, and includes a derivative on that other <i>financial instrument</i>.</p> <p>[Note: article 25(2) of the <i>MiFID implementing Directive</i>]</p>
<i>relevant competent authority</i>	<p>(in relation to a <i>financial instrument</i>) means the <i>competent authority</i> of the most relevant market in terms of liquidity for that <i>financial instrument</i>.</p> <p>[Note: article 2(7) of <i>MiFID Regulation</i>]</p>
<i>relevant liquid market</i>	<p>a market for a share determined in accordance with paragraph 2 and 8 of Article 9 of the <i>MiFID Regulation</i>, in many cases this will be the Member State where the share or the unit was first admitted to trading on a regulated market.</p> <p>[Note: article 9 of the <i>MiFID Regulation</i>]</p>
<i>rule on use of dealing commission</i>	<p><i>COBS</i> 11.6.3R.</p>
<i>turnover</i>	<p>(in relation to a <i>financial instrument</i>) means the sum of the results of multiplying the number of units of that instrument exchanged between buyers and sellers in a defined period of time, pursuant to <i>transactions</i> taking place on a <i>trading venue</i> or otherwise, by the unit price applicable to each such <i>transaction</i>.</p> <p>[Note: article 2(9) of the <i>MiFID Regulation</i>]</p>

FEES (DATA REPORTING APPLICATIONS) INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance); and
 - (d) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
 - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Data Reporting Services Regulations 2017 (SI 2017/699):
 - (a) regulation 20 (Guidance); and
 - (b) regulation 40 (FCA: penalties, fees and exemption from liability in damages).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 3 July 2017.

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- F. This instrument may be cited as the Fees (Data Reporting Applications) Instrument 2017.

By order of the Board
30 June 2017

Annex

Amendments to the Fees manual (FEES)

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

1 Fees Manual

1.1 Application and Purpose

1.1.1 G (1) ...

...

(3) *FEES 3* (Application, Notification and Vetting Fees) covers one-off fees payable on a particular event for example:

- (a) various application fees (including those in relation to authorisation, variation of *Part 4A permission*, registration as a *CBTL firm*, authorisation of a *data reporting services provider*, listing and the Basel Capital Accord); and

...

...

...

2 General Provisions

...

2.2 Late Payments and Recovery of Unpaid Fees

...

Recovery of Fees

2.2.3 G (1) Paragraph 23(8) of Schedule 1ZA of to the *Act* permits the *FCA* to recover fees (including *fees* relating to *payment services*, the issuance of *electronic money*, ~~fees relating to *CBTL firms*~~, *data reporting services providers*, *designated credit reference agencies*, *designated finance platforms* and, where relevant, *FOS* levies and *CFEB* levies).

...

...

3 Application, Notification and Vetting Fees

3.1 Introduction

...

3.1.1A R A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider*, a *CBTL firm*, a *fee-paying electronic money issuer*, a *designated finance platform* ~~and~~, a *designated credit reference agency* and a data reporting services provider.

...

3.1.6D G ...

3.1.6E G (1) Application fees for authorisation under regulation 7 of the *DRS Regulations*, and for operators of *trading venues* seeking verification of their compliance with Title V of *MiFID II* under regulation 8 of the *DRS Regulations* and for variation of an authorisation under regulation 12 of the *DRS Regulations* are set out in the table at *FEES 3.2.7R*.

(2) The fee depends on the number of *data reporting services* for which the *firm* is making an application.

...

3.2 Obligation to pay fees

...

Method of payment

...

3.2.5 G (1) (a) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part 4A permission*, authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*, registration under article 8(1) of the *MCD Order*, authorisation under regulation 7 of the *DRS Regulations* or verification under regulation 8 of the *DRS Regulations* or notification or registration under the *AIFMD UK regulation*.

(b) Any application or notification received by the *FCA* without the accompanying appropriate fee, in full and without deduction (see *FEES 3.2.1R*), will not be treated as an application or notification made, incomplete or otherwise, in accordance with section 55U(4), or 55H of the *Act* or regulation 5(3) or 12(3) of the *Payment Services Regulations* or regulation 5 or 12 of the *Electronic Money Regulations* or regulation 11(1) and 60(a) of the *AIFMD UK regulation*, regulation 7(2) of the *DRS Regulations* or article 9 of the *MCD Order*.

...

...

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		
<p><u>(zw) An applicant for authorisation under regulation 7 of the DRS Regulations, or the operator of a trading venue seeking verification of their compliance with Title V of MiFID II under regulation 8 of the DRS Regulations or an applicant for variation of an authorisation under regulation 12 of the DRS Regulations.</u></p>	<p><u>Either (1), (2), or (3) applies as set out below:</u></p> <p><u>(1) If the applicant is applying for permission to operate one data reporting service, 5,000.</u></p> <p><u>(2) If the applicant is applying for permission to operate more than one data reporting services, 50% of the fee at (1) for each additional service plus the fee at (1).</u></p> <p><u>(3) If the applicant is applying for variation of an authorisation, 50% of the fee at (1) for each additional service.</u></p>	<p><u>On the date the application is made.</u></p>

**MARKETS AND ORGANISATIONAL REQUIREMENTS
(MiFID 2) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 64A (Rules of conduct);
 - (b) section 137A (The FCA’s general rules);
 - (c) section 137H (General rules about remuneration);
 - (d) section 137T (General supplementary powers);
 - (e) section 139A (Power of the FCA to give guidance);
 - (f) section 293 (Power to make notification rules in respect of recognised bodies);
 - (g) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
 - (h) paragraph 19 (Establishment) of Schedule 3 (EEA Passport Rights); and
 - (i) paragraph 20 (Services) of Schedule 3 (EEA Passport Rights);
 - (2) the power in regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, (SI 2001/995), as inserted by the Financial Services and Markets Act (Markets in Financial Instruments) Regulations 2017, (SI 2017/701);
 - (3) the powers of direction, guidance and related provisions in or under the following provisions of the Data Reporting Services Regulations 2017, (SI 2017/699):
 - (a) regulation 7 (Application for authorisation);
 - (b) regulation 8 (Application for verification of compliance);
 - (c) regulation 11 (Cancellation of authorisation);
 - (d) regulation 12 (Variation of authorisation);
 - (e) regulation 20 (Guidance);
 - (f) regulation 21 (Reporting requirements); and
 - (g) regulation 40 (FCA: penalties, fees and exemption from liability in damages);
 - (4) the powers of direction, guidance and related provisions in or under the following provisions of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, (SI 2017/701):
 - (a) regulation 16 (FCA duty to establish position limits)
 - (b) regulation 17 (Exemption for non-financial entities);
 - (c) regulation 27 (FCA power to require information);

- (d) paragraph 7 of Schedule 1 (Guidance); and
 - (e) paragraph 8 of Schedule 1 (Reporting requirements); and
- (5) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 3 January 2018 except as indicated in:
- (1) paragraph D Commencement 3 July 2017;
 - (2) paragraph E Commencement 31 July 2017;
 - (3) paragraph F Commencement 4 December 2017
 - (4) paragraph G Commencement 31 March 2018;
 - (5) paragraph H Commencement 3 March 2019; and
 - (6) paragraph I Commencement 3 September 2019.

Commencement 3 July 2017

- D. The following provisions come into force on 3 July 2017:
- (1) FEES 2, FEES 3.1.2G, FEES 3.2.7R Part 1 (1) (zx), FEES 3.2.7R Part 1 (1)(zy) concerning fees for data reporting services providers establishing a technology connection to the FCA and FEES TP 16R, which sets out a transitional provision in relation to the payment of onboarding fees, and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017;
 - (2) MAR 5.7.1AD, MAR 5.7.1CD, MAR 5 Annex 1D, MAR 5A.10.1D, MAR 5A.11.1D and MAR 5A Annex 1D concerning applications for transparency waivers and deferrals and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017;
 - (3) MAR 9.1, MAR 9.2 (except for MAR 9.2.3D, MAR 9.2.4G and MAR 9.2.5D); MAR 9.3 (except for MAR 9.3.1D, MAR 9.3.2D, MAR 9.3.3G, MAR 9.3.7D, MAR 9.3.8D and MAR 9.3.9G); MAR 9.5; MAR 9 Annexes (except for MAR 9 Annex 3D, MAR 9 Annex 4D, MAR 9 Annex 5D, MAR 9 Annex 6D, MAR 9 Annex 8D and MAR 9 Annex 9D) concerning applications for authorisation and verification and data reporting services providers establishing a technology connection to the FCA and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017;

- (4) MAR 10.2.2D relating to the application of position limits, MAR 10.2.4D and MAR 10 Annex 1D concerning the application process for non-financial entities for the exemption from position limit obligations and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017;
- (5) SUP 17A for the purpose of facilitating a technology connection to the FCA and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017; and
- (6) REC 3.14A.7AD and REC 3.14A.7CD concerning applications for transparency waivers and deferrals and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017.

Commencement 31 July 2017

- E. SUP TP 1.2 which sets out transitional provisions in relation to the exercise of passport rights by UK firms and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017 comes into force on 31 July 2017.

Commencement 4 December 2017

- F. SUP 13 concerning the exercise of passport rights by UK firms and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017 comes into force on 4 December 2017.

Commencement 31 March 2018

- G. Amendments made to FEES 1.1.2R(2)(o), FEES 4 Annex 3AR and the part of FEES 4.2.11R concerning the payment of fees for transaction reporting under SUP 17 come into force on 31 March 2018.

Commencement 3 March 2019

- H. Until 3 March 2019, every direct and indirect reference to the term CTP in MAR 9.1; MAR 9.2 (except for MAR 9.2.3D, MAR 9.2.4G and MAR 9.2.5D); MAR 9.3 (except for MAR 9.3.1D, MAR 9.3.2D, MAR 9.3.3G, MAR 9.3.7D, MAR 9.3.8D and MAR 9.3.9G); MAR 9.5; MAR 9 Annexes (except for MAR 9 Annex 3D, MAR 9 Annex 4D, MAR 9 Annex 5D, MAR 9 Annex 6D, MAR 9 Annex 8D and MAR 9 Annex 9D) concerning applications for authorisation and verification and data reporting services providers establishing a technology connection to the FCA is not to be read as including reference to the operation of a CTP in relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue.

Commencement 3 September 2019

- I. Until 3 September 2019, every direct and indirect reference to the term CTP in MAR 9.2.3D, MAR 9.2.4G, MAR 9.2.5D; MAR 9.3.1D, MAR 9.3.2D, MAR 9.3.3G; MAR 9.3.7D, MAR 9.3.8D, MAR 9.3.9G; MAR 9.4; MAR 9 Annex 3D; MAR 9 Annex 4D; MAR 9 Annex 5D; MAR 9 Annex 6D; MAR 9 Annex 8D and MAR 9 Annex 9D

is not to be read as including reference to the operation of a CTP in relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue.

Amendments to the Handbook

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

(1)	(2)
Principles for Businesses (PRIN)	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex C
Fit and Proper test for Approved Persons (FIT)	Annex D
General Provisions (GEN)	Annex E
Fees manual (FEES)	Annex F
Prudential sourcebook for Investment Firms (IFPRU)	Annex G
Interim Prudential sourcebook for Investment Businesses (IPRU (INV))	Annex H
Conduct of Business sourcebook (COBS)	Annex I
Insurance: Conduct of Business sourcebook (ICOBS)	Annex J
Market Conduct sourcebook (MAR)	Annex K
Supervision manual (SUP)	Annex L
Decision Procedure and Penalties manual (DEPP)	Annex M
Consumer Credit sourcebook (CONC)	Annex N
Recognised Investment Exchanges sourcebook (REC)	Annex O

Amendments to material outside the Handbook

- K. The Service Companies Handbook Guide (SERV) is amended in accordance with Annex P to this instrument.
- L. The Enforcement Guide (EG) is amended in accordance with Annex Q to this instrument.

Notes

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

European Union Legislation

- N. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the electronic Official Journal of the European Union is deemed authentic.

Citation

- O. This instrument may be cited as the Markets and Organisational Requirements (MiFID 2) Instrument 2017.

By order of the Board
30 June 2017

Annex A

Amendments to the Principles for Businesses (PRIN)

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

1 Introduction

1.1 Application and purpose

...

Purpose

- 1.1.2 G The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. This includes provisions which implement the *Single Market Directives*. They derive their authority from the ~~appropriate regulator's~~ FCA's rule-making powers as set out in the *Act* and reflect the *statutory objectives*.

...

Taking group activities into account

- 1.1.5 G *Principles* 3 (Management and control), 4 (Financial prudence) and (in so far as it relates to disclosing to the ~~appropriate regulator~~ FCA) 11 (Relations with regulators) take into account the activities of members of a *firm's group*. ...

Standards in markets outside the United Kingdom

- 1.1.6 G 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 ~~appropriate regulator~~ FCA will take into account the standards expected in the market in which the *firm* 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 ~~appropriate regulator~~ FCA will have regard to the extent of, and limits to, the duties owed by the *firm* to that regulator. (*Principle* 4 (Financial prudence) also applies to world-wide activities.)

...

Consequences of breaching the Principles

1.1.7 G ... Under each of the *Principles* the onus will be on the ~~appropriate regulator~~ FCA to show that a *firm* has been at fault in some way. What constitutes "fault" varies between different *Principles*. Under *Principle 1* (Integrity), for example, the ~~appropriate regulator~~ FCA would need to demonstrate a lack of integrity in the conduct of a *firm's* business ...

...

1.1.9 G 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 ~~appropriate regulator's~~ FCA's other *rules* and *guidance* or EU regulations should not be viewed as exhausting the implications of the *Principles* themselves.

...

1.2 Clients and the Principles

...

Approach to client categorisation

1.2.2 G *Principles 6, 8 and 9* and parts of *Principle 7*, as qualified by *PRIN 3.4.1R*, apply only in relation to *customers* (~~that is, clients which are not eligible counterparties~~). The approach that a *firm* (other than for *credit-related regulated activities* in relation to which *client* categorisation does not apply) needs to take regarding categorisation of *clients* into *customers* and *eligible counterparties* will depend on whether the *firm* is carrying on *designated investment business* or other activities, as described in *PRIN 1.2.3G*.

...

1 Annex 1R Non-designated investment business - clients that a firm may treat as an eligible counterparty for the purposes of PRIN

1.1	A <i>firm</i> may categorise the following types of <i>client</i> as an <i>eligible counterparty</i> for the purposes of <i>PRIN</i> :	
	...	
	(4)	a State investment body, or a body charged with, or intervening in, the management of the public debt <u>at national level</u> ;
	...	
...		

2 The Principles

2.1 The Principles

2.1.1 R The Principles

...	
11 Relations with regulators	A <i>firm</i> must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator <u>FCA</u> appropriately anything relating to the <i>firm</i> of which that regulator would reasonably expect notice.

...

3 Rules about application

3.1 Who?

...

3.1.2 G ~~COBS 1 Annex 1 and the territorial guidance in PERG 13.6 all contain~~ contains guidance that is relevant to the reservation of responsibility to a *Home State regulator* referred to in *PRIN* 3.1.1R(1).

...

3.2 What?

...

3.2.3 R *Principles* 3, 4 and (in so far as it relates to disclosing to the ~~appropriate regulator~~ FCA) 11 (and this chapter) also:

- (1) apply with respect to the carrying on of *unregulated activities* (for *Principle* 3 this is only in a *prudential context*); and
- (2) take into account any activity of other members of a *group* of which the *firm* is a member.

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> unless another applicable <i>rule</i> or <i>EU 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>EU regulation</i> .
...	
<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 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> unless another applicable <i>rule</i> or <i>EU 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>EU regulation</i> .
...	

3.4 General

Clients and the Principles

3.4.1 R ~~Although *Principle 7* refers to *clients*, 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*.

...

Reference to “regulators” in Principle 11

3.4.5 R Where *Principle 11* refers to regulators, this means, in addition to the ~~*appropriate regulator*~~ *FCA*, other regulators with recognised jurisdiction in relation to *regulated activities*, whether in the *United Kingdom* or abroad.

4.1 Principles: MiFID business

4.1.1 G *PRIN 3.1.6R* ensures that the *Principles* do not impose obligations upon *firms* which are inconsistent with an *EU* instrument. If a ~~*Principles Principle*~~ *Principle* does purport to impose such an obligation *PRIN 3.1.6R* disapplies that *Principle*

but only to the extent necessary to ensure compliance with European law. 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 3.3.1R*, the territorial application of a number of *Principles* to a *UK MiFID investment firm* is extended to the extent that another applicable rule or EU regulation which is relevant to an activity has a wider territorial scope. ...

...

What?

...

- 4.1.5 G ~~Although *Principle 8* does not apply to *eligible counterparty business*, a firm will owe obligations in respect of conflicts of interest set out in *SYSC 10* which are wider than those contained in *Principle 8* in that they apply to *eligible counterparty business*. [deleted]~~

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Application and purpose

1.1A Application

...

- 1.1A.1A G The application of this sourcebook to *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 <u>4 to 10, 12, 18, 19B, 21, 22</u>
...	...

...

1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
...		
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 <u>in Table A</u> 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 <u>Column A++ in Table A</u> 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 <u>in Table A</u> 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).
...		

2.7A	G	<i>EEA UCITS management companies</i> are also reminded that they must comply with:		
		(1)	the <i>common platform requirements</i> indicated in Column A+ (Application to a management company) in <u>Table A</u> in Part 3 of this Annex;	
		...		
What?				
2.8	R	...		
<u>2.8A</u>	R	(1)	<u>Subject to (2) and (3), 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 <i>MiFID</i>, <i>MiFIR</i> and the <i>MiFID Org Regulation</i>) apply to a firm's business other than <i>MiFID business</i> or <i>structured deposits regulated activities</i> as if they were <i>rules</i> or <i>guidance</i> in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm).</u>	
		(2)	<u>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:</u>	
			<u>(1)</u>	<u>(2)</u>
			<u>“ancillary services”</u>	<u><i>ancillary services</i> or <i>ancillary activities</i> associated with the <i>firm's regulated activities</i></u>
			<u>“client” and “potential client”</u>	<u><i>client</i></u>
			<u>“competent authority”</u>	<u><i>FCA</i></u>
			<u>“investment firm” and “firm”</u>	<u><i>firm</i></u>
			<u>“investment service” and “investment services and activities”</u>	<u><i>designated investment business</i></u>
			<u>“portfolio management” and “portfolio management service”</u>	<u><i>managing investments</i></u>

		<p><u>“Directive 2014/65/EU”;</u> <u>“Regulation (EU) No 600/2014”;</u> <u>“Directive 2014/57/EU” and</u> <u>“Regulation (EU) No 596/2014” and their</u> <u>implementing measures</u></p>	<p><u>regulatory system, except</u> <u>where the reference is to a</u> <u>specific provision of a</u> <u>Directive or Regulation in</u> <u>Column (1) in which case the</u> <u>reference must be read as</u> <u>referring to such specific</u> <u>provision</u></p>
		<p><u>“shall”</u></p>	<p><u>must</u></p>
	(3)	<p><u>Any references within the <i>MiFID Org Regulation</i> for the</u> <u>purpose of (1) to other provisions of <i>EU law</i> must be</u> <u>interpreted in light of this rule.</u></p>	
	(4)	<p><u>This rule does not apply to a <i>collective portfolio</i></u> <u>management investment firm in relation to the firm’s</u> <u>business other than its <i>MiFID business</i>.</u></p>	
		<p><u>[Note: The <i>MiFID Org Regulation</i> can be found at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN.]</u></p>	
2.8B	G	<p><u>The purpose of SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR</u> <u>is that the <i>common platform organisational requirements</i> also</u> <u>apply when carrying on any of the activities listed in SYSC 1</u> <u>Annex 1 2.8R even where they do not involve <i>investment services</i></u> <u>and/or activities and, where relevant, <i>ancillary services</i> (unless</u> <u>provided otherwise within a specific rule).</u></p>	
2.8C	G	<p><u>SYSC 1 Annex 1 2.8AR(3) has the effect that, where the</u> <u>requirement in the <i>MiFID Org Regulation</i> that is a <i>common</i></u> <u><i>platform organisational requirement</i> includes a reference or cross</u> <u>reference to another part of the <i>MiFID Org Regulation</i>, that</u> <u>reference or cross reference is given the same meaning as for the</u> <u>purposes of SYSC 1 Annex 1 2.8AR.</u></p>	
2.8D	G	<p><u>For the purpose of SYSC 1 Annex 1 2.8AR, a firm should apply</u> <u>any guidance published by the FCA that assists with interpreting</u> <u>the definitions in <i>MiFID</i>, <i>MiFIR</i> and the <i>MiFID Org Regulation</i>.</u></p>	
2.9	G	<p>The application of the provisions on the conflicts of interest in SYSC 10 is set out in SYSC 10.1.1R to SYSC 10.1.1AR and SYSC 10.2.1R.</p>	
2.10	R	<p>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:</p>	

		...	
...			
2.14	G	...	
2.14A	G	<u>The systems and control requirements in article 17 of MiFID for the following are in chapter 7A of the Market Conduct sourcebook (MAR):</u>	
		(1)	<u>algorithmic trading;</u>
		(2)	<u>direct electronic access to a trading venue; and</u>
		(3)	<u>acting as a general clearing member of a trading venue.</u>
2.14B	G	<u>Firms should refer to articles 38 to 42 of the MiFID Org Regulation and COBS 11A for additional organisational requirements for underwriting and placing.</u>	
		Where?	
...			
2.16A	R	(1)	The <i>common platform requirements</i> referred to in Column A+ in <u>Table A</u> of Part 3 (below) apply to a <i>UK UCITS management company</i> in relation to <i>passport activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> .
		...	
...			
2.17	R	The <i>common platform record-keeping requirements</i> apply to activities carried on by a <i>firm</i> from an establishment maintained 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 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 13(9) <u>16(11) first paragraph</u> of <i>MiFID</i>]	
...			
2.18A	G	<u>SYSC 6.1.1R on systems and controls for countering the risk that a firm might be used to further financial crime is:</u>	
		(1)	<u>a common platform organisational requirement, not a common platform requirement on financial crime; and</u>
		(2)	<u>subject to the application, amongst other provisions, of SYSC</u>

		<u>1 Annex 1 2.13R, SYSC 1 Annex 1 2.16R and SYSC 1 Annex 1 2.18R.</u>														
...																
Part 3	Tables summarising the application of the common platform requirements to different types of firm															
3.1	G	<p>The <i>common platform requirements</i> apply in the following four ways as described in the following table (subject to the provisions in Part 2 of this Annex (<u>Application of the common platform requirements</u>)).</p> <table border="1"> <thead> <tr> <th><u>Type of firm</u></th> <th><u>Common platform requirements</u></th> </tr> </thead> <tbody> <tr> <td><u>Common platform firm</u></td> <td><u>SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR</u></td> </tr> <tr> <td><u>Management company</u></td> <td><u>SYSC 1 Annex 1 3.2AG</u></td> </tr> <tr> <td><u>Full-scope UK AIFM of an authorised AIF</u></td> <td><u>SYSC 1 Annex 1 3.2BR</u></td> </tr> <tr> <td><u>MiFID optional exemption firm</u></td> <td><u>SYSC 1 Annex 1 3.2CR</u></td> </tr> <tr> <td><u>Third country firm</u></td> <td><u>SYSC 1 Annex 1 3.2CR</u></td> </tr> <tr> <td><u>All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms)</u></td> <td><u>SYSC 1 Annex 1.3.3R</u></td> </tr> </tbody> </table>	<u>Type of firm</u>	<u>Common platform requirements</u>	<u>Common platform firm</u>	<u>SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR</u>	<u>Management company</u>	<u>SYSC 1 Annex 1 3.2AG</u>	<u>Full-scope UK AIFM of an authorised AIF</u>	<u>SYSC 1 Annex 1 3.2BR</u>	<u>MiFID optional exemption firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>	<u>Third country firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>	<u>All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms)</u>	<u>SYSC 1 Annex 1.3.3R</u>
<u>Type of firm</u>	<u>Common platform requirements</u>															
<u>Common platform firm</u>	<u>SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR</u>															
<u>Management company</u>	<u>SYSC 1 Annex 1 3.2AG</u>															
<u>Full-scope UK AIFM of an authorised AIF</u>	<u>SYSC 1 Annex 1 3.2BR</u>															
<u>MiFID optional exemption firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>															
<u>Third country firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>															
<u>All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms)</u>	<u>SYSC 1 Annex 1.3.3R</u>															
<u>Common platform firm</u>																
3.2	G	<p>For a <i>common platform firm</i> ; (other than a <i>dormant account fund operator</i> not subject to <i>MiFID</i>):</p> <table border="1"> <tbody> <tr> <td>(1)</td> <td><u>SYSC 4 to SYSC 10</u> they apply in accordance with Column A in the table <u>Table A</u> below ; and</td> </tr> <tr> <td>(2)</td> <td><u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation</u> are directly applicable to the <i>firm</i>.</td> </tr> </tbody> </table>	(1)	<u>SYSC 4 to SYSC 10</u> they apply in accordance with Column A in the table <u>Table A</u> below ; and	(2)	<u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation</u> are directly applicable to the <i>firm</i> .										
(1)	<u>SYSC 4 to SYSC 10</u> they apply in accordance with Column A in the table <u>Table A</u> below ; and															
(2)	<u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation</u> are directly applicable to the <i>firm</i> .															
<u>3.2-A</u>	<u>R</u>	<p>For a <i>common platform firm</i> (other than a <i>dormant account fund operator</i> not subject to <i>MiFID</i>), <u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation</u> apply to the <i>firm's</i> business other than <i>MiFID business</i> or <i>structured deposits regulated</i></p>														

		<u>activities as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.</u>	
3.2-B	R	For a <u>common platform firm</u> that is a <u>dormant account fund operator</u> and is not subject to <u>MiFID</u> :	
		(1) <u>SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and</u>	
		(2) <u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation apply as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.</u>	
<u>Management company</u>			
3.2A	G	For a <u>management company</u> , they <u>the common platform requirements in SYSC 4 to SYSC 10</u> apply in accordance with Column A+ in the table <u>Table A</u> below.	
<u>Full-scope UK AIFM of an authorised AIF</u>			
3.2B	R	For a <u>full-scope UK AIFM</u> of an <u>authorised AIF</u> , they <u>the common platform requirements in SYSC 4 to SYSC 10</u> apply in line <u>accordance</u> with Column A++ in the table <u>Table A</u> below.	
<u>MiFID optional exemption firm and a third country firm</u>			
3.2C	R	For a <u>MiFID optional exemption firm</u> and a <u>third country firm</u> :	
		(1)	<u>SYSC 4 to SYSC 10 apply as rules or as guidance in accordance with Table B below in the following way:</u>
			(a) <u>where a rule is shown modified as 'Guidance', it should be read as guidance (as if "should" appeared in that rule instead of "must"); and</u>
			(b) <u>the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm's business; and</u>
(2) <u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation apply as if the MiFID Org Regulation applied to the firm as rules (in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR) or as guidance in accordance with Part 1 of Table C below. Part 2 of Table C sets out those articles of the MiFID Org Regulation.</u>			
3.2D	R	(1) <u>Subject to (2), SYSC 4.3A.6R, SYSC 4.3A.8R and SYSC 7.1.18R apply to a MiFID optional exemption firm that is</u>	

			<u>'significant' as a rule or as guidance in accordance with SYSC 1 Annex 1 3.2CR.</u>
		(2)	<u>In (1), 'significant' means a MiFID optional exemption firm that meets one of more of the conditions in paragraphs (1) to (5) of IFPRU 1.2.3R and related rules and guidance.</u>
<u>Other firms</u>			
3.3E	R	<u>SYSC 1 Annex 1 3.3R does not apply to the following:</u>	
		(1)	<u>insurers;</u>
		(2)	<u>managing agents;</u>
		(3)	<u>the Society;</u>
		(4)	<u>full-scope UK AIFMs of unauthorised AIFs;</u>
		(5)	<u>MiFID optional exemption firms; and</u>
		(6)	<u>third country firms.</u>
3.3	G R	<u>For all other firms apart from insurers, managing agents, the Society and full scope UK AIFMs of unauthorised AIFs, they :</u>	
		(1)	<u>SYSC 4 to SYSC 10 apply as rules or as guidance in accordance with Column B in the table Table A below in the following way:</u>
		(a)	<u>For these firms, where a rule is shown modified in Column B as 'Guidance', it should be read as guidance (as if "should" appeared in that rule rule instead of "must") ; and</u>
		(b)	<u>the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm's firm's business; and</u>
(2)	<u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation do not apply.</u>		
3.3A	R	<u>SYSC 1 Annex 1 3.3R(1)(b) does not apply to a firm in relation to the requirements in SYSC 4.5 (Management responsibilities maps for UK relevant authorised persons), SYSC 4.6 (Management responsibilities maps for non-UK relevant authorised persons), SYSC 4.7 (Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities), SYSC 4.8 (Senior management responsibilities for third country relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material) and SYSC 5.2 (Certification</u>	

	<u>regime).</u>
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[Editor's note: The rows in Table A below relating to SYSC 10.1.4R, SYSC 10.1.6R, SYSC 10.1.10R and SYSC 10.1.11R are provisional, as they depend on possible changes to COBS 12 consulted on in CP16/29. The final content of these rows will be confirmed at the time of making the final rules.]

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

Provision SYSC 4	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, managing agents the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
<u>SYSC 4.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i></u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 4.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 4.1.1CR	Rule for a <i>BIPRU firm</i>	Rule for a <i>BIPRU firm</i> that is a <i>UCITS investment firm</i>	Not applicable	<u><i>Third country BIPRU firms:</i></u> <u>Rule</u> <u><i>Other firms:</i></u> Not applicable
...				

SYSC 4.1.4R	<u>Rule Not applicable</u>	Rule	Not applicable	(1) and (3) ; Guidance ; (2) ; Rule
...				
SYSC 4.1.5R	Rule applies only to a <i>MiFID investment firm</i> <u>Not applicable</u>	Rule	Not applicable	Not applicable
...				
SYSC 4.1.7R	<u>Rule for a <i>CRR firm</i> only</u>	Rule	Not applicable	Guidance
...				
SYSC 4.1.9R	<u>Rule Not applicable</u>	Rule	Not applicable	Not applicable
SYSC 4.1.10R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance - except reference to SYSC 4.1.9R which does not apply to these <i>firms</i>
...				
SYSC 4.2.1R	Rule	Rule	Rule	UK branch of non-EEA bank rule applies. Other firms Guidance
...				
SYSC 4.2.2R	Rule	Rule	Rule	UK branch of a non-EEA bank Rule applies Other firms this provision does not apply

				<u>Not applicable</u>
SYSC 4.2.3G - 4.2.5G	Guidance	Guidance	Guidance	–UK branch of a non-EEA bank– Guidance –Other firms– these provisions do not apply <u>Not applicable</u>
SYSC 4.2.6R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	Not applicable	–UK branch of a non-EEA bank– Rule applies –Other firms– this provision does not apply <u>Not applicable</u>
...				
SYSC 4.3.1R	Rule <u>Not applicable</u>	Rule	Not applicable	Rule (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYSC 4.3.2R	Rule <u>Not applicable</u>	Rule	Not applicable	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
...				
SYSC 4.3A.-1R	Rule applicable to CRR firms	Rule for a <i>CRR firm</i> that is a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC	Rule applicable	Rule for a <i>CRR</i>	Not	Not applicable

4.3A.1R	to CRR firms	firm that is a UCITS investment firm	applicable	
<u>SYSC 4.3A.1AR</u>	<u>Rule</u>	<u>Rule for a CRR firm that is a UCITS investment firm</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 4.3A.2R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
<u>SYSC 4.3A.2AG</u>	<u>Guidance</u>	<u>Guidance for a CRR firm that is a UCITS investment firm</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 4.3A.3R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.4R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.5R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.6R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.7R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.8R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.9R	Rule applicable to CRR firms	Rule for a CRR firm that is a	Not applicable	Not applicable

		<i>UCITS investment firm</i>		
SYSC 4.3A.10R	Rule applicable to CRR firms	Rule for a CRR firm that is a <i>UCITS investment firm</i>	Not applicable	Not applicable
...				
SYSC 4.5	Whole section applies to <i>UK relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>
SYSC 4.6	Applies to <i>EEA relevant authorised persons</i> and <i>third country relevant authorised persons</i> in accordance with the <i>rules</i> in SYSC 4.6	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>
SYSC 4.7	Whole section applies to <i>UK relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>
SYSC 4.8	Applies to <i>third country relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised</u>

				<u>persons only.</u> <u>All rules apply</u> <u>as rules and</u> <u>not as</u> <u>guidance.</u>
SYSC 4.9	Whole section applies to <i>third country relevant authorised persons</i> and <i>UK relevant authorised persons only</i>	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only.</u> <u>All rules apply as rules and not as guidance.</u>

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, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
<u>SYSC 5.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 5.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 5.1.1R	<u>Rule Not applicable</u>	Rule	Not applicable	Rule

...				
SYSC 5.1.6R	<u>Rule Not applicable</u>	Rule	Guidance	Guidance
...				
SYSC 5.1.12R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance
...				
SYSC 5.1.13R	<u>Rule Not applicable</u>	Rule	Not applicable	Rule
SYSC 5.1.14R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance
...				

Provision SYSC 6	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, managing agents, the Society and ² full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
<u>SYSC 6.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>

<u>SYSC</u> <u>6.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
<u>SYSC</u> <u>6.1.2R</u>	Rule <u>Not applicable</u>	Rule	Not applicable	Guidance
...				
<u>SYSC</u> <u>6.1.3R</u>	Rule <u>Not applicable</u>	Rule	Not applicable	- Guidance This provision shall be read with the following 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 <u>SYSC</u> 6.1.3R and <u>SYSC</u> 6.1.4R as guidance."
...				
<u>SYSC</u> <u>6.1.4R</u>	Rule <u>Not applicable</u>	Rule	Not applicable	(1) ; (3) and (4) ; Guidance ; (2) ; - Rule for <i>firms</i> which carry on <i>designated</i>

				<i>investment business with or for retail clients or professional clients.</i> - Guidance for all other firms.
SYSC 6.1.4-AG	<u>Not applicable Guidance</u>	Not applicable	Rule	Guidance
...				
<u>SYSC 6.1.4-CG</u>	<u>Guidance applies to relevant authorised persons only</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 6.1.5R	<u>Not applicable</u>	Rule	Not applicable	- Guidance - " <i>investment services and/or activities</i> " shall be read as " <i>financial services and activities</i> "
...				
SYSC 6.2.1R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance
...				
<u>SYSC 6.2.1BG</u>	<u>Guidance applies to relevant authorised persons only</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				

Provision	COLUMN A Application to a	COLUMN A+ Application to	COLUMN A++ A++	COLUMN B Application to
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SYSC 7	common platform firm other than to a UCITS investment firm	a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
<u>SYSC 7.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i></u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 7.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 7.1.2R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 7.1.3R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 7.1.4AG	<u>Not applicable</u>	Rule for a <i>UCITS</i>	Not	Guidance

	<u>Guidance</u>	<i>investment firm</i> ; otherwise guidance	applicable	
...				
<i>SYSC</i> 7.1.5R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
<i>SYSC</i> 7.1.6R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
<i>SYSC</i> 7.1.7R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
...				
<i>SYSC</i> 7.1.8G	[deleted] <u>Guidance</u>	[deleted] <u>Guidance</u>	[deleted] <u>Guidance</u>	[deleted] <u>Guidance</u>
...				
<i>SYSC</i> 7.1.16AG	<u>Guidance applies to a BIPRU firm</u> [deleted]	<u>Guidance for a UCITS investment firm</u> otherwise not applicable [deleted]	Not applicable [deleted]	Not applicable [deleted]
<i>SYSC</i> 7.1.16BG	<u>Guidance applies to a BIPRU firm</u>	<u>Guidance for a UCITS investment firm</u>	Not applicable	Not applicable [deleted]

	[deleted]	otherwise not applicable [deleted]	[deleted]	
...				
<i>SYSC</i> <u>7.1.18AG</u> <u>7.1.18AA</u> <u>G</u>	Guide <u>Guidance</u> applies to a <i>CRR</i> <i>firm</i>	Guidance for a <i>UCITS</i> <i>investment firm</i> that is a <i>CRR</i> <i>firm</i> , otherwise not applicable	Not applicable	Not applicable
...				
<u><i>SYSC</i></u> <u>7.1.23G</u>	<u>Guidance</u> applies to <i>UK</i> <i>relevant</i> <i>authorised</i> <i>persons and</i> <i>third country</i> <i>relevant</i> <i>authorised</i> <i>persons only</i>	<u>Not applicable</u>	<u>Not</u> <u>applicable</u>	<u>Not applicable</u>

Provision SYSC 8	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, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID</u> <u>optional</u> <u>exemption firms</u> <u>and third</u> <u>country firms</u>
<u><i>SYSC</i></u> <u>8.1.-2G</u>	<u>Guidance</u>	<u>Not</u> <u>applicable</u> <u>save in</u> <u>relation to a</u> <u><i>UCITS</i></u> <u><i>investment</i></u> <u><i>firm and its</i></u>	<u>Not applicable</u>	<u>Not applicable</u>

		<u>MiFID business</u>		
<u>SYSC 8.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 8.1.4R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.5R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 8.1.6R	<u>Rule Not applicable</u>	Rule <u>for a UCITS investment firm in relation to its non-MiFID business</u> ; otherwise guidance	Not applicable	Rule
<u>SYSC 8.1.6AG</u>	<u>Guidance for a UCITS investment firm in relation to its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 8.1.7R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance

SYSC 8.1.8R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.9R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.10R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.11R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 8.2	<i>MiFID investment firms only</i> [deleted]	<i>UCITS investment firms only</i> [deleted]	Not applicable [deleted]	Not applicable [deleted]
SYSC 8.3	<i>MiFID investment firms only</i> [deleted]	<i>UCITS investment firms only</i>	Not applicable [deleted]	Not applicable [deleted]

		[deleted]		
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Provision SYSC 9	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, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
<u>SYSC 9.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a <i>UCITS investment firm and its MiFID business</i></u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 9.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 9.1.1R	<u>Rule Not applicable</u>	Rule	Rule but only for the requirement to arrange for orderly records to be kept of its business and internal organisation which do not relate to portfolio transactions and subscription and redemptions orders	Rule

<u>SYSC 9.1.1AR</u>	<u>Rule</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 9.1.2R	Rule applies only in relation to <i>MiFID business</i>	Rule applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i>	Rule but only for records specified by the modified application of SYSC 9.1.1R	Not applicable
SYSC 9.1.3R	Rule applies only in relation to <i>MiFID business</i> [deleted]	Rule applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i> [deleted]	Not applicable [deleted]	Not applicable [deleted]
...				
SYSC 9.1.7G	Guidance applies only in relation to <i>MiFID business</i> [deleted]	Guidance applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i> [deleted]	Not applicable [deleted]	Not applicable [deleted]

Provision SYSC 10	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, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
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<u>SYSC 10.1.-2G</u>	<u>Guidance</u>	<u>Guidance in relation to relation to a UCITS investment firm in relation to its MiFID business; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 10.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 10.1.4R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with COBS 12.2, or the production or dissemination of non-independent research in accordance with COBS 12.3
...				
SYSC 10.1.6R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with COBS 12.2, or the production or dissemination of non-independent

				research in accordance with <i>COBS</i> 12.3
SYSC 10.1.6AG	Not applicable	Not applicable	Not applicable <u>Guidance</u>	Guidance
<u>SYSC 10.1.6BG</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				
SYSC 10.1.8R	Rule <u>Not applicable</u>	Rule	Not applicable	Rule
SYSC 10.1.8AR	Rule <u>Not applicable</u>	Rule	Not applicable	Rule
SYSC 10.1.9G	Guidance <u>Not applicable</u>	Guidance	Not applicable	Guidance
<u>SYSC 10.1.9AR</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule</u>
SYSC 10.1.10R	Rule <u>Not applicable</u>	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with <i>COBS</i> 12.2, or the production or dissemination of non-independent research in accordance with <i>COBS</i> 12.3
SYSC 10.1.11R	Rule <u>Not applicable</u>	Rule	Not applicable	[Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with

				COBS 12.2, or the production or dissemination of non-independent research in accordance with COBS 12.3]
SYSC 10.1.11A G	Not applicable	Not applicable	Not applicable <u>Guidance</u>	Guidance
<u>SYSC 10.1.11B G</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				
SYSC 10.1.12G - 10.1.15G	<u>Guidance Not applicable</u>	Guidance for SYSC 10.1.12G; not applicable for SYSC 10.1.13G - SYSC 10.1.15G	Guidance for SYSC 10.1.12G; not applicable for SYSC 10.1.13G to SYSC 10.1.15G	Guidance
<u>SYSC 10.1.13-10.1.15G</u>	[deleted]	[deleted]	[deleted]	[deleted]
...				

Insert the following new Tables B and C after Table A. All the text is new and is not underlined.

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 4		

<i>SYSC 4.1.-2G</i>	Not applicable	Not applicable
<i>SYSC 4.1.-1G</i>	Guidance	Guidance
<i>SYSC 4.1.1R</i>	Rule	Rule
<i>SYSC 4.1.1AR</i>	Not applicable	Not applicable
<i>SYSC 4.1.1BR</i>	Not applicable	Not applicable
<i>SYSC 4.1.1CR</i>	Not applicable	Rule
<i>SYSC 4.1.1DR</i>	Not applicable	Not applicable
<i>SYSC 4.1.1ER</i>	Not applicable	Not applicable
<i>SYSC 4.1.1FG</i>	Not applicable	Not applicable
<i>SYSC 4.1.2R</i>	Rule	Guidance
<i>SYSC 4.1.2AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.2AAR</i>	Not applicable	Not applicable
<i>SYSC 4.1.2BR</i>	Not applicable	Not applicable
<i>SYSC 4.1.2CR</i>	Not applicable	Not applicable
<i>SYSC 4.1.2DR</i>	Not applicable	Not applicable
<i>SYSC 4.1.4R</i>	Not applicable	Not applicable
<i>SYSC 4.1.4AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.5R</i>	Not applicable	Not applicable
<i>SYSC 4.1.6R</i>	Rule	Guidance
<i>SYSC 4.1.7R</i>	Rule	Guidance
<i>SYSC 4.1.7AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.8G</i>	Guidance	Guidance
<i>SYSC 4.1.9R</i>	Not applicable	Not applicable
<i>SYSC 4.1.10R</i>	Not applicable	Not applicable
<i>SYSC 4.1.10AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.11G</i>	Guidance	Guidance

<i>SYSC 4.1.13G</i>	Guidance	Guidance
<i>SYSC 4.1.14G</i>	Guidance	Guidance
<i>SYSC 4.2.1R</i>	Rule	Rule
<i>SYSC 4.2.1AG</i>	Not applicable	Not applicable
<i>SYSC 4.2.2R</i>	Rule	Rule
<i>SYSC 4.2.3G - 4.2.5G</i>	Guidance	Guidance
<i>SYSC 4.2.6R</i>	Rule	Rule
<i>SYSC 4.2.7R</i>	Not applicable	Not applicable
<i>SYSC 4.2.8G</i>	Not applicable	Not applicable
<i>SYSC 4.3.1R</i>	Not applicable	Not applicable
<i>SYSC 4.3.2R</i>	Not applicable	Not applicable
<i>SYSC 4.3.2AG</i>	Not applicable	Not applicable
<i>SYSC 4.3.3G</i>	Guidance	Guidance
<i>SYSC 4.3A.-1R</i>	Rule	Not applicable
<i>SYSC 4.3A.1R</i>	Rule	Not applicable
<i>SYSC 4.3A.1AR</i>	Rule	Not applicable
<i>SYSC 4.3A.2R</i>	Rule	Not applicable
<i>SYSC 4.3A.2AG</i>	Guidance	Not applicable
<i>SYSC 4.3A.3R</i>	Rule	Not applicable
<i>SYSC 4.3A.4R</i>	Rule	Not applicable
<i>SYSC 4.3A.5R</i>	Rule	Not applicable
<i>SYSC 4.3A.6R</i>	Rule	Not applicable
<i>SYSC 4.3A.7R</i>	Rule	Not applicable
<i>SYSC 4.3A.8R</i>	Rule	Not applicable
<i>SYSC 4.3A.9R</i>	Rule	Not applicable
<i>SYSC 4.3A.10R</i>	Rule	Not applicable

SYSC 4.3A.11R	Not applicable	Not applicable
SYSC 4.4.1AR	Not applicable	Not applicable
SYSC 4.4.2G	Not applicable	Not applicable
SYSC 4.4.3R	Not applicable	Not applicable
SYSC 4.4.5R	Not applicable	Not applicable
SYSC 4.4.6G	Not applicable	Not applicable
SYSC 4.5	Not applicable	Not applicable
SYSC 4.6	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 4.6</i>
SYSC 4.7	Not applicable	Not applicable
SYSC 4.8	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 4.8</i>
SYSC 4.9	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 4.9</i>
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 5.1.5AG	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 5.1.15G	Not applicable	Not applicable
SYSC 5.2	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 5.2</i>
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 6.1.4AR	Not applicable	Not applicable
SYSC 6.1.4-BG	Not applicable	Not applicable
SYSC 6.1.4CR	Not applicable	Not applicable
SYSC 6.1.4-CG	Not applicable	Guidance for a <i>third country relevant authorised person</i>
SYSC 6.1.5R	Not applicable	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

<i>SYSC 7.1.1G</i>	Guidance	Guidance
<i>SYSC 7.1.2R</i>	Not applicable	Not applicable
<i>SYSC 7.1.2AG</i>	Not applicable	Not applicable
<i>SYSC 7.1.2BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.3R</i>	Not applicable	Not applicable
<i>SYSC 7.1.4R</i>	Rule	Guidance
<i>SYSC 7.1.4AG</i>	Guidance	Guidance
<i>SYSC 7.1.4BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.5R</i>	Not applicable	Not applicable
<i>SYSC 7.1.6R</i>	Not applicable	Not applicable
<i>SYSC 7.1.7R</i>	Not applicable	Not applicable
<i>SYSC 7.1.7AG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7BAG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7BBG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7CG</i>	Guidance	Guidance
<i>SYSC 7.1.8G</i>	Guidance	Guidance
<i>SYSC 7.1.9R</i>	Not applicable	Not applicable
<i>SYSC 7.1.10R</i>	Not applicable	Not applicable
<i>SYSC 7.1.11R</i>	Not applicable	Not applicable
<i>SYSC 7.1.12G</i>	Not applicable	Not applicable
<i>SYSC 7.1.13R - 7.1.16R</i>	Not applicable	Not applicable
<i>SYSC 7.1.16AG</i>	Not applicable	Not applicable
<i>SYSC 7.1.16BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.16CR</i>	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 8.1.8R	Not applicable	Not applicable
SYSC 8.1.9R	Not applicable	Not applicable
SYSC 8.1.10R	Not applicable	Not applicable

<i>SYSC 8.1.11R</i>	Not applicable	Not applicable
<i>SYSC 8.1.11AG</i>	Not applicable	Not applicable
<i>SYSC 8.1.12G</i>	Not applicable	Not applicable
<i>SYSC 8.1.13R</i>	Not applicable	Not applicable
<i>SYSC 8.1.14G</i>	Not applicable	Not applicable
SYSC 9		
<i>SYSC 9.1.-2G</i>	Not applicable	Not applicable
<i>SYSC 9.1.-1G</i>	Guidance	Guidance
<i>SYSC 9.1.1R</i>	Not applicable	Not applicable
<i>SYSC 9.1.1AR</i>	Rule	Rule
<i>SYSC 9.1.2R</i>	Rule	Not applicable
<i>SYSC 9.1.4G</i>	Guidance	Guidance
<i>SYSC 9.1.5G</i>	Guidance	Guidance
<i>SYSC 9.1.6G</i>	Guidance	Guidance
SYSC 10		
<i>SYSC 10.1.-2G</i>	Not applicable	Not applicable
<i>SYSC 10.1.-1G</i>	Guidance	Guidance
<i>SYSC 10.1.1R</i>	Rule	Rule
<i>SYSC 10.1.1AR</i>	Not applicable	Not applicable
<i>SYSC 10.1.2G</i>	Guidance	Guidance
<i>SYSC 10.1.3R</i>	Rule	Rule
<i>SYSC 10.1.4R</i>	Rule	Guidance
<i>SYSC 10.1.4AG</i>	Not applicable	Guidance
<i>SYSC 10.1.5G</i>	Guidance	Guidance
<i>SYSC 10.1.6R</i>	Rule	Guidance
<i>SYSC 10.1.6AG</i>	Not applicable	Guidance

<i>SYSC 10.1.6BG</i>	Not applicable	Guidance
<i>SYSC 10.1.7R</i>	Rule	Rule
<i>SYSC 10.1.8R</i>	Rule	Rule
<i>SYSC 10.1.8AR</i>	Rule	Rule
<i>SYSC 10.1.9G</i>	Guidance	Guidance
<i>SYSC 10.1.9AR</i>	Not applicable	Not applicable
<i>SYSC 10.1.10R</i>	Rule	Guidance
<i>SYSC 10.1.11R</i>	Rule	Guidance
<i>SYSC 10.1.11AG</i>	Not applicable	Guidance
<i>SYSC 10.1.11BG</i>	Not applicable	Guidance
<i>SYSC 10.1.12G</i>	Guidance	Guidance
<i>SYSC 10.1.16R</i>	Not applicable	Not applicable
<i>SYSC 10.1.17R</i>	Not applicable	Not applicable
<i>SYSC 10.1.18G</i>	Not applicable	Not applicable
<i>SYSC 10.1.19R</i>	Not applicable	Not applicable
<i>SYSC 10.1.20R</i>	Not applicable	Not applicable
<i>SYSC 10.1.21R</i>	Not applicable	Not applicable
<i>SYSC 10.1.22R</i>	Not applicable	Not applicable
<i>SYSC 10.1.23R</i>	Not applicable	Not applicable
<i>SYSC 10.1.24R</i>	Not applicable	Not applicable
<i>SYSC 10.1.25R</i>	Not applicable	Not applicable
<i>SYSC 10.1.26R</i>	Not applicable	Not applicable
<i>SYSC 10.1.27G</i>	Not applicable	Not applicable
<i>SYSC 10.2.1R</i>	Rule	Rule
<i>SYSC 10.2.2R</i>	Rule	Rule
<i>SYSC 10.2.3G</i>	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		Text of the MiFID Org Regulation as of:	MiFID optional exemption firm	Third country firm
Article 1 – Subject-matter and scope	(2)	31/3/2017	Not applicable	Not applicable
Article 21 – General organisational requirements	(1)	31/3/2017	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)	31/3/2017	Guidance	Guidance
	(2)		Guidance	Guidance
	(3)		Guidance	(a), (c), (d) and (e): Guidance; (b): Rule
	(4)		Guidance	Guidance
Article 23 – Risk management		31/3/2017	Guidance	Guidance
Article 24 – Internal audit		31/3/2017	Guidance	Guidance
Article 25 – Responsibility of senior management		31/3/2017	Guidance	(1): Rule; (2), (3) and (4): Guidance

Article 30 – Scope of critical and important operational functions	31/3/2017	Guidance	Guidance
Article 31 – Outsourcing critical or important operational functions	31/3/2017	(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	31/3/2017	Rule	Guidance
Article 72 – Retention of records	31/3/2017	Rule	Guidance

Part 2: Articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation

EU	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 referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation.
EU	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.
		When complying with the requirements set out in the 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.
	2	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.
	3	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.
	4	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.
	5	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
EU	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 Directive 2014/65/EU, 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 that Directive. 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 obligations under Directive 2014/65/EU;
		(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 by Directive 2014/65/EU and 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 obligations under Directive 2014/65/EU;
		(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.	
EU	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 policies and procedures.
	2	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:	
		(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).
		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.
EU	Article 24 - Internal audit	
	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:	
	(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).
EU	Article 25 - Responsibility of senior management	
	1	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 Directive 2014/65/EU. 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 obligations under Directive 2014/65/EU and to take appropriate measures to address any deficiencies. 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.
	2	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 and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.
	3	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.
	4	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.

EU	Article 30 - Scope of critical and important operational functions	
	1	For the purposes of the first subparagraph of Article 16(5) of Directive 2014/65/EU, 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 Directive 2014/65/EU, 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.
EU	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 Directive 2014/65/EU 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 Directive 2014/65/EU is not altered;
	(c)	the conditions with which the investment firm must comply in order to be authorised in accordance with Article 5 of Directive 2014/65/EU, 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;
		(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 Directive 2014/65/EU and its implementing measures.
EU	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 Directive 2014/65/EU 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 Directive 2014/65/EU 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 Union in cases of breach of the requirements of Directive 2014/65/EU and its implementing measures and relevant national law.
	3		<p>Competent authorities shall publish on their 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.</p> <p>Competent authorities shall update cooperation agreements concluded before the date of entry into application of this Regulation within six months from that date.</p>
EU	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;
		(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		<p>Investment firms shall keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities.</p> <p>The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.</p>
	3		<p>Investment firms shall also keep records of any policies and procedures they are required to maintain pursuant to Directive 2014/65/EU, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014 and their respective implementing measures in writing.</p> <p>Competent authorities may require investment firms to keep additional records to the list identified in Annex I to this Regulation.</p>

4 General organisational requirements

4.1 General 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:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>General requirements</u>	<u>SYSC 4.1.1R, SYSC 4.1.1CR, SYSC 4.1.2R, SYSC 4.1.2AAR</u>
<u>Business continuity</u>	<u>SYSC 4.1.6R, SYSC 4.1.7R, SYSC 4.1.8G</u>
<u>Audit committee</u>	<u>SYSC 4.1.11G, SYSC 4.1.13G, SYSC 4.1.14G</u>
<u>Persons who effectively direct the business</u>	<u>SYSC 4.2.1R, SYSC 4.2.2R, SYSC 4.2.3G, SYSC 4.2.4G, SYSC 4.2.5G, SYSC 4.2.6R</u>
<u>Responsibility of senior personnel</u>	<u>SYSC 4.3.3G</u>
<u>Management body</u>	<u>SYSC 4.3A-1R to SYSC 4.3A.7R</u>
<u>Nominations committee</u>	<u>SYSC 4.3A.8R to SYSC 4.3A.11R</u>
<u>Management responsibilities maps for UK relevant authorised persons</u>	<u>SYSC 4.5</u>
<u>Management responsibilities maps for non-UK relevant authorised persons</u>	<u>SYSC 4.6</u>
<u>Senior management responsibilities for UK relevant authorised persons</u>	<u>SYSC 4.7</u>
<u>Handover procedures and material</u>	<u>SYSC 4.9</u>

Application to a MiFID optional exemption firm and to a third country firm

- 4.1.-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

- 4.1.1 R (1) A *firm* 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.

...

[**Note:** article 74 (1) of *CRD*, article 43 16(5) second paragraph of *MiFID*, article 12(1)(a) of the *UCITS Directive*, and article 18(1) of *AIFMD*]

- (3) Without prejudice to the ability of the *FCA* or any other relevant competent authority to require access to communications in accordance with *MiFID* and *MiFIR*, a *common platform firm* must have sound security mechanisms in place for the following, while maintaining the confidentiality of the data at all times:
 - (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.

[**Note:** article 16(5) third paragraph of *MiFID*]

...

- 4.1.2 R For a *common platform firm*, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R 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 ~~SYSC 4.1.7R~~ article 21(3) of the *MiFID Org Regulation*, SYSC 5.1.7R, SYSC 7 and whichever of the following as applicable:

- (1) (for a *firm* to which SYSC 19A applies) SYSC 19A (IFPRU Remuneration Code);
- (2) (for a *full-scope UK AIFM*) SYSC 19B (AIFM Remuneration Code);
- (3) (for a *firm* to which SYSC 19C applies) SYSC 19C (BIPRU Remuneration Code);
- (4) (for a *firm* to which SYSC 19D applies) SYSC 19D (Dual-regulated firms Remuneration Code);
- (5) (for a *firm* to which the remuneration part of the *PRA Rulebook* applies) the remuneration part of the *PRA Rulebook*.

[**Note:** article 74(2) of *CRD*]

- 4.1.2A G Other *firms* should take account of the comprehensiveness and proportionality *rule* (SYSC 4.1.2R) as if it were *guidance* (and as if "should" appeared in that ~~rule~~ *rule* instead of "must") as explained in SYSC 1 Annex 1 3.3 ~~G~~ **R**(1).

...

Mechanisms and procedures for a firm

- 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 and activities undertaken in the course of that business:

- (1) (if it is ~~a *common platform firm* or 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;

...

- (3) ~~(if it is a *common platform firm*)~~ establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*; and

...

[**Note:** ~~articles 5(1) final paragraph, 5(1)(a), 5(1)(c) and 5(1)(e) of the *MiFID implementing Directive* and 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~~ *rules* instead of "must") as explained in

SYSC 1 Annex 1 3.3G R(1).

- 4.1.5 R A ~~MiFID investment firm~~ and 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 5(2) of the MiFID implementing Directive~~ and article 4(2) of the UCITS implementing Directive]

Business continuity

- 4.1.6 R A common platform firm must take reasonable steps to ensure continuity and regularity in the performance of its *regulated activities*. To this end the common platform firm must employ appropriate and proportionate systems, resources and procedures.

[~~Note: article 43~~ 16(4) of MiFID]

- 4.1.7 R A ~~common platform firm~~ CRR firm and a management company 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 *regulated activities*, or, in the case of a management company, its *collective portfolio management* activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities.

[~~Note: article 5(3) of the MiFID implementing Directive, annex V paragraph 13 of the Banking Consolidation Directive~~, article 4(3) of the UCITS implementing Directive and article 85(2) of the CRD]

- 4.1.7A G Other firms should take account of the business continuity rules (SYSC 4.1.6R and 4.1.7R) as if they were *guidance* (and as if "should" appeared in those ~~rules~~ rules instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

- 4.1.8 G The matters dealt with in a business continuity policy should include:

...

- (3) communication arrangements for internal and external concerned parties (including the ~~appropriate regulator~~ FCA, clients and the press);

...

- (6) regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with SYSC 4.1.10R and for a common platform firm with article 21(5) of the MiFID Org Regulation.

...

Accounting policies: management company

- 4.1.9 R A ~~common platform firm and 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 5(4) of the MiFID implementing Directive and~~ article 4(4) of the *UCITS implementing Directive*]

Regular monitoring: management company

- 4.1.10 R A ~~common platform firm and 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* 4.1.4R to *SYSC* 4.1.9R and take appropriate measures to address any deficiencies.

[~~Note: article 5(5) of the MiFID implementing Directive and~~ 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* 4.1.10R) as if it were *guidance* (and as if "should" appeared in that ~~rule~~ rule instead of "must") as explained in *SYSC* 1 Annex 1 3.3G R(1), but ignoring the cross-reference to *SYSC* 4.1.5R and *SYSC* 4.1.9R.

...

4.2 Persons who effectively direct the businessGeneral requirement

- 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-EEA 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, article 11(1) second paragraph of the Banking Consolidation Directive and article 13(1) 91(1) of the CRD]~~

- 4.2.1A G Other firms should take account of the senior personnel rule (*SYSC* 4.2.1R) as if it were *guidance* (and as if "should" appeared in that ~~rule~~ rule instead of "must") as explained in *SYSC* 1 Annex 1 3.3G R(1).

...

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-EEA bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R and:

(a) for a *full-scope UK AIFM*, SYSC 4.2.7R; or

(b) for a *common platform firm*, SYSC 4.3A.3R.

[**Note:** article 9 (4) (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*]

...

4.2.4 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 non-EEA bank third country firm*. Where a *firm* nominates just two individuals to direct its business, the ~~appropriate regulator~~ *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 non-EEA bank third country firm*, the ~~appropriate regulator~~ *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 4.2.2R 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 non-EEA bank 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.

[**Note:** article 9 ~~(4)~~(6) second paragraph of *MiFID*]

...

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:** ~~article 9(1) of the *MiFID implementing Directive* and~~ articles 9(1) and 9(3) of the *UCITS implementing Directive*]

- 4.3.2 R A ~~*common platform firm* (with the exception of 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)) and a *management company* ;~~ must ensure that:

- (1) its *senior personnel* receive on a frequent basis, and at least annually, written reports on the matters covered by SYSC 6.1.2R to SYSC 6.1.5R, SYSC 6.2.1R ~~and~~ SYSC 7.1.2R, SYSC 7.1.3R and SYSC 7.1.5R to SYSC 7.1.7R, 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: article 9(2) and article 9(3) of the MiFID implementing Directive and 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 4.3.2R) as if it were *guidance* (and as if "should" appeared in that ~~rule~~ rule instead of "must") as explained in SYSC 1 Annex 1 3.3G ~~R(1)~~.

...

4.3A ~~CRR firms~~ Management body and nomination committee

Management body

- 4.3A.-1 R In SYSC 4.3A.6R and SYSC 4.3A.8R a '~~CRR firm~~ common platform firm that is ~~significant~~ significant means a *significant IFPRU firm*.

- 4.3A.1 R A ~~CRR firm~~ 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*, and

takes 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 ~~CRR firm~~ 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, unless justified by the firm and authorised by the FCA.

[**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 ~~CRR firm~~ 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.4 R A ~~*CRD-firm*~~ *common platform firm* must devote adequate human and financial resources to the induction and training of members of the *management body*.

[**Note:** article 91(~~3~~) (9) of *CRD* and article 9(1) of *MiFID*]

- 4.3A.5 R A ~~*CRD-firm*~~ *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 ~~*CRD-firm*~~ *common platform firm* that is significant 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.7 R For the purposes of SYSC 4.3A.5R and SYSC 4.3A.6R:

- (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) *firms* that are members of the same institutional protection scheme provided that the conditions set out

in article 113(7) of the *CRR* are fulfilled; or

- (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.8 R A ~~*CRR firm*~~ *common platform firm* that is significant 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.9 R A ~~*CRR firm*~~ *common platform firm* that has a nomination committee must ensure that the nomination committee:
- (1) ~~engage~~ 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 ~~the~~ *CRD* and article 9(1) of *MiFID*]

4.3A.10 R A ~~CRR-firm~~ *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 ~~CRR-firm~~ *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*]

...

4.7 Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities

...

4.7.7 R Table: FCA-prescribed senior management responsibilities

FCA-prescribed senior management responsibility	Explanation	Equivalent PRA-prescribed senior management responsibility
...		
Part Two (applies to all firms except for small CRR firms and credit unions)		
...		
(7) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the internal audit function, in accordance with SYSC 6.2 (Internal Audit) or <u>article 24 of the <i>MiFID</i></u>	This responsibility includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; a person approved to perform the <i>PRA's</i> Head of Internal Audit	<i>PRA-prescribed senior management responsibility</i> 4.1(15)

<u>Org Regulation.</u>	<i>designated senior management function for the firm.</i>	
(8) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the compliance function in accordance with SYSC 6.1(Compliance) or article 22 of the <u>MiFID Org Regulation.</u>	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.	<i>PRA-prescribed senior management responsibility 4.1(16)</i>
...		

...

5 Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

...

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 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:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Segregation of functions</u>	<u>SYSC 5.1.2G to SYSC 5.1.5AG, SYSC 5.1.7R, SYSC 5.1.8G to SYSC 5.1.11G</u>
<u>Certification regime</u>	<u>SYSC 5.2</u>

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).

Segregation of functions

- 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: article 5(1)(d) of the *MiFID implementing Directive*, articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 5(1) of the *UCITS implementing Directive*]~~

...

- 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 recommended examinations maintained by the Financial Skills Partnership, the ~~appropriate regulator~~ *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*.

~~Segregation of functions~~

- 5.1.6 R A ~~*common platform firm* and a *management company*~~ must ensure that the performance of multiple functions by its *relevant persons* does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally.

[~~Note: article 5(1)(g) of the *MiFID implementing Directive* and article 5(3) of the *UCITS implementing Directive*]~~

- 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 the *CRD* and annex V paragraph 1 of the *Banking Consolidation Directive* article 9(1) of *MiFID*]~~

- 5.1.7A G Other *firms* should take account of the segregation of functions *rules* (SYSC 5.1.6R and SYSC 5.1.7R) as if they were *guidance* (and as if “should” appeared in those ~~rules~~ *rules* instead of “must”) as explained in SYSC 1 Annex 1 3.3G ~~R~~ R(1).

Segregation of functions: additional guidance

...

- 5.1.11 G Where a *common platform 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:

...

Awareness of procedures: management company

- 5.1.12 R A ~~common platform firm~~ and 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 5(1)(b) of the MiFID implementing Directive~~ and article 4(1)(b) of the UCITS implementing Directive]

Awareness of procedures: other firms

- 5.1.12A G Other firms should take account of the rule concerning awareness of procedures (SYSC 5.1.12R) as if it were guidance (and as if “should” appeared in that ~~rule~~ rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G 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 and activities undertaken in the course of that business.

[~~Note: article 5(1) final paragraph of the MiFID implementing Directive~~ and articles 4(1) final paragraph and 5(4) of the UCITS implementing Directive]

- 5.1.14 R A ~~common platform firm~~ and 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 5(5) of the MiFID implementing Directive~~ and articles 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 5.1.14R) as if it were guidance (and as if “should” appeared in that ~~rule~~ rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

6 Compliance, internal audit and financial crime

6.1 Compliance

...

Application to a common platform firm6.1.-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:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Adequate policy and procedures</u>	<u>SYSC 6.1.1R, SYSC 6.1.1AG</u>
<u>Compliance function</u>	<u>SYSC 6.1.4-AG, SYSC 6.1.7R</u>
<u>Internal audit</u>	<u>SYSC 6.2.2G</u>
<u>Financial crime</u>	<u>SYSC 6.3.1R to SYSC 6.3.11G</u>

Application to an MiFID optional exemption firm and to a third country firm6.1.-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, *tiered 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 13 16(2) of *MiFID* and article 12(1)(a) of the *UCITS Directive*]

...

6.1.2 R A ~~*common platform firm*~~ and a *management company* 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 ~~appropriate regulator~~ FCA to exercise its powers effectively under the *regulatory system* and to enable any other *competent authority* to exercise its powers effectively under ~~MiFID~~ or the *UCITS Directive*.

[~~Note: article 6(1) of the MiFID implementing Directive and~~ article 10(1) of the *UCITS implementing Directive*]

- 6.1.2A G Other *firms* should take account of the adequate policies and procedures *rule* (SYSC 6.1.2R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ *rule* instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

Compliance function

- 6.1.3 R A ~~common platform firm and a management company~~ 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 6.1.2R, 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 6(2) of the MiFID implementing Directive and~~ article 10(2) of the *UCITS implementing Directive*]

- 6.1.3A G (1) Other *firms* should take account of the compliance function *rule* (SYSC 6.1.3R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ *rule* instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

...

- 6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a ~~common platform firm and a management company~~ 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 4.3.2R;
 - (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 6(3) first paragraph of the MiFID implementing Directive and article 10(3) of the UCITS implementing Directive~~]

- 6.1.4-A G In setting the method of determining the *remuneration of relevant persons* involved in the compliance function:
- (1) *firms* that SYSC 19A applies to will also need to comply with the *Remuneration Code*;
 - (2) ~~BIPRU firms~~ that SYSC 19C applies to will also need to comply with the *BIPRU Remuneration Code*;
 - (3) *firms* that SYSC 19D applies to will also need to comply with the *dual-regulated firms Remuneration Code*; and
 - (4) *firms* that the remuneration part of the ~~PRA Rulebook~~ *Rulebook* applies to will also need to comply with it.

...

- 6.1.4-C G (1) This *guidance* is relevant to a *relevant authorised person* required to appoint a compliance officer under SYSC 6.1.4R or article 22(3) of the MiFID Org Regulation as applicable.

...

- 6.1.5 R A ~~common platform firm and a management company~~ need not comply with SYSC 6.1.4R(3) or SYSC 6.1.4R(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 *rules* are not proportionate and that its compliance function continues to be effective.

[~~Note: article 6(3) second paragraph of the MiFID implementing Directive and article 10(3) second paragraph of the UCITS implementing Directive~~]

- 6.1.6 G Other *firms* should take account of the proportionality *rule* (SYSC 6.1.5R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ *rule* instead of “must”) as explained in SYSC 1 Annex 1 3.3GR(1).

- 6.1.7 R ...

- (2) References to the *regulatory system* in SYSC 6.1.1R, SYSC 6.1.2R and SYSC 6.1.3R apply in respect of a *firm's branch* as if *regulatory system* includes a *Host State's* requirements under *MiFID* and the ~~MiFID implementing Directive~~ *MiFID Org Regulation* which are applicable to the *investment services and/or activities* conducted from the *firm's branch*.

[~~Note: article 13(2) 16 of MiFID~~]

6.2 Internal audit

- 6.2.1 R A ~~common platform firm and a 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:

...

[~~Note: article 8 of the MiFID implementing Directive and~~ article 11 of the *UCITS implementing Directive*]

- 6.2.1A G Other *firms* should take account of the internal audit *rule* (SYSC 6.2.1R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ *rule* instead of “must”) as explained in SYSC 1 Annex 1 3.3G ~~R(1)~~.
- 6.2.1B G (1) This *guidance* is relevant to a *relevant authorised person* required to establish and maintain an internal audit function under ~~SYSC 6.2.1R~~ article 24 of the *MiFID Org Regulation*.
- 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.

...

...

7 Risk control

7.1 Risk control

...

Application to a common platform firm

- 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:

<u>Subject</u>	<u>Applicable rule or guidance</u>
----------------	------------------------------------

<u>Risk assessment</u>	<u>SYSC 7.1.1G</u>
<u>Risk management</u>	<u>SYSC 7.1.4R, SYSC 7.1.4AG</u>
<u>Risk control: remuneration</u>	<u>SYSC 7.1.7BG, SYSC 7.1.7BBG</u>
<u>Risk control: additional provisions</u>	<u>SYSC 7.1.7CG, SYSC 7.1.8G, SYSC 7.1.9R to SYSC 7.1.16R</u>
<u>Additional rules for CCR firms</u>	<u>SYSC 7.1.16CR to SYSC 7.1.22R</u>

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 G SYSC 4.1.1R 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 *common platform firm UCITS investment firm* 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 *firm*.

~~[Note: article 7(1)(a) of the *MiFID implementing Directive*, article 13(5) second paragraph of *MiFID*]~~

7.1.2A G Other *firms* should take account of the risk management policies and procedures *rule* (SYSC 7.1.2R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

...

Risk management

7.1.3 R A *common platform firm UCITS investment firm* must adopt effective arrangements, processes and mechanisms to manage the risk relating to the *firm's* activities, processes and systems, in light of that level of risk tolerance.

~~[Note: article 7(1)(b) of the *MiFID implementing Directive*]~~

...

7.1.4B G Other *firms* should take account of the risk management *rules* (SYSC 7.1.3R and SYSC 7.1.4R) as if they were *guidance* (and as if "should" appeared in those ~~rules~~ *rules* instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

7.1.5 R A ~~common platform firm~~ *UCITS investment firm* must monitor the following:

- (1) the adequacy and effectiveness of the *firm's* risk management policies and procedures;
- (2) the level of compliance by the *firm* and its *relevant persons* with the arrangements, processes and mechanisms adopted in accordance with SYSC 7.1.3R;
- (3) 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 or processes and mechanisms or follow such policies and procedures.

~~[Note: article 7(1)(e) of the MiFID implementing Directive]~~

7.1.6 R A ~~common platform firm~~ *UCITS investment firm* 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/or activities* undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:

- (1) implementation of the policies and procedures referred to in SYSC 7.1.2R to SYSC 7.1.5R; and
- (2) provision of reports and advice to *senior personnel* in accordance with SYSC 4.3.2R.

~~[Note: MiFID implementing Directive Article 7(2) first paragraph]~~

7.1.7 R Where a ~~common platform firm~~ *UCITS investment firm* is not required under SYSC 7.1.6R 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 7.1.2R to SYSC 7.1.5R satisfy the requirements of those *rules* and are consistently effective.

~~[Note: article 7(2) second paragraph of the MiFID implementing Directive]~~

7.1.7A G Other *firms* should take account of the risk management *rules* (SYSC 7.1.5R to SYSC 7.1.7R) as if they were *guidance* (and as if "should" appeared in those ~~rules~~ *rules* instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

...

Risk control: additional provisions

7.1.7C G ...

7.1.8 G ...

- (2) The term 'risk management function' in SYSC 7.1.6R and SYSC 7.1.7R₁ and for a *common platform firm* in article 23(2) of the *MiFID Org Regulation*, refers to the generally understood concept of risk assessment within a *firm*, that is, the function of setting and controlling risk exposure.

...

...

- 7.1.21 R (1) A *CRR firm's* risk management function (~~SYSC 7.1.6R~~ 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*.

...

...

8 Outsourcing**8.1 General outsourcing requirements**

...

Application to a common platform firm8.1.-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:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>General requirements</u>	<u>SYSC 8.1.1R, SYSC 8.1.2G, SYSC 8.1.3G, SYSC 8.1.12G</u>

Application to an MiFID optional exemption firm and to a third country firm8.1.-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 ~~appropriate regulator~~ 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 ~~43~~ 16(5) first paragraph of *MiFID*]
- 8.1.1A G Other *firms* should take account of the outsourcing *rule* (SYSC 8.1.1R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).
- ...
- 8.1.3 G SYSC 4.1.1R 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 8.1.1R(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.

~~[Note: article 13(1) of the MiFID implementing Directive]~~

8.1.5 R ~~Without~~ 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;

~~[Note: article 13(2) of the MiFID implementing Directive]~~

- (3) the recording and retention of relevant telephone conversations or electronic communications subject to ~~COBS 4.8~~ SYSC 10A.

8.1.5A G Other *firms* should take account of the critical functions *rules* (SYSC 8.1.4R and SYSC 8.1.5R) as if they were *guidance* (and as if “should” appeared in those ~~rules~~ *rules* instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(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.

~~[Note: article 14(1) of the MiFID implementing Directive]~~

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 ~~*common platform firm*~~ *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.

~~[Note: article 14(2) first paragraph of the MiFID implementing Directive]~~

- 8.1.8 R A ~~common platform firm~~ UCITS investment firm must in particular take the necessary steps to ensure that the following conditions are satisfied:
- ...
- (8) the service provider must co-operate with the ~~appropriate regulator~~ FCA and any other relevant *competent authority* in connection with the *outsourced* activities;
- (9) the *firm*, its auditors, the ~~appropriate regulator~~ 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 ~~appropriate regulator~~ FCA and any other relevant *competent authority* must be able to exercise those rights of access;
- ...
- ~~[Note: article 14(2) second paragraph of the MiFID implementing Directive]~~
- 8.1.9 R A ~~common platform firm~~ 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.
- ~~[Note: article 14(3) of the MiFID implementing Directive]~~
- 8.1.10 R If a ~~common platform firm~~ UCITS investment firm and the service provider are members of the same *group*, the *firm* may, for the purpose of complying with SYSC 8.1.7R to SYSC 8.1.11R and SYSC 8.2 and SYSC 8.3, take into account the extent to which the ~~common platform firm~~ UCITS investment firm *controls* the service provider or has the ability to influence its actions.
- ~~[Note: article 14(4) of the MiFID implementing Directive]~~
- 8.1.11 R A firm (other than a common platform firm) must make available on request to the ~~appropriate regulator~~ FCA and any other relevant *competent authority* all information necessary to enable the ~~appropriate regulator~~ FCA and any other relevant *competent authority* to supervise the compliance of the performance of the *outsourced* activities with the requirements of the *regulatory system*.
- ~~[Note: article 14(5) of the MiFID implementing Directive]~~
- 8.1.11A G Other *firms* should take account of the outsourcing of important operational functions *rules* (SYSC 8.1.7R to SYSC 8.1.11R) as if they were *guidance* (and as if “should” appeared in those ~~rules~~ rules instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

8.1.12 G As *SUP* 15.3.8G explains, a *firm* should notify the ~~appropriate regulator~~ 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 ~~20~~ of 44 to the ~~MiFID implementing Directive~~ *MiFID Org Regulation*]

...

SYSC 8.2 and SYSC 8.3 are deleted in their entirety. The deleted text is not shown.

Amend the following as shown.

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:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>General requirements</u>	<u>SYSC 9.1.1AR</u>
<u>Guidance on record-keeping</u>	<u>SYSC 9.1.4G, SYSC 9.1.5G, SYSC 9.1.6G</u>

Application to an MiFID optional exemption firm and to a third country firm

9.1.-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

- 9.1.1 R *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 ~~appropriate regulator~~ FCA or any other relevant competent authority under ~~MiFID~~ or the UCITS Directive 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 13(6) of MiFID, article 5(1)(f) of the MiFID implementing Directive, article 12(1)(a) of the UCITS Directive and article 4(1)(e) of the UCITS implementing Directive~~]

- 9.1.1A R (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 regulatory system including MiFID, MiFIR and the Market Abuse Regulation, and in particular to ascertain that the common platform firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.*

[~~Note: article 16(6) of MiFID~~]

- 9.1.2 R *A common platform firm must retain all records kept by it under this chapter in relation to its MiFID business for a period of at least five years.*

[~~Note: article 51(1) of the MiFID implementing Directive~~]

- 9.1.3 R ~~In relation to its MiFID business, a common platform firm must retain records in a medium that allows the storage of information in a way accessible for future reference by the appropriate regulator or any other relevant competent authority under MiFID, and so that the following conditions are met:~~
- (1) ~~the appropriate regulator or any other relevant competent authority under MiFID must be able to access them readily and to reconstitute each key stage of the processing of each transaction;~~
- (2) ~~it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and amendments, to be easily ascertained;~~
- (3) ~~it must not be possible for the records otherwise to be manipulated or altered. [deleted]~~

[~~Note: article 51(2) of the MiFID implementing Directive~~]

Guidance on record-keeping

...

- 9.1.6 G 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*.

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

- 9.1.7 G ~~The Committee of European Securities Regulators (*CESR*) has issued recommendations on the list of minimum records under Article 51(3) of the *MiFID implementing Directive*. [deleted]~~

10 Conflicts of interest

10.1 Application

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:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Provision of services</u>	<u>SYSC 10.1.2G</u>
<u>Identifying conflicts</u>	<u>SYSC 10.1.3R</u>
<u>Types of conflicts</u>	<u>SYSC 10.1.5G</u>
<u>Managing conflicts</u>	<u>SYSC 10.1.7R</u>
<u>Conflicts policy</u>	<u>SYSC 10.1.12G</u>

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*:

- (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 application

- 10.1.1 R (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 *management company*.

[Note: The provisions in SYSC 10.1 also implement articles 74(1) and 88 of CRD and as applied under the discretion in the third paragraph of article 95(2) of the EU CRR, BCD article 22 and BCD Annex V paragraph 1]

- 10.1.1A R This section also applies to:
- (1) a *full-scope UK AIFM* of:
- (a) a *UK AIF*;
- (b) an *EEA AIF* managed or *marketed* from an establishment in the *UK*; and
- (c) a *non-EEA AIF*; and
- (2) an *incoming EEA AIFM branch* which manages or *markets* a *UK AIF*.

Requirements only apply if a service is provided

- 10.1.2 G 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 25 of MiFID implementing Directive~~ recital 46 to the MiFID Org Regulation]

Identifying conflicts

- 10.1.3 R A *firm* must take all ~~reasonable~~ appropriate steps to identify and to prevent or manage conflicts of interest between:
- (1) 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 *client* of the *firm*; or
- (2) one *client* of the *firm* and another *client*;
- that arise or may arise in the course of the *firm* providing any service

referred to in SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the firm's own remuneration and other incentive structures.

[~~Note:~~ article 18 23(1) of *MiFID*]

Types of conflicts

10.1.4 R 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 ~~entail a material risk of damage to~~ the interests of a *client*, ~~a common platform firm and~~ a *management company* 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 an interest in the outcome of a service provided to the *client* or of a transaction carried out on behalf of the *client*, which is distinct from the *client's* interest in that outcome;
- (2A) in the case of a *management company* providing *collective portfolio management* services for a *UCITS scheme*, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a *client* other than the *UCITS scheme*;
- (3) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interests of the *client*;
- (4) carries on the same business as the *client*; or in the case of a *management company*, carries on the same activities for the *UCITS scheme* and for another *client* or *clients* which are not *UCITS schemes*; or
- (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 10.1.1R 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 21 of *MiFID implementing Directive* and article 17(1) of the *UCITS implementing Directive*]

10.1.4A G Other *firms* (except common platform firms and UCITS management companies) should take account of the *rule* on the types of conflicts (see SYSC 10.1.4R) as if it were *guidance* (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1 3.3G, except when

~~they produce or arrange the production of investment research in accordance with COBS 12.2, or produce or disseminate non-independent research in accordance with COBS 12.3 (see SYSC 10.1.16R) in accordance with SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.~~

- 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 *firm* or certain *persons* connected to the *firm* or the *firm's group* and the duty the *firm* owes to a *client*; or between the differing interests of two or more of its *clients*, to whom the *firm* owes in each case a duty. It is not enough that the *firm* may gain a benefit if there is not also a possible disadvantage to a *client*, or that one *client* to whom the *firm* owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such *client*.

[**Note:** recital 24 of *MiFID implementing Directive 45* to the *MiFID Org Regulation*]

Record of conflicts

- 10.1.6 R A ~~common platform firm and a management company~~ must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that *firm* in which a conflict of interest entailing a material risk of damage to the interests of one or more *clients* has arisen or, in the case of an ongoing service or activity, may arise.

[**Note:** article 23 of *MiFID implementing Directive* and article 20(1) of the *UCITS implementing Directive*]

- 10.1.6A G Other *firms* (other than *common platform firms*) should also take account of the rule on records of conflicts (see SYSC 10.1.6R) as if it were *guidance* (and as if "should" appeared in that rule instead of "must", (as explained in SYSC 1 Annex 1 3.3G), ~~except when they produce or arrange the production of investment research in accordance with COBS 12.2, or produce or disseminate non-independent research in accordance with COBS 12.3 (see SYSC 10.1.16R) in accordance with SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R).~~

- 10.1.6B G A firm (other than a common platform firm) should 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.

Managing conflicts

- 10.1.7 R A *firm* 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 10.1.3R from ~~constituting or giving rise to a material risk of damage to~~ adversely affecting the interests of its *clients*.

[~~Note:~~ article ~~13~~ 16(3) of *MiFID*]

Disclosure of conflicts

- 10.1.8 R (1) If arrangements made by a *firm* under SYSC 10.1.7R ~~to manage conflicts of interest~~ 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 ~~general nature and/or sources of conflicts of interest~~ following to the *client* before undertaking business for the *client*:
- (a) the general nature or sources of conflicts of interest, or both; and
 - (b) the steps taken to mitigate those risks.
- (2) The disclosure must:
- (a) be made in a *durable medium*; ~~and~~
 - (b) 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;
 - (c) include specific description of the conflicts of interest that arise in the provision of *investment services* or *ancillary services*;
 - (d) explain the risks to the *client* that arise as a result of the conflicts of interest; and
 - (e) 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 10.1.21R applies.

[~~Note:~~ article ~~18~~(2) 23(2) and (3) of *MiFID* ~~and Article 22(4) of *MiFID implementing Directive*~~]

- 10.1.8A R The obligation in SYSC 10.1.8R(2)(a) does not apply to a *firm* when carrying on *insurance mediation activity*.
- 10.1.9 G *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 10.1.7R. While disclosure of specific conflicts of interest is required by SYSC 10.1.8R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

~~[Note: recital 27 of MiFID implementing Directive]~~

- 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.

Conflicts policy

- 10.1.10 R (1) ~~A common platform firm and a management company~~ must establish, implement and maintain an effective ~~conflicts of interest policy~~ 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 ~~common platform firm or the management company~~ 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 22(1) of MiFID implementing Directive and article 18(1) of the UCITS implementing Directive]~~

Contents of policy

- 10.1.11 R (1) The *conflicts of interest policy* must include the following content:
- (a) it must identify in accordance with SYSC 10.1.3R and SYSC 10.1.4R, by reference to the specific services and activities carried out by or on behalf of the ~~common platform firm or management company~~, 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 ~~common platform firm or 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*; and

- (b) include such of the following as are necessary and appropriate for the ~~*common platform firm*~~ or 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; and
 - (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.
- (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 ~~*common platform firm*~~ and a *management company* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

[~~Note: article 22(2) and (3) of MiFID implementing Directive and articles 18(2), 19(1) and 19(2) of the UCITS implementing Directive~~]

- 10.1.11A G ~~Other *firms* (except *common platform firms* and *UCITS management companies*) should take account of the *rules* relating to *conflicts of interest policies* (see SYSC 10.1.10R and SYSC 10.1.11R) as if they were *guidance* (and as if "should" appeared in those rules instead of "must", as explained in SYSC 1 Annex 13.3.3G), except when they produce or arrange the~~

~~production of investment research in accordance with COBS 12.2, or produce or disseminate non-independent research in accordance with COBS 12.3 (see SYSC 10.1.16R) in accordance with SYSC 1 Annex 1.3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.~~

10.1.11B G A firm (other than a common platform firm) should assess and periodically review, on an at least an annual basis, the conflicts of interest policy 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).

10.1.12 G In drawing up a *conflicts of interest policy* which identifies circumstances which constitute or may give rise to a conflict of interest, a *firm* 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 *firm* or a *person* directly or indirectly linked by *control* to the *firm* performs a combination of two or more of those activities.

[**Note:** recital 26 of *MiFID implementing Directive 47* to the *MiFID Org Regulation*]

Corporate finance

10.1.13 G ~~This section is relevant to the management of a securities offering by any firm. [deleted]~~

10.1.14 G ~~A firm will wish to note that when carrying on a mandate to manage an offering of securities, the firm's duty for that business is to its corporate finance client (in many cases, the corporate issuer or seller of the relevant securities), but that its responsibilities to provide services to its investment clients are unchanged. [deleted]~~

10.1.15 G Measures that a *firm* might wish to consider in drawing up its *conflicts of interest policy* in relation to the management of an offering of *securities* include: [deleted]

(1) ~~at an early stage agreeing with its corporate finance client relevant aspects of the offering process such as the process the firm proposes to follow in order to determine what recommendations it will make about allocations for the offering; how the target investor group will be identified; how recommendations on allocation and pricing will be prepared; and whether the firm might place securities with its investment clients or with its own proprietary book, or with an associate, and how conflicts arising might be managed; and~~

(2) ~~agreeing allocation and pricing objectives with the corporate finance client; inviting the corporate finance client to participate actively in the allocation process; making the initial~~

~~recommendation for allocation to *retail clients* of the *firm* as a single block and not on a named basis; having internal arrangements under which senior personnel responsible for providing services to *retail clients* make the initial allocation recommendations for allocation to *retail clients* of the *firm*; and disclosing to the *issuer* details of the allocations actually made.~~

~~[**Note:** The provisions in SYSC 10.1 also implement articles 74(1) and 88 of the *CRD* and as applied under the discretion in the third paragraph of article 95(2) of the *EU CRR*, *BCD* Article 22 and *BCD* Annex V paragraph 1]~~

...

18 Whistleblowing

18.1 Application and Purpose

...

18.1.1A R This chapter applies to:

- (1) a *firm*;
- (2) in relation to the *guidance* in SYSC 18.3.9G₂ every *firm*; ~~and~~
- (3) in relation to SYSC 18.3.6R and SYSC 18.3.10R, *EEA relevant authorised persons* and *third-country relevant authorised persons* 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:

- “(8) (in SYSC 18, with the exception of the *guidance* in SYSC 18.3.9G):
- “(a) a *relevant authorised person* except a *small deposit taker*; and
- (b) a *firm* as referred to Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing.”

...

Purpose

- 18.1.2 G (1) The purposes of the chapter are to:
- ...
- (c) ...
- (ca) implement 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 *MiFID* and *MiFIR* (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);
- ...

Insert the following new section after SYSC 18.5 (Settlement agreements with workers). All the text is new and not underlined.

18.6 Whistleblowing obligations under MiFID and other EU legislation

Whistleblowing obligations under MiFID

- 18.6.1 R (1) A *UK 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* implementing *MiFID*; or
- (b) a requirement imposed by *MiFIR* or any *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 *UK 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 EU legislation
- 18.6.4 G In addition to obligations under *MiFID*, similar whistleblowing obligations apply to miscellaneous *persons* subject to regulation by the *FCA* under the following non-exhaustive list of *EU* legislation:
- (1) article 32(3) of the *Market Abuse Regulation*, as implemented in section 131AA of the *Act*;
 - (2) article 71(3) of the *CRD* (see *IFPRU* 2.4.1R in respect of *IFPRU investment firms*);
 - (3) 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*); and
 - (4) article 24(3) of the *securities financing transactions 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.

Amend the following as shown.

19C BIPRU Remuneration Code

19C.3 Remuneration principles

...

Remuneration Principle 5: Control functions

...

19C.3.17 G ...

- (3) The *FCA* would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk management and compliance functions than for *employees* in other business areas whose potential bonus is a significant proportion of their *remuneration*. *Firms* should nevertheless ensure that the total *remuneration* package offered to those *employees* is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the *remuneration* of *relevant persons* involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see ~~SYSC 6.1.4R(4)~~ article 22(3) of the *MiFID Org Regulation*).

...

Insert the following new chapter after SYSC 19E (UCITS Remuneration Code). All the text is new and not underlined.

19F Remuneration and performance management of sales staff

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*;
 - (c) a *third country firm*; and
 - (d) a *UK branch* of an *EEA MiFID investment firm*, unless it is a *UCITS investment firm* or an *AIFM investment firm*.
- (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.1.3 G This chapter contains *rules* implementing article 24(10) of *MiFID* and on remuneration policies and practices.

MiFID requirement on remuneration incentives

- 19F.1.4 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.1.5 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.1.6 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.

Amend the following as shown.

Sch 1 Record keeping requirements

1.1G 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.

1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SYSC 9.1.1R	...	...	...	...
<u>SYSC 9.1.1AR</u>	<u>Business and internal organisation</u>	<u>Details of the <i>firm's</i> orderly records of services and transactions undertaken</u>	<u>Within a reasonable time</u>	<u>Adequate</u>
...				

Annex C

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

4 Code of Practice for Approved Persons: specific

...

4.7 Statement of Principle 7

...

4.7.10 G In the case of an *approved person* performing an *accountable higher management function* responsible for compliance ~~under SYSC 3.2.8R, SYSC 6.1.4R or SYSC 6.1.4AR~~ in respect of the following provisions, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within *APER 4.7.2G*:

- (1) SYSC 3.2.8R; or
- (2) SYSC 6.1.4R; or
- (3) article 22(3) 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); or
- (4) SYSC 6.1.4AR.

...

Annex D

Amendments to the Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)

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

1 General

...

1.2 Introduction

...

1.2.1C G The key general *rules* relating to the criteria listed in *FIT* 1.2.1BG include:

...

(2) for *employees of firms* generally, ~~SYSC 5.1.1R~~ (the *competent employees rule*); and

...

...

Annex E

Amendments to the General Provisions (GEN)

In this Annex underlining indicates new text.

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

EU Regulations and third country firms

- 2.2.22A R (1) Unless exempted in (2) and subject to (3), *MiFIR*, and any *EU regulation* adopted as at 3 January 2018 under *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
 - (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 *EU regulation* adopted under *MiFIR* or *MiFID* imposes a specific requirement in relation to a *third country investment firm*; and
 - (b) to *EU regulations* adopted under articles 7, 34 and 35 of *MiFID*.
- (3) Paragraph (1) is modified by the application provisions in individual *Handbook* chapters for particular purposes.
- 2.2.22B G (1) The purpose of *GEN 2.2.22AR* is to ensure consistency with the principle referred to in recital 109 to *MiFID* that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*. A *third country investment firm* does not, however, benefit from passporting rights in the manner envisaged for *EEA firms* and its *authorisation* requires consideration of other issues, including the nature and extent of regulation provided by its *Home State regulator*.
- (2) *GEN 2.2.22AR* may be overridden where the application provisions at the beginning of individual *Handbook* chapters qualify its effect.

...

Annex F

Amendments to the Fees manual (FEES)

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

1 Fees Manual

1.1 Application and Purpose

...

Application

1.1.2 R This manual applies in the following way:

(1) ...

(2) *FEES* 1, 2 and 4 apply to:

...

(n) every *AIFM* notifying the *FCA* under regulation 57, 58 and 59 of the *AIFMD UK regulation* and every *AIFM* which has made such a notification; ~~and~~

(o) ~~each of the following that makes *transactions reports* directly to the *FCA* under *SUP 17* (Transaction reporting):~~

~~(i) a *firm*;~~

~~(ii) a third party acting on a *firm's* behalf;~~

~~(iii) an *approved reporting mechanism*;~~

~~(iv) an operator of a *regulated market*; and~~

~~(v) an operator of an *MTF* [deleted]~~

(p) a *data reporting services provider* (*FEES* 4 does not apply to an *incoming data reporting services provider*).

...

2 General Provisions

2.1 Introduction

...

Purpose

...

2.1.5 G (1) The following enable the *FCA* to charge fees to cover its costs and expenses in carrying out its functions:

...

(d) article 25(a) of the *MCD Order*; ~~and~~

(e) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*;

(f) regulation 18 of the *Small and Medium Sized Business (Finance Platforms) Regulations*;

(g) regulation 40 of the *DRS Regulations*; and

(h) paragraph 25 of the Schedule 1 to the *MiFI Regulations*.

...

...

2.1.5C G (1) The *FCA* also has a fee-raising power as a result of:

(a) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*; ~~and~~

(b) regulation 18 of the *Small and Medium Sized Business (Finance Platforms) Regulations* ;

(c) regulation 40 of the *DRS Regulations*; and

(d) paragraph 25 of the Schedule 1 to the *MiFI Regulations*.

(2) The *FCA*'s functions under these regulations are treated as functions conferred on the *FCA* under the *Act* for the purposes of its fee-raising power in paragraph 23 of Schedule 1ZA to the *Act* or as if they had similar effect for these purposes.

...

3.1 Introduction

...

3.1.2 G This chapter does not apply to:

(1) an *EEA firm* that wishes to exercise an *EEA right*; ~~or~~ unless it is:

- (a) an incoming data reporting services provider connecting to the market data processor system; or
- (b) an EEA firm connecting to the market data processor system; or

...

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		
(r) Providers of reporting or trade matching systems applying for recognition under MiFID as an Approved Reporting Mechanism. [deleted]	100,000	Having received its application, within 30 days after the FCA has notified the applicant that it is to commence testing of the applicant's systems.
...		
(t) A firm, a third party acting on a firm's behalf, an operator of a regulated market or, an operator of an MTF applying to the FCA to report transaction reports directly to the FCA. [deleted]	100,000	Having received its application, within 30 days after the FCA has notified the applicant that it is to commence testing of the applicant's systems.
...		
<u>(zx) (1) Unless (2) applies any person applying to connect to the market data processor system to make transaction</u>	<u>(1) Unless (2) applies, 20,000.</u> <u>(2) Any incoming data reporting services provider will pay 80%</u>	<u>On the date the application is made.</u>

<p><u>reports directly to the FCA under MiFIR.</u></p> <p><u>(2) If a person has previously applied as stated in (zx)(1) above and has been connected then no further fee is payable for any further such applications.</u></p>	<p><u>of the fee at (1).</u></p>	
<p><u>(zy) (1) Subject to (2) and (3) below, any person applying to connect to the market data processor system to provide markets data (other than transaction reports) under MiFID II and MiFIR.</u></p> <p><u>(2) If a person has previously applied as stated in (zy)(1) above and has been connected then no further fee is payable for any further such applications in relation to reporting the same data.</u></p> <p><u>(3) If a person has previously applied as stated in (zy)(1) above and makes a further application in relation to the provision of different data then a separate fee is payable for such application.</u></p>	<p><u>(1) Unless (2) applies, 10,000.</u></p> <p><u>(2) Any incoming data reporting services provider authorised by another EEA State will pay 80% of the fee at (1).</u></p>	<p><u>On the date the application is made.</u></p>
<p>...</p>		

...

4 Periodic fees

4.1 Introduction

...

- 4.1.1A R A reference to *firm* in this chapter includes a reference to:
- (1) a *fee-paying payment service provider*;
 - (2) a *CBTL firm*;
 - (3) a ~~*fee-paying*~~ *fee-paying electronic money issuer*, ~~and~~ ;
 - (4) a *recognised investment exchange*; and
 - (5) *a data reporting services provider (other than an incoming data reporting services provider)*.

...

Background

...

- 4.1.4 G ...
- (3) The periodic fees for *fee-paying payment service providers, fee-paying electronic money issuers, CBTL firms, data reporting services providers (other than incoming data reporting services providers and issuers of regulated covered bonds)* are set out in FEES 4 Annex 11R. This annex sets out the activity groups, tariff base, valuation dates and, where applicable, the flat fees due for these *firms*.

...

4.2 Obligation to pay periodic fees

...

- 4.2.7K R ...

Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

Fee-block	Tariff base	Calculation where trading data are not available
...		
B. Market operators and , MTF operators <u>and</u> OTF operators	Flat fee	Not applicable.
...		

...

4.2.11 R Table of periodic fees payable to the FCA

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
Any <i>firm</i> (except an <i>AIFM</i> <i>qualifier</i> , <i>ICVC</i> or a <i>UCITS</i> <i>qualifier</i>)	(1) Unless (2) applies, as specified in <i>FEES</i> 4 Annex 2AR and <i>FEES</i> 4 Annex 11R. (2) Where a <i>firm</i> is paying a <i>ring-fencing</i> <i>implementation</i> <i>fee</i> , as specified in <i>FEES</i> 4 Annex 2BR.	(1) Unless (2) or (3) apply, on or before the relevant dates specified in <i>FEES</i> 4.3.6R. ... (3) Where the <i>permission</i> is for <i>operating a</i> <i>multilateral</i> <i>trading</i> <i>facility</i> or <i>operating an</i> <i>organised</i> <i>trading</i> <i>facility</i> , the date specified in <i>FEES</i> 4 Annex 10R (Periodic fees for MTF and OTF operators).	<i>Firm</i> receives <i>permission</i> , or becomes authorised or registered under the <i>Payment Services Regulations</i> , article 8 of the <i>MCD Order</i> , the <i>DRS Regulations</i> or the <i>Electronic Money Regulations</i> ; or <i>firm</i> extends <i>permission</i> or its <i>payment service</i> activities
...
Each of the following that makes <i>transaction reports</i> directly to the <i>FCA</i> under <i>SUP 17</i> (Transaction reporting): (1) a <i>firm</i> ; (2) a third party acting on a <i>firm</i> 's behalf; (3) an <i>approved</i> <i>reporting</i>	<i>FEES</i> 4 Annex 3A	Within 30 days of the date of the invoice	The <i>FCA</i> enters into arrangements with the fee payer under which it can make <i>transaction reports</i> directly to the <i>FCA</i> [deleted]

<i>mechanism;</i>			
(4) an operator of a <i>regulated market</i> ; and			
(5) an operator of an <i>MTF</i>			

...

4.3 Periodic fee payable by firms (other than AIFM qualifiers, ICVCs and UCITS qualifiers)

...

Calculation of periodic fee (~~excluding~~ except in relation to the Society of Lloyd’s, fee-paying payment service providers and , *CBTL firms*, fee-paying electronic money issuers and data reporting services providers)

4.3.3 R The periodic fee referred to in *FEES* 4.3.1R is (except in relation to the *Society, fee-paying payment service providers and , CBTL firms, fee-paying electronic money issuers and data reporting services providers*) calculated as follows:

...

Calculation of periodic fee for fee-paying payment service providers, *CBTL firms, data reporting services providers* (other than *incoming data reporting services providers*) and fee-paying electronic money issuers

4.3.3A R The periodic fee referred to in *FEES* 4.3.1R in relation to *fee-paying payment service providers, CBTL firms, data reporting services providers* (other than *incoming data reporting services providers*) and *fee-paying electronic money issuers* is calculated in accordance with *FEES* 4 Annex 11R.

...

Time of payment

4.3.6 R ...

[**Note:** If the *firm* is a *PRA-authorized person* that meets the condition at *FEES* 4.3.6R(1)(D)(b), the *firm* will also pay its *PRA* periodic fees in two tranches as specified in the Fees Part of the *PRA ~~Rulebook~~ Rulebook*. The *FCA*, acting as the *PRA*’s collection agent, will collect these fees.]

...

- (3) If a *firm* has applied to cancel its *Part 4A permission* in the way set out in *SUP 6.4.5D* (Cancellation of permission), or its status as a *payment institution* under regulation 10 of the *Payment Services Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 14 of the *Payment Services Regulations* (Supplementary provisions), or its status as an *electronic money issuer* under regulation 10 of the *Electronic Money Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 15 of the *Electronic Money Regulations* (Supplementary provisions), or its registration as a *CBTL firm* under article 13(c) of the *MCD Order* or its authorisation as a *data reporting services provider* under regulation 11 of the *DRS Regulations*, then (1) and (2) do not apply but it must pay the total amount due when the application is made.

...

- (4A) If the *FCA* has cancelled a *firm's* authorisation or registration under regulation 10 of the *Payment Services Regulations* or regulation 10 of the *Electronic Money Regulations* or its registration under regulation 10 as applied by regulation 14 of the *Payment Services Regulations* or its registration under regulation 10 as applied by regulation 15 of the *Electronic Money Regulations*, or its registration under article 13 (except under article 13(c)) of the *MCD Order*, or its authorisation as a *data reporting services provider* under regulation 11 or 12 of the *DRS Regulations*, then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.

...

- (6) Paragraphs (1) and (2) do not apply to any periodic fee in relation to a *firm's permission* for *operating a multilateral trading facility* or *operating an organised trading facility* and such a fee is not taken into account for the purposes of the split in (1). Instead any fee for this *permission* is payable on the date specified in *FEES 4 Annex 10R* (Periodic fees for *MTF* and *OTF* operators).

...

- 4.3.12 R For an *incoming EEA firm* (excluding *MTF* and *OTF* operators), or an *incoming Treaty firm*, the calculation required by *FEES 4.3.3R* is modified as follows:

...

...

Firms Applying to Cancel or Vary Permission Before Start of Period

- 4.3.13 R (1) If:
- (a) a *firm*:
 - (i) makes an application to vary its *permission* (by reducing its scope), or cancel it, in the way set out in *SUP* 6.3.15D(3) (Variation of permission) and *SUP* 6.4.5D (Cancellation of permission); or
 - (ii) applies to vary (by reducing its scope) or cancel its authorisation or registration (regulation 8 and 10(1) of the *Payment Services Regulations* including as applied by regulation 14 of the *Payment Services Regulations*); or
 - (iii) applies to cancel its authorisation or registration (regulation 10 and 12 of the *Electronic Money Regulations* including as applied by regulation 15 of the *Electronic Money Regulations*); or
 - (iv) applies for revocation of its registration under article 13(c) of the *MCD Order*; or
 - (v) applies to vary (by reducing its scope) or cancel its authorisation as a *data reporting services provider* under regulation 11 and 12 of the *DRS Regulations*; or
 - (aa) an *issuer* makes an application for de-listing; or
 - (ab) a *sponsor* notifies the *FCA* of its intention to be removed from the list of approved *sponsors*; and
 - (b) the *firm*, *issuer* or *sponsor* makes the application or notification referred to in (a), (aa) or (ab) respectively, before the start of the *fee year* to which the fee relates;

FEES 4.2.1R applies to the *firm* as if the relevant variation or cancellation of the *firm's permission* or authorisation or registration under the *Payment Services Regulations*, *MCD Order*, *DRS Regulations* or the *Electronic Money Regulations*, de-listing or removal from the list of approved *sponsors*, took effect immediately before the start of the *fee year* to which the fee relates.

- (2) But (1) does not apply if, due to the continuing nature of the business, the variation, cancellation, de-listing or removal is not to take effect on or before 30 June of the *fee year* to which the fee relates.

- 4.3.14 G Where The due dates for payment of periodic fees are modified by *FEES* 4.3.6R(3), *FEES* 4.3.6R(4) and *FEES* 4.3.6R(4A) respectively where:

- (1) a *firm* has applied to cancel its:
- (a) *Part 4A permission*; or
 - (b) its authorisation or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*; or
 - (c) its registration as a *CBTL firm* under article 13(c) of the *MCD Order*; or
 - (d) authorisation under regulation 11 of the *DRS Regulations*; or
- (2) the *FCA* has exercised its:
- (a) *own-initiative powers* to cancel a *firm's Part 4A permission* ; or
 - (b) ~~the *FCA* has exercised its~~ powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 14 (Supplementary provisions) of the *Payment Services Regulations* to cancel a *firm's* authorisation or registration under the *Payment Services Regulations* ; or
 - (c) ~~the *FCA* has exercised its~~ powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 15 (Supplementary provisions) of the *Electronic Money Regulations*; or regulation 11 of the *DRS Regulations*; or
 - (d) ~~the *FCA* has exercised its~~ powers under article 13 (Revocation of registration), excluding article 13(c), of the *MCD Order* , ~~the due dates for payment of periodic fees are modified by *FEES* 4.3.6R(3), *FEES* 4.3.6R(4) and *FEES* 4.3.6R(4A) respectively.~~

...

4.4 Information on which fees are calculated

- 4.4.1 R A *firm* (other than the *Society* ~~and~~ or an *MTF* or *OTF* operator in relation to its *MTF* or *OTF* business) must notify the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) the value (as at the valuation date specified in Part 5 of *FEES* 4 Annex 1AR) of each element of business on which the periodic fee payable by the *firm* is to be calculated.

...

4 Annex FCA Activity groups, tariff bases and valuation dates 1AR

Part 1	
This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i> .	
Activity group	Fee payer falls in the activity group if :
...	...
A.13 Advisors, arrangers, dealers or brokers	<p>(1) it is an <i>authorised professional firm</i> and ALL the <i>regulated activities</i> in its <i>permission</i> are limited to non-mainstream regulated activities (a firm falling within this category is a <i>class (1) firm</i>);</p> <p>OR</p> <p>(2) its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <p>...</p> <p>(ii) ...</p> <p><u>(iii) in relation to a structured deposit:</u></p> <p><u>dealing in investments as agent; or</u></p> <p><u>arranging (bringing about deals) in investments; or</u></p> <p><u>making arrangements with a view to transactions in investments; or</u></p> <p><u>advising on investments (except P2P agreements); or</u></p> <p><u>advising on investments (except pension transfers and pension opt-outs);</u></p> <p>...</p>
...	
B. Market operators	<p>(1) <i>firms</i> that were prescribed as an operator of a <i>prescribed market</i> under the Financial Services and Markets Act (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996); and</p> <p>(2) <i>firms</i> that are prescribed as a market operator, as defined in article 4(1)(13) <u>4(1)(18)</u> of <i>MiFID</i>.</p>
...	
B. MTF and OTF operators	its <i>permission</i> includes <i>operating a multilateral trading facility</i> <u>or</u> <i>operating an organised trading facility</i> .
...	

<p>Part 3</p> <p>This table indicates the tariff base for each fee-block set out in Part 1.</p> <p>The tariff base in this Part is the means by which the <i>FCA</i> measures the amount of business conducted by a <i>firm</i> for the purposes of calculating the annual periodic fees payable to the <i>FCA</i> by that <i>firm</i>.</p>	
Activity group	Tariff base
...	...
A.10	<p>NUMBER OF TRADERS</p> <p>Any <i>employee</i> or agent, who:</p> <p>ordinarily acts within the <i>United Kingdom</i> on behalf of an <i>authorised person</i> liable to pay fees to the <i>FCA</i> in its fee-block A.10 (firms dealing as principal); and who,</p> <p>as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>.</p> <p>But not any <i>employees</i> or agents who work solely in the <i>firm's MTF or OTF</i> operation.</p> <p>...</p>
...	
B. MTF and OTF operators	<p>SUPERVISORY CATEGORY</p> <p>The general supervisory category to which the <i>firm</i> <i>MTF or OTF operator</i> was assigned as at the start of the relevant <i>fee year</i>.</p>
...	

Part 5

This table indicates the valuation date for each fee-block. A *firm* can calculate its tariff data in respect of fees payable to the *FCA* by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.

Activity group	Valuation date
<p>IN THIS TABLE, REFERENCES TO SPECIFIC DATES OR MONTHS ARE REFERENCES TO THE LATEST ONE OCCURRING BEFORE THE START OF THE PERIOD TO WHICH THE FEE APPLIES, UNLESS OTHERWISE SPECIFIED - E.G. FOR 2013/14 FEES (1 APRIL 2013 TO 31 MARCH 2014), A REFERENCE TO DECEMBER MEANS DECEMBER 2012.</p>	
<p>Where a <i>firm's</i> tariff data is in a currency other than sterling, it should be converted into sterling at the exchange rate prevailing on the relevant valuation</p>	

date.	
...	
B. MTF <u>and</u> OTF operators	The start of the relevant <i>fee year</i> .
...	

4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from ~~1 April 2016 to March 2017~~ 1 April 2017 to 31 March 2018

Part 1		
This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of <i>FEES 4 Annex 1AR</i> .		
...		
Activity group	Fee payable	
...		
B. MTF <u>and</u> OTF operators	As set out in <i>FEES 4 Annex 10 10R</i> (Periodic fees for MTF <u>and</u> OTF operators).	
...
Part 3		
This table shows the modifications to fee tariffs that apply in respect of the <i>FCA</i> to <i>incoming EEA firms</i> and <i>incoming Treaty firms</i> which have established branches in the UK.		
Activity group	Percentage deducted from the tariff payable under Part 1 applicable to the <i>firm</i>	
...		
B. MTF MTF <u>and</u> OTF operators	Not applicable	
...		

FEES 4 Annex 3AR is deleted in its entirety and the deleted text is not shown.

4 Annex Fees relating to the direct reporting of transactions to the FCA under SUP

3AR 17A for the period 1 April 2017 to 31 March 2018 ~~[deleted]~~

...

4 Annex 10R Periodic fees for MTF and OTF operators payable in relation to the period 1 April 2017 to 31 March 2018

General supervisory category of <i>MTF</i> or <i>OTF</i> operator (see Note below)	Fee payable (£)	Due date (i) 1 August 2016 <u>2017</u> ; or (ii) 30 days from the date of the invoice in the case of a <i>firm</i> which receives <i>permission</i> to be <i>operating a multilateral trading facility</i> or to <u>be operating an organised trading facility</u> or whose <i>permission</i> is extended to include this <u>either</u> activity in the course of the relevant financial year.
<i>MTF</i> or <i>OTF</i> operator has a named individual fixed portfolio supervisor	...	
All other <i>MTF</i> or <i>OTF</i> operators (i.e. those supervised by a team of flexible portfolio supervisors)	...	
...		
Note: subject to <i>FEES</i> 4.3.13R, this table applies to all <i>MTF</i> or <i>OTF</i> operators with <i>permission</i> to operate an <i>MTF</i> or <i>OTF</i> as at 1 April of the applicable <i>fee year</i> , irrespective of whether, and if so when, their <i>permission</i> to operate an <i>MTF</i> or <i>OTF</i> was subsequently cancelled during that <i>fee year</i> .		

4 Annex 11R Periodic fees in respect of payment services, electronic money, ~~and~~ issuance, regulated covered bonds, CBTL business and data reporting services in relation to the period 1 April 2017 to 31 March 2018

This Annex sets out the periodic fees in respect of *payment services* carried on by *fee-paying payment service providers* under the *Payment Services Regulations* and electronic money issuance by *fee-paying electronic money issuers* under the *Electronic Money Regulations* and issuance of *regulated covered bonds* by issuers and *CBTL business* carried on by *CBTL firms* under the *MCD Order* ~~and in relation to the period 1 April 2017 to 31 March 2018~~ and data reporting services providers (other than incoming data reporting services providers) under

the DRS Regulations.

...	
Part 2C – Activity group relevant to <i>data reporting services providers</i>	
Activity Group	Fee payer falls into this group if:
<u>G.25 DRSP</u>	<u>it is a <i>data reporting services provider</i> (other than an <i>incoming data reporting services provider</i>).</u>

<p>Part 3</p> <p>This table indicates the tariff base for each fee-block. The tariff base is the means by which the <i>FCA</i> measures the amount of business conducted by <i>fee-paying payment service providers, fee-paying electronic money issuers, CBTL firms, data reporting services providers (other than incoming data reporting services providers)</i> and <i>issuers of regulated covered bonds</i>.</p>	
Activity Group	Tariff base
...	
<u>G.25</u>	<u>Not applicable</u>

...

Part 5 – Tariff rates		
Activity group	Fees payable in relation to 2017/18	
...		
<u>G.25</u>	<u>Flat fee (£) for first <i>data reporting service</i> plus 50% flat fee for each additional <i>data reporting service</i> for which the <i>data reporting services provider</i> (other than an <i>incoming data reporting services provider</i>) has authorisation.</u>	<u>[TBC]</u>

...

TP 16R Transitional Provisions for Market Data Processor System Connectivity Fees

(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
16.1	<u>FEES 3.2.7R Part 1 (1) (zx) and 1(1) (zy)</u>	<u>R</u>	<u>Where a person has applied to connect to the market data processor system prior to [3 July 2017] the onboarding fees as described in FEES 3.2.7R Part 1 (1) (zx) and 1(1) (zy) are payable in respect of the application and are due within 15 workings days of 3 July 2017.</u>	<u>From 3 July 2017</u>	<u>3 July 2017</u>

Annex G

Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

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

1 Application

1.1 Application and Purpose

...

Types of IFPRU investment firm: IFPRU 125K firm

- 1.1.9 R An *IFPRU 125K firm* means an *IFPRU investment firm* that satisfies the following conditions:

...

- (5) it does not operate either a multilateral trading facility or an organised trading facility, or both.

[Note: article 29(1) of *CRD*]

Types of IFPRU investment firm: IFPRU 50K firm

- 1.1.10 R An *IFPRU 50K firm* is a *IFPRU investment firm* that satisfies the following conditions:

...

- (4) it does not operate either a multilateral trading facility or an organised trading facility, or both.

[Note: article 29(3) of *CRD*]

Types of IFPRU investment firm: IFPRU 730K firm

- 1.1.11 R ...

- (2) An *IFPRU investment firm* that operates either a multilateral trading facility or an organised trading facility or both is an *IFPRU 730K firm*.

[Note: article 28(2) of *CRD*]

...

Interpretation of the definition of types of firm and undertaking

- 1.1.13 G A *firm* whose head office is not in an *EEA State* is an *investment firm* if it would have been subject to the requirements imposed by MiFID (but it is

not a *bank, building society, credit institution, local firm, exempt CAD firm and BIPRU firm*) if:

...

...

2 Supervisory processes and governance

...

2.3 Supervisory review and evaluation process: internal capital adequacy standards

...

A securities firm

...

2.3.65 G Counterparty risk requirements only partially capture the risk of settlement failure, as the quantification of risk is only based on mark-to-market values and does not take account of the volatility of the securities over the settlement period. A securities *firm's* assessment of its exposure to counterparty risk should take into account:

...

- (2) the types of execution venues which it uses - for example, the London Stock Exchange or a retail service provider (RSP) have more depth than *multilateral trading facilities*; and

...

...

Annex H

**Amendments to the Interim Prudential sourcebook for Investment Businesses
(IPRU(INV))**

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

3 Financial resources for Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms or Exempt IFPRU Commodities Firms

...

3-60 FIRMS TO WHICH RULES 3-61 TO 3-182 APPLY

Broad scope firms

- 3-60(1) R Rules 3-61 to 3-182 apply to a *broad scope firm* except that rules 3-80 to 3-178 do not apply to a *venture capital firm* or in respect of *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(~~i~~) (j).

...

~~Advisers and locals/traded options market makers~~

- 3-60(4) R Rules 3-61 to 3-182 do not apply to an *adviser* ~~or local/traded options market maker~~ which must instead comply with the following capital requirements at all times:
- (a) *tangible net worth* must be positive; and
 - (b) ~~in the case of an adviser,~~ net current assets must be positive; and .
 - (c) ~~in the case of a local traded options market maker, the firm must be able to meet its liabilities as they fall due.~~

...

Absolute minimum requirement = General rule

- 3-72 R A *firm's* absolute minimum requirement is:

...

- (eb) for a *firm* that is exempt from *MiFID* under article 2(1)(~~i~~) (j) and whose *permitted activities* include *bidding in emissions auctions*: £50,000;

...

3-173A DERIVATIVE TRANSACTIONS

...

Exposures to ~~local~~ local firms

- 3-173A(5) R A *firm* must calculate a 100% *CRR* for amounts of initial and variation margin not met with *acceptable collateral* or a positive *equity balance* owed to a *firm* by a *local firm* in respect of transactions in *derivatives* listed on an *exchange* or *approved exchange* from the date of any shortfall. However, a *firm* may use an alternative treatment if it:
- (a) participates in the profits or losses of the *local firm* for 25% or more when the *firm* may include the *local firm* position in its own position which will then be subject to *PRR*; or
 - (b) calculates *PRR* for ~~local~~ local firms in which case its requirement will be the sum of the following:
 - (i) 10% of the *PRR* result for each *local firm*; and
 - (ii) the excess over the “net liquidating balance” of the *PRR* applied to the positions of each *local firm*; and
 - (c) for the purposes of (b) above, “net liquidating balance” means the cash amount which would remain in a *local firm* account if all positions were liquidated and there were added (1) cash balances (2) the value of *marketable investments*, and (3) letters of credit and guarantees issued by a *regulated banking institution* which is not the *counterparty* or an *associate* of the *counterparty* in the control of the *firm*; and there were deducted all loans and overdrafts from, and other liabilities to the *firm*; and to the extent that a *firm* includes an exposure in the net liquidating balance calculation, it does not also need to apply the liquidity adjustment in rule 3-75 or the *CRR* to those exposures.

...

APPENDIX 1 - GLOSSARY OF TERMS FOR IPRU(INV) 3

...

broad scope firm means any *firm* which is not an *adviser*; or an arranger ~~or a local~~;

...

9 Financial resources requirements for an exempt CAD firm**9.2 GENERAL REQUIREMENTS**

...

Initial capital and professional indemnity insurance requirements – exempt CAD

firms that are not IMD insurance intermediaries

- 9.2.4 R (1) An *exempt CAD firm* which is not an *IMD insurance intermediary* must have:

...

[Note: ~~Article 67(3) of MiFID~~ and article 31(1) of the *CRD*]

...

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are also IMD insurance intermediaries

- 9.2.5 R (1) An *exempt CAD firm* that is also an *IMD insurance intermediary* must comply with the professional indemnity insurance requirements at least equal to those set out in *IPRU(INV)* 9.2.4R(1)(b) (except that the minimum *limits of indemnity* are at least EUR 1,120,200 for a single claim and EUR 1,680,300 in aggregate) and in addition has to have:

...

[Note: ~~Article 67(3) of MiFID~~ and article 31(2) of the *CRD*]

...

...

Initial capital and ongoing capital requirements for local firms

- 9.2.8 R A *local firm* must:

- (a) have *initial capital* of EUR 50,000; and

[Note: ~~Article 67(2) of MiFID~~ and article 30 of *CRD*]

...

...

13 Financial Resource Requirements for Personal Investment Firms

13.1 APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

...

Limits of indemnity

...

- 13.1.11 R ...

[Note: ~~Article 67(3) of MiFID and~~ article 31(1) of *CRD* (see also *IPRU(INV)* 13.1A.3R)]

13.1.12 R ...

[Note: ~~Article 67(3) of MiFID and~~ article 31(2) of *CRD* (see also *IPRU(INV)* 13.1A.4R)]

...

Annex I

Amendments to the Conduct of Business sourcebook (COBS)

Amend the following as shown. Underlining indicates new text and striking through indicates deleted text.

3 Client categorisation

...

3.6 Eligible counterparties

...

Per se eligible counterparties

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

...

(7) ~~an undertaking exempted from the application of *MiFID* under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive; [deleted]~~

...

(9) a central bank; and

...

...

Annex J

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

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

2 General matters

...

2.4 Record-keeping

- 2.4.1 G (1) The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) contains high-level record-keeping requirements (see SYSC 3.2.20R and SYSC 9.1.1R and SYSC 9.1.1AR).

...

Annex K

Amendments to the Market Conduct sourcebook (MAR)

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

5 Multilateral trading facilities (MTFs)

5.1 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.esma.europa.eu/system/files/esma_2012_122_en.pdf~~

Who and what?

5.1.1 R This chapter applies to:

(1)	a <i>UK domestic firm</i> which operates an <i>MTF</i> from an establishment in the <i>United Kingdom</i> or elsewhere; or
(2)	an <i>overseas firm</i> which operates an <i>MTF</i> from an establishment in the <i>United Kingdom</i> .

Status of EU provisions as rules in certain instances

5.1.2 R ~~In this chapter, provisions marked “EU” apply to an *overseas firm* as if they were *rules*. [deleted]~~

5.1.3 G *GEN 2.2.22AR* applies to ensure that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*.

5.2 Purpose

5.2.1 G The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *MTFs*, specifically articles ~~14, 26, 29 and 30~~ 18, 19, 31, 32, 33, 48, 49 and 50 of *MiFID*. This chapter does not apply to bilateral systems, which are excluded from the *MTF* definition. ~~It sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.~~

5.3 Trading process requirements

Rules, procedures and arrangements

5.3.1 R A ~~firm operating an MTF~~ must have:

- (1) transparent ~~and non-discretionary~~ rules and procedures for fair and orderly trading;

[~~Note: Article 14~~ article 18(1) of MiFID]

- (2) objective criteria for the efficient execution of orders which are established and implemented in non-discretionary rules;

[~~Note: Article 14(1)~~ articles 18(1) and 19(1) of MiFID]

- (2A) arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with the risks of systems disruption;

[~~Note: article 18(1) of MiFID~~]

- (3) transparent rules regarding the criteria for determining the *financial instruments* that can be traded under its systems;

[~~Note: Subparagraph 1 of Article 14~~ article 18(2) of MiFID]

- (4) published, transparent and non-discriminatory rules, based on objective criteria, governing access to its facility, and which ~~rules~~ must provide that its members or participants are *investment firms, CRD credit institutions* or other ~~persons~~ persons who:
- (a) are ~~fit and proper~~ of sufficient good repute;
 - (b) have a sufficient level of trading ability ~~and~~, competence and experience;
 - (c) where applicable, have adequate organisational arrangements; and
 - (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the *firm* operating the *MTF* may have established in order to guarantee the adequate settlement of *transactions*; ~~and~~

[~~Note: Article 14(4) and 42(3)~~ articles 18(3), 19(2) and 53(3) of MiFID]

- (5) ~~where applicable must~~ arrangements to provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment ~~judgment~~ judgement, taking into account both the nature of the users and the types of instrument traded; and

[~~Note: Subparagraph 2 of Article 14~~ article 18(2) of MiFID]

(6) (as between the interests of the *MTF*, its owners, or the *firm* and those of the members and participants or users in the sound functioning of the *trading venue*) arrangements to identify clearly and to manage any conflict with adverse consequences for:

(a) the operation of the *trading venue* for the members and participants or users; or

(b) the members and participants or users otherwise.

[Note: article 18(4) of *MiFID*]

Functioning of an MTF

5.3.1A R A *firm* must:

(1) ensure the *MTF* has at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation;

[Note: article 18(7) of *MiFID*]

(2) have arrangements to ensure it is adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation and put in place effective measures to mitigate those risks;

[Note: article 19(3)(a) of *MiFID*]

(3) have available at the time of *authorisation* and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the venue and the range and degree of the risks to which it is exposed;

[Note: article 19(3)(c) of *MiFID*]

(4) not execute orders against proprietary capital, or engage in *matched principal trading*;

[Note: article 19(5) of *MiFID*]

(5) make available data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments* to the public in the following manner:

(a) at least on an annual basis; and

(b) without any charges; and

[Note: article 27(3) of MiFID]

- (6) provide the following to the FCA:
- (a) a detailed description of the functioning of the MTF, including any links to or participation by a regulated market, an MTF, OTF or systematic internaliser owned by the same firm; and
 - (b) a list of its members, participants and users.

[Note: article 18(10) of MiFID and MiFID ITS 19 with regard to the content and format of the description of the functioning of MTFs]

- 5.3.1B G The requirement in MAR 5.3.1AR(4) does not prevent a firm, with the appropriate permission, from executing orders against its proprietary capital or engaging in matched principal trading outside the MTF it operates.

~~Publication of pre and post-trade information for shares not admitted to trading on a regulated market~~

- 5.3.2 G ~~In the case of shares not admitted to trading on a regulated market, the FCA expects that in order to fulfil the requirements in MAR 5.3.1R as regards fair and orderly trading, the firm operating the MTF will make public on reasonable commercial terms:~~
- ~~(1) on a continuous basis during normal trading hours, information about the quotes and orders relating to these shares which the MTF displays or advertises to its users; and~~
 - ~~(2) as close to real time as possible, information about the price, volume and time of transactions in these shares executed under its systems. [deleted]~~

- 5.3.3 G ~~The firm may make information about a large quote, order or transaction available under MAR 5.3.2G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction. [deleted]~~

~~Publication of post-trade information for financial instruments other than shares~~

- 5.3.4 G ~~Where financial instruments other than shares are traded on an MTF, and the same or substantially similar instruments are also traded on a UK RIE, a regulated market or an EEA commodities market, the FCA expects that in order to fulfil the requirements in MAR 5.3.1R as regards fair and orderly trading, the firm operating the MTF will make public, on reasonable commercial terms and as close to real time as possible, the price, volume and time of the transactions executed under its systems. [deleted]~~
- 5.3.5 G ~~For large transactions in debt securities, an indication that volume exceeded a certain figure (not being less than £7 million or its equivalent) instead of~~

~~the actual volume is sufficient transparency of the volume of a trade.
[deleted]~~

- 5.3.6 G ~~The *firm* may make information about a large quote, order or transaction available under MAR 5.3.4G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction. [deleted]~~

Operation of a primary market in ~~shares~~ financial instruments not admitted to trading on a regulated market

- 5.3.7 G The *FCA* will be minded to impose a variation on the *Part 4A Permission permission* of an *MTF* operator (other than an *SME growth market*) that operates a primary market in ~~shares~~ financial instruments not admitted to trading on a *regulated market* in order to ensure its fulfilment of the requirements in MAR 5.3.1R as regards fair and orderly trading.

Transferable securities traded without issuer consent

- 5.3.8 R Where a *transferable security*, which has been *admitted to trading* on a *regulated market*, is also traded on an *MTF* without the consent of the *issuer*, the *firm* operating the *MTF* must not make the *issuer* subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that *MTF*.

[~~Note: Article 14(6)~~ article 18(8) of *MiFID*]

After MAR 5.3 (Trading process requirements) insert the following new section. All the text is new and is not underlined.

5.3A Systems and controls for algorithmic trading

Systems and controls

- 5.3A.1 R A *firm* must ensure that the systems and controls, including procedures and arrangements, used in the performance of its activities are adequate, effective and appropriate for the scale and nature of its business.
- 5.3A.2 R *MAR* 5.3A.1R applies in particular to systems and controls concerning:
- (1) the resilience of the *firm's* trading systems;
 - (2) its capacity to deal with peak order and message volumes;
 - (3) the ability to ensure orderly trading under conditions of severe market stress;
 - (4) the effectiveness of business continuity arrangements to ensure the continuity of the *MTF's* services if there is any failure of its trading

- systems, including the testing of the *MTF's* systems and controls;
- (5) the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous;
 - (6) the ability to ensure that *algorithmic trading* systems cannot create or contribute to disorderly trading conditions on the *trading venue*;
 - (7) the ability to ensure any disorderly trading conditions which do arise from the use of *algorithmic trading* systems are capable of being managed, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the *MTF's* trading system by a member or participant;
 - (8) the ability to ensure the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;
 - (9) the ability to limit and enforce the minimum tick size which may be executed on the *MTF*; and
 - (10) the requirement for members and participants to carry out appropriate testing of algorithms, including providing environments to facilitate that testing.

[Note: article 48(1),(4) and (6) of *MiFID*, *MiFID RTS 7*, *MiFID RTS 9*, and *MiFID RTS 11*]

Market making agreements

5.3A.3 R A *firm* must:

- (1) have written agreements with all *investment firms* pursuing a *market making strategy* on *trading venues* operated by it (market making agreements);
- (2) have schemes, appropriate to the nature and scale of a *trading venue*, to ensure that a sufficient number of *investment firms* enter into market making agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;
- (3) monitor and enforce compliance with the market making agreements;
- (4) inform the *FCA* of the content of its market making agreements; and
- (5) provide the *FCA* with any information it requests which the *FCA* reasonably requires to be satisfied that the market making agreements comply with this *rule*.

[Note: article 48(2) and (3) of *MiFID*, and *MiFID RTS 8*]

- 5.3A.4 R A market making agreement in *MAR* 5.3A.3R(1) must specify:
- (1) the obligations of the *investment firm* in relation to the provision of liquidity;
 - (2) where applicable, any obligations arising, or rights accruing, from the participation in a liquidity scheme mentioned in *MAR* 5.3A.3R(2); and
 - (3) any incentives in terms of rebates or otherwise offered by the *firm* to the *investment firm* in order for it to provide liquidity to the *MTF* on a regular and predictable basis and, where applicable, any other rights accruing to the *investment firm* as a result of participation in the liquidity scheme.

[**Note:** article 48(3) of *MiFID* and *MiFID RTS* 8]

Measures to prevent disorderly markets

- 5.3A.5 R A *firm* must have the ability to:
- (1) temporarily halt or constrain trading on the *MTF* if there is a significant price movement in a *financial instrument* on the *MTF* or a related *trading venue* during a short period; and
 - (2) in exceptional cases, cancel, vary or correct any *transaction*.

[**Note:** article 48(5) of *MiFID*]

- 5.3A.6 R For the purposes of *MAR* 5.3A.5R and to avoid significant disruptions to the orderliness of trading, a *firm* must calibrate the parameters for halting trading in a way which takes into account the following:
- (1) the liquidity of different asset classes and subclasses;
 - (2) the nature of the *trading venue* market model; and
 - (3) the types of users.

[**Note:** article 48(5) of *MiFID*]

- 5.3A.7 R The *firm* must report the parameters mentioned in *MAR* 5.3A.6R to the *FCA* in writing, by electronic mail to an address for the usual supervisory contact of the *firm* at the *FCA*, and obtain an electronic confirmation of receipt.

[**Note:** article 48(5) of *MiFID*]

- 5.3A.8 R A *firm* must have systems and procedures to notify the *FCA* if:
- (1) an *MTF* operated by the *firm* is material in terms of the liquidity of trading of a *financial instrument* in the *EEA*; and

- (2) trading is halted in that instrument.

[Note: article 48(5) of *MiFID*]

Direct electronic access

- 5.3A.9 R A *firm* which permits *direct electronic access* to an *MTF* it operates must:
- (1) not permit members or participants of the *MTF* to provide such services unless they are:
 - (a) *investment firms* authorised under *MiFID*; or
 - (b) *CRD credit institutions*; or
 - (c) third country firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or
 - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
 - (e) third country firms providing the *direct electronic access* in accordance with the; exclusion in article 72 of the *RAO* or
 - (f) a third country firm which does not come within *MAR* 5.3A.9R(1)(d) to (f) but is otherwise permitted to provide the *direct electronic access* under the *Act*; or
 - (g) *firms* that come within article 2.1(a), (e), (i), or (j) of *MiFID* and have a *Part 4A permission* relating to *investment services or activities*;
 - (2) set, and apply, criteria for the suitability of *persons* to whom *direct electronic access* services may be provided;
 - (3) ensure that the member or participant of the *MTF* retains responsibility for adherence to the requirements of *MiFID* in respect of orders and trades executed using the *direct electronic access* service;
 - (4) set standards for risk controls and thresholds on trading through *direct electronic access*;
 - (5) be able to distinguish and if necessary stop orders or trading on that *trading venue* by a *person* using *direct electronic access* separately from:
 - (a) other orders; and
 - (b) trading by the member or participant providing the *direct electronic access*; and

- (6) have arrangements to suspend or terminate the provision of *direct electronic access* on that market by a member or participant in the case of any non-compliance with this *rule*.

[**Note:** article 48(7) of *MiFID*]

Co-location

- 5.3A.10 R Where a *firm* permits co-location in relation to the *MTF*, its rules on co-location services must be transparent, fair and non-discriminatory.

[**Note:** article 48(8) of *MiFID* and *MiFID RTS 10*]

Fee structures

- 5.3A.11 R A *firm's* fee structure, for all fees it charges and rebates it grants in relation to the *MTF*, must:

- (1) be transparent, fair and non-discriminatory;
- (2) not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading or *market abuse*; and
- (3) impose market making obligations in individual *financial instruments* or suitable baskets of *financial instruments* for any rebates that are granted.

[**Note:** article 48(9) of *MiFID* and *MiFID RTS 10*]

- 5.3A.12 G Nothing in *MAR* 5.3A.11R prevents a *firm*:
- (1) adjusting its fees for cancelled orders according to the length of time the order was maintained;
 - (2) calibrating its fees to each *financial instrument* to which they apply;
 - (3) imposing a higher fee:
 - (a) for placing an order which is cancelled than for an order which is executed;
 - (b) on participants placing a high ratio of cancelled orders to executed orders; and
 - (c) on a *person* operating a high-frequency *algorithmic trading* technique,

in order to reflect the additional burden on system capacity.

[**Note:** article 48(9) of *MiFID*]

Flagging orders, tick sizes and clock synchronization

- 5.3A.13 R A *firm* must require members and participants of an *MTF* operated by it to flag orders generated by *algorithmic trading* in order for the *firm* to be able to identify the following:
- (1) different algorithms used for the creation of orders; and
 - (2) the *persons* initiating those orders.
- [Note: article 48(10) of *MiFID*]
- 5.3A.14 R A *firm* must adopt tick size regimes in:
- (1) shares, *depository receipts*, *exchange-traded funds*, *certificates* and other similar *financial instruments* traded on the *MTF*; and
 - (2) any other *financial instrument* which is traded on that *trading venue*, as required by a regulatory technical standard made under article 49.3 or 49.4 of *MiFID*.
- [Note: article 49 of *MiFID* and *MiFID RTS 11*]
- 5.3A.15 R The tick size regime referred to in *MAR 5.3A.14R* must:
- (1) be calibrated to reflect the liquidity profile of the *financial instrument* in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and
 - (2) adapt the tick size for each *financial instrument* appropriately.
- [Note: article 49 of *MiFID* and *MiFID RTS 11*]
- 5.3A.16 G Nothing in *MAR 5.3A.14R* or *MAR 5.3A.15R* requires a *firm* to act inconsistently with any regulatory technical standards made under article 49.3 or 49.4 of *MiFID*.
- [Note: article 49 of *MiFID*]
- 5.3A.17 R A *firm* must synchronise the business clocks it uses to record the date and time of any reportable event.
- [Note: article 50 of *MiFID* and *MiFID RTS 25*]
- 5.3A.18 G For the purpose of *MAR 5.3A.17R*, the regulatory technical standards made under article 50 of *MiFID* provide further requirements.

Amend the following as shown.

5.4 Finalisation of transactions

- 5.4.1 R A *firm* ~~operating an MTF~~ must:
- (1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in ~~that~~ its MTF; and
 - (2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[~~Note: Article 14(5)~~ articles 18(6) and 19(3)(b) of MiFID]

[Note: in relation to derivative transactions, MiFID RTS 26 contains requirements on the systems for the clearing of such transactions]

5.5 Monitoring compliance with the rules of the MTF

- 5.5.1 R A *firm* ~~operating an MTF~~ must:
- (1) have effective arrangements and procedures relevant to ~~the~~ its MTF, for the regular monitoring of the compliance by its users with its rules; and
 - (2) monitor the transactions undertaken by its users under its systems in order to identify breaches of those rules, disorderly trading conditions, system disruptions in relation to a financial instrument, or conduct that may involve ~~market abuse~~ market abuse.

[~~Note: Article 26~~ article 31(1) of MiFID]

5.6 Reporting requirements

- 5.6.1 R A *firm* ~~operating an MTF~~ must:
- (1) report to the FCA any:
 - (a) significant breaches of the *firm's* rules;
 - (b) disorderly trading conditions; ~~and~~
 - (c) conduct that may involve ~~market abuse~~ market abuse; ~~and~~
 - (d) system disruptions in relation to a financial instrument;
 - (2) supply the information required under this *rule* without delay to the FCA and any other authority competent for the investigation and prosecution of ~~market abuse~~ market abuse; and

- (3) provide full assistance to the *FCA*, and any other authority competent for the investigation and prosecution of ~~market abuse~~ market abuse, in its investigation and prosecution of ~~market abuse~~ market abuse occurring on or through the *firm's* systems.

[~~Note: Article 26~~ article 31(2) of *MiFID* and articles 81 and 82 of the *MiFID Org Regulation*]

After MAR 5.6 insert the following new section. All the text is new and is not underlined.

5.6A Suspension and removal of financial instruments

5.6A.1 R A *firm* must:

- (1) not exercise any power under its rules to suspend or remove from trading any *financial instrument* which no longer complies with its rules, where such a step would be likely to cause significant damage to the interest of investors or the orderly functioning of the *trading venue*;
- (2) where it does suspend or remove from trading a *financial instrument*, also suspend or remove derivatives that relate, or are referenced, to that *financial instrument*, where necessary to support the objectives of the suspension or removal of the underlying; and
- (3) make public any decision in (2) and notify the *FCA* of it.

[~~Note: article 32 of *MiFID*, article 80 of the *MiFID Org Regulation*, *MiFID RTS 18* and *MiFID ITS 2*~~]

Amend the following as shown.

5.7 Pre- and post-trade transparency requirements for shares equity and non-equity instruments: form of waiver and deferral

...

5.7.1A D A *firm* that makes an application to the *FCA* for a waiver in accordance with articles 4 or 9 of *MiFIR* (in relation to pre-trade transparency for equity or non-equity instruments) must make it in the form set out in *MAR 5 Annex 1D*.

[~~Note: articles 4 and 9 of *MiFIR*, *MiFID RTS 1* and *MiFID RTS 2*~~]

- 5.7.1B G According to article 4(7) of MiFIR, waivers granted by competent authorities in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by ESMA by 3 January 2020. ESMA shall issue an opinion to the competent authority, assessing the continued compatibility of those waivers with the requirements established in MiFIR and any regulations made pursuant to it. The FCA will cooperate with ESMA in relation to the continued effect of existing waivers.
- 5.7.1C D A firm intending to apply to the FCA for deferral in accordance with articles 7 or 11 of MiFIR in relation to post-trade transparency for equity or non-equity instruments must apply in writing to the FCA.
- [Note: articles 7 and 11 of MiFIR, MiFID RTS 1 and MiFID RTS 2]
- 5.7.1D G A firm should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the FCA by telephone or by other prompt means of communication, before submitting a written application. Oral notifications should be given directly to the firm's usual supervisory contact at the FCA. An oral notification left with another person or on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

Pre-trade information

5.7.2	EU	1.	An investment firm or market operator operating an MTF or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [of the MiFID Regulation], make public the information set out in paragraphs 2 to 6.
		2.	Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.
		3.	Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices. The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell. In exceptional market conditions, however, one way prices may be allowed for a limited time.

4.	Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
5.	Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraph 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share. In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.
6.	A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II [of the <i>MiFID Regulation</i>].
[Note: Article 17 of the <i>MiFID Regulation</i>] [deleted]	

Table 1: Information to be made public in accordance with Article 17

5.7.3

EU	Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
	Continuous auction order book trading system	A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis	The aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels
	Quote-driven trading system	A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a	The best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices

	commercial size and the risk to which the market maker exposes itself	
Periodic auction trading system	A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	The price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
Trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first three rows	Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit
[Note: Table 1, Annex II of the MiFID Regulation] [deleted]		

Publication of pre-trade information

5.7.4

EU	1.	A regulated market, MTF or systematic internaliser shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market, MTF or systematic internaliser concerned, and remains available until it is updated.
	2.	Pre-trade information ... shall be made available as close to real time as possible ...
[Note: Article 29(1) and (2) of the MiFID Regulation] [deleted]		

5.7.5

EU	Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.
[Note: Recital (18) to the MiFID Regulation] [deleted]	

Disapplication of the pre-trade transparency requirements

5.7.6 G ~~The obligation in MAR 5.7.1R(1) to make public certain pre-trade information is disapplied in MAR 5.7.1R(2) based on the market model or the type and size of orders in the cases identified in the *MiFID Regulation*, and as reproduced for reference in MAR 5.7.8EU, MAR 5.7.9EU, MAR 5.7.10EU and MAR 5.7.11EU. In particular, the obligation is disapplied in respect of transactions that are large in scale compared with the normal market size for the share or type of share in question.~~

~~[Note: Article 29(2) of *MiFID* and Recital 12 and Articles 18, 19, 20, 33 and 34 of the *MiFID Regulation*] [deleted]~~

5.7.7 EU ~~If granting waivers in relation to pre-trade transparency requirements, or authorising the deferral of post trade transparency obligations, *competent authorities* should treat all *regulated markets* and *MTFs* equally and in a non-discriminatory manner, so that a waiver or deferral is granted either to all *regulated markets* and *MTFs* that they authorise under [the *MiFID*] Directive 2004/39/EC, or to none. *Competent authorities* which grant the waivers or deferrals should not impose additional requirements.~~

~~[Note: Recital 12 to the *MiFID Regulation*] [deleted]~~

5.7.8	EU	4.	Waivers in accordance with Article 29(2) and 44(2) of [the <i>MiFID</i>] Directive 2004/39/EC may be granted by the <i>competent authorities</i> for systems operated by an <i>MTF</i> or a <i>regulated market</i>, if those systems satisfy one of the following criteria:	
		(a)	they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;	
		(b)	they formalise negotiated transactions, each of which meets one of the following criteria:	
		(i)	it is made at or within the current volume-weighted spread reflected on the order book or the quotes of the market makers of the <i>regulated market</i> or <i>MTF</i> operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;	
		(ii)	it is subject to conditions other than the current market price of the share.	
			For the purposes of point (b), the other conditions specified in the	

	<p>rules of the regulated market or <i>MTF</i> for a transaction of this kind must also have been fulfilled.</p> <p>In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.</p>
2.	<p>Waivers in accordance with Articles 29(2) and 44(2) of [the <i>MiFID</i>] Directive 2004/39/EC based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the <i>regulated market</i> or the <i>MTF</i> pending their being disclosed to the market.</p>
<p>[Note: Article 18 of the <i>MiFID Regulation</i>] [deleted]</p>	

5.7.9

EU	<p>For the purpose of Article 18(1)(b) [of the <i>MiFID Regulation</i>] a negotiated transaction shall mean a transaction involving members or participants of a <i>regulated market</i> or an <i>MTF</i> which is negotiated privately but executed within the <i>regulated market</i> or <i>MTF</i> and where that member or participant in doing so undertakes one of the following tasks:</p>
(a)	<p><i>dealing on own account</i> with another member or participant who acts for the account of a <i>client</i>;</p>
(b)	<p>dealing with another member or participant, where both are executing orders on own account;</p>
(c)	<p>acting for the account of both the buyer and seller;</p>
(d)	<p>acting for the account of the buyer, where another member or participant acts for the account of the seller;</p>
(e)	<p>trading for own account against a <i>client</i> order.</p>
<p>[Note: Article 19 of the <i>MiFID Regulation</i>] [deleted]</p>	

5.7.10

EU	<p>An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [of the <i>MiFID Regulation</i>]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33 [of the <i>MiFID Regulation</i>].</p>
<p>[Note: Article 20 of the <i>MiFID Regulation</i>] [deleted]</p>	

Table 2: Orders large in scale compared with normal market size

5.7.11	EU	Class in terms of average daily turnover (ADT)	ADT < €500 000	€500 000 ≤ ADT < €1 000 000	€1 000 000 ≤ ADT < €25 000 000	€25 000 000 ≤ ADT < €50 000 000	ADT ≥ €50 000 000
		Minimum size of order qualifying as large in scale compared with normal market size	€50 000	€100 000	€250 000	€400 000	€500 000
[Note: Table 2, Annex II of the <i>MiFID Regulation</i>] [deleted]							

5.7.12 G The *FCA* will publish on its website the calculations and estimates for shares admitted to trading on a regulated market, made by the *FCA* under the provisions in Articles 33 and 34 of the *MiFID Regulation*. [deleted]

MAR 5.8 and MAR 5.9 are deleted in their entirety. The deleted text is not shown.

5.8 Provisions common to pre- and post-trade transparency requirements for shares [deleted]

5.9 Post-trade transparency requirements for shares [deleted]

After the deleted MAR 5.9 insert the following link to a new form as a separate Annex. All the text is new and is not underlined.

5 Annex 1D Form in relation to pre-trade transparency

[Editor's note: The form can be found at this address:

<https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.doc>]

...

After the new MAR 5 Annex 1R insert the following new chapter. All the text is new and is not underlined.

5A Organised trading facilities (OTFs)

5A.1 Application

Who and what?

5A.1.1 R This chapter applies to:

- (1) a *UK domestic firm* which operates an *OTF* from an establishment in the *United Kingdom* or elsewhere; or
- (2) an *overseas firm* which operates an *OTF* from an establishment in the *United Kingdom*.

5A.1.2 G In addition:

- (1) In accordance with paragraph 15(9) of the Schedule to the *Recognition Requirement Regulations* and *REC 2.16A.1GR*, *MAR 5A.3.9R* applies to a *UK RIE* as though it was an *investment firm*.
- (2) *GEN 2.2.22AR* applies to ensure that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*.

5A.2 Purpose

5A.2.1 G The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *OTFs*, specifically articles 18, 20, 31, 32, 48, 49 and 50 of *MiFID*.

5A.2.2 G *MAR 5A.3.9R* also sets out how the obligations of an *investment firm* under articles 16, 24, 25, 27 and 28 (as transposed in the *FCA Handbook*) apply to a *firm* operating an *OTF* in respect of that operation.

5A.2.3 G This chapter does not apply to bilateral systems, which are excluded from the *OTF* definition.

5A.3 Specific requirements for OTFs

Executing orders

5A.3.1 R A *firm* must:

- (1) execute orders on a discretionary basis in accordance with *MAR 5A.3.2R*;
- (2) unless permitted in *MAR 5A.3.5R*, not execute any *client* orders against its proprietary capital or the proprietary capital of any entity that is part of the same group or legal person as the *firm*; and

- (3) ensure that the operation of an *OTF* and of a *systematic internaliser* does not take place within the same legal entity, and that the *OTF* does not connect with another *OTF* or with a *systematic internaliser* in a way which enables orders in the different *OTFs* or *systematic internaliser* to interact.

[**Note:** article 20(1) to (4) and 20(6) of *MiFID*]

5A.3.2 R The discretion which the *firm* must exercise in executing a *client* order must be either, or both, of the following:

- (1) the first discretion is whether to place or retract an order on the *OTF*;
- (2) the second discretion is whether to match a specific *client* order with other orders available on the *OTF* at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the *client* and in accordance with the *firm's* obligations under article 27 of *MiFID*.

[**Note:** article 20(6) of *MiFID*]

5A.3.3 G Where the *OTF* crosses *client* orders, the *firm* may decide if, when and how much of two or more orders it wants to match. In addition, subject to the requirements of this section, the *firm* may facilitate negotiation between *clients* so as to bring together two or more potentially comparable trading interests in a transaction.

[**Note:** article 20(6) of *MiFID*]

5A.3.4 G *MAR* 5A.3 does not prevent a *firm* from engaging another *investment firm* to carry out market making on an independent basis on an *OTF* operated by it provided the *investment firm* does not have *close links* with the *firm*.

[**Note:** article 20(5) of *MiFID*]

Proprietary trading

5A.3.5 R A *firm* must not engage in:

- (1) *matched principal trading* on an *OTF* operated by it except in bonds, *structured finance products*, *emission allowances* and derivatives which have not been declared subject to the clearing obligation in accordance with article 5 of *EMIR*, and where the *client* has consented; or
- (2) *dealing on own account* on an *OTF* operated by it, excluding *matched principal trading*, except in *sovereign debt instruments* for which there is not a liquid market.

[**Note:** article 20(2) and (3) of *MiFID*]

- 5A.3.6 R For the purposes of *MAR* 5A.3.5R(2), a “liquid market” means a market for a *financial instrument* or a class of *financial instruments*, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular *financial instrument* or of the particular class of *financial instruments*:
- (1) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of *financial instrument*;
 - (2) the number and type of market participants, including the ratio of market participants to traded instruments in a particular product; and
 - (3) the average size of spreads, where available.

[**Note:** article 4(1)(25) of *MiFID*]

- 5A.3.7 R A *firm* engaging in *matched principal trading* in accordance with *MAR* 5A.3.5R(1) must establish arrangements to ensure compliance with the definition of *matched principal trading*.

[**Note:** article 20(1) and (7) of *MiFID*]

- 5A.3.8 G *Matched principal trading* does not exclude the possibility of settlement risk, and, accordingly, *firms* should take appropriate steps to minimise this risk. For *guidance* relating to the treatment of *matched principal trading* for the purposes of *IFPRU* prudential categorisation, see *PERG* 13 Q61 and Q64.

Other MiFID obligations

- 5A.3.9 R A *firm* must comply with the obligations under the following provisions of *MiFID*, as transposed in the *FCA Handbook*, in the course of operating an *OTF*:
- (1) articles 16(2), 16(3) (first subparagraph), 16(4), 16(5), 16(6), 16(7), 16(8), 16(9), and 16(10);
 - (2) articles 24(1), (3), (4), (5), (9), (10) and (11);
 - (3) articles 25(3) (except to the extent that article 25(4) applies), 25(5), and 25(6) (to the extent applicable);
 - (4) article 27; and
 - (5) article 28.

[**Note:** article 20(8) of *MiFID*. The above *MiFID* provisions are transposed as follows in the *FCA Handbook*:

- (1) *SYSC* 6.1.1, *SYSC* 10.1.7, *SYSC* 4.1.6, *SYSC* 8.1.1, *SYSC* 4.1.1(1), *SYSC* 4.1.1(3), *SYSC* 9.1.1A, *SYSC* 10A, *CASS* 6.2.1 and *CASS* 7.12.1;

- (2) *COBS 2.1.1, COBS 4.2.1, COBS 4.3.1, COBS 2.2A.2, COBS 2.2A.3, COBS 2.3A.5, SYSC 19F.1.3 and COBS 6.1ZA.2.12;*
- (3) *COBS 10A.2.1, COBS 10A.2.2, COBS 10A.3.1, COBS 10A.3.2, COBS 10A.4.1, COBS 8A, COBS 16A.2.1 and COBS 9A.3.2;*
- (4) *COBS 11.2A;* and
- (5) *COBS 11.3.]*

Reporting to the FCA

5A.3.10 R A *firm* must:

- (1) in respect of an *OTF* operated by it, or such a facility it proposes to operate, provide to the *FCA* a detailed explanation of:
 - (a) why the *OTF* does not correspond to, and cannot operate as, an *MTF*, a *regulated market* or a *systematic internaliser*;
 - (b) how discretion will be exercised in executing *client* orders; and
 - (c) its use of *matched principal trading*; and
- (2) supply the information in (1) to the *FCA* in writing, by electronic mail to an address for the usual supervisory contact of the *firm* at the *FCA*, and obtain an electronic confirmation of receipt.

[**Note:** article 20(7) of *MiFID*]

5A.3.11 G A *person operating an organised trading facility* cannot also provide the service of a *systematic internaliser*, irrespective of whether the *systematic internaliser* trades different *financial instruments* or types of *financial instruments* to those traded on the *OTF*.

5A.4 Trading process requirements

Rules, procedures and arrangements

5A.4.1 R A *firm* must have:

- (1) transparent rules and procedures for fair and orderly trading;

[**Note:** article 18(1) of *MiFID*]

- (2) objective criteria for the efficient execution of orders which are established and implemented in non-discretionary rules;

[**Note:** article 18(1) of *MiFID*]

- (3) arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with the risks of systems disruption;

[**Note:** article 18(1) of *MiFID*]

- (4) transparent rules regarding the criteria for determining the *financial instruments* that can be traded under its systems;

[**Note:** subparagraph (1) of article 18(2) of *MiFID*]

- (5) arrangements to provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instrument traded;

[**Note:** subparagraph (2) of article 18(2) of *MiFID*]

- (6) transparent and non-discriminatory rules, based on objective criteria, governing access to its facility and which must be published, maintained and implemented; and

[**Note:** article 18(3) of *MiFID*]

- (7) (as between the interests of the *OTF*, its owners, or the *firm* and those of the members and participants or users in the sound functioning of the *trading venue*) arrangements to identify clearly and to manage any conflict with adverse consequences for:

- (a) the operation of the *trading venue* for the members and participants or users; or
- (b) the members and participants or users otherwise.

[**Note:** article 18(4) of *MiFID*]

Functioning of an OTF

5A.4.2 R A *firm* must:

- (1) ensure the *OTF* has at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation;

[**Note:** article 18(7) of *MiFID*]

- (2) provide the following to the *FCA*:
- (a) a detailed description of the functioning of the *OTF*, including any links to or participation by a *regulated market*, an *MTF* or *OTF* or *systematic internaliser* owned by the same *firm*; and
- (b) a list of its members, participants and users; and

[**Note:** article 18(10) of *MiFID* and *MiFID ITS 19* with regard to the content and format of the description of the functioning of *MTFs* and *OTFs*]

- (3) make available data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments* to the public in the following manner:
- (a) at least on an annual basis; and
 - (b) without any charges.

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

Transferable securities traded without issuer consent

- 5A.4.3 R Where a *transferable security*, which has been *admitted to trading* on a *regulated market*, is also traded on an *OTF* without the consent of the *issuer*, the *firm* operating the *OTF* must not make the *issuer* subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that *OTF*.

[**Note:** article 18(8) of *MiFID*]

5A.5 Systems and controls for algorithmic trading

Systems and controls

- 5A.5.1 R A *firm* must ensure that the systems and controls, including procedures and arrangements, used in the performance of its activities are adequate, effective and appropriate for the scale and nature of its business.
- 5A.5.2 R *MAR* 5A.5.1R applies in particular to systems and controls concerning:
- (1) the resilience of the *firm's* trading systems;
 - (2) its capacity to deal with peak order and message volumes;
 - (3) the ability to ensure orderly trading under conditions of severe market stress;
 - (4) the effectiveness of business continuity arrangements to ensure the continuity of the *OTF's* services if there is any failure of its trading systems, including the testing of the *OTF's* systems and controls;
 - (5) the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous;
 - (6) the ability to ensure that *algorithmic trading* systems cannot create or contribute to disorderly trading conditions on the *trading venue*;
 - (7) the ability to ensure that any disorderly trading conditions which do arise from the use of *algorithmic trading* systems are capable of being

managed, including systems to limit the ratio of unexecuted orders to *transactions* that may be entered into the *OTF's* trading system by a member or participant;

- (8) the ability to ensure that the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;
- (9) the ability to limit and enforce the minimum tick size which may be executed on the *OTF*; and
- (10) the requirement for members and participants to carry out appropriate testing of algorithms, including providing environments to facilitate that testing.

[**Note:** article 48(1), (4) and (6) of *MiFID*, *MiFID RTS 7*, *MiFID RTS 9*, and *MiFID RTS 11*]

Market making agreements

5A.5.3 R A *firm* must:

- (1) have written agreements with all *investment firms* pursuing a *market making strategy* on *trading venues* operated by it (market making agreements);
- (2) have schemes, appropriate to the nature and scale of a *trading venue*, to ensure that a sufficient number of *investment firms* enter into market making agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;
- (3) monitor and enforce compliance with the market making agreements;
- (4) inform the *FCA* of the content of its market making agreements; and
- (5) provide the *FCA* with any information it requests which the *FCA* reasonably requires to be satisfied that the market making agreements comply with this *rule*.

[**Note:** article 48(2) and (3) of *MiFID* and *MiFID RTS 8*]

5A.5.4 R A market making agreement in *MAR 5A.5.3R(1)* must specify:

- (1) the obligations of the *investment firm* in relation to the provision of liquidity;
- (2) where applicable, any obligations arising, or rights accruing, from the participation in a liquidity scheme mentioned in *MAR 5A.5.3R(2)*; and
- (3) any incentives in terms of rebates or otherwise offered by the *firm* to the *investment firm* in order for it to provide liquidity to the *OTF* on a

regular and predictable basis and, where applicable, any other rights accruing to the *investment firm* as a result of participation in the liquidity scheme.

[**Note:** article 48(3) of *MiFID* and *MiFID RTS 8*]

Measures to prevent disorderly markets

- 5A.5.5 R A *firm* must have the ability to:
- (1) temporarily halt or constrain trading on the *OTF* if there is a significant price movement in a *financial instrument* on the *OTF* or a related *trading venue* during a short period; and
 - (2) in exceptional cases, cancel, vary, or correct, any *transaction*.

[**Note:** article 48(5) of *MiFID*]

- 5A.5.6 R For the purposes of *MAR 5A.5.5R*, and to avoid significant disruptions to the orderliness of trading, a *firm* must calibrate the parameters for halting trading in a way which takes into account the following:
- (1) the liquidity of different asset classes and subclasses;
 - (2) the nature of the *trading venue* market model; and
 - (3) the types of users.

[**Note:** article 48(5) of *MiFID*]

- 5A.5.7 R The *firm* must report the parameters mentioned in *MAR 5A.5.6R* to the *FCA* in writing, by electronic mail to an address for the usual supervisory contact of the *firm* at the *FCA*, and obtain an electronic confirmation of receipt.

[**Note:** article 48(5) of *MiFID*]

- 5A.5.8 R A *firm* must have systems and procedures to notify the *FCA* if:
- (1) an *OTF* operated by it is material in terms of the liquidity of the trading of a *financial instrument* in the *EEA*; and
 - (2) trading is halted in that instrument.

[**Note:** article 48(5) of *MiFID*]

Direct electronic access

- 5A.5.9 R A *firm* which permits *direct electronic access* to an *OTF* it operates must:
- (1) not permit members or participants of the *OTF* to provide such services unless they are:

- (a) *investment firms* authorised under *MiFID*; or
 - (b) *CRD credit institutions*; or
 - (c) third country firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or
 - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
 - (e) third country firms providing the *direct electronic access* in accordance with the exclusion in article 72 of the *RAO*; or
 - (f) third country firms which do not come within *MAR* 5A.5.9R(1)(d) to (f) but are otherwise permitted to provide the *direct electronic access* under the *Act*; or
 - (g) *firms* that come within article 2.1(a), (e), (i), or (j) of *MiFID* and have a *Part 4A permission* relating to *investment services or activities*;
- (2) set and apply criteria for the suitability of *persons* to whom *direct electronic access* services may be provided;
 - (3) ensure that the member or participant of the *OTF* retains responsibility for adherence to the requirements of *MiFID* in respect of orders and trades executed using the *direct electronic access* service;
 - (4) set standards for risk controls and thresholds on trading through *direct electronic access*;
 - (5) be able to distinguish and if necessary stop orders or trading on that *trading venue* by a person using *direct electronic access* separately from:
 - (a) other orders; and
 - (b) trading by the member or participant providing the *direct electronic access*; and
 - (6) have arrangements to suspend or terminate the provision of *direct electronic access* on that market by a member or participant in the case of any non-compliance with this *rule*.

[**Note:** article 48(7) of *MiFID*]

Co-location

- 5A.5.10 R Where a *firm* permits co-location in relation to the *OTF*, its rules on co-location services must be transparent, fair and non-discriminatory.

[**Note:** article 48(8) of *MiFID* and *MiFID RTS 10*]

Fee structures

- 5A.5.11 R A *firm's* fee structure, for all fees it charges and rebates it grants in relation to the *OTF*, must:
- (1) be transparent, fair and non-discriminatory;
 - (2) not create incentives to place, modify or cancel orders, or execute *transactions*, in a way which contributes to disorderly trading or *market abuse*; and
 - (3) impose market making obligations in individual *financial instruments* or suitable baskets of *financial instruments* for any rebates that are granted.

[**Note:** article 48(9) of *MiFID* and *MiFID RTS 10*]

- 5A.5.12 G Nothing in *MAR* 5A.5.11R prevents a *firm*:
- (1) adjusting its fees for cancelled orders according to the length of time for which the order was maintained;
 - (2) calibrating its fees to each *financial instrument* to which they apply;
 - (3) imposing a higher fee:
 - (a) for placing an order which is cancelled than an order which is executed;
 - (b) on participants placing a high ratio of cancelled orders to executed orders; and
 - (c) on a *person* operating a high-frequency *algorithmic trading* technique,

in order to reflect the additional burden on system capacity.

[**Note:** article 48(9) of *MiFID*]

Flagging orders, tick sizes and clock synchronization

- 5A.5.13 R A *firm* must require members and participants of an *OTF* operated by it to flag orders generated by *algorithmic trading* in order for the *firm* to be able to identify the following:
- (1) different algorithms used for the creation of orders; and
 - (2) the *persons* initiating those orders.

[**Note:** article 48(10) of *MiFID*]

5A.5.14 R The *firm* must adopt tick size regimes for *financial instruments* as required by a regulatory technical standard made under article 49.3 or 49.4 of *MiFID*.

[**Note:** article 49 of *MiFID* and *MiFID RTS 11*]

5A.5.15 R The tick size regime referred to in *MAR 5A.5.14R* must:

(1) be calibrated to reflect the liquidity profile of the *financial instrument* in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and

(2) adapt the tick size for each *financial instrument* appropriately.

[**Note:** article 49 of *MiFID* and *MiFID RTS 11*]

5A.5.16 G Nothing in *MAR 5A.5.14R* or *MAR 5A.5.15R* requires a *firm* to act inconsistently with any regulatory technical standards made under article 49.3 or 49.4 of *MiFID*.

[**Note:** article 49 of *MiFID*]

5A.5.17 R The *firm* must synchronise the business clocks it uses to record the date and time of any reportable event.

[**Note:** article 50 of *MiFID* and *MiFID RTS 25*]

5A.5.18 G For the purpose of *MAR 5A.5.17R*, the regulatory technical standards made under article 50 of *MiFID* provide further requirements.

5A.6 Finalisation of transactions

5A.6.1 R A *firm* must:

(1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in its *OTF*; and

(2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[**Note:** article 18(6) of *MiFID*]

[**Note:** in relation to derivative transactions, *MiFID RTS 26* contains requirements on the systems for clearing of such transactions]

5A.7 Monitoring compliance with the rules of the OTF

5A.7.1 R A *firm* must:

- (1) have effective arrangements and procedures relevant to its *OTF* for the regular monitoring of the compliance by its users with its rules; and
- (2) monitor the transactions undertaken by its users under its systems in order to identify breaches of those rules, disorderly trading conditions, system disruptions in relation to a *financial instrument*, or conduct that may involve *market abuse*.

[**Note:** article 31(1) of *MiFID*]

5A.8 Reporting requirements

5A.8.1 R A *firm* must:

- (1) report to the *FCA* any:
 - (a) significant breaches of the *firm's* rules;
 - (b) disorderly trading conditions;
 - (c) conduct that may involve *market abuse*; and
 - (d) system disruptions in relation to a *financial instrument*;
- (2) supply the information required under this *rule* without delay to the *FCA* and any other authority competent for the investigation and prosecution of *market abuse*; and
- (3) provide full assistance to the *FCA*, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of *market abuse* occurring on or through the *firm's* systems.

[**Note:** article 31(2) of *MiFID*, articles 81 and 82 of the *MiFID Org Regulation*, *MiFID RTS 18* and *MiFID ITS 2*]

5A.9 Suspension and removal of financial instruments

5A.9.1 R A *firm* must:

- (1) not exercise any power under its rules to suspend or remove from trading any *financial instrument* which no longer complies with its rules, where such a step would be likely to cause significant damage to the interest of investors or the orderly functioning of the *trading venue*;
- (2) where it does suspend or remove from trading a *financial instrument*,

also suspend or remove derivatives that relate or are referenced to that *financial instrument*, where necessary to support the objectives of the suspension or removal of the underlying; and

- (3) make public any decision in (2) and notify the *FCA* of it.

[**Note:** article 32 of *MiFID*, article 80 of the *MiFID Org Regulation* and *MiFID RTS 18*]

5A.10 Pre-trade transparency requirements for non-equity instruments: form of waiver

- 5A.10.1 D A *firm* that makes an application to the *FCA* for a waiver in accordance with article 9 of *MiFIR* (in relation to pre-trade transparency for non-equity instruments) must make it in the form set out in *MAR 5A Annex 1D*.

[**Note:** article 9 of *MiFIR* and *MiFID RTS 2*]

5A.11 Post-trade transparency requirements for non-equity instruments: form of deferral

- 5A.11.1 D A *firm* intending to apply to the *FCA* for deferral in accordance with article 11 of *MiFIR* (in relation to post-trade transparency for non-equity instruments) must apply in writing to the *FCA*.

[**Note:** article 11 of *MiFIR* and *MiFID RTS 2*]

- 5A.11.2 G A *firm* should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *FCA* by telephone by other prompt means of communication, before submitting written application. Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another person or on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

After *MAR 5A* insert the following link to a new form as a separate Annex. All the text is new and is not underlined.

5A Annex 1D Form in relation to pre-trade transparency

[*Editor's note:* The form can be found at this address:

<https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.doc>]

Amend the following as shown.

6 Systematic Internalisers internalisers

6.1 Application

Who and what?

6.1.1 R ~~Except as regards the reporting requirement in MAR 6.4.1R, this chapter applies MAR 6.3A (Quality of execution) and MAR 6.4A (Quotes in respect of non-equity instruments) apply to the following firms when dealing in the United Kingdom:~~

- (1) ~~a MiFID investment firm which is a systematic internaliser in shares when dealing in sizes up to standard market size; or~~
- (2) ~~a third country investment firm which is a systematic internaliser in shares when dealing in the United Kingdom in sizes up to standard market size.~~

[Note: article 35(8) of MiFID]

6.1.2 R The *systematic internaliser* reporting requirement in MAR 6.4.1R applies to an *investment firm* which is authorised by the FCA.

[Note: articles 15(1) and 18(4) of MiFIR]

Status of EU provisions as rules in certain instances

6.1.3 R ~~In this chapter, provisions marked "EU" apply to a third country investment firm which is a systematic internaliser as if they were rules. [deleted]~~

6.1.4 G GEN 2.2.22AR applies to ensure that a third country investment firm should not be treated in a more favourable way than an EEA firm.

6.2 Purpose

6.2.1 G The purpose of this chapter is to implement ~~Article~~ article 27(3) of MiFID, which deals with the requirements on *systematic internalisers* ~~for pre-trade transparency in shares, the execution of orders on behalf of clients and standards and conditions for trading~~ to make available to the public data relating to the quality of execution of transactions. It also provides a ~~rule~~ rule (MAR 6.4.1R) requiring investment firms to notify the FCA when they become, or cease to be, a systematic internaliser, and which gives effect to Article 21(4) articles 15(1) and 18(4) of the MiFID Regulation. ~~The chapter sets out for reference other provisions of the MiFID Regulation relevant to the articles being implemented MiFIR. Finally, MAR 6.4A.1R makes clear that a firm is not subject to the publication obligations of article 18 of MiFIR if it satisfies the conditions set out in that rule.~~

MAR 6.3 is deleted in its entirety. The deleted text, other than the section title, is not shown.

6.3 Criteria for determining whether an investment firm is a systematic internaliser [deleted]

After the deleted MAR 6.3 insert the following new section. All the text is new and is not underlined.

6.3A Quality of execution

6.3A.1 R A *systematic internaliser* must make available the data in MAR 6.3A.2R to the public in the following manner:

- (1) at least on an annual basis; and
- (2) without any charges.

6.3A.2 R MAR 6.3A.1R applies to data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments*.

[**Note:** article 27(3) of *MiFID*, *MiFID RTS 27* and *MiFID RTS 28*]

Amend the following as shown.

6.4 Systematic internaliser reporting requirement

6.4.1 R An *investment firm*, ~~which is authorised by the FCA,~~ must promptly notify the *FCA* in writing of its status as a *systematic internaliser* ~~in respect of shares admitted to trading on a regulated market:~~

- (1) when it gains that status; or
- (2) if it ceases to have that status.

[**Note:** ~~Article 21(4) of the *MiFID Regulation*~~ articles 15(1) and 18(4) of *MiFIR*]

6.4.2 G The notification under MAR 6.4.1R can be addressed to the *firm's* usual supervisory contact at the *FCA*.

After MAR 6.4 (Systematic internaliser reporting requirement) insert the following new section. All the text is new and is not underlined.

6.4A Quotes in respect of non-equity instruments

- 6.4A.1 R *An investment firm* is not subject to the publication obligations of article 18 of *MiFIR* if:
- (1) it makes an assessment in writing certifying that it meets the conditions specified and measures adopted under article 9 of *MiFIR* for the waiver; and
 - (2) the *FCA* has not objected to the assessment.

MAR 6.5 to MAR 6.14 and MAR 7 are deleted in their entirety. The deleted text is not shown.

- 6.5 Obligations on systematic internalisers in shares to make public firm quotes**
[deleted]
- 6.6 Size and content of quotes** [deleted]
- 6.7 Prices reflecting prevailing market conditions** [deleted]
- 6.8 Liquid market for shares, share class, standard market size and relevant market** [deleted]
- 6.9 Publication of quotes** [deleted]
- 6.10 Execution price of retail client orders** [deleted]
- 6.11 Execution price of professional client orders** [deleted]
- 6.12 Execution price of client orders not matching quotation sizes** [deleted]
- 6.13 Standards and conditions for trading** [deleted]
- 6.14 Limiting risk of exposure to multiple transactions** [deleted]
- 7 Disclosure of information on certain trades undertaken outside a regulated market or MTF** [deleted]
- 7.1 Application** [deleted]

7.2 Making post-trade information public [deleted]

7 Annex Deferred publication thresholds and delays [deleted] 1EU

After the deleted MAR 7 insert the following new chapter. All the text is new and is not underlined.

7A Algorithmic trading

7A.1 Application

Who?

7A.1.1 R This chapter applies to :

- (1) a *UK MiFID investment firm*; and
- (2) a *third country investment firm*, with an establishment in the *United Kingdom*.

What?

7A.1.2 R This chapter applies to a *firm* in relation to the following activities:

- (1) *algorithmic trading (MAR 7A.3)*;
- (2) providing the service of *DEA* to a *trading venue (MAR 7A.4)*; and
- (3) providing the service of acting as a general clearing member for another *person (MAR 7A.5)*.

[**Note:** this chapter transposes article 17 of *MiFID*, in respect of the types of *firms* referred to above. Parts 4 of the *MiFI Regulations* sets out equivalent requirements in respect of *persons* exempt under article 2(1)(a), (e), (i) and (j) of *MiFID*, which are required to comply with article 17(1) to (6) of *MiFID* due to article 1(5) of *MiFID*.]

Status of EU provisions as rules in certain instances

7A.1.3 G *GEN 2.2.22AR* applies to ensure that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*.

7A.2 Purpose

7A.2.1 G The purpose of this chapter is to implement article 17 of *MiFID*, which

imposes requirements on *investment firms* which are:

- (1) engaging in *algorithmic trading*; or
- (2) providing the service of *DEA* to a *trading venue*; or
- (3) providing the service of acting as a general clearing member for another *person*.

[**Note:** related requirements imposed under article 48 of *MiFID* upon *trading venues*, in respect of members and participants engaging in *algorithmic trading* and providing the service of *DEA*, are transposed in *REC 2*, *MAR 5* and *MAR 5A*]

7A.3 Requirements for algorithmic trading

Application

- 7A.3.1 R This section applies to a *firm* which engages in *algorithmic trading*.

Systems and controls

- 7A.3.2 R A *firm* must have in place effective systems and controls, suitable to the business it operates, to ensure that its trading systems:
- (1) are resilient and have sufficient capacity;
 - (2) are subject to appropriate trading thresholds and limits;
 - (3) prevent the sending of erroneous orders, or the systems otherwise functioning in a way that may create or contribute to a disorderly market; and
 - (4) cannot be used for any purpose that is contrary to:
 - (a) the *Market Abuse Regulation*; or
 - (b) the rules of a *trading venue* to which it is connected.

[**Note:** article 17(1) of *MiFID* and *MiFID RTS 6* specifying the organisational requirements of *investment firms* engaged in *algorithmic trading*]

- 7A.3.3 R A *firm* must:
- (1) have in place effective business continuity arrangements to deal with any failure of its trading systems; and
 - (2) ensure that its systems are fully tested and properly monitored to ensure that it meets the requirements of (1) and of *MAR 7A.3.2R*.

[**Note:** article 17(1) of *MiFID* and *MiFID RTS 6* specifying the organisational requirements of *investment firms* engaged in *algorithmic trading*]

Market making

- 7A.3.4 R Where a *firm* engages in *algorithmic trading* to pursue a *market making strategy*, it must:
- (1) carry out market making continuously during a specified proportion of the *trading venue's* trading hours so that it provides liquidity on a regular and predictable basis to that *trading venue*, except in exceptional circumstances;
 - (2) enter into a binding written agreement with the *trading venue* which must specify the requirements for the purpose of (1); and
 - (3) have in place effective systems and controls to ensure that it meets the obligations under the agreement in (2).

[**Note:** article 17(3) of *MiFID*, *MiFID RTS 8* specifying the circumstances in which a *person* would be obliged to enter into the market making agreement referred to in *MAR 7A.3.4R(2)* and the content of such an agreement, including the specified proportion of the *trading venue's* trading hours, and the situations constituting exceptional circumstances, referred to in *MAR 7A.3.4R(1)*]

- 7A.3.5 R For the purpose of *MAR 7A.3.4R*, the *firm* must take into account:
- (1) the liquidity, scale and nature of the specific market; and
 - (2) the characteristics of the instrument traded.

[**Note:** article 17(3) of *MiFID*]

Notifications

- 7A.3.6 R A *firm* which is a member or participant of a *trading venue* must immediately notify the following if it is engaging in *algorithmic trading*:
- (1) the *FCA*; and
 - (2) any *competent authority* of a *trading venue* in another *EEA State* where the *firm* engages in *algorithmic trading*.

[**Note:** article 17(2) of *MiFID*]

- 7A.3.7 R A *firm* must provide the following, at the *FCA's* request, within 14 days from receipt of the request:
- (1) a description of the nature of its *algorithmic trading* strategies;

- (2) details of the trading parameters or limits to which the *firm's* system is subject;
- (3) evidence that *MAR* 7A.3.2R (systems and controls) and *MAR* 7A.3.3R (business continuity and system tests) are met;
- (4) details of the testing of the *firm's* systems;
- (5) the records in *MAR* 7A.3.8R(2) (accurate and time-sequenced records of all its placed orders); and
- (6) any further information about the *firm's algorithmic trading* and systems used for that trading.

[**Note:** article 17(2) of *MiFID*]

Record keeping

7A.3.8 R A *firm* must:

- (1) arrange for records to be kept to enable it to meet *MAR* 7A.3.7R; and
- (2) (where it engages in a high-frequency *algorithmic trading* technique) store, in the approved form, accurate and time-sequenced records of all its placed orders, including:
 - (a) cancelled orders;
 - (b) executed orders; and
 - (c) quotations on *trading venues*.

[**Note:** article 17(2) of *MiFID* and *MiFID RTS 6* specifying the format and content of the approved form referred to in *MAR* 7A.3.8R(2), and the length of time for which records must be kept by the *firm*]

7A.4 Requirements when providing direct electronic access

Application

7A.4.1 R This section applies to a *firm* which provides the services of *DEA* to a *trading venue*.

Systems and controls

7A.4.2 R A *firm* must have in place systems and controls which:

- (1) ensure it conducts an assessment and review of the suitability of *clients* using the service;

- (2) prevent *clients* using the service from exceeding appropriate pre-set trading and credit thresholds;
- (3) prevent trading by *clients* which:
 - (a) may create risks to the *firm*; or
 - (b) may create, or contribute to, a disorderly market; or
 - (c) could be contrary to the *Market Abuse Regulation* or the rules of the *trading venue*.

[**Note:** article 17(5) of *MiFID*]

Client dealings

- 7A.4.3 R (1) A *firm* must monitor the transactions made by *clients* using the service to identify:
- (a) infringements of the rules of the *trading venue*; or
 - (b) disorderly trading conditions; or
 - (c) conduct which may involve *market abuse* and which is to be reported to the *FCA*.
- (2) A *firm* must have a binding written agreement with each *client* which:
- (a) details the essential rights and obligations of both parties arising from the provision of the service; and
 - (b) states that the *firm* is responsible for ensuring the *client* complies with the requirements of *MiFID* and the rules of the *trading venue*.

[**Note:** article 17(5) of *MiFID*]

Notifications

- 7A.4.4 R A *firm* must immediately notify the following if it is providing *DEA* services:
- (1) the *FCA*; and
 - (2) the *competent authority* of any *trading venue* in the *EEA* to which the *firm* provides *DEA* services.

[**Note:** article 17(5) of *MiFID* and *MiFID RTS 6* specifying the organisational requirements of *investment firms* providing *direct electronic access*]

7A.4.5 R A *firm* must provide the following, at the *FCA*'s request, within 14 days from receipt of the request:

- (1) a description of the systems mentioned in *MAR* 7A.4.2R(1);
- (2) evidence that those systems have been applied; and
- (3) information stored in accordance with *MAR* 7A.4.6R.

[**Note:** article 17(5) of *MiFID*]

Record keeping

7A.4.6 R A *firm* must arrange for records to be kept:

- (1) on the matters referred to in *MAR* 7A.4.2R in relation to its systems and controls; and
- (2) in order to enable it to meet any requirement imposed on it under *MAR* 7A.4.5R.

[**Note:** article 17(5) of *MiFID*]

7A.5 Requirements when acting as a general clearing member

Application

7A.5.1 R This section applies to a *firm* which provides the service of acting as a general clearing member.

Requirements

7A.5.2 R A *firm* must:

- (1) have clear criteria as to the suitability requirements of *persons* to whom clearing services will be provided;
- (2) apply those criteria;
- (3) impose requirements on the *persons* to whom clearing services are being provided to reduce risks to the *firm* and to the market; and
- (4) have a binding written agreement with any *person* to whom it is providing clearing services, detailing the essential rights and obligations of both parties arising from the provision of the services.

[**Note:** article 17(6) of *MiFID* and *MiFID RTS 6* specifying the organisational requirements of *investment firms* acting as general clearing members]

After MAR 8 insert the following new chapter. All the text is new and is not underlined.

9 Data reporting service

9.1 Application, introduction, approach and structure

Application

9.1.1 G This chapter applies to:

- (1) a *UK person* (that is a *person* whose registered office or head office is located in the *UK*) seeking authorisation to provide a *data reporting service*;
- (2) a UK branch of a third country person seeking authorisation to provide a data reporting service;
- (3) a *UK MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(b) or (c) of the *DRS Regulations*;
- (4) a *UK RIE* seeking verification of its rights to provide a *data reporting service* under regulation 5(d) of the *DRS Regulations*; and
- (5) a *data reporting services provider*.

This chapter is not limited to operators of *trading venues* and *firms*.

[**Note:** article 59 of *MiFID*]

Introduction

9.1.2 G Title V of *MiFID* sets out harmonised market data services authorisation and supervision requirements. These are designed to ensure a necessary level of quality of trading activity information across *EU* financial markets for users, and for *competent authorities* to receive accurate and comprehensive information on relevant transactions. These requirements provide for:

- (1) *approved publication arrangements (APAs)* to:
 - (a) improve the quality of trade transparency information published in relation to *over the counter* trading; and
 - (b) contribute significantly to ensuring such data is published in a way that facilitates its consolidation with data published by *trading venues*;
- (2) *consolidated tape providers (CTPs)* to supply a comprehensive consolidated tape of *equity* and equity-like *financial instruments* data from all *APAs* and *trading venues* to make it easier for market

participants to gain access to a consolidated view of trade transparency information;

- (3) *CTPs* to enable a comprehensive consolidated tape for non-equity *financial instruments* with an extended date for the application of national measures transposing *MiFID*; and
- (4) *approved reporting mechanisms (ARMs)* to provide the service of transaction reporting on behalf of *investment firms*.

Approach to transposition

9.1.3 G The market data services authorisation and supervision requirements in Title V of *MiFID* are implemented in the *UK* through a combination of:

- (1) HM Treasury legislation in the form of:
 - (a) the *DRS Regulations* which set out a separate regulatory framework for *persons* providing one or more *data reporting service* in the *UK*; and
 - (b) the *MiFI Regulations* which set out additional provisions addressing requirements imposed by *MiFIR* and *EU regulations*;
- (2) this chapter; and
- (3) *EU regulations* including:
 - (a) *MiFID RTS 1*;
 - (b) *MiFID RTS 2*;
 - (c) *MiFID RTS 3*;
 - (d) *MiFID RTS 13*;
 - (e) *MiFID ITS 3*;
 - (f) the *MiFID Org Regulation*; and
 - (g) the *MiFIR Delegated Regulation*.

Structure

9.1.4 G The following table provides an overview of this chapter:

Handbook reference	Topic and specific application
<i>MAR 9.1</i>	Application, introduction, approach and structure

MAR 9.2	Authorisation and verification
MAR 9.3	Notification and information
MAR 9.4	Supervisory regime
MAR 9.5	Frequently Asked Questions
MAR 9 Annex 1D to MAR Annex 10D	Forms

9.2 Authorisation and verification

Application form and notification form for members of the management body

- 9.2.1 D (1) Each of the following must complete the forms in (2):
- (a) an applicant for a *data reporting service* authorisation;
 - (b) a *UK MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(b) and (c) of the *DRS Regulations*; and
 - (c) a *UK RIE* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(d) of the *DRS Regulations*.
- (2) The forms in (1) are:
- (a) the application form at *MAR 9 Annex 1D*; and
 - (b) the notification form for the list of members of the *management body* at *MAR 9 Annex 2D*.
- 9.2.2 G *MAR 9 Annex 1D* and *MAR 9 Annex 2D* are derived from Annex I and Annex II respectively of *MiFID ITS 3*.
- Variation of authorisation form
- 9.2.3 D If a *data reporting services provider* wishes to extend or otherwise vary its *data reporting service* authorisation it must complete the variation of authorisation form at *MAR 9 Annex 3D*.
- 9.2.4 G *MAR 9 Annex 3D* requires completion of Annex I of *MiFID ITS 3* in the case of an extension of authorisation and, if relevant, Annex II of *MiFID ITS 3* if the members of the *management body* are different from the existing

authorised *data reporting services provider*.

Cancellation of authorisation form

- 9.2.5 D If a *data reporting services provider* wishes to cancel all of its *data reporting service* authorisation it must complete the cancellation of authorisation form at *MAR 9 Annex 4D*.

Provision of the forms in *MAR 9 Annexes 1D, 2D, 3D and 4D* to the *FCA*

- 9.2.6 D A *person* must provide *MAR 9 Annexes 1D, 2D, 3D and 4D* together with supporting documentation to the *FCA* by:
- (1) emailing MiFiDII.Applications@fca.org.uk; or
 - (2) posting to the *FCA* addressed to:

The Financial Conduct Authority
FAO The Authorisations Support Team
25 The North Colonnade
Canary Wharf
London E14 5HS

9.3 Notification and information

Notification to the *FCA* of material changes in information provided at the time of authorisation

- 9.3.1 D A *data reporting services provider* must promptly complete the material change in information form at *MAR 9 Annex 5D* to inform the *FCA* of any material change to the information provided at the time of its authorisation.

Notification to the *FCA* of change to membership of management body

- 9.3.2 D A *data reporting services provider* must promptly complete the notification form for changes to the membership of the management body form at *MAR 9 Annex 6D* to inform the *FCA* of any change to the membership of its *management body* before any change to the membership of its *management body* or when this is impossible within 10 working days after the change.

- 9.3.3 G *MAR 9 Annex 6D* is derived from Annex III of *MiFID ITS 3*.

Notification to the *FCA* by an *APA* or a *CTP* of compliance with connectivity requirements

- 9.3.4 D As soon as possible and within 2 weeks of being authorised as an *APA* or a *CTP*, an *APA* or a *CTP* seeking a connection to the *FCA's market data processor system* must:
- (1) sign the *MIS confidentiality agreement* at *MAR 9 Annex 10D*; and

- (2) email it to MDP.onboarding@fca.org.uk or post an original signed copy to the *FCA* addressed to:

The Financial Conduct Authority
 FAO The Markets Reporting Team
 25 The North Colonnade
 Canary Wharf
 London E14 5HS.

- 9.3.5 G (1) To ensure the security of the *FCA*'s systems, the *FCA* requires an *APA* or a *CTP* to sign the *MIS confidentiality agreement* before receiving the *FCA*'s *Market Interface Specification (MIS)*.
- (2) Once the *FCA* receives the *MIS confidentiality agreement* from the *APA* or the *CTP*, the *FCA* will provide the *APA* or the *CTP* with *Market Interface Specification (MIS)*.
- 9.3.6 D An *APA* or a *CTP* seeking a connection to the *FCA*'s *market data processor system* must complete the form at *MAR 9 Annex 7D* as soon as possible and no later than 4 weeks following authorisation as an *APA* or a *CTP*.
- 9.3.7 G The *FCA* expects an *APA* or a *CTP* to deal with it in an open and co-operative way in order to establish a technology connection for the provision of data to the *FCA* as required by article 22 of *MiFIR*.

Yearly notifications to the FCA

- 9.3.8 D A *data reporting services provider* must complete the yearly notification form in *MAR 9 Annex 8D*:
- (1) within 3 *months* of the 12 *month* anniversary of the commencement of its authorisation; and
- (2) then every year within 3 *months* of the same date.
- 9.3.9 G For example, if a *data reporting services provider's* authorisation commences on 3 January 2018, the *data reporting services provider* must provide the information in *MAR 9 Annex 8D* on or before 3 April 2019 and then every year thereafter on or before 3 April of that particular year.

Ad hoc notifications to the FCA

- 9.3.10 D A *data reporting services provider* must promptly complete the ad hoc notification form in *MAR 9 Annex 9D* to notify the *FCA* in respect of all matters required by *MiFID RTS 13*.
- 9.3.11 G Information to be provided in *MAR 9 Annex 9D* includes information relating to planned significant changes to a *data reporting services provider's* IT system, breaches in physical and electronic security measures and service interruptions or connection disruptions.

Provision of the forms in MAR 9 Annexes 5D, 6D, 7D, 8D and 9D to the FCA

9.3.12 D A *data reporting services provider* must promptly provide the forms in MAR 9 Annexes 5D, 6D, 7D, 8D and 9D and supporting documentation to the *FCA*:

- (1) at MRT@fca.org.uk; or
- (2) by posting it to the *FCA*, addressed to:

The Financial Conduct Authority
 The Markets Reporting Team
 25 The North Colonnade
 Canary Wharf
 London E14 5HS

9.4 Supervisory regime

Overview of supervisory approach

- 9.4.1 G (1) The *FCA* expects to have an open, cooperative and constructive relationship with *data reporting services providers* to enable it to understand and evaluate *data reporting services providers'* activities and their ability to meet the requirements in the *DRS Regulations*. As part of that relationship the *FCA* expects a *data reporting services provider* to provide it with information about any proposed restructuring, reorganisation or business expansion which could have a significant impact on the *data reporting services provider's* risk profile or resources.
- (2) The *FCA* will, when necessary, arrange meetings between the *FCA* and key individuals of the *data reporting services provider* for this purpose.
- (3) The *FCA* expects the *data reporting services provider* to take its own steps to assure itself that it will continue to satisfy the *data reporting services provider* organisational requirements when considering any changes to its business operations.

Overview of supervisory tools

- 9.4.2 G The *FCA* will use a variety of tools to monitor whether a *data reporting services provider* complies with its regulatory requirements. These tools include (but are not limited to):
- (1) desk-based reviews;
 - (2) liaison with other regulators;
 - (3) meetings with management and other representatives of a *data*

- reporting services provider*;
- (4) on-site visits;
 - (5) use of auditors;
 - (6) use of a *skilled person*;
 - (7) reviews and analysis of periodic returns and notifications;
 - (8) transaction monitoring;
 - (9) making recommendations for preventative or remedial action;
 - (10) giving individual guidance;
 - (11) restrictions on permission to carry on a *data reporting service*; and
 - (12) imposing individual requirements.

9.5 Frequently Asked Questions

- 9.5.1 G Q. Are there any grandfathering arrangements for *ARMs* or trade data monitors operating prior to *MiFID*?
- A. No. *Persons* wishing to provide a *data reporting service* must apply to be authorised as a *data reporting services provider*.
- 9.5.2 G Q. We are a *trading venue* operator. Can you please clarify how we can provide a *data reporting service* under the derogation from needing authorisation in article 59(2) of *MiFID*?
- A. (1) The derogation (or exception) in article 59(2) of *MiFID* allows Member States to allow a *trading venue* operator to provide a *data reporting service* without prior authorisation, if the operator has verified that they comply with Title V of *MiFID*.
- (2) The *United Kingdom* has adopted this derogation in regulation 5(b) to (d) of the *DRS Regulations*.
- (3) As a result a *trading venue* operator must apply for verification of its rights to provide a *data reporting service* using the form in *MAR 9 Annex 1D*.
- (4) The application process for a *trading venue* operator to become a *data reporting services provider* is the same as for a *person* to become a *data reporting services provider*, except for the requirements for the *management body* of a *market operator* addressed in *MAR 9.5.3G* below.

- (5) Successful applicants will become *data reporting services providers* and will be required to comply with the regulatory framework in *MAR 9.1.3G*. They will be subject to fees charged by the *FCA* in *MAR 9.5.4G*.

- 9.5.3 G Q. We are a *market operator*. Can we use the same members of our *management body*?
- A. Yes. Where the members of the *management body* of the *APA*, the *CTP* or the *ARM* are the same as the members of the *management body* of the *regulated market* you will be deemed to have complied with the *management body* requirement in regulation 13(1)(a) and (b) of the *DRS Regulations*. You will only be required to complete the full name and personal national identification number or equivalent thereof fields of *MAR 9 Annex 2D* for each of these members of the *management body*. For any additional members of the *management body* of the *APA*, the *CTP* or the *ARM* that are not the same as the members of the *management body* of the *regulated market*, you must notify us of these persons by completing all fields of *MAR 9 Annex 2D*. You must notify us of any change in membership using *MAR 9 Annex 6D*.
- 9.5.4 G Q. Where can I find out information about fees to be charged in respect of *data reporting services providers*?
- A. See *FEES 3.2.7R* and *FEES 4 Annex 11R*.
- 9.5.5 G Q. How do we go about applying to be an *ARM*?
- A. In summary:
- (1) You should complete:
 - (a) all of the questions in the application form at *MAR 9 Annex 1D*; and
 - (b) the notification form for the list of members of the *management body* at *MAR 9 Annex 2D*.
 - (2) You should sign the *MIS confidentiality agreement* at *MAR 9 Annex 10D*.
 - (3) You should provide the documents referred to in:
 - (a) (1)(a) and (b) together with supporting documentation to the *FCA* as set out in *MAR 9.2.6D*; and
 - (b) (2) to the *FCA* as set out in *MAR 9.3.4D*.
 - (4) After receiving the documents referred to in (3) and subject to our review of them, we will provide you with a copy of our

Market Interface Specification (MIS).

- (5) If you consider that you can meet our specifications you should obtain the *FCA MDP on-boarding application form* at *MAR 9 Annex 7D* and provide the completed form and any relevant documents to us together with the associated fee in *FEES 3.2.7R* and *FEES 4 Annex 11R*. Our consideration of your application for authorisation as an *ARM* is dependent on us reviewing a completed *FCA MDP on-boarding application form*.
- (6) We may at any time request additional information to proceed with the assessment of the application.
- (7) During our consideration of your application for authorisation or verification, we will normally invite you to work with us to undertake the appropriate testing required for you to establish connection to us.
- (8) Having obtained and examined the necessary information we require from you, we will do one of three things in relation to your application for authorisation:
 - (a) authorise you as an *ARM*; or
 - (b) issue a *warning notice* that we propose to authorise you as an *ARM* with the imposition of a requirement on your authorisation; or
 - (c) issue a *warning notice* that we propose to refuse the application for authorisation.
- (9) If we issue a *warning notice*, the procedure in *DEPP* applies.
- (10) If we approve your application for authorisation or verification, we will confirm your authorised status.

9.5.6 G Q. Does an *investment firm* need to be authorised as an *ARM* to send *transaction reports* to the *FCA*?

A. No. If you are a *MiFID investment firm* that wishes to send *transaction reports* to us to satisfy your own transaction reporting obligations under *MiFIR*, you do not need to become authorised as an *ARM*. You are permitted to connect directly to us although there will be a requirement to sign a *MIS confidentiality agreement* with us, to satisfy connectivity requirements and to undertake testing associated with connecting to our systems. For the associated costs please see *FEES 3.2.7R* for relevant on-boarding costs. If you want to connect to us to send reports on behalf of other *investment firms* then you must become authorised as an *ARM*.

- 9.5.7 G Q. Where can I find a list of *data reporting services providers*?
- A. Article 59(3) of *MiFID* requires *ESMA* to establish a list of all *data reporting services providers*. Further, regulation 6 of the *DRS Regulations* requires the *FCA* to maintain a register of *data reporting services providers*.
- 9.5.8 G Q. I am a *data reporting services provider* and am experiencing technical issues. What do I do?
- A. In the first instance please contact Market Data Processor support at MDP.technicalOnboarding@soprasteria.com and copy DRSP supervision at MRT@fca.org.uk with a succinct summary of the technical issue(s) encountered.
- 9.5.9 G Q. Can any *trading venue* report *transactions* for the purposes of article 26 of *MiFIR* to the *FCA* using an *ARM*?
- A. Yes. The ability of a *trading venue* to submit data to an *ARM* is consistent with the definition of an *ARM* which enables a *trading venue* to submit information, on its own behalf, to an *ARM*. It is also consistent with paragraph 2 of article 9 [Security] of *MiFID RTS 13*, which enables a third party to submit information to an *ARM* on behalf of others. More generally, it supports the purpose underlying *MiFIR* and *MiFID* of facilitating the detection of cases of *market abuse*.
- 9.5.10 G Q. Can a group of *investment firms* aggregate their reporting via an internal hub?
- A. Yes. A group of *investment firms* may use a hub to assist with aggregating transaction reporting data for each legal entity that is an *investment firm* in the group for the purposes of article 26 of *MiFIR* provided that the hub is either an *ARM* or the hub uses an *ARM* to report the transaction data to the *FCA*. Paragraph 2 of article 9 [Security] of *MiFID RTS 13* confirms that an *investment firm* ('reporting firm') may use a third party ('submitting firm') to submit information to an *ARM*.
- 9.5.11 G Q. Which form should I use if I wish to cancel some, but not all, of my *data reporting service*?
- A. You should use the form at *MAR 9 Annex 3D*. If you expect the wind-down (run-off) of the service that you wish to cancel to take longer than six *months* you should discuss this with your usual supervisory contact.
- 9.5.12 G Q. I intend to apply to be authorised to provide the *data reporting service* of an *APA*. May I establish connectivity requirements while my application for authorisation is being considered?

- A. Yes. The *MIS confidentiality agreement* is available on our website at www.fca.org.uk/markets/market-data-regimes/market-data-reporting-mdp together with instructions on how to obtain the *Market Interface Specification (MIS)* for connectivity.

After MAR 9 insert the following new Annexes. Each Annex consists of a link to a form.

9 Annex 1D Application form to provide the service of ARM and/or APA and/or CTP

[*Editor's note*: The form can be found at this address:
<https://www.fca.org.uk/publication/forms/mifid-data-reporting-services-form.docx>]

9 Annex 2D Notification form for list of members of a management body

[*Editor's note*: The form can be found at this address:
<https://www.fca.org.uk/publication/forms/mifid-management-body-members-form.docx>]

9 Annex 3D Variation of Authorisation of a Data Reporting Services Provider (DRSP)

[*Editor's note*: To follow]

9 Annex 4D Cancellation of Authorisation of a Data Reporting Services Provider (DRSP)

[*Editor's note*: To follow]

9 Annex 5D Material Change in information for a Data Reporting Services Provider (DRSP)

[*Editor's note*: To follow]

9 Annex 6D Notification form for changes to the membership of the management body

[*Editor's note*: To follow]

9 Annex 7D FCA MDP on-boarding application form

[*Editor's note*: The form can be found at this address:
<https://www.fca.org.uk/publication/forms/mdp-on-boarding-application-form.doc>]

9 Annex 8D Yearly Notification Form for a Data Reporting Service Provider (DRSP)

[*Editor's note*: To follow]

9 Annex 9D Data Reporting Services Provider (DRSP) Ad hoc notification

[*Editor's note*: To follow]

9 Annex 10D MIS confidentiality agreement

[*Editor's note*: The form can be found at this address:

<https://www.fca.org.uk/publication/forms/mis-confidentiality-agreement.docx>]

After MAR 9 insert the following new chapter. All the text is new and is not underlined.

10 Commodity derivative position limits and controls, and position reporting

10.1 Application

Introduction

- 10.1.1 G (1) The purpose of this chapter is to implement articles 57 and 58 of *MiFID* by setting out the necessary directions, *rules* and *guidance*.
- (2) In particular, this chapter sets out the *FCA's* requirements in respect of:
- (a) articles 57(1) and 57(6) of *MiFID*, which require *competent authorities* or *central competent authorities* to establish limits, on the basis of a methodology determined by *ESMA*, on the size of a net position which a *person* can hold, together with those held on the *person's* behalf at an aggregate group level, at all times, in *commodity derivatives* traded on *trading venues* and *economically equivalent OTC contracts* to those *commodity derivatives*;
- [**Note:** articles 3 and 4 of *MiFID RTS 21*]
- (b) article 57(8) of *MiFID*, which requires *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* to apply position management controls;
 - (c) article 58(1) of *MiFID*, which requires *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* or *emission allowances* to provide the *competent authority* with reports in respect of such positions held; and
 - (d) article 58(2) of *MiFID*, which requires *investment firms* trading in *commodity derivatives* or *emission allowances* outside a *trading venue* to provide the *competent authority* or *central competent authority* with reports containing a complete breakdown of their positions held through such contracts traded on a *trading venue* and *economically equivalent OTC contracts*,

as well as of those of their *clients* and the clients of those clients until the end client is reached.

- (3) The position limit requirements apply to both *authorised persons* and *unauthorised persons*. As such, the *MiFI Regulations* provide for a separate regulatory framework in relation to such *persons*. This framework is set out in:
- (a) Part 3 of the *MiFI Regulations* ('Position limits and position management controls in commodity derivatives'); and
 - (b) Schedule 1 to the *MiFI Regulations* ('Administration and enforcement of Part 3, 4 and 5'), which provides for the administration and enforcement of position limits established by the *FCA*, and of the reporting of positions in *commodity derivatives, emission allowances and economically equivalent OTC contracts*.

This chapter complements and adds to the regulatory framework in the *MiFI Regulations* by establishing the applicable position limits.

Scope and territoriality

10.1.2 G The scope of this chapter is as follows:

- (1) In respect of position limit requirements in *MAR 10.2*, a *commodity derivative* position limit established by the *FCA* in accordance with *MAR 10.2.2D(1)* applies regardless of the location of the *person* at the time of entering into the position and the location of execution.

[Note: article 57(14)(a) of *MiFID*]

- (2) In respect of position management controls requirements:
- (a) the requirements contained or referred to in *MAR 10.3* apply to *persons* operating a *trading venue* which trades *commodity derivatives* in respect of which the *FCA* is the *Home State competent authority*; and
 - (b) in the case of a *UK branch* of a *third country investment firm* operating an *MTF* or *OTF*, *MAR 10.3* applies in the same way as it does to a *UK firm* operating a *multilateral trading facility* or an *OTF*.
- (3) In respect of position reporting requirements:
- (a) the position reporting requirements in *MAR 10.4* apply to:
 - (i) a *UK regulated market*; and
 - (ii) a *UK firm* or a *UK branch* of a *third country investment firm* operating a *multilateral trading facility* or an *OTF*,

when operating a *trading venue* which trades *commodity derivatives* or *emission allowances*; and

- (b) the position reporting requirements in *MAR 10.4* apply to an *investment firm* regardless of its location at the time of entering into the position and the location of execution.

Structure

10.1.3 G This chapter is structured as follows:

- (1) *MAR 10.1* sets out an introduction to *MAR 10*, a description of the application of *MAR 10* to different categories of *person*, an explanation of the approach taken to the *UK* transposition of articles 57 and 58 of *MiFID*, the scope and territoriality of this chapter, and the structure of this chapter.
- (2) *MAR 10.2* sets out the position limit requirements.
- (3) *MAR 10.3* sets out the position management controls requirements.
- (4) *MAR 10.4* sets out the position reporting requirements.
- (5) *MAR 10.5* sets out other reporting, notification and information requirements.

10.2 Position limit requirements

Establishing, applying and resetting position limits

- 10.2.1 G (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:
- (a) Regulation 16(1) imposes an obligation on the *FCA* to establish position limits in respect of *commodity derivatives* traded on *trading venues* in the *United Kingdom* and *economically equivalent OTC contracts*;
 - (b) Regulation 16(2) imposes an obligation on the *FCA* to establish position limits on the basis of all positions held by a *person* in the contract to which the limit relates and those held on the *person's* behalf at an aggregate group level;
 - (c) Regulation 16(4) imposes an obligation on the *FCA* to publish the position limits it establishes in a manner which the *FCA* considers appropriate;
 - (d) Regulation 18 imposes an obligation on the *FCA* to ensure that each position limit established by it specifies clear quantitative thresholds for the maximum size of a position in a *commodity*

derivative that a *person* can hold;

- (e) Regulation 19(1) imposes an obligation on the *FCA* to establish position limits in accordance with *ESMA*'s methodology, unless an exceptional case exists under Regulation 25 of the *MiFI Regulations*;
- (f) Regulation 19(2) imposes an obligation on the *FCA* to review position limits it has established in the presence of certain factors;
- (g) Regulation 19(3) imposes an obligation on the *FCA* to establish a new position limit following its review if it believes that the limit should be reset;
- (h) Regulation 20(2) imposes an obligation on the *FCA*, where it receives an *ESMA* opinion stating that the establishment of a position limit would be, or is, incompatible with that opinion, to modify the position limit in accordance with *ESMA*'s opinion or to notify *ESMA* as to why amendment to the limit is considered to be unnecessary;
- (i) Regulation 21(1) imposes an obligation on the *FCA* to not establish a position limit in respect of a *commodity derivative* traded on *trading venues* in the *United Kingdom*, where there is a *central competent authority* for that *commodity derivative* other than the *FCA*;
- (j) Regulation 23 imposes general obligations on the *FCA* in respect of the position limits it establishes, so that the limits must be transparent and non-discriminatory, specify how they apply to *persons*, and take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading;
- (k) Regulation 25(1) prohibits the *FCA* from establishing position limits which are more restrictive than permitted under *ESMA*'s methodology, unless in exceptional cases where more restrictive position limits are objectively justified and proportionate;
- (l) Regulation 25(2) to Regulation 25(5) impose obligations on the *FCA* where it establishes position limits which are more restrictive than permitted under *ESMA*'s methodology in accordance with Regulation 25(1) of the *MiFI Regulations*. The obligations are that the *FCA* must publish that position limit on its website, not apply that position limit for more than six *months* from the date of publication unless further subsequent six-month application periods for that limit are objectively justified and proportionate, and must notify *ESMA* of the position limit and the justification for establishing it;

- (m) Regulation 20(5) and Regulation 25(6) impose obligations on the *FCA* to publish a notice on its website explaining the reasons for its decision when, under Regulation 20(2) and Regulation 25(5) of the *MiFI Regulations* respectively, it does not modify a position limit following an *ESMA* opinion incompatible with the limit; and
 - (n) Regulation 27 empowers the *FCA* to require a *person* to provide information on, or concerning, a position the *person* holds, or trades the *person* has undertaken, or intends to undertake, in a contract to which a position limit relates.
- (2) *MiFID RTS 21* provides a methodology for the calculation of position limits on *commodity derivatives*, and rules for the calculation of the net position held by a *person* in a *commodity derivative*.
 - (3) *MiFID RTS 21* provides that the *FCA* can establish different position limits for different times within the spot month period or other months' period of a *commodity derivative*, and for the spot month period, those position limits shall decrease towards the maturity of the *commodity derivative*, and shall take into account the position management controls of *trading venues*.

[**Note:** article 57 of *MiFID*]

Application of position limits

- 10.2.2 D
- (1) A *person* must comply at all times with *commodity derivative* position limits established by the *FCA*, published at www.fca.org.uk.
 - (2) A direction made under (1) applies where a *commodity derivative* is traded on a *trading venue* in the *United Kingdom*, provided that there is not a *central competent authority* established in an *EEA State* other than the *United Kingdom*.
 - (3) Position limits established under (1) shall apply to the positions held by a *person* together with those held on its behalf at an aggregate group level (subject to the *non-financial entity* exemption in regulation 17(1) of the *MiFI Regulations*).
 - (4) Position limits established under (1) shall apply regardless of the location of the *person* at the time of entering into the position.
 - (5) Position limits established under (1) prior to 3 January 2018, will apply from 3 January 2018.

[**Note:** articles 57(1) and 57(14) of *MiFID*; and *MiFID RTS 21* in respect of *ESMA*'s methodology for *competent authorities* to calculate position limits]

Non-financial entity exemption

- 10.2.3 G (1) Regulation 17 of the *MiFI Regulations* regulates the position limit exemption applicable to positions in a *commodity derivative* held by or on behalf of a *non-financial entity* which are objectively measurable as reducing risks directly relating to the commercial activity of that *non-financial entity*, and which is approved by the *FCA* in accordance with the relevant criteria and procedures. Regulation 17(1) imposes an obligation on the *FCA* to disregard such positions, when calculating the position held by such entities in respect of a *commodity derivative* to which a position limit applies.
- (2) Regulation 17(2) of the *MiFI Regulations* enables the *FCA* to receive applications from *non-financial entities* for the purposes of obtaining an exemption from the position limits which it sets and in such form as the *FCA* may direct.
- (3) *MiFID RTS 21* stipulates detail on positions qualifying as reducing risks directly related to commercial activities, and the application for the exemption from position limits.
- (4) *MiFID RTS 21* clarifies that a *non-financial entity* shall notify the *FCA* if there is a significant change to the nature or value of that *non-financial entity's* commercial activities, or its trading activities in *commodity derivatives*. The obligation arises where the change is relevant to the description of the nature and value of the *non-financial entity's* trading and positions held in *commodity derivatives* and their *economically equivalent OTC contracts* in a position limit exemption application it has already submitted. In this case, a *non-financial entity* must submit a new application if it intends to continue to make use of the exemption.

[**Note:** article 57(1) of *MiFID*]

Non-financial entity exemption application

- 10.2.4 D A *non-financial entity* must complete the application form in *MAR 10 Annex 1D* for approval to be exempt from compliance with position limits established by the *FCA* in accordance with *MAR 10.2.2D(1)*.
- 10.2.5 G Where a position limit is established by a *competent authority* or *central competent authority* other than the *FCA*, a *non-financial entity* should submit its application for exemption, in relation to the position limit, to that *competent authority* or *central competent authority* in the manner it specifies.

[**Note:** article 8 of *MiFID RTS 21*]

10.3 Position management controls

Application

10.3.1 G The application of this section is set out in the following table:

Type of firm	Applicable provisions
a <i>UK market operator</i> operating a <i>trading venue</i>	MAR 10.3.2G and MAR 10.3.4G
a <i>UK firm operating a multilateral trading facility</i> or an <i>OTF</i> and a <i>UK branch of a third country investment firm operating a multilateral trading facility</i> or an <i>OTF</i>	MAR 10.3.3R to MAR 10.3.5G

Position management controls applicable to UK market operators operating a trading venue

10.3.2 G A *UK market operator* operating a *trading venue* which trades *commodity derivatives* must apply position management controls on that *trading venue*, in accordance with paragraph 7BA of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[**Note:** article 57(8) to 57(10) of *MiFID*]

Position management controls applicable to UK firms and UK branches of third country investment firms operating an MTF or OTF

10.3.3 R (1) This *rule* applies to a *UK firm operating a multilateral trading facility* or an *OTF* and a *UK branch of a third country investment firm operating a multilateral trading facility* or an *OTF*.

(2) A *firm* must apply position management controls which enable an *MTF* or *OTF* at least to:

- (a) monitor the open interest positions of *persons*;
- (b) access information, including all relevant documentation, from *persons* about:
 - (i) the size and purpose of a position or exposure entered into;
 - (ii) any beneficial or underlying owners;
 - (iii) any concert arrangements; and
 - (iv) any related assets or liabilities in the underlying market;
- (c) require a *person* to terminate or reduce a position on a temporary or permanent basis and unilaterally to take appropriate action to ensure the termination or reduction if the *person* does not comply; and

- (d) require a *person* to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large and dominant position.
- (3) The position management controls in paragraph (2) must take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading and must:
 - (a) be transparent;
 - (b) be non-discriminatory; and
 - (c) specify how the controls apply to *persons*.
- (4) A *firm* must inform the *FCA* of the details of the position management controls in relation to each *MTF* or *OTF* it operates which trades *commodity derivatives*.

[**Note:** article 57(8) to 57(10) of *MiFID*]

Supervision of position management controls

- 10.3.4 G An operator of a *trading venue* referred to in *MAR* 10.3.1G may include provisions in its rulebook which impose appropriate obligations on its members or participants as part of compliance with its position management controls obligations.

Position management controls: Procedure for informing the FCA

- 10.3.5 G A *firm* must comply with the obligation in *MAR* 10.3.3R(4) by completing the form available at www.fca.org.uk.

10.4 Position reporting

Application

- 10.4.1 G The application of this section is set out in the following table:

Type of firm	Applicable provisions
<i>UK regulated market</i>	<i>MAR</i> 10.4.2G
<i>UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF</i>	<i>MAR</i> 10.4.3R to <i>MAR</i> 10.4.6G
<i>UK MiFID investment firm</i>	<i>MAR</i> 10.4.7D to <i>MAR</i> 10.4.9D

<i>UK branch of third country investment firm when not operating a multilateral trading facility or an OTF</i>	MAR 10.4.7D to MAR 10.4.9D
Member, participant or a <i>client</i> of a <i>UK trading venue</i>	MAR 10.4.7D
<i>EEA MiFID investment firm</i> who is a member, participant or a <i>client</i> of a <i>UK trading venue</i>	MAR 10.4.10D

Position reporting by UK regulated markets

- 10.4.2 G A *UK regulated market* which trades *commodity derivatives* or *emission allowances* must provide position reports in accordance with paragraph 7BB of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[**Note:** article 58(1) of *MiFID*]

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: Reports

- 10.4.3 R (1) This *rule* applies to a *UK firm operating a multilateral trading facility* or an *OTF* and a *UK branch of a third country investment firm operating a multilateral trading facility* or an *OTF*.
- (2) A *firm* must make public and provide to the *FCA* and *ESMA* a weekly report with the aggregate positions held by the different categories of *persons* for the different *commodity derivatives* or *emission allowances* traded on the *trading venue*, where those instruments meet the criteria of article 83 of the *MiFID Org Regulation*, specifying:
- (a) the number of long and short positions held by such categories;
 - (b) changes in those positions since the previous report;
 - (c) the percentage of the total open interest represented by each category; and
 - (d) the number of *persons* holding a position in each category, as specified in *MAR 10.4.4R*.
- (3) The *firm* must provide the *FCA* with a complete breakdown of the positions held by all *persons*, including the members or participants and *clients*, as well as those of their clients until the end client is reached, on the *trading venue* on a daily basis.
- (4) For the weekly report mentioned in (2) above, the *firm* must differentiate between:

- (a) positions which in an objectively measurable way reduce risks directly relating to commercial activities; and
- (b) other positions.

[**Note:** article 58(1) of *MiFID*, *MiFID ITS 4* on position reporting and *MiFID ITS 5* on the format and timing of weekly position reports to *ESMA*]

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: classification of persons holding positions in commodity derivatives or emission allowances

- 10.4.4 R A firm must classify persons holding positions in *commodity derivatives* or *emission allowances* according to the nature of their main business, taking account of any applicable authorisation or registration, as:
- (1) *investment firms* or *credit institutions*; or
 - (2) investment funds, either as a *UCITS*, or an *AIF* or an *AIFM*; or
 - (3) other financial institutions, including:
 - (a) insurance undertakings and reinsurance undertakings as defined in the *Solvency II Directive*; and
 - (b) institutions for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement; or
 - (4) commercial undertakings; or
 - (5) in the case of *emission allowances*, operators with compliance obligations under the *Emission Allowance Trading Directive*.

[**Note:** article 58(4) of *MiFID*]

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Procedure for reporting to the FCA

- 10.4.5 D (1) This direction applies to:
- (a) a *UK firm operating a multilateral trading facility* or an *OTF*; and
 - (b) a *UK branch of a third country investment firm operating a multilateral trading facility* or an *OTF*.
- (2) A firm shall report to the *FCA*:
- (a) (where it meets the minimum threshold as specified in article 83 of the *MiFID Org Regulation*) the weekly report referred to in

MAR 10.4.3R(2), by using the form set out in Annex I of *MiFID ITS 4*, and publish it on its website and provide the report to *ESMA*; and

- (b) in respect of the daily report referred to in *MAR* 10.4.3R(3):
 - (i) by using the form set out in Annex II of *MiFID ITS 4* available at <https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives>; and
 - (ii) in each case, the report must be provided to the *FCA* by 21:00 GMT the following *business day*.

[**Note:** *MiFID ITS 4* on position reporting]

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Duplication of reporting

- 10.4.6 G For the purposes of making the weekly report referred to under *MAR* 10.4.3R(2), the *FCA* will accept an email containing a link to the report, as published on the *firm's* website. Emails should be sent to the *FCA* at COT_reports@fca.org.uk. This *guidance* does not affect the separate obligation for a *firm* to make the weekly report to *ESMA*.

Position reporting by members, participants or clients of UK trading venues: trading venue participant reporting

- 10.4.7 D (1) This direction applies to a member, participant or a *client* of a *trading venue*.
- (2) A *person* in (1) must report to the relevant operator of a *trading venue* the details of their own positions held through contracts traded on that venue, at least on a daily basis, as well as those of their clients and the clients of those clients, until the end client is reached.
- (3) Paragraph (2) above does not apply to a member, participant or a *client* of a *trading venue* that is an *EEA person*.

[**Note:** article 58(3) of *MiFID*]

UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to the *FCA*

- 10.4.8 D (1) This direction applies to:
- (a) a *UK MiFID investment firm*; and
 - (b) a *UK branch* of a *third country investment firm*.
- (2) An *investment firm* in (1) trading in a *commodity derivative* or *emission allowance* outside a *trading venue* must, where the *FCA* is the *competent authority* of the *trading venue* where that *commodity*

derivative or emission allowance is traded, provide the *FCA* with a report containing a complete breakdown of:

- (a) their positions taken in those *commodity derivatives* or *emission allowances* traded on a *trading venue*;
 - (b) *economically equivalent OTC contracts*; and
 - (c) the positions of their *clients* and the clients of those clients until the end client is reached, in accordance with article 26 of *MiFIR*.
- (3) The report in (2) must be submitted to the *FCA*, for each *business day*, by 21:00 GMT the following *business day*, using the form set out in Annex II of *MiFID ITS 4* available at <https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives>.
- (4) The obligation in (2) does not apply where there is a *central competent authority* for the *commodity derivative* other than the *FCA*.

[**Note:** 58(2) of *MiFID*, and *MiFID ITS 4* on position reporting]

UK MiFID investment firms and UK branches of third country investment firms:
OTC reporting to EEA competent authorities other than the FCA

- 10.4.9 D (1) This direction applies to:
- (a) a *UK MiFID investment firm*; and
 - (b) a *UK branch* of a *third country investment firm*.
- (2) An *investment firm* in (1) trading in a *commodity derivative* or *emission allowance* outside a *trading venue* must, where an *EEA competent authority* other than the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, or the *central competent authority* for the purposes of that *commodity derivative*, provide that *EEA competent authority* with a report containing a complete breakdown of:
- (a) their positions taken in those *commodity derivatives* or *emission allowances* traded on a *trading venue*;
 - (b) *economically equivalent OTC contracts*; and
 - (c) the positions of their *clients* and the clients of those clients until the end client is reached, in accordance with article 26 of *MiFIR*.
- (3) The report in (2) must be submitted to the relevant *EEA competent authority*, for each *business day*, using the form set out in Annex II of *MiFID ITS 4*, by the time specified by that *EEA competent authority*.

- (4) The obligation in (2) does not apply where the *FCA* is the *central competent authority* for that *commodity derivative*.

[**Note:** 58(2) of *MiFID*, and *MiFID ITS 4* on position reporting]

EEA MiFID investment firms who are members, participants or clients of UK trading venues: trading venue participant reporting and OTC reporting to the FCA

- 10.4.10 D (1) This direction applies to an *EEA MiFID investment firm* which is a member, participant or a *client* of a *UK trading venue*.
- (2) *MAR 10.4.7D* applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*.
- (3) *MAR 10.4.8D* applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*, where the *EEA MiFID investment firm* trades in a *commodity derivative* or *emission allowance* outside a *trading venue*, and the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, or the *central competent authority* for the purposes of that *commodity derivative*.
- (4) Paragraphs (2) and (3) above only apply where the *EEA MiFID investment firm* is not subject to a corresponding rule or other requirement imposed by its *Home State competent authority*.

10.5 Other reporting, notifications and information requirements

Information requirement

- 10.5.1 G Regulation 27 of the *MiFI Regulations* provides the *FCA* with the power to:
- (1) require a *person* to provide information including all relevant documentation, on, or concerning:
- (a) a position the *person* holds in a contract to which a position limit relates; and
- (b) trades the *person* has undertaken, or intends to undertake, in a contract to which a position limit relates;
- (2) require an operator of a *trading venue* to provide information including all relevant documentation on, or concerning, trades a *person* has undertaken, or intends to undertake in a contract to which a position limit relates.

[**Note:** article 69(2)(j) of *MiFID*]

Power to intervene

- 10.5.2 G The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to intervene in respect of position limits:
- (1) Regulation 28 provides that the *FCA* may, if it considers necessary, limit the ability of any *person* to enter into a contract for a *commodity derivative*, restrict the size of positions a *person* may hold in such a contract, or require any *person* to reduce the size of a position held, notwithstanding that the restriction or reduction would be more restrictive than the position limit established by the *FCA* or another *competent authority* in accordance with article 57 of *MiFID* to which the contract relates; and
 - (2) Paragraph 5 of Schedule 1 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.

[**Note:** article 69(2)(o) and 69(2)(p) of *MiFID*]

Reporting requirements

- 10.5.3 G The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to impose reporting requirements in respect of positions taken in *commodity derivatives* and *emission allowances*:
- (1) Paragraph 8 of Schedule 1 provides that a *person* must provide the *FCA* with information in respect of its compliance or non-compliance with position limit requirements, as the *FCA* may direct; and
 - (2) Paragraph 5 of Schedule 1 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.

[**Note:** article 69(2)(j) of *MiFID*]

Breaches of MAR 10 by unauthorised persons

- 10.5.4 D (1) An *unauthorised person* to which this chapter applies must notify the *FCA* of:
- (a) a breach of a direction in this chapter;
 - (b) a breach of a directly applicable provision imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*; and
 - (c) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.

- (2) Notifications under (1) must be made immediately if the *person* becomes aware, or has information which reasonably suggests, that any of the breaches referred to in (1) have occurred, may have occurred or may occur in the foreseeable future.

Notifications by unauthorised persons: non-financial entity exemption applications

- 10.5.5 G *SUP* 15.3.13G and *SUP* 15.3.14G apply to notifications of an application by an *unauthorised person* for the *non-financial entity* exemption under regulation 17 of the *MiFI Regulations* as if the *person* is a *firm* to which *SUP* 15.3.11R applies.

Breaches of MAR 10 by authorised persons

- 10.5.6 G *Firms* should refer to *SUP* 15.3 (General notification requirements) generally, and in particular *SUP* 15.3.11R, in respect of the following:
- (1) a breach of a *rule* or *direction* in this chapter;
 - (2) a breach of a directly applicable provision imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*; and
 - (3) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.

Territoriality

- 10.5.7 G The powers of the *FCA* referred to in *MAR* 10.5.1G to *MAR* 10.5.3G can be applied to a *person* regardless of whether the *person* is situated or operating in the *UK* or abroad, where the relevant position relates to a *commodity derivative* or *emission allowance* of which the *FCA* is the *competent authority* or *central competent authority*, or *economically equivalent OTC contracts*.

Decision and appeal procedures

- 10.5.8 G The power of the *FCA* referred to in *MAR* 10.5.2G is exercisable subject to the decision-making procedures in *DEPP* 2 Annex 2G (Supervisory notices) (and other provisions in *DEPP*, as appropriate).

10 Annex 1D Application form for a non-financial entity for an exemption from compliance with position limits

[*Editor's Note*: To follow]

Amend the following as shown.

Sch 1 Record ~~Keeping~~ keeping requirements

1.1G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u>MAR 7A.3.8R</u>	<u>Algorithmic and high-frequency algorithmic trading</u>	<u>Records necessary to meet MAR 7A.3.7R, and high-frequency algorithmic trading records and quotes</u>	<u>On initiation of algorithmic and high-frequency algorithmic trading strategies</u>	<u>5 years, or as otherwise provided for high-frequency algorithmic trading records and quotes in MiFID RTS 6</u>
<u>MAR 7A.4.6R</u>	<u>Direct electronic access providers' systems and controls</u>	<u>Records necessary to meet MAR 7A.4.2R and MAR 7A.4.5R</u>	<u>On initiation of direct electronic access provision</u>	<u>5 years</u>
...

Sch 2 Notification requirements

...

Sch 2.2G Notification requirements

Handbook reference	Matter to be notified	Contents of Notification	Trigger event	Time allowed
<u>MAR 5.3A.3R(4)</u>	<u>Market making agreements</u>	<u>Content of market making agreements</u>	<u>Upon formation of a binding written agreement</u>	<u>Without delay</u>
<u>MAR 5.3A.8R</u>	<u>Trading halts on material markets</u>	<u>Information that trading is halted in a financial instrument</u>	<u>Upon trading halt</u>	<u>Without delay</u>
<u>MAR 5.6.1R(1)</u>	<u>Non-compliant, disorderly or abusive trading</u>	<u>Information of the occurrence of significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve market abuse</u>	<u>Upon occurrence of the breach, conditions or conduct</u>	<u>Without delay</u>

<u>MAR 5.6A.1R(3)</u>	<u>Suspension and removal of <i>financial instruments</i></u>	<u>Information of the suspension or removal of a <i>financial instrument</i> and any related or referenced <i>derivative</i></u>	<u>Upon suspension or removal</u>	<u>Without delay</u>
<u>MAR 5A.5.3R(4)</u>	<u>Market making agreements</u>	<u>Content of market making agreements</u>	<u>Upon formation of a <i>binding written agreement</i></u>	<u>Without delay</u>
<u>MAR 5A.5.8R</u>	<u>Trading halts on material markets</u>	<u>Information that trading is halted in a <i>financial instrument</i></u>	<u>Upon trading halt</u>	<u>Without delay</u>
<u>MAR 5A.8.1R(1)</u>	<u>Non-compliant, disorderly or abusive trading</u>	<u>Information of the occurrence of <i>significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve market abuse</i></u>	<u>Upon occurrence of the <i>breach, conditions or conduct</i></u>	<u>Without delay</u>
<u>MAR 5A.9.1R(3)</u>	<u>Suspension and removal of <i>financial instruments</i></u>	<u>Information of the suspension or removal of a <i>financial instrument</i> and any related or referenced <i>derivative</i></u>	<u>Upon suspension or removal</u>	<u>Without delay</u>
<u>MAR 6.4.1R</u>	<u><i>Systematic internaliser</i> status</u>	<u>Information of gaining or ceasing <i>systematic internaliser</i> status</u>	<u>Upon becoming or ceasing to be a <i>systematic internaliser</i></u>	<u>Without delay</u>
<u>MAR 7A.3.6R</u>	<u>Engaging in <i>algorithmic trading</i></u>	<u>Information that a <i>member of a trading venue</i> is <i>engaging in algorithmic trading</i></u>	<u>Upon engagement in <i>algorithmic trading</i></u>	<u>Without delay</u>
<u>MAR 7A.4.4R</u>	<u>Provision of <i>DEA</i> services</u>	<u>Information that a <i>firm</i> is providing <i>DEA</i> services</u>	<u>Upon engagement in <i>DEA</i> provision</u>	<u>Without delay</u>
...

Annex L

Amendments to the Supervision Manual (SUP)

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

3 Auditors

3.1 Application

...

3.1.2 R Applicable sections (see SUP 3.1.1R)

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...		
<p>Note 3B = UK MiFID investment firms include exempt CAD firms. An exempt CAD firm that has opted into MiFID can benefit from the audit exemption for small companies in the Companies Act legislation if it meets the relevant criteria in that legislation and fulfils the conditions of regulation 4C(3) 4(8) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 is an exempt investment firm as defined by article 8 of the <u>MiFI Regulations</u>. If a firm does so benefit then SUP 3 will not apply to it. For further details about exempt CAD firms, see PERG 13, Q58.</p>		
...		

...

10A FCA Approved Persons

...

10A.7 FCA required functions

...

Compliance oversight function (CF10)

10A.7.8 R The *compliance oversight function* is the function of acting in the capacity of:

- (1) a director or senior manager who is allocated the function set out in :
 - (a) SYSC 3.2.8R ; or
 - (b) SYSC 6.1.4R(2) ; or

- (c) article 22(3) of the *MiFID Org Regulation*; or
- (d) article 22(3) 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*); or
- (e) *SYSC 6.1.4CR*; or

...

...

10A.8 Systems and controls functions

Systems and controls function (CF28)

- 10A.8.1 R The *systems and controls function* is the function of acting in the capacity of an *employee* of the *firm* with responsibility for reporting to the *governing body* of a *firm*, or the audit committee (or its equivalent) in relation to:
- (1) its financial affairs;
 - (2) setting and controlling its risk exposure (see *SYSC 3.2.10G* and *SYSC 7.1.6R*, article 23(2) of the *MiFID Org Regulation* and article 23(2) 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
 - (3) adherence to internal systems and controls, procedures and policies (see *SYSC 3.2.16G* and *SYSC 6.2*, article 24 of the *MiFID Org Regulation* and article 24 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*)).

...

10C FCA senior management regime for approved persons in relevant authorised persons

...

10C.5 FCA governing functions

...

Chairman of the nomination committee function (SMF13)

- 10C.5.3 G See *SYSC 4.3A* (~~CRR firms~~ Management body and nomination committee) for material about nomination committees.

...

10C.6 FCA-required functions

Compliance oversight function (SMF16)

- 10C.6.1 R The *compliance oversight function* is the function of acting in the capacity of a *director* or *senior manager* who is allocated the function in:
- (1) SYSC 6.1.4R(2); or
 - (2) article 22(3) of the *MiFID Org Regulation*; or
 - (3) article 22(3) 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).

...

13 Exercise of passport rights by UK firms

...

- 13.1.6 G The chapter also explains how a *UK firm* which has already established a *branch* in, or is providing *cross border services* into, another *EEA State*, may change the details of its *branch* or of the *cross border services* it is providing: for example, where a *UK firm* wishes to establish additional *branches* in an *EEA State* in which it has already established a *branch* where this would result in a change to the details provided previously. Such changes are governed by the *EEA Passport Rights Regulations* and, where *MiFID* applies, *MiFID RTS 3A* and *MiFID ITS 4A*.

...

13.3 Establishing a branch in another EEA State

What constitutes a branch

- 13.3.1 G (1) Guidance on what constitutes a *branch* is given in SUP App 3. Note that if a *UK MiFID investment firm* is seeking to use a *tiered agent* established in another *EEA State*, the rules in SUP 13 will apply as if that *firm* were seeking to establish a *branch* in that *EEA State* unless the *firm* has already established a *branch* in that *EEA State* (paragraph 20A of Schedule 3 to the Act)
- (2) (a) Where a *UK MiFID investment firm* is seeking to use a *tiered agent* established in another *EEA State* in which a *branch* is already established, the *tiered agent* will be assimilated into the *branch*.

- (b) If a UK MiFID investment firm is seeking to use a tied agent established in another EEA State in which no branch is already established, the rules in SUP 13 will apply as if that firm were seeking to establish a branch in that EEA State (paragraph 20A of Schedule 3 to the Act).
- (c) In any event, the appointment of a tied agent established in another EEA State leads to the application of conduct requirements to the tied agent's business, as if it were a branch of a UK MiFID investment firm.
- (d) See SUP 13.3.9G for details of the MiFID branch forms.

[Note: article 35(2) of MiFID]

...

MiFID branch forms

- 13.3.9 G (1) (a) A UK MiFID investment firm wishing to use a tied agent established in another EEA State is required to complete the form in Annex VII of MiFID ITS 4A and send it to the FCA.
- [Note: article 14(1) of MiFID ITS 4A]
- (b) A UK MiFID investment firm which intends to establish a branch in another EEA State is required to complete the form in Annex VI of MiFID ITS 4A and send it to the FCA.
- [Note: article 13(1) of MiFID ITS 4A]
- (c) A UK MiFID investment firm that intends to establish a branch which in turn intends to use tied agents is required to complete the forms in Annex VI and Annex VII of MiFID ITS 4A and send them to the FCA.
- [Note: article 13(2) of MiFID ITS 4A]
- (2) (a) Each of the forms in MiFID ITS 4A referred to in SUP 13.3.9G(1)(a) to (c) is replicated in SUP 13 Annex 1AR.
- (b) These versions should be used for the purposes of notifications to the FCA.
- (c) The forms should be submitted in accordance with SUP 13.5.3R.

13.4 Providing cross border services into another EEA State

...

The conditions for providing cross border services into another EEA State

...

- 13.4.2D G (1) *A MiFID investment firm that wishes to obtain a passport for the activity of operating ~~a MTF~~ multilateral trading facility or operating an organised trading facility should follow the procedures described in this chapter.*
- (2) *A UK market operator that operates a recognised investment exchange, a recognised auction platform (pursuant to the RAP regulations, the definition of regulated market in the Act is read for these purposes as including a recognised auction platform) ~~or~~ an MTF or an OTF and wishes to provide cross border services into another EEA State should follow the procedure described in REC 4.2B.*

...

MiFID services forms

- 13.4.8 G (1) *A UK MiFID investment firm is required to submit an investment services and activities passport notification to the FCA by completing the form in Annex I of MiFID ITS 4A. The firm should complete a separate form for each EEA State it wishes to provide services into.*

[Note: article 4(1) of MiFID ITS 4A]

- (2) *A UK MiFID investment firm wishing to provide investment services or activities through a tied agent established in the UK is required to send an investment services and activities passport notification to the FCA by completing the parts of the form in Annex I of MiFID ITS 4A that are relevant to a tied agent. The firm should complete a separate form for each EEA State into which it wishes to provide services through a tied agent.*

[Note: article 4(3) of MiFID ITS 4A]

- (3) *A UK MiFID investment firm operating a multilateral trading facility or operating an organised trading facility that intends to provide appropriate arrangements to facilitate access to and trading on those systems by remote users, members or participants in another EEA State, is required to send the details of the Host State in which it intends to provide such arrangements to the FCA by completing the form in Annex IV of MiFID ITS 4A. If the firm is notifying in respect of more than one MTF or OTF, it should complete a separate form for each MTF or OTF.*

[Note: article 9 of MiFID ITS 4A]

- (4) (a) Each of the forms in *MiFID ITS 4A* referred to in *SUP* 13.4.8G(1) to (3) is replicated in *SUP* 13 Annex 2R.
- (b) These versions should be used for the purposes of notifications to the *FCA*.
- (c) The forms should be submitted in accordance with *SUP* 13.5.3R.

13.5 Notices of intention

Specified contents: notice of intention to establish a branch

- 13.5.1 R A *UK firm*, other than a *CRD credit institution*, wishing to establish a *branch* in a particular *EEA State* for the first time under an *EEA right*,² other than under the *auction regulation*,² must submit a *notice of intention* in the form set out in:

- (1) *SUP* 13 Annex 1R; or
- (2) if the *firm* is a *UK MiFID investment firm*, *SUP* 13 Annex 1AR.

...

Method of submission of notices

- 13.5.3 R (1) A *UK firm*, other than a *credit union*, must submit any notice under *SUP* 13.5.1R(1), ~~*SUP* 13.5.1AR~~ or *SUP* 13.5.2R online at www.fca.org.uk using the *online notification and application system*.

...

...

13.6 Changes to branches

- 13.6.1 G (1) Where a *UK firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive* (see *SUP* 13.6.9AG) or the *CRD*, and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are governed by the *EEA Passport Rights Regulations*.
- (2) References to regulations in this section are to the *EEA Passport Rights Regulations*.
- (3) (a) A *UK firm* which is not an *authorised person* should note that, under regulation 18, contravention of the prohibition imposed by regulation 11(1), 13(1) or 15(1) is an offence.

(b) It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

(4) Where a *UK MiFID investment firm* exercises an *EEA right* under *MiFID* and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are also governed by *MiFID RTS 3A* and *MiFID ITS 4A*.

...

Firms passporting under MiFID

13.6.5A G If a *UK firm* has exercised an *EEA right* to establish a *branch* under *MiFID*, it must not make a change in the *requisite details* of the *branch* (see ~~*SUP 13 Annex 1*~~ *SUP 13 Annex 1AR*), use, for the first time, a *tied agent* established in the *EEA State* in which the *branch* is established, or cease to use a *tied agent* established in the *EEA State* in which the *branch* is established, unless it has satisfied the requirements of regulation 11A(2) (see *SUP 13.6.5BG*).

...

13.6.5C G A *UK MiFID investment firm* is also required to notify the *FCA* of changes to a *branch* or *tied agent* in accordance with:

- (1) article 7 (Information to be notified concerning the change of branch or tied agent particulars) of *MiFID RTS 3A*;
- (2) article 18 (submission of the change of branch particulars notification) of *MiFID ITS 4A*; and
- (3) article 19 (submission of the change of the tied agent particulars notification) of *MiFID ITS 4A*.

13.6.5D G If any of the details in a *branch passport notification* change, a *UK MiFID investment firm* is required to notify the *FCA* by completing the form in Annex VI of *MiFID ITS 4A*.

[Note: article 18(1) of *MiFID ITS 4A*]

13.6.5E G If any of the details in a *tied agent passport notification* change, a *UK MiFID investment firm* is required to notify the *FCA*, by completing the form in Annex VII of *MiFID ITS 4A*.

[Note: article 19(1) of *MiFID ITS 4A*]

13.6.5F G If a *UK MiFID investment firm* closes a *branch* or stops using a *tied agent*, it is required to notify the *FCA* using the form in Annex X of *MiFID ITS 4A*.

[Note: articles 18(4) and 19(4) of *MiFID ITS 4A*]

- 13.6.5G G (1) Each of the forms in *MiFID ITS 4A* referred to in *SUP 13.6.5DG* to *SUP 13.6.5FG* is replicated in *SUP 13 Annex 1AR*.
- (2) These versions should be used for the purposes of notifications to the *FCA*.
- (3) The forms should be submitted in accordance with *SUP 13.8.1R*.

...

The process: MiFID investment firms

- 13.6.17 G (1) When the ~~*appropriate UK regulator*~~ *FCA* receives a notice from a *UK MiFID investment firm* (see *SUP 13.6.5BG* (1)), it is required by regulation 11A(3) to inform the relevant *Host State regulator* of the proposed change as soon as reasonably practicable.
- (2) The *FCA* is required to use the forms in Annex XI, Annex XII or Annex XIII of *MiFID ITS 4A*, as applicable.
- (3) The *firm* in question may make the change once the period of one *month* beginning with the day on which it gave notice has elapsed.

...

13.7 Changes to cross border services

- 13.7.1 G (1) Where a *UK firm* is exercising an *EEA right* under the *UCITS Directive*, *MiFID*, the *Insurance Directives* or *AIFMD* and is providing *cross border services* into another *EEA State*, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*.
- (2) References to regulations in this section are to the *EEA Passport Rights Regulations*.
- (3) (a) A *UK firm* which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence.
- (b) It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.
- (4) Where a *UK MiFID investment firm* exercises an *EEA right* under *MiFID* to provide *cross border services*, any changes to the details of the services are also governed by *MiFID RTS 3A* and *MiFID ITS 4A*.

...

Firms passporting under MiFID

- 13.7.3A G If a *UK firm* is providing *cross border services* in a particular *EEA State* in exercise of an *EEA right* deriving from *MiFID*, the *UK firm* must comply with the requirements of regulation 12A(2) before it makes a change to its programme of operations, including:
- (1) changing the activities to be carried on in exercise of that EEA right;
- ...
- ...
- 13.7.3C G A UK MiFID investment firm is also required to notify the FCA of any changes to the information in its investment services and activities passport notification, including changes relating to a UK tied agent, in accordance with:
- (1) article 4 (Information to be notified concerning the change of investment services and activities particulars) of MiFID RTS 3A; and
- (2) article 7 (Submission of the change of investment services and activities particulars notification) of MiFID ITS 4A.
- 13.7.3D G (1) If any of the details in an investment services and activities passport notification change, a UK MiFID investment firm is required to notify the FCA by completing the form in Annex I of MiFID ITS 4A.
- [Note: article 7(1) of MiFID ITS 4A]**
- (2) When communicating a change to investment services and/or activities, ancillary services or financial instruments, the firm is required to list all:
- (a) the investment services and/or activities and ancillary services that it currently provides or intends to provide in the future; and
- (b) the financial instruments that are relevant to those activities and services.
- 13.7.3E G If any of the details in the notification for the provision of arrangements to facilitate access to an MTF or an OTF change, the investment firm operating the MTF or the OTF is required to notify the FCA by completing the form in Annex IV of MiFID ITS 4A.
- [Note: article 11(1) of MiFID ITS 4A]**
- 13.7.3F G (1) Each of the forms in MiFID ITS 4A referred to in SUP 13.7.3DG and SUP 13.7.3EG is replicated in SUP 13 Annex 2R.

- (2) These versions should be used for the purposes of notifications to the FCA.
- (3) The forms should be submitted in accordance with SUP 13.8.1R.

Termination of an investment services and activities passport

- 13.7.3G R A UK MiFID investment firm should use the relevant form in SUP 13 Annex 2AR to notify the FCA that it intends to:
- (1) change its programme of operations by ceasing to provide cross border services; or
 - (2) change its programme of operations by ceasing to provide cross border services through a tied agent established in the UK; or
 - (3) terminate in the territory of an EEA State, the provision of arrangements to facilitate access to, and trading on, an MTF or OTF by remote users, members or participants established in that EEA State.

...

13.8 Changes of details: provision of notices to the appropriate UK regulator

- 13.8.1 R (1) ~~Where a firm is required to submit~~ A firm must complete and submit the following notices in accordance with the procedures in SUP 13.5 for notifying the establishment of a branch or the provision of cross border services:
- (a) a notice of a change to a *branch* or a *tied agent* referred to in SUP 13.6.5G(1), SUP 13.6.5BG(1), SUP 13.6.5DG, SUP 13.6.5EG, SUP 13.6.5FG, SUP 13.6.7G(1), SUP 13.6.8G, SUP 13.6.9BR, SUP 13.6.9CG, 13.6.9DG and SUP 13.6.10G(1); or
 - (b) a notice of change to *cross border services* referred to in SUP 13.7.3G(1), SUP 13.7.3AG(1), SUP 13.7.3DG, SUP 13.7.3EG, SUP 13.7.3GR, SUP 13.7.5G(1), SUP 13.7.6G, SUP 13.7.13BG, SUP 13.7.14G and SUP 13.7.15G ;

~~it must complete and submit that notice in accordance with the procedures set out in SUP 13.5 for notifying the establishing of a branch or the provision of cross border services.~~

...

13 Annex 1R Passporting: Notification of intention to establish a branch in another EEA state

...

4 Markets in Financial Instruments Directive ('MiFID') [deleted]

Section 4 of the form at Annex 1R is deleted in its entirety. The deleted text is not shown.

...

After SUP 13 Annex 1R (Passporting: Notification of intention to establish a branch in another EEA state) insert the following new SUP 13 Annex 1AR. All the text is new and is not underlined.

[Editor's Note: The forms comprising SUP 13 Annex 1AR can be found in the Appendix at the end of this instrument and are as follows:

Part 1: Notice of intention to establish a branch or change branch particulars in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)

Part 2: Notice of intention to use a tied agent established in another EEA State or to amend the details of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (tied agent passport notification)

Part 3: Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)]

13 Annex 1AR Passporting: Branch passport notifications and tied agent notifications under MiFID ITS 4A

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms> for an *FCA-authorised person*.

The forms can also be found through the following address:

Passporting: Branch passport notifications and tied agent notifications under MiFID II ITS 4A of MiFID – SUP 13 Annex 1AR

...

[Editor's Note: The forms comprising SUP 13 Annex 2R can be found in the Appendix at the end of this instrument and are as follows:

Part 1: Notice of intention to provide cross border services and activities in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)

Part 2: Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)]

Amend the following as shown.

13 Annex 2R ~~Passporting: Markets in Financial Instruments Directive~~ MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under MiFID ITS 4A

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms>.

The forms ~~are~~ can also ~~to~~ be found through the following address: ~~Passporting: Markets in Financial Instruments Directive – SUP 13 Annex 2~~

Passporting: MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under MiFID ITS 4A – SUP 13 Annex 2R

After SUP 13 Annex 2R (Passporting: MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under MiFID ITS 4A) insert the following new section. All the text is new and is not underlined.

[*Editor's Note:* The forms comprising SUP 13 Annex 2AR can be found in the Appendix at the end of this instrument and are as follows:

Part 1: Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)

Part 2: Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)]

13 Annex 2AR ~~Passporting: Notification to cease the provision of cross border services under MiFID~~

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms> for an *FCA-authorised person*.

The forms can also be found through the following address:

Passporting: Notification to stop the provision of services under MiFID and notification to terminate the provision, within the territory of an EEA State, arrangements to facilitate access to, and trading on, an MTF or OTF by remote users, members or participants established in that EEA State – SUP 13 Annex 2AR

...

15 Notifications to the FCA

...

15.3 General notification requirements

...

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 R (1) A *firm* must notify the *FCA* of:

...

(b) ...

(ba) a breach of any requirement imposed by or under either the *MiFI Regulations* or the *DRS Regulations*; or

...

(d) a breach of any directly applicable provision ~~in the *MiFID Regulation*~~ imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*; or

...

...

...

15.6 Inaccurate, false or misleading information

15.6.1 R A *firm* must take reasonable steps to ensure that all information it gives to the *FCA* in accordance with a *rule* in any part of the *Handbook* (including *Principle 11*) is:

- (1) factually accurate or, in the case of estimates and ~~judgments~~ judgements, fairly and properly based after appropriate enquiries have been made by the *firm*; and
- (2) complete, in that it should include anything of which the *FCA* would reasonably expect notice.

15.6.1A R *SUP 15.6.1R* also applies to all information given, or to be given, by a *firm* in accordance with any of the following:

- (1) a directly applicable provision imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*; or
- (2) a breach of any requirement imposed by or under either the *MiFI*

Regulations or the DRS Regulations.

...

16 Reporting requirements

...

16.7A Annual report and accounts

...

Exceptions from the requirement to submit an annual report and accounts

- 16.7A.4 R (1) ~~An adviser, local or traded options market maker~~ (as referred to in *IPRU(INV) 3-60(4)R*), is only required to submit the *annual report and accounts* if:

...

...

...

16.17 Remuneration reporting

...

High Earners Reporting Requirements

- 16.17.4 R ...

- (12) This *rule* also applies to a *BIPRU firm*, an *exempt CAD firm*, a *local firm*, or any other *firm* that is not a *bank*, a *building society* or an *IFPRU investment firm*:

...

...

...

SUP 17 is deleted in its entirety except for the purpose of SUP TP 9. The deleted text is not shown.

17 Transaction reporting [deleted]

After SUP 17 (deleted) insert the following new chapter. All the text is new and is not underlined.

17A Transaction reporting and supply of reference data

17A.1 Application

17A.1.1 R This chapter applies to:

- (1) a *MiFID investment firm* (excluding a *collective portfolio management investment firm*) which:
 - (a) *executes transactions* in a *reportable financial instrument*; and
 - (b) is required under article 26(1) of *MiFIR* to report its *transactions* to the *FCA*;
- (2) an operator of a *trading venue*:
 - (a) through whose systems and platforms a *transaction* in a *reportable financial instrument* is *executed* by a *person* not subject to *MiFIR*; and
 - (b) which is required under article 26(5) of *MiFIR* to report such *transactions* to the *FCA*;
- (3) a *third country investment firm* which *executes transactions* in a *reportable financial instrument*; and
- (4) a *systematic internaliser* or an operator of a *trading venue* which is required under article 27 of *MiFIR* to supply identifying reference data relating to *financial instruments* traded on its system or *trading venue* to the *FCA*.

[**Note:** article 26 of *MiFIR* and *MiFID RTS 22* contain requirements regarding transaction reporting that are directly applicable to a *firm* in *SUP 17A.1.1R*(1) or (2), and to an *ARM* or an operator of a *trading venue* which acts on behalf of a *MiFID investment firm* subject to article 26(1) of *MiFIR*]

17A.1.2 G *GEN 2.2.22AR* has the effect of requiring *third country investment firms* to comply with the transaction reporting requirements in article 26 of *MiFIR* and *MiFID RTS 22* as though they were *MiFID investment firms*.

[**Note:** article 27 of *MiFIR* and *MiFID RTS 23* contain requirements about the supply of reference data that are directly applicable to a *systematic internaliser* in relation to *financial instruments* traded on its system or a *trading venue* in relation to *financial instruments admitted to trading* on a

regulated market or traded on an *MTF* or *OTF*]

17A.2 Connectivity with FCA systems

- 17A.2.1 R The following *firms* or operators of *trading venues* must deal with the *FCA* in an open and co-operative way when establishing a technology connection with the *FCA* for the submission of *transaction reports* and/or the supply of reference data:
- (1) a *firm* in *SUP* 17A.1.1R(1) or 17A.1.1R(3) that chooses to submit its reports directly to the *FCA* instead of using an *ARM*;
 - (2) an operator of a *trading venue* in *SUP* 17A.1.1R(2), other than a *UK RIE* that is not itself an *ARM*; and
 - (3) a *firm* or operator of a *trading venue* in *SUP* 17A.1.1R(4), other than a *UK RIE*.
- 17A.2.2 R To ensure the security of the *FCA*'s systems, a *firm* or operator of a *trading venue* in *SUP* 17A.2.1R must:
- (1) sign the *MIS confidentiality agreement* at *MAR* 9 Annex 10D; and
 - (2) send it by email it to MDP.onboarding@fca.org.uk or post an original signed copy to the *FCA* addressed to:

The Financial Conduct Authority
FAO The Markets Reporting Team
25 The North Colonnade
Canary Wharf
London E14 5HS.
- 17A.2.3 G Once the *FCA* receives the *MIS confidentiality agreement* from the *firm* or operator of a *trading venue*, the *FCA* will:
- (1) provide the *firm* or operator with the *Market Interface Specification (MIS)*; and
 - (2) request the *firm* or operator to:
 - (a) confirm to the *FCA* that it can satisfy these specifications by completing the *FCA MDP on-boarding application form* at *MAR* 9 Annex 7D; and
 - (b) provide the completed form and any relevant documents to the *FCA* together with the associated fee in *FEES* 3.2.7R.
- 17A.2.4 R The *firm* or operator of a *trading venue* must confirm to the *FCA* that it can satisfy the *FCA*'s technical specifications before it can establish a technology connection with the *FCA* for the submission of *transaction*

reports and/or the supply of reference data.

- 17A.2.5 G Where an *ARM* is used to satisfy a *MiFID investment firm's* or a *third country investment firm's transaction* reporting obligations in accordance with article 26 of *MiFIR* or *GEN 2.2.22AR*, *MAR 9* applies.

SUP TP 1 Transitional Provisions

...

SUP TP 1.2

(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
...					
9A	...	...	
9AA	<u>SUP 13</u>	<u>R</u>	<p>(1) <u>Where a <i>person</i> wishes to obtain a passport for an investment service or financial instrument to which <i>MiFID II</i> will apply, but to which <i>MiFID</i> does not apply, all changes made to <i>SUP 13</i> by [<i>FCA Handbook Instrument</i>] on 4 December 2017, and any related definitions set out in Part 2 of the Glossary (<i>MiFID 2</i>) Instrument 2017, instead take effect from 31 July 2017.</u></p> <p>(2) <u>For the purposes of this transitional provision, <i>SUP 13.5.3R(1)</i> and <i>SUP 13.8.1R(1)</i> do not apply. A <i>person</i></u></p>	From 31 July 2017 until 3 December 2017	31 July 2017

				<p>submitting a notice to which <i>SUP</i> 13.5.3R(1) or <i>SUP</i> 13.8.1R(1) would otherwise apply must do so by email to MiFID.passport@fca.org.uk.</p>		
			(3)	<p>This transitional provision also applies where a <i>person</i> to whom <i>MiFID</i> does not apply, but to whom <i>MiFID II</i> will apply, wishes to obtain a passport that takes effect from the application date of <i>MiFID II</i>.</p>		
<u>9AB</u>	<u>SUP 13</u>	<u>G</u>	(1)	<p><i>SUP</i> TP 1.2 9AAR is intended to allow a <i>person</i> to apply for a passport for an investment service or financial instrument introduced by <i>MiFID II</i>, prior 4 December 2018. It also allows other <i>persons</i> such as those who will cease to be exempt under <i>MiFID II</i>, to apply for a passport prior to 4 December 2018.</p>	From 31 July 2017 until 3 December 2017	<u>31 July 2017</u>
			(2)	<p>A <i>person</i> who wishes to obtain a passport for an investment service or financial instrument to which <i>MiFID</i> applies, as well as for an investment service or financial instrument to which <i>MiFID</i> does not apply but to which <i>MiFID II</i> will apply, should submit two separate notifications during the transitional</p>		

			period.		
			(3) <u>This transitional provision ceases to be effective on 4 December 2017, at which point the amendments made to SUP 13 in this instrument take effect. From 4 December, all persons should submit passporting notifications in accordance with SUP 13, as amended by this instrument.</u>		
<u>9AC</u>	<u>SUP 13</u>	<u>R</u>	<u>Where the person wishing to obtain a passport is not subject to MiFID, but will be subject to MiFID II, SUP 13.5.3R(1) and SUP 13.8.1R(1) do not apply. Such a person must submit the relevant notice by email to MiFID.passport@fca.org.uk</u> :	<u>From 4 December 2017 until 2 January 2018</u>	<u>31 July 2017</u>

After SUP TP 8 (Financial Services (Banking Reform) Act 2013: Approved persons in small non-directive insurers) insert the following new chapter SUP TP 9. All this text is new and is not underlined.

TP 9 Transitional Provisions in relation to the MiFID Regulation

9.1	Continuing obligations under the MiFID Regulation		
9.1.1	R	(1)	If the condition in (2) is met, SUP TP 9 applies in respect of an obligation or requirement in, or under, the following with which a <i>firm</i> must comply:
		(a)	the <i>MiFID Regulation</i> ; or
		(b)	a <i>rule</i> under SUP 17 (Transaction reporting).
		(2)	As at 2 January 2018, a <i>firm</i> is under an obligation or requirement to comply, or to have complied, with a provision referred to in (1) in the

			version in force on that date.
9.1.2	R	A <i>firm</i> remains obliged to comply with the obligation, requirement or <i>rule</i> referred to in <i>SUP</i> TP 9.1.1R(1)(a) and (b) until such time as effective compliance is achieved.	
9.1.3	R	<i>SUP</i> 15 (Notifications to the FCA) continues to apply in respect of a breach of a requirement or a <i>rule</i> referred to in <i>SUP</i> TP 9.1.1R.	
	Purpose		
9.1.4	G	The purpose of <i>SUP</i> TP 9.1.1R is to ensure that, as appropriate, <i>firms</i> :	
		(1)	comply with the provisions of the <i>MiFID Regulation</i> and <i>SUP</i> 17 (as at 2 January 2018); and
		(2)	notify and remedy breaches of these provisions whenever those breaches come to light,
		notwithstanding the repeal of the <i>MiFID Regulation</i> on 3 January 2018.	

Annex M

Amendments to the Decision Procedure and Penalties Manual (DEPP)

In this Annex, underlining indicates new text.

6 Penalties

...

6.2 Deciding whether to take action

...

Action against individuals under section 66 of the Act

...

- 6.2.5 G In some cases it may not be appropriate to take disciplinary measures against a *firm* for the actions of an individual (an example might be where the *firm* can show that it took all reasonable steps to prevent the *breach*). In other cases, it may be appropriate for the *FCA* to take action against both the *firm* and the individual. For example, a *firm* may have breached the *rule* requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1R or SYSC 4.1.10R or article 21(5) 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 an individual may have taken advantage of those deficiencies to front run orders or misappropriate assets.

...

Annex N

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

7 Arrears, default and recovery (including repossessions)

...

7.6 Exercise of continuous payment authority

...

7.6.15 G ...

- (3) *Firms* are reminded of their record-keeping obligations under SYSC 9.1.1R and SYSC 9.1.1AR (general rules on record-keeping) which in particular require sufficient records to be kept to ascertain that the *firm* has complied with all obligations with respect to *customers*. These should include, for example, arranging to keep records of payment requests (including refusals of payment requests) made under *continuous payment authorities* and to keep suitable written or other records of the consents referred to in CONC 7.6.1R, CONC 7.6.12R, CONC 7.6.13R and CONC 7.6.14R.

...

[*Editor's note:* In this Annex, certain “EU” provisions are deleted and have been replaced with Notes signposting readers to the relevant EU Regulations.]

Annex O

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

1 Introduction

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.esma.europa.eu/system/files/esma_2012_122_en.pdf]~~

1.1.1 G (1) The *rules and guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *RIEs* under Part XVIII of the *Act* (Recognised Investment Exchanges and Clearing Houses) and (as *RAPs*) under the *RAP regulations*.

(2) The recognition requirements and guidance in REC 2 relate primarily to UK RIEs which are recognised, or applying to be recognised, to operate a regulated market in the United Kingdom.

(3) While some recognition requirements in REC 2 apply to other trading venues operated by UK RIEs, guidance in respect of those venues is set out in MAR 5 and MAR 5A.

...

1.1.2 G (1) *UK RIEs* are *exempt persons* under section 285 of the *Act* (Exemption for recognised investment exchanges and clearing houses).

(2) *UK RIEs* must satisfy *recognition requirements* prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirements Regulations*. *UK RIEs* must also satisfy the ~~*MiFID implementing requirements in the MiFID Regulation*~~ *MIFID/MiFIR requirements*. *RAPs* must satisfy the recognition requirements prescribed by the Treasury in the *RAP regulations*, under the *auction regulation* and must also be *UK RIEs* and so are subject to requirements under the ~~*MiFID Regulation*~~ *MiFID/MiFIR requirements*. *ROIEs* must satisfy *recognition requirements* laid down in section 292 of the *Act* (Overseas investment exchanges and overseas clearing houses).

- (3) *UK RIEs* must also comply with the following:
- (a) notification requirements in, and ~~with~~ *notification rules* made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the *Act*; and
- (b) any rules made under the FCA's rule-making power in regulation 11 of the *Recognition Requirements Regulations*.

1.1.3 G (1) The *recognition requirements* for *UK recognised bodies* ~~and the *MiFID implementing requirements*~~ are set out, with *guidance*, in *REC 2*. The *RAP recognition requirements* (other than requirements under the *auction regulation* which are not reproduced in *REC*) are set out, with *guidance*, in *REC 2A*.

(1A) Key relevant *MiFID/MiFIR requirements* directly applicable to *UK recognised bodies* are signposted as “**Notes**”.

...

...

1.2 Purpose, status and quotations, notes or references

...

Status

1.2.2 G (1) Most of the provisions in this sourcebook are marked with a G (to indicate *guidance*) or an R (to indicate a *rule*). Quotations from *UK* statute or statutory instruments are marked with the letters “~~UK~~ **UK**” unless they form part of a piece of *guidance*. ~~Quotations from the directly applicable *MiFID Regulation* are marked with the letters “EU”.~~ Other informative text regarding provisions of *EU* directives or directly applicable *EU regulations* which is meant to be for the convenience of readers but is not part of the legislative material is preceded by the word “**Note**”. For a discussion of the status of provisions marked with a letter, see Chapter 6 of the Reader's Guide.

...

Quotations

1.2.3 G (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations*, the *RAP regulations* ~~and~~, the Companies Act 1989 ~~and the *MiFID Regulation*~~ and, where necessary, words have been added to, or substituted for, the text of the provisions to facilitate understanding.

...

2 Recognition requirements

2.1 Introduction

- 2.1.1 G (1) This chapter contains the *recognition requirements* for *UK RIEs* (other than *RAPs*) and sets out *guidance* on those requirements. Except for *REC 2.5A*, references to *recognised body* or *UK recognised bodies* in the rest of this chapter shall be read as referring to *UK RIEs*.
- (2) This chapter also contains ~~the *MiFID implementing requirements* for *UK RIEs*~~ **“Notes”** with informative text in relation to *MiFID/MiFIR requirements* applicable directly to *UK RIEs* operating *trading venues*.
- (3) This chapter directs *UK RIEs* to certain *recognition requirements* and *guidance* on those requirements found in other parts of the *Handbook*.

...

2.1.4 G Location of recognition requirements and guidance

Recognition Requirements Regulations	Subject	Section in REC 2 / other parts of the <i>Handbook</i>
Regulation 6	Method of satisfying recognition requirements	2.2
Part 1 of the Schedule	UK RIE recognition requirements	
Paragraph 1	Financial Resources	2.3
Paragraph 2	Suitability	2.4
<u>Paragraphs 2A and 2B</u>	<u>Management Body</u>	<u>2.4A</u>
<u>Paragraph Paragraphs 3, 3A, 3B, 3C, 3D, 3E, 3G and 3H</u>	<u>Systems and controls, market making agreements, halting trading, direct electronic access, co-location services, fee structures, algorithmic trading, tick size regimes, synchronisation of business</u>	2.5

	<u>clocks</u>	
Paragraphs 4(1) and <u>4(2)(aa) and 4C</u>	General safeguards for investors <u>and publication of data regarding execution of transactions</u>	2.6
Paragraph 4(2)(a)	Access to facilities	2.7
Paragraph 4(2)(b)	Proper markets	2.12
Paragraph 4(2)(c)	Availability of relevant information	2.12
Paragraph 4(2)(d)	Settlement	2.8
Paragraph 4(2)(e)	Transaction recording	2.9
Paragraph 4(2)(ea)	Conflicts	2.5
Paragraph 4(2)(f) <u>and 4(2)(fa)</u>	Financial crime and market abuse	2.10
Paragraph 4(2)(g)	Custody	2.11
Paragraph 4(3)	Definition of relevant information	2.12
Paragraph 4A	Provision of pre-trade information about share trading	2.6
Paragraph 4B	Provision of post-trade information about share trading	2.6
Paragraph 6	Promotion and maintenance of standards	2.13
Paragraph 7	Rules and consultation	2.14
Paragraph <u>Paragraphs 7A and 9ZB (regulated markets only)</u>	Admission of financial instruments to trading	2.12
Paragraph <u>Paragraphs 7B and 7C and 9ZC (regulated markets only)</u>	Access to facilities	2.7

<u>Paragraphs 7BA & 7BB</u>	<u>Position management and position reporting re commodity derivatives</u>	<u>2.7A</u>
Paragraph 7D	<u>Settlement and clearing facilitation services</u>	2.8
<u>Paragraph Paragraphs 7E and 7F</u>	Suspension and removal of financial instruments from trading	2.6
Paragraph 8	Discipline	2.15
Paragraph 9	Complaints	2.16
<u>Paragraph Paragraphs 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H and 9ZD</u>	Operation of a multilateral trading facility or an <u>organised trading facility</u>	2.16A / <u>MAR 5 and MAR 5A</u>
<u>Paragraph 9ZA (regulated markets only)</u>	<u>Order execution</u>	<u>2.6</u>
<u>Paragraph 9K</u>	<u>Provision of data reporting services</u>	<u>2.16B/ MAR 9</u>
Part II of the Schedule	UK RIE default rules in respect of market contracts	2.17

- 2.1.5 G ~~Recital and articles from the *MiFID Regulation* (and the associated guidance) relevant to market transparency are set out in *REC 2.6*. Articles from the *MiFID Regulation* relevant to admission to trading are set out in *REC 2.12*. [deleted]~~

2.2 Method of satisfying the recognition requirements

...

Outsourcing

- 2.2.3 G It is the *UK recognised body's* responsibility to demonstrate to the *FCA* that a *person* who performs a function on behalf of the *UK recognised body* is fit and proper and able and willing to perform that function. The *recognition requirement* referred to in Regulation 6(3) applies to the *UK recognised body* and not to any *person* who performs any function on its behalf. In this context, for a *person* to be “fit and proper” does not necessarily imply that ~~he is~~ they are an *authorised person*, or qualified to be so, or that the required standard is the same as that required either for *authorised persons* or

recognised bodies.

- 2.2.4 G If a *UK recognised body* makes arrangements for functions to be performed on its behalf by persons who are *authorised persons* or *recognised bodies*, this does not alter its obligations under Regulation 6.

[Note: MiFID RTS 7 contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions]

...

- 2.2.6 G In determining whether the *UK recognised body* meets the *recognition requirement* in Regulation 6(3), the *FCA* may have regard to whether that body has ensured that the *person* who performs that function on its behalf:
- (1) has sufficient resources to be able to perform the function (after allowing for any other activities);
 - (2) has adequate systems and controls to manage that function and to report its performance to the *UK recognised body*;
 - (3) is managed by *persons* of sufficient skill, competence and integrity;
 - (4) understands the nature of the function it performs on behalf of the *UK recognised body* and its significance for the *UK recognised body's* ability to satisfy the *recognition requirements* and other obligations in or under *the Act*; and
 - (5) undertakes to perform that function in such a way as to enable the *UK recognised body* to continue to satisfy the *recognition requirements* and other obligations in or under the *Act*.

[Note: MiFID RTS 7 contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions]

- 2.2.7 G In determining whether a *UK recognised body* continues to satisfy the *recognition requirements* where it has made arrangements for any function to be performed on its behalf by any *person*, the *FCA* may have regard, in addition to any of the matters described in the appropriate section of this chapter, to the arrangements made to exercise control over the performance of the function, including:
- (1) the contracts (and other relevant *documents*) between the *UK recognised body* and the *person* who performs the delegated function;
 - (2) the arrangements made to monitor the performance of that function; and

- (3) the arrangements made to manage conflicts of interest and protect confidential regulatory information.

[Note: MiFID RTS 7 contains further requirements for a trading venue whose systems enable algorithmic trading when outsourcing all or part of its functions]

...

2.4 Suitability

2.4.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 2

(1)	The [UK RIE] must be a fit and proper <i>person</i> to perform the [relevant functions] of a [UK RIE].
(2)	In considering whether this requirement is satisfied, the [FCA] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any <i>person</i> .
(3)	The persons <u>members of the management body</u> who effectively direct the business and operations of the [UK RIE] must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it <u>possess sufficient knowledge, skill and experience to perform their duties</u> .
(4)	The <i>persons</i> who are in a position to exercise significant influence over the management of the [UK RIE], whether directly or indirectly must be suitable.

...

2.4.3 G In determining whether a UK recognised body is a fit and proper person, the FCA may have regard to any relevant factor including, but not limited to:

- (1) the commitment shown by the UK recognised body's ~~governing body~~ management body to satisfying the *recognition requirements* and to complying with other obligations in or under the Act;

...

- (3) the extent to which its constitution and organisation provide for effective governance;

[Note: MiFID RTS 7 contains further governance requirements for a trading venue whose systems enable algorithmic trading]

- (4) the arrangements made to ensure that its ~~governing body~~ management body has effective oversight of the *UK recognised body's relevant functions*;
- (5) the access which its regulatory department has to the ~~governing body~~ management body;
- (6) ~~the size and composition of its governing body, including:~~
 - (a) ~~the number of members of the governing body who represent members of the UK recognised body or other persons and the types of person whom they represent;~~
 - (b) ~~the number and responsibilities of any members of the governing body with executive roles within the UK recognised body; and~~
 - (c) ~~the number of independent members of the governing body;~~
[deleted]
- (7) ~~the structure and authorisation of its governing body, including any distribution of responsibilities among its members and committees;~~
[deleted]
- (8) ~~the integrity and competence of its governing body and key individuals;~~ [deleted]

...

2.4.4 G In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to its connections with:

...

- (3) any *person* who has the right to appoint or remove *members of the governing body or other key individuals* management body;
- (4) any *person* who is able in practice to appoint or remove *members of the governing body or other key individuals* management body;
- (5) any *person* in accordance with whose instructions the ~~governing body or any key individual~~ management body is accustomed to act; and

...

2.4.5 G In assessing whether its connection with any *person* could affect whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to:

...

- (5) the extent to which the *UK recognised body's governing body management body* is responsible for its day-to-day management and operations;

...

...

After REC 2.4 insert the following new section. The text is not underlined.

2.4A Management body

2.4A.1 UK Schedule to the Recognition Requirements Regulations, paragraph 2A

(1)	The composition of the management body of a [UK RIE] must reflect an adequately broad range of experience.		
(2)	The <i>management body</i> must possess adequate collective knowledge, skills and experience in order to understand the [UK RIE's] activities and main risks.		
(3)	Members of the management body must -		
	(a)	commit sufficient time to perform their functions on the management body;	
	(b)	act with honesty, integrity and independence of mind; and	
	(c)	effectively -	
		(i)	assess and challenge, where necessary, the decisions of the senior management; and
		(ii)	oversee and monitor decision making.
(4)	The management body must -		
	(a)	define and oversee the implementation of governance arrangements that ensure the effective and prudent management of the [UK RIE] in a manner which promotes the integrity of the market, which at least must include the -	
		(i)	the segregation of duties in the organisation; and
		(ii)	the prevention of conflicts of interest;
	(b)	monitor and periodically assess the effectiveness of the [UK RIE's] governance arrangements; and	

	(c)	take appropriate steps to address any deficiencies found as a result of the monitoring under paragraph (b).
(5)	A [UK RIE] must -	
	(a)	devote adequate human and financial resources to the induction and training of members of the management body;
	(b)	ensure that the management body has access to the information and documents it requires to oversee and monitor management decision-making; and
	(c)	notify the FCA of the identity of all the members of its management body.
(6)	A [UK RIE] and, if it has a nomination committee, its nomination committee must engage a broad set of qualities and competences when recruiting persons to the management body, and for that purpose have a policy promoting diversity on the management body.	
(7)	The number of directorships a member of the management body can hold at the same time must take into account individual circumstances and the nature, scale and complexity of the [UK RIE's] activities.	

2.4A.2 UK Schedule to the Recognition Requirements Regulations, paragraph 2B

(1)	If the [UK RIE] is significant the following requirements apply to the management body -	
	(a)	members of the management body must not at the same time hold positions exceeding more than one of the following combinations –
	(i)	one executive directorship with two non-executive directorships (or where so authorised by the FCA under regulation 44(1) [of the <i>MiFI Regulations</i>], three non-executive directorships); or
	(ii)	four non-executive directorships (or where so authorised by the FCA under regulation 44(1) [of the <i>MiFI Regulations</i>], five non-executive directorships); and
	(b)	the management body must have a nomination committee unless it is prevented by law from selecting and appointing its own members.
(2)	For the purposes of sub-paragraph (1)(a) -	

	(a)	any directorship in which the person represents the United Kingdom is not counted;
	(b)	executive or non-executive directorships -
	(i)	held within the same group, or
	(ii)	held within the same undertaking where the [UK RIE] holds a qualifying holding within the meaning of Article 4.1.31 of the markets in financial instruments directive [MiFID],
		shall be counted as a single directorship; and
	(c)	any directorship in an organisation which does not pursue predominantly commercial objectives is not counted.
(3)		The nomination committee referred to in sub-paragraph (1)(b) must -
	(a)	be composed of members of the management body who do not perform an executive function in the [UK RIE];
	(b)	identify and recommend to the [UK RIE] persons to fill management body vacancies;
	(c)	at least annually assess the structure, size, composition and performance of the management body and make recommendations to the management body;
	(d)	at least annually assess the knowledge, skills and experience of individual members of the management body and of the management body collectively and report to the management body accordingly; and
	(e)	periodically review the policy of the management body for the selection and appointment of senior management and make recommendations to the management body; and
	(f)	be able to use any forms of resource it deems appropriate, including external advice.
(4)		In performing its functions under sub-paragraph (3), the nomination committee must take account of the need to ensure that the management body's decision making is not dominated by-
	(a)	any one individual; or
	(b)	a small group of individuals,
		in a manner that is detrimental to the interests of the [UK RIE] as a whole.

(5)	In performing its function under sub-paragraph 3(b) the nomination committee must -	
	(a)	evaluate the balance of knowledge, skills, diversity and experience of the management body;
	(b)	prepare a description of the roles, capabilities and expected time commitment for any particular appointment;
	(c)	decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to meet that target;
	(d)	engage a broad set of qualities and competences, and for that purpose have a policy promoting diversity on the management body.
(6)	In sub-paragraph (1), “significant” in relation to a [UK RIE] means significant in terms of the size and internal organisation of the [UK RIE] and the nature, scale and complexity of the [UK RIE’s] activities.	

2.4A.3 G The FCA will assess an application under section 299AB of the Act for a person on a management body to hold an additional non-executive directorship on a case-by-case basis, having regard to the person’s ability to commit sufficient time to perform their functions on the management body and the complexity, nature and scale of operations of the UK RIE.

Amend the following as shown.

2.5 Systems and controls, algorithmic trading and conflicts

2.5.1 UK Schedule to the Recognition Requirements Regulations, ~~paragraph~~ paragraphs 3 – 3H

<u>Paragraph 3 – Systems and controls</u>		
(1)	The [UK RIE] must ensure that the systems and controls, <u>including procedures and arrangements</u> , used in the performance of its [relevant functions] functions and the functions of the trading venues it operates are adequate, <u>effective</u> and appropriate for the scale and nature of its business.	
(2)	Sub-paragraph (1) applies in particular to systems and controls concerning -	
	...	

	(e)	(where relevant) the safeguarding and administration of assets belonging to users of the <u>[UK RIE's] facilities</u> ;
	(f)	<u>the resilience of its trading systems;</u>
[Note: MiFID RTS 7 contains requirements on the resilience of trading systems operated by <i>trading venues</i> that enable <i>algorithmic trading</i>]		
	(g)	<u>the ability to have sufficient capacity to deal with peak order and message volumes;</u>
[Note: MiFID RTS 7 contains requirements on the adequacy of capacity of trading systems operated by <i>trading venues</i> that enable <i>algorithmic trading</i>]		
	(h)	<u>the ability to ensure orderly trading under conditions of severe market stress;</u>
	(i)	<u>the effectiveness of business continuity arrangements to ensure the continuity of the [UK RIE's] services if there is any failure of its trading systems including the testing of the [UK RIE's] systems and controls;</u>
	(j)	<u>the ability to reject orders that exceed predetermined volume or price thresholds or which are clearly erroneous;</u>
	(k)	<u>the ability to ensure algorithmic trading systems cannot create or contribute to disorderly trading conditions on trading venues operated by the [UK RIE];</u>
	(l)	<u>the ability to ensure disorderly trading conditions which arise from the use of algorithmic trading systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the [UK RIE's] trading system by a member or participant are capable of being managed;</u>
[Note: MiFID RTS 9 contains requirements on the ratio of unexecuted orders to transactions to be taken into account by a <i>trading venue</i> that operates electronic continuous auction order book, quote-driven or hybrid trading systems]		
	(m)	<u>the ability to ensure the flow of orders is able to be slowed down if there is a risk of system capacity being reached;</u>
	(n)	<u>the ability to limit and enforce the minimum tick size which may be executed on its trading venues; and</u>
	(o)	<u>the requirement for members and participants to carry out appropriate testing of algorithms.</u>

	<u>[Note: MiFID RTS 7 contains requirements on the appropriate testing of algorithms to ensure that trading systems, when they enable algorithmic trading, cannot create or contribute to disorderly trading conditions]</u>	
(3)	For the purposes of sub-paragraph 2(c), the [UK RIE] must -	
	(a)	<u>establish and maintain effective arrangements and procedures including the necessary resource for the regular monitoring of the compliance by members or participants with its rules; and</u>
	(b)	<u>monitor orders sent including cancellations and the transactions undertaken by its members or participants under its systems in order to identify infringements of those rules, disorderly trading conditions or conduct that may indicate behavior that is prohibited under the market abuse regulation or system disruptions in relation to a financial instrument.</u>
(4)	For the purpose of sub-paragraph (2)(o) the [UK RIE] must provide <u>environments to facilitate such testing.</u>	
(5)	The [UK RIE] must be adequately equipped to manage the risks to <u>which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks.</u>	
<u>Paragraph 3A – Market making arrangements</u>		
(1)	The [UK RIE] must -	
	(a)	<u>have written agreements with all investment firms pursuing a market making strategy on trading venues operated by it (“market making agreements”);</u>
	(b)	<u>have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of investment firms enter into such agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;</u>
	(c)	<u>monitor and enforce compliance with the market making agreements;</u>
	(d)	<u>inform the FCA of the content of its market making agreements; and</u>
	(e)	<u>provide the FCA with any information it requests which is necessary for the FCA to satisfy itself that the market making agreements comply with paragraphs (c) and (d) of this sub-paragraph and sub-paragraph 2.</u>

(2)	<u>A market making agreement must specify-</u>	
	(a)	<u>the obligations of the investment firm in relation to the provision of liquidity;</u>
	(b)	<u>where applicable, any obligations arising from the participation in a scheme mentioned in sub-paragraph (1)(b);</u>
	(c)	<u>any incentives in terms of rebates or otherwise offered by the [UK RIE] to the investment firm in order for it to provide liquidity to the market on a regular and predictable basis; and</u>
	(d)	<u>where applicable, any other rights accruing to the investment firm as a result of participation in the scheme referred to in sub-paragraph (1)(b).</u>
(3)	<u>For the purposes of this paragraph, an investment firm pursues a market making strategy if -</u>	
	(a)	<u>the firm is a member or participant of one or more trading venues;</u>
	(b)	<u>the firm's strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size at competitive prices relating to one or more financial instruments on a single trading venue, across different trading venues; and</u>
	(c)	<u>the result is providing liquidity on a regular and frequent basis to the overall market.</u>
<u>Paragraph 3B – Halting trading</u>		
(1)	<u>The [UK RIE] must be able to -</u>	
	(a)	<u>temporarily halt or constrain trading on any trading venue operated by it if there is a significant price movement in a financial instrument on such a trading venue or a related trading venue during a short period; and</u>
	(b)	<u>in exceptional cases be able to cancel, vary, or correct any transaction.</u>
(2)	<u>For the purposes of sub-paragraph (1), the [UK RIE] must ensure that the parameters for halting trading are appropriately calibrated in a way which takes into account -</u>	
	(a)	<u>the liquidity of different asset classes and subclasses;</u>
	(b)	<u>the nature of the trading venue market model; and</u>

	(c)	<u>the types of users,</u>
		<u>to ensure the parameters are sufficient to avoid significant disruptions to the orderliness of trading.</u>
(3)		<u>The [UK RIE] must report the parameters mentioned in sub-paragraph (2) and any material changes to those parameters to the FCA in a format to be specified by the FCA.</u>
(4)		<u>If a trading venue operated by the [UK RIE] is material in terms of liquidity of the trading of a financial instrument and it halts trading in an EEA State in that instrument it must have systems and procedures in place to ensure that it notifies the FCA.</u>
[Note: MiFID RTS 12 contains requirements for when a regulated market is material in terms of liquidity in a financial instrument for purposes of trading halt notifications]		
<u>Paragraph 3C – Direct electronic access</u>		
<u>Where the [UK RIE] permits direct electronic access to a trading venue it operates, it must -</u>		
(1)	(a)	<u>ensure that a member of, or participant in that trading venue is only permitted to provide direct electronic access to the venue if the member or participant -</u>
		(i) <u>is an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive (definitions), authorised in accordance with the directive;</u>
		(ii) <u>is a credit institution authorised in accordance with the capital requirements directive;</u>
		(iii) <u>comes within Article 2.1(a), (e), (i), or (j) of the markets in financial instruments directive (exemptions) and has a Part 4A permission relating to investment services and activities;</u>
		(iv) <u>is a third country firm providing the direct electronic access in the course of exercising rights under Article 46.1 (general provisions) or 47.3 (equivalence decision) of the markets in financial instruments regulation;</u>
		(v) <u>is a third country firm and the provision of the direct electronic access by that firm is subject to the exclusion in Article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; or</u>

	(vi)	<u>is a third country firm which does not come within paragraph (iv) or (v) and is otherwise permitted to provide the direct electronic access under the Act;</u>
	(b)	<u>ensure that appropriate criteria are set and applied for the suitability of persons to whom direct electronic access services may be provided;</u>
	(c)	<u>ensure that a member of, or participant in, the trading venue retains responsibility for adherence to the requirements of the markets in financial instruments directive in respect of orders and trades executed using the direct electronic access service;</u>
	(d)	<u>set appropriate standards regarding risk controls and thresholds on trading through direct electronic access;</u>
	(e)	<u>be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately from -</u>
	(i)	<u>other orders; or</u>
	(ii)	<u>trading by the member or participant providing the direct electronic access; and</u>
	(f)	<u>have arrangements in place to suspend or terminate the provision to a client of direct electronic access to that trading venue by a member of, or participant in, the trading venue in the case of non-compliance with this paragraph.</u>
[Note: MiFID RTS 7 contains requirements on <i>direct electronic access</i> permitted through a <i>trading venue's</i> systems]		
<u>Paragraph 3D – Co-location services</u>		
(1)	<u>The [UK RIE's] rules on colocation services must be transparent, fair and nondiscriminatory.</u>	
[Note: MiFID RTS 10 contains requirements to ensure co-location services are transparent, fair and non-discriminatory]		
<u>Paragraph 3E – Fee structures</u>		
(1)	<u>The [UK RIE's] fee structure, for all fees it charges including execution fees and ancillary fees and rebates it grants, must -</u>	
	(a)	<u>be transparent, fair and non-discriminatory;</u>
[Note: MiFID RTS 10 contains requirements to ensure fee structures are transparent, fair and non-discriminatory]		

	(b)	<u>not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading conditions or market abuse; and</u>
[Note: MiFID RTS 10 contains requirements concerning prohibited fee structures]		
	(c)	<u>impose market making obligations in individual shares or suitable baskets of shares for any rebates that are granted.</u>
(2)	Nothing in sub-paragraph (1) prevents the [UK RIE] from -	
	(a)	<u>adjusting its fees for cancelled orders according to the length of time for which the order was maintained;</u>
	(b)	<u>calibrating its fees to each financial instrument to which they apply;</u>
	(c)	<u>imposing a higher fee -</u>
	(i)	<u>for placing an order which is cancelled than an order which is executed;</u>
	(ii)	<u>on participants placing a high ratio of cancelled orders to executed orders; or</u>
	(iii)	<u>on a person operating a high-frequency algorithmic trading technique,</u>
		<u>in order to reflect the additional burden on system capacity.</u>
<u>Paragraph 3F – Algorithmic trading</u>		
(1)	The [UK RIE] must require members of and participants in trading venues operated by it to flag orders generated by algorithmic trading in order for it to be able to identify the -	
	(a)	<u>the different algorithms used for the creation of orders; and</u>
	(b)	<u>the persons initiating those orders.</u>
<u>Paragraph 3G – Tick size regimes</u>		
(1)	The [UK RIE] must adopt tick size regimes in respect of trading venues operated by it in -	
	(a)	<u>shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments traded on each trading venue; and</u>
[Note: MiFID RTS 11 contains requirements on the tick size regime]		

	<u>for shares, depositary receipts, exchange-traded funds and certificates]</u>	
	(b)	<u>any financial instrument for which regulatory technical standards are adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive which is traded on that trading venue.</u>
	[Note: MiFID RTS 11]	
(2)	<u>The tick size regime must -</u>	
	(a)	<u>be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread taking into account desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and</u>
	(b)	<u>adapt the tick size for each financial instrument appropriately.</u>
(3)	<u>The tick size regime must comply with any regulatory technical standards adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive.</u>	
	[Note: MiFID RTS 11]	
	<u>Paragraph 3H – Synchronisation of business clocks</u>	
(1)	<u>The [UK RIE] must synchronise the business clocks it uses to record the date and time of any reportable event in accordance with regulatory technical standards adopted by the European Commission pursuant to Article 50 of the markets in financial instruments directive.</u>	
	[Note: MiFID RTS 25]	

2.5.1 UK Schedule to the Recognition Requirements Regulations, paragraph 4(2)(ea)
A

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that - appropriate arrangements are made to -	
(i)	identify conflicts between the interests of the [UK RIE], its owners and operators and the interests of the [persons] who make use of its [facilities] or the interests of the financial markets trading venues operated by it; and
(ii)	manage such conflicts so as to avoid adverse consequences for the operation of the financial markets trading venues operated by the [UK RIE] and for the [persons] who make use of its [facilities].

- 2.5.1 R In paragraph 3B(3) of the Schedule to the Recognition Requirements Regulations, under which a UK RIE must report the parameters for halting trading to the FCA, such information must be provided to the FCA in writing and delivered by any one of the methods in REC 3.2.3R.
- ...
- 2.5.3 G In assessing whether the systems and controls used by a *UK recognised body* in the performance of its relevant functions are adequate, effective and appropriate for the scale and nature of its business, the *FCA* may have regard to the *UK recognised body's*:
- (1) arrangements for managing, controlling and carrying out its *relevant functions*, including:
 - (a) the distribution of duties and responsibilities among ~~its key individuals~~ the members of the management body and the departments of the *UK recognised body* responsible for performing its *relevant functions*;
 - (b) (where the staffing requirements in MiFID RTS 7 do not apply to the UK RIE) the staffing and resources of the departments of the *UK recognised body* responsible for performing its *relevant functions*; and
 - (c) the arrangements made to enable ~~key individuals~~ members of the management body to supervise the departments or functions for which they are responsible;
 - (d) ~~the arrangements for appointing and supervising the performance of key individuals (and their departments); and~~
 - (e) ~~the arrangements by which the governing body is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of key individuals under review;~~
 - (2) arrangements for the identification and management of conflicts of interest;
 - (3) arrangements for internal and external audit; and
 - (4) information technology systems.
- 2.5.4 G ~~The following paragraphs REC 2.5.5G to REC 2.5.20G set out other matters to which the FCA may have regard in assessing the UK RIE's systems and controls used for the transmission of information, risk management, the effecting and monitoring of transactions, the operation of settlement arrangements (the matters covered in paragraph 4(2)(d) of the Schedule to the Recognition Requirements Regulations) and , the safeguarding and administration of assets and certain other aspects of its operations.~~

2.5.4 A G Where the *MiFID/MiFIR Systems Regulations* apply to a *UK RIE*, the *FCA* will, in assessing the *UK RIE's* systems and controls, additionally have regard to the *UK RIE's* satisfaction of any relevant requirements in those regulations. Of particular importance is *MiFID RTS 7*, which will apply where a *trading venue* allows or enables *algorithmic trading*.

...

~~Effecting and monitoring of transactions and operation~~ Operation of settlement arrangements and effecting and monitoring of transactions

2.5.8 G In assessing a *UK RIE's* systems and controls for ~~the effecting and monitoring of transactions, and for the operation of settlement arrangements~~, the *FCA* may have regard to the totality of the arrangements and processes through which the *UK RIE's* transactions are ~~effected~~, cleared, and settled, including:

- (1) ~~(in relation to non-derivatives transactions)~~ a *UK RIE's* ~~arrangements under which orders are received and matched, its arrangements for trade and transaction reporting, and (if relevant) its arrangements with another~~ person ~~person~~ under which any rights or liabilities arising from transactions are discharged including arrangements for transmission to a settlement system or *clearing house*;
- (2) ~~(in relation to non-derivatives transactions and if relevant)~~, a *UK RIE's* ~~arrangements under which instructions relating to a transaction, to be cleared by another~~ person ~~person~~ by means of a *clearing facilitation service*, are entered into its systems by the relevant other ~~person~~ person and transmitted to the other ~~person~~ person; and
- (3) the arrangements made by the *UK RIE* for monitoring and reviewing the operation of these systems and controls.

[Note: In relation to derivative transactions, *MiFID RTS 26* contains requirements on the systems for clearing such transactions]

2.5.8 A G Where the requirements of *MiFID RTS 7* in respect of effecting and monitoring transactions do not apply to a *UK RIE*, the *FCA* may, in addition, assess the *UK RIE's* systems and controls for the effecting and monitoring of transactions. In doing so, it will have regard to the *UK RIE's* arrangements under which orders are received and matched, and its arrangements for trade and transaction reporting.

...

Management of conflicts of interest

2.5.10 G A conflict of interest arises in a situation where a *person* with responsibility to act in the interests of one *person* may be influenced in his or her action by an interest or association of his or her own, whether personal or business or employment related. Conflicts of interest can arise both for the *employees* of *UK recognised bodies* and for the *members* (or other *persons*) who may be

involved in the decision-making process, for example where they belong to committees or to the ~~governing body~~ management body. Conflicts of interest may also arise for the *UK recognised body* itself as a result of its connection with another *person*.

...

2.5.13 G The *FCA* may have regard to the arrangements a *UK recognised body* makes to structure itself and to allocate responsibility for decisions so that it can continue to take proper regulatory decisions notwithstanding any conflicts of interest, including:

- (1) the size and composition of the ~~governing body~~ management body and relevant committees;
- (2) the roles and responsibilities of ~~key individuals~~ members of the management body, especially where they also have responsibilities in other organisations;
- (3) the arrangements for transferring decisions or responsibilities to alternates in individual cases; and
- (4) the arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which that conflict of interest would be relevant.

...

2.5.15 G The *FCA* may also have regard to the contracts of employment, staff rules, letters of appointment for ~~members of the governing body~~ members of the management body, members of relevant committees ~~and other key individuals~~ and other guidance given to individuals on handling conflicts of interest. Guidance to individuals may need to cover:

...

...

Information technology systems

2.5.18 G ~~Information technology is likely to be a major component of the systems and controls used by an *UK recognised body*. In assessing the adequacy of the information technology used by a *UK recognised body* to perform or support its *relevant functions* Where *MiFID RTS 7* applies to the *UK RIE*, the *FCA* may, in assessing the adequacy of the *UK recognised body's* information technology systems, have regard to:~~

- (1) the organisation, management and resources of the information technology department within the *UK recognised body*;

- (2) the arrangements for ~~controlling and~~ documenting the design, development, implementation and use of information technology systems; and
- (3) the ~~performance, capacity and reliability~~ arrangements for maintaining, recording and enforcing technical and operational standards and specifications for information technology systems, including the procedures for the evaluation and selection of information technology systems.

2.5.19 G Where MiFID RTS 7 does not apply to a UK RIE, the FCA may in addition have regard to the performance, capacity and reliability of its systems. The FCA may also have regard in these cases to the arrangements for maintaining, recording and enforcing technical and operational standards and specification for information technology systems, including:

...

...

2.6 General safeguards for investors, ~~provision of pre and post-trade information about share trading and~~ suspension and removal of financial instruments from trading and order execution on regulated markets

...

2.6.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(aa)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that –	
it has transparent and non-discretionary rules and procedures -	
(i)	to provide for fair and orderly trading, and
(ii)	to establish objective criteria for the efficient execution of orders;

2.6.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 4C

(1)	<u>The [UK RIE] must make available to the public, without any charges, data relating to the quality of execution of transactions on the trading venues operated by the [UK RIE] on at least an annual basis.</u>
(2)	<u>Reports must include details about price, costs, speed and likelihood of execution for individual financial instruments.</u>

2.6.3 UK Schedule to the Recognition Requirements Regulations, Paragraph 4A
[deleted]

(1)	The [<i>UK RIE</i>] must have arrangements for-	
	(a)	current bid and offer prices for <i>shares</i>, and
	(b)	the depth of trading interest in <i>shares</i> at the prices which are advertised through its systems,
	to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours, subject to the requirements contained in Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.7EU</i> and <i>REC 2.6.21EU</i> to <i>REC 2.6.24EU</i>).	
(2)	If [<i>a UK RIE</i>] decides to give <i>investment firms</i> and <i>credit institutions</i> required to publish their quotes in <i>shares</i> -	
	(a)	in accordance with Article 27 of [<i>MiFID</i>], or
	(b)	by the [<i>FCA</i>],
	access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.	
(3)	The [<i>FCA</i>] may waive the requirements of sub-paragraph (1) in the circumstances specified-	
	(a)	in the case of <i>shares</i> to be traded on a multilateral trading facility operated by the [<i>UK RIE</i>], in Article 29.2 of [<i>MiFID</i>] and Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.10EU</i> and <i>REC 2.6.13EU</i>); or
	(b)	in the case of <i>shares</i> to be traded on a <i>regulated market</i> operated by the [<i>UK RIE</i>], in Article 44.2 of [<i>MiFID</i>] and Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.10EU</i> and <i>REC 2.6.13EU</i>).

2.6.4 UK Schedule to the Recognition Requirements Regulations, Paragraph 4B
[deleted]

(1)	The [<i>UK RIE</i>] must make arrangements for the price, volume and time of transactions executed in <i>shares</i> to be made available to the public as soon as possible after the time of transaction on reasonable commercial terms, subject to the requirements contained in Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.15EU</i> and <i>REC 2.6.21EU</i> to <i>REC 2.6.24EU</i>).
(2)	If [<i>a UK RIE</i>] decides to give <i>investment firms</i> and <i>credit institutions</i> required to make public details of their transactions in <i>shares</i> -

	(a)	in accordance with Article 28 of [<i>MiFID</i>], or
	(b)	by the [<i>FCA</i>],
		access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.
(3)		The [<i>FCA</i>] may permit [<i>UK RIEs</i>] to defer the publication required by sub-paragraph (1) in the circumstances specified, and subject to the requirements contained-
	(a)	in the case of <i>shares</i> to be traded on a <i>multilateral trading facility</i> operated by [a <i>UK RIE</i>], in Article 30.2 of [<i>MiFID</i>] and Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.18EU</i>); or
	(b)	in the case of <i>shares</i> to be traded on a <i>regulated market</i> operated by [a <i>UK RIE</i>], in Article 45.2 of [<i>MiFID</i>] and Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.18EU</i>).

2.6.5 G Articles 29.2 and 44.2 of *MiFID* provide that the pre-trade transparency requirement can be waived based on market model or the size and type of orders. In particular this obligation can be waived in respect of transactions that are large in scale compared with normal market size for the share or type of share in question. Articles 30.2 and 45.2 of *MiFID* provide that publication of the details of transactions can be deferred based on their type or size. In particular this obligation can be deferred in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares. [deleted]

2.6.6 UK Schedule to the Recognition Requirements Regulations, Paragraph 7E

(1)	The rules of the [<i>UK RIE</i>] must provide that the [<i>UK RIE</i>] must not exercise its power to suspend or remove from trading on a <i>trading venue</i> operated by it any <i>financial instrument</i> which no longer complies with its rules, where such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.
(2)	<u>Where the [<i>UK RIE</i>] suspends or removes any financial instrument from trading on a trading venue it operates it must also suspend or remove from trading on that venue any derivative that relates to or is referenced to that financial instrument where that is required to support the objectives of the suspension or removal of trading of that financial instrument.</u>
(3)	<u>Where the [<i>UK RIE</i>] suspends or removes any financial instrument from trading on a trading venue it operates, including any derivative in accordance with sub-paragraph (2), it must make that decision public and notify the FCA.</u>

(4)	Where following a decision made under sub-paragraph (2) the [UK RIE] lifts a suspension or re-admits any financial instrument to trading on a trading venue it operates, including any derivative suspended or removed from trading in accordance with that sub-paragraph , it must make that decision public and notify the FCA.
[Note: MiFID RTS 18 contains requirements on the suspension and removal of financial instruments from trading]	

2.6.6B UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZA

[Note: This paragraph is relevant to regulated markets only. See REC 2.16A regarding MTFs or OTFs]

(1)	A [UK RIE] must have non-discretionary rules for the execution of orders on a regulated market operated by it.
(2)	A [UK RIE] must not on a regulated market operated by it -
(a)	execute any client orders against its proprietary capital; or
(b)	engage in matched principal trading.

2.6.7 EU Article 17 of the MiFID Regulation

Pre-trade transparency obligation	
(1)	A ... market operator operating an MTF or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [(see REC 2.6.8EU)], make public the information set out in paragraphs 2 to 6.
(2)	Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.
(3)	Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.
	The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.

	In exceptional market conditions, however, indicative or one-way prices maybe allowed for a limited time.
(4)	Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
(5)	Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraphs 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share.
	In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.
(6)	A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II. [(see <i>REC 2.6.8EU</i>)]

[**Note:** article 3 of *MiFIR* covers pre-trade transparency requirements for trading venues in respect of shares, depository receipts, ETFs, certificates and other similar financial instruments, and article 8 of *MiFIR* imposes similar requirements in respect of bonds, structured finance products, emission allowances and derivatives]

2.6.8 EU Table 1 of Annex II to the MiFID Regulation: Information to be made public in accordance with Article 17 (see *REC 2.6.9EU*)

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
continuous auction order book trading system	a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis	the aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels.

quote driven trading system	a system where <i>transactions</i> are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself	the best bid and offer by price of each market maker in that share together with the volumes attaching to those prices
periodic auction trading system	a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by [the] first three rows	adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit

[Note: MiFID RTS 1 on transparency requirements for trading venues in respect of shares, *depository receipts*, *exchange traded funds*, *certificates* and other similar *financial instruments* and the obligation for *investment firms* to execute *transactions* in certain *shares* on a *trading venue* or a *systematic internaliser*]

2.6.9 EU Recital 14 to the MiFID Regulation [deleted]

A waiver from pre-transparency obligations arising under Articles 29 or 44 of [MiFID] [see REC 2.6.3UK] ... should not enable [MiFID investment firms] to avoid such obligations in respect of those *transactions* in liquid shares which they conclude on a bilateral basis under the rules of a *regulated market* or an *MTF* where, if carried out outside the rules of the *regulated market* or *MTF*, those transactions would be subject to the requirements to publish quotes set out in Article 27 of [MiFID].

2.6.10 EU Article 18 of the MiFID Regulation

Waivers based on market model and type of order or transaction	
(1)	Waivers in accordance with Article 29(2) and 44(2) of [<i>MiFID</i>] [(see <i>REC 2.6.3UK</i>)] may be granted by the [<i>FCA</i>] for systems operated by an <i>MTF</i> or a <i>regulated market</i> , if those systems satisfy one of the following criteria:
(a)	they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
(b)	they formalise negotiated transactions [(see <i>REC 2.6.11EU</i>)], each of which meets one of the following criteria:
(i)	it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the <i>regulated market</i> or <i>MTF</i> operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;
(ii)	it is subject to conditions other than the current market price of the share [see <i>REC 2.6.12EU</i>].
	For the purposes of point (b), the other conditions specified in the rules of the <i>regulated market</i> or <i>MTF</i> for a transaction of this kind must also have been fulfilled.
	In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.
(2)	Waivers in accordance with Articles 29(2) and 44(2) of [<i>MiFID</i>] [(see <i>REC 2.6.3UK</i>)], based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the <i>regulated market</i> or <i>MTF</i> pending their being disclosed to the market.

[Note: articles 4 and 5 of *MiFIR*, *MiFID RTS 1* and *MiFID RTS 3* on the double volume cap mechanism and the provision of information for the purposes of transparency and other calculations]

2.6.11 EU Article 19 of the MiFID Regulation

References to negotiated transaction
For the purposes of Article 18(1)(b) [(see <i>REC 2.6.10EU</i>)] a negotiated transaction shall mean a transaction involving members or participants of a <i>regulated market</i> or an <i>MTF</i> which is negotiated privately but executed

within the <i>regulated market</i> or <i>MTF</i> and where that member or participant in doing so undertakes one of the following tasks:	
(a)	dealing on own account with another member or participant who acts for the account of a <i>client</i> ;
(b)	dealing with another member or participant, where both are executing orders on own account;
(c)	acting for the account of both the buyer and seller;
(d)	acting for the account of the buyer, where another member or participant acts for the account of the seller;
(e)	trading for own account against a <i>client</i> order.

[**Note:** article 5 of *MiFIR*, and *MiFID RTS 3*]

2.6.11A EU [**Note:** article 8 of *MiFIR*]

2.6.11B EU [**Note:** *MiFID RTS 2* with regard to regulatory technical standards on transparency requirements for trading venues with respect to bonds, *structured finance products*, emission allowances and derivatives]

2.6.11C EU [**Note:** article 9 of *MiFIR*]

2.6.12 EU Article 3 of the *MiFID* Regulation [deleted]

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions	
(1)	A <i>transaction</i> related to an individual share in a <i>portfolio trade</i> shall be considered, for the purposes of Article 18(1)(b)(ii) [(see <i>REC 2.6.10EU</i>)], as a <i>transaction</i> subject to conditions other than the current market price.
(2)	A volume weighted average price <i>transaction</i> shall be considered, for the purposes of Article 18(1)(b)(ii) [(see <i>REC 2.6.10EU</i>)], as a <i>transaction</i> subject to conditions other than the current market price.

2.6.13 EU Article 20 of the *MiFID* Regulation [deleted]

Waivers in relation to transactions which are large in scale
An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [(see <i>REC 2.6.14EU</i>)]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a <i>regulated market</i> shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33.

2.6.14 EU Table 2 in Annex II to the MiFID Regulation: Orders large in scale compared with normal market size [deleted]

Class in terms of average daily turnover	ADT < €500 000	€500 000 < ADT < €1 000 000	€1 000 000 < ADT < €25 000 000	€25 000 000 < ADT < €50 000 000	ADT < €50 000 000
Minimum size of order qualifying as large in scale compared with normal market size	€50 000	€100 000	€250 000	€400 000	€500 000

2.6.15 EU Article 27(1) of the MiFID Regulation

Post-trade transparency obligation	
(1)	... regulated markets, and ... market operators operating an MTF shall, with regard to transactions in respect of shares admitted to trading on regulated markets concluded ... within their systems, make public the following details:
(a)	the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [(see REC 2.6.16EU)]
(b)	an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable [(see REC 2.6.17EU)];
(c)	an indication that the trade was a negotiated trade, where applicable;
(d)	any amendments to previously disclosed information, where applicable.
	Those details shall be made public either by reference to each transaction or in a form aggregating the volume and price of all transactions in the same share taking place at the same price at the same time.

[Note: article 6 of *MiFIR* now covers post-trade transparency requirements for trading venues in respect of shares, *depository receipts, ETFs, certificates* and other similar *financial instruments* and article 10 of *MiFIR* imposes similar requirements in respect of bonds, *structured finance products, emission allowances and derivatives*]

2.6.16 EU Points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I of the MiFID Regulation

2.	Trading Day	The trading day on which the <i>transaction</i> was executed.
3.	Trading Time	The time at which the <i>transaction</i> was executed, reported in the local time of the competent authority to which the <i>transaction</i> will be reported, and the basis in which the <i>transaction</i> is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
6.	Instrument Identification	This shall consist in:
		— a unique code to be decided by the competent authority (if any) to which the report is made identifying the [share] which is subject of the <i>transaction</i> ;
		— if the [share] in question does not have a unique identification code, the report must include the name of the [share] ...
16.	Unit Price	The price per [share] excluding commission and (where relevant) accrued interest. ...
17.	Price Notation	The currency in which the price is expressed ...
18.	Quantity	The number of units of the [shares].
21.	Venue identification	Identification of the venue where the <i>transaction</i> was executed. That identification shall consist ... [of the <i>regulated market</i> or <i>MTF</i> 's] ... unique harmonised identification code;
		...

[Note: MiFID RTS 1]

2.6.17 EU Article 3 of the MiFID Regulation [deleted]

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions	
1.	A <i>transaction</i> related to an individual share in a <i>portfolio trade</i> ... shall ... be considered, for the purposes of Article 27(1)(b) [(see <i>REC</i> 2.6.15EU)] as a <i>transaction</i> where the exchange of shares is determined by factors other than the current market valuation of the share.
2.	A volume weighted average price <i>transaction</i> ... shall be considered,

	for the purposes of Article 27(1)(b) [(see <i>REC 2.6.15EU</i>)] as a <i>transaction</i> where the exchange of shares is determined by factors other than the current market valuation of the share.
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2.6.18 EU Article 28 of the MiFID Regulation

Deferred publication of large transactions	
The deferred publication of information in respect of <i>transactions</i> may authorised, for a period no longer than the period specified in Table 4 in Annex II [(see <i>REC 2.6.20EU</i>)] for the class of share and <i>transaction</i> concerned, provided the following criteria are satisfied:	
(a)	the <i>transaction</i> is between [a <i>MiFID investment firm</i>] <i>dealing on own account</i> and a <i>client</i> of the firm;
(b)	the size of that <i>transaction</i> is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II [(see <i>REC 2.6.20EU</i>)].
In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a <i>regulated market</i> shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33.	

[**Note:** article 7 of *MiFIR*]

2.6.18A EU [**Note:** article 10 of *MiFIR*]2.6.18B EU [**Note:** *MiFID RTS 22*]2.6.18C EU [**Note:** article 11 of *MiFIR*]

2.6.19 EU Article 29(3), second sentence of the MiFID Regulation [deleted]

Each constituent *transaction* [of a *portfolio trade*] shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under Article 28 (see *REC 2.6.18EU*).

2.6.20 EU Table 4 in Annex II to the MiFID Regulation: Deferred publication thresholds and delays [deleted]

The table below shows, for each permitted delay for publication and each class of shares in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of a share of that type.

		Class of share in terms of average daily turnover (ADT)			
		ADT <	€100 000 < ADT <	€1 000 000 <	ADT < €50

		€100 000	€1 000 000	ADT < €50 000 000	000 000
		Minimum qualifying size of transaction for permitted delay			
Permitted delay for publication	60 minutes	€10 000	Greater of 5% of ADT and €25 000	Lower of 10% of ADT and €3 500 000	Lower of 10% of ADT and €7 500 000
	180 minutes	€25 000	Greater of 15% of ADT and €75 000	Lower of 15% of ADT and €5 000 000	Lower of 20% of ADT and €15 000 000
Until end of trading day (or roll-over to noon of next trading day if trade undertaken in final 12 hours of trading day)		€45 000	Greater of 25% of ADT and €100 000	Lower of 25% of ADT and €10 000 000	Lower of 30% of ADT and €30 000 000
Until end of trading day next after trade		€60 000	Greater of 50% of ADT and €100 000	Greater of 50% of ADT and €1 000 000	100% of ADT
Until end of second trading day next after trade		€80 000	100% of ADT	100% of ADT	250% of ADT
Until end of third trading day next after trade			250% of ADT	250% of ADT	

2.6.21 EU Article 29 of MiFID Regulation [deleted]

Publication and availability of pre- and post-trade transparency data	
1.	<i>A regulated market [or] MTF ... shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market [or] MTF concerned, and remains available until it is updated.</i>
2.	Pre-trade information, and post-trade information relating to

	transactions taking place on [regulated markets or MTFs] and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.
3.	Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. ...
4.	Post-trade information referring to transactions taking place on a [regulated market or MTF] but outside its normal trading hours shall be made public before the opening of the next trading day of the [regulated market or MTF] on which the transaction took place.

2.6.22 EU Recital to the MiFID Regulation [deleted]

Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter time

2.6.23 EU Article 30 of the MiFID Regulation [deleted]

Public availability of pre- and post-trade information	
... pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:	
(a)	the facilities of a regulated market or MTF;
(b)	the facilities of a third party;
(c)	proprietary arrangements.

2.6.24 EU Article 32 of the MiFID Regulation [deleted]

Arrangements for making information public	
Any arrangement to make information public, adopted for the purposes of Article ... 30 [(see REC 2.6.23EU)] ... shall satisfy the following conditions:	
(a)	it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
(b)	it must facilitate the consolidation of the data with similar data from other sources;

(e)	in must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.
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...

Orderly markets

...

- 2.6.29 G In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FCA* may have regard to whether the *UK RIE's* arrangements and practices:
- (1) enable *members* and *clients* for whom they act to obtain the best price available at the time for their size and type of trade;
 - (2) ~~ensure~~ demonstrate that the *UK RIE* is able to satisfy:
 - (a) ~~sufficient pre-trade transparency in the *UK RIE's* markets taking account of the practices in those markets and the trading systems used; and~~ either or both of the following:
 - (i) (for shares, depositary receipts, *exchange traded funds*, *certificates* and other similar *financial instruments* traded on its *trading venues*) the pre-trade transparency requirements in article 3 of *MiFIR*, unless waived by the *FCA* under article 4 of *MiFIR* in which case the *FCA* will have regard to the *UK RIE's* ability to demonstrate that it is able to satisfy article 5(7) of *MiFIR*; or
 - (ii) (for bonds, *structured finance products*, *emission allowances* and derivatives traded on its *trading venues*) the pre-trade transparency requirements in article 8 of *MiFIR*, unless waived or temporarily suspended by the *FCA* under article 9 of *MiFIR*; and
 - (b) ~~sufficient post-trade transparency in the *UK RIE's* markets taking into account the nature and liquidity of the *specified investments* traded, market conditions and the scale of transactions, the need (where appropriate) to preserve anonymity for *members* and *clients* for whom they act, and the needs of different markets participants for timely price information; and~~ either or both of the following:
 - (i) (for shares, depositary receipts, *exchange traded funds*, *certificates* and other similar *financial instruments* traded on its *trading venues*) the post-trade transparency requirements set out in article 6 of *MiFIR*, unless the *FCA* has provided for deferred publication in accordance with article 7 of *MiFIR*; or

- (ii) (for bonds, structured finance products, emission allowances and derivatives traded on its trading venues) the directly applicable post-trade transparency requirements set out in article 10 of MiFIR, unless the FCA has provided for deferred publication or temporarily suspended such post-trade transparency requirements in accordance with article 11 of MiFIR. In the event the FCA has provided for deferred publication of the post-trade transparency requirements, regard would be had to the UK RIE's ability to demonstrate that it is able to satisfy any other requests made by the FCA pursuant to article 11(3) of MiFIR; and
 - (c) (for all financial instruments referred to in REC 2.6.29G(2)(a) or REC 2.6.29G(b) traded on its trading venue) the obligation to make pre-trade and post-trade data available separately and on a reasonable commercial basis in accordance with articles 12 and 13 of MiFIR, and MiFID RTS 14 on the specification of the offering of pre-trade data and post-trade data and the level of disaggregation.
- (2A) ~~(2) does not apply to a UK RIE's markets for shares admitted to trading on a regulated market. For pre trade and post trade transparency for a UK RIE's markets for shares admitted to trading on a regulated market, see in particular REC 2.6.3UK and REC 2.6.4UK and REC 2.6.7EU to EU 2.6.24EU; [deleted]~~
- (3) ~~include procedures which enable the UK RIE to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and [deleted]~~
- (4) ~~if they include arrangements to support or encourage liquidity:~~
- ~~(a) are transparent;~~
 - ~~(b) are not likely to encourage any person to enter into transactions other than for proper trading purposes (which may include hedging, investment, speculation, price determination, arbitrage and filling orders from any client for whom he acts);~~
 - ~~(c) are consistent with a reliable, undistorted price formation process; and~~
 - ~~(d) alleviate dealing or other identified costs associated with trading on the UK RIE's markets and do not subsidise a market position of a user of its facilities. [deleted]~~

2.6.29A G In addition to the matters set out in REC 2.6.29G, the FCA may have regard to the UK recognised body's compliance with relevant requirements of MiFID RTS 7 on the prevention of disorderly trading conditions.

- 2.6.30 G (1) ~~The FCA accepts that block trading, upstairs trading and other types of specialist transactions (such as the “exchange of futures for physicals” in certain commodity markets) can have a legitimate commercial rationale consistent with the orderly conduct of business and proper protection for investors. They may therefore be permitted under the rules of a UK RIE, subject to any necessary safeguards, where appropriate.~~
- (2) ~~(1) does not apply to a UK RIE’s markets for shares admitted to trading on a regulated market. For pre trade and post trade transparency for a UK RIE’s markets for shares admitted to trading on a regulated market, see in particular REC 2.6.3UK and REC 2.6.4UK and REC 2.6.7EU to REC 2.6.24EU. [deleted]~~

~~Waiver of pre-trade transparency requirements and deferral of post-trade transparency requirements~~

- 2.6.31 G ~~The FCA has exercised its power referred to in REC 2.6.3UK(3) to waive the pre-trade transparency requirements referred to in REC 2.6.3UK(1). The waivers granted are those based on market model (See REC 2.6.10EU1), type of order (see REC 2.6.10EU2) and transactions which are large in scale (see REC 2.6.13EU). These waivers apply to all regulated markets and MTFs operated by UK RIEs. [deleted]~~
- 2.6.32 G ~~The FCA has exercised its power referred to in REC 2.6.4UK(3) to permit the deferral of the post-trade transparency requirements referred to in REC 2.6.4UK(1). This permission is with respect to large transactions (see REC 2.6.17EU). This permission applies to all regulated markets and MTFs operated by UK RIEs. [deleted]~~

~~Arrangements for making information public~~

- 2.6.33 G ~~The FCA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see REC 2.6.24EU(a)), a verification process should be established which does not need to be external from organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business. [deleted]~~
- 2.6.34 G (1) ~~In respect of arrangements facilitating the consolidation of data as required in REC 2.6.24EU(b), the FCA considers information as being made public in accordance with REC 2.6.24EU(b), if it:~~
- ~~(a) is accessible by automated electronic means in a machine-readable way;~~
 - ~~(b) utilises technology that facilitates consolidation of the data~~

~~and permits commercially viable usage; and~~

~~(e) is accompanied by instructions outlining how users can access the information.~~

~~(2) The FCA considers that an fulfils the ‘machine readable’ criteria where the data:~~

~~(a) is in a physical form that is designed to be read by a computer;~~

~~(b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and~~

~~(c) is in a format that is known in advance by the party wishing to access the data.~~

~~(3) The FCA considers that publication on a non-machine readable website would not meet the MiFID requirements.~~

~~(4) The FCA considers that information that is made public in accordance with REC 2.6.24EU should conform to a consistent and structured format based on industry standards. Regulated markets or market operators operating an MTF can choose the structure that they use. [deleted]~~

2.7 Access to facilities

2.7.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(a)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that –

access to the [UK RIE’s] facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors and is in accordance with paragraph 7B;

2.7.1A UK Schedule to the Recognition Requirements Regulations, Paragraph 7B

(1)	The [UK RIE] must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its facilities.
(2)	In particular those rules must specify the obligations for users or members of its facilities arising from -
(a)	the constitution and administration of the [UK RIE];
(b)	rules relating to transactions on the market <u>its trading venues</u> ;

	(c)	its professional standards for staff of any <i>investment firm</i> or <i>credit institution</i> having access to or membership of a trading venue operated by the [UK RIE];
	(d)	conditions established under sub-paragraph 3(c) for access to or membership of a financial market <u>trading venue</u> operated by the [UK RIE] by persons other than <i>investment firms</i> or <i>credit institutions</i> ; and
	(e)	the rules and procedures for clearing and settlement of transactions concluded on a financial market <u>trading venue</u> operated by the [UK RIE].
(3)	Rules of the [UK RIE] about access to, or membership of, a financial market operated by it must permit the [UK RIE] to give access to or admit to membership (as the case may be) only—	
	(a)	an <i>investment firm</i>;
	(b)	a <i>credit institution</i>;
	(e)	a <i>person who</i>:
	(i)	is fit and proper;
	(ii)	has a sufficient level of trading ability and competence;
	(iii)	where applicable, has adequate organisational arrangements, and
	(iv)	has sufficient resources for the role he is to perform, taking into account the [UK RIE's] arrangements under paragraph 4(2)(d).
	[Note: see paragraph 9ZC below, replacing paragraph 7B(3)]	
(4)	Rules under this paragraph must enable -	
	(a)	an <i>investment firm</i> authorised under Article 5 of [MiFID], or
	(b)	a <i>credit institution</i> authorised under the <i>Banking Consolidation Directive</i> [CRD],
	by the <i>competent authority</i> of another <i>EEA State</i> (including a <i>branch</i> established in the <i>United Kingdom</i> of such a firm or institution) to have direct or remote access to or membership of, any financial market <u>trading venue</u> operated by the [UK RIE] on the same terms as a <i>UK firm</i> .	
(5)	The [UK RIE] must make arrangements regularly to provide the	

	[FCA] with a list of users or <i>members</i> of its <i>facilities</i> .
(6)	This paragraph is without prejudice to the generality of paragraph 4.

2.7.1B UK ...

2.7.1C UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZC

[Note: this sub-paragraph is relevant to *regulated markets* only. See REC 2.16A regarding *MTFs* or *OTFs*.]

(1)	The rules of the [UK RIE] about access to, or membership of, a <u>regulated market operated by it must permit the [UK RIE] to give access to or admit membership to (as the case may be) only -</u>	
	(a)	<u>an investment firm authorised under article 5 of [MiFID];</u>
	(b)	<u>a credit institution authorised in accordance with the capital requirements directive; or</u>
	(c)	<u>a person who –</u>
		(i) <u>is of sufficient good repute;</u>
		(ii) <u>has a sufficient level of trading ability, competence and experience;</u>
		(iii) <u>where applicable has adequate organisational arrangements; and</u>
		(iv) <u>has sufficient resources for the role it is to perform, taking account of the [UK RIE's] arrangements under paragraph 4(2)(d).</u>

...

2.7.3 G In assessing whether access to a *UK recognised body's facilities* is subject to criteria designed to protect the orderly functioning of the market, or of those *facilities*, and the interests of investors, the *FCA* may have regard to whether:

(1) ...

...

(d) (if appropriate) who have adequate financial resources in relation to their exposure to the *UK recognised body* or its central counterparty; and

...

(3) ~~indirect access to the *UK recognised body's facilities* is subject to~~

~~suitable criteria, remains the responsibility of a *member* of the *UK recognised body* and is subject to its rules; and [deleted]~~

(4) ...

2.7.3A G ...

~~Electronic access~~

2.7.4 G ~~The *FCA* may have regard to the arrangements made to permit electronic access to the *UK recognised body's facilities* and to prevent and resolve problems likely to arise from the use of electronic systems to provide indirect access to its *facilities* by *persons* other than its *members*, including:~~

- ~~(1) the rules and guidance governing *members'* procedures, controls and security arrangements for inputting instructions into the system;~~
- ~~(2) the rules and guidance governing the facilities *members* provide to *clients* to input instructions into the system and the restrictions placed on the use of those systems;~~
- ~~(3) the rules and practices to detect, identify, and halt or remove instructions breaching any relevant restrictions;~~
- ~~(4) the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and~~
- ~~(5) procedures to determining whether to suspend trading by those systems or access to them by or through individual *members*. [deleted]~~

After REC 2.7 (Access to facilities) insert the following new section. The text is not underlined.

2.7A Position management and position reporting in relation to commodity derivatives

2.7A.1 UK

Paragraph 7BA – Position management	
(1)	A [<i>UK RIE</i>] operating a trading venue which trades commodity derivatives must apply position management controls on that venue, which must at least enable the [<i>UK RIE</i>] to -
	(a) monitor the open interest positions of persons;
	(b) access information, including all relevant documentation, from persons about-
	(i) the size and purpose of a position or exposure entered into;

		(ii)	any beneficial or underlying owners;
		(iii)	any concert arrangements; and
		(iv)	any related assets or liabilities in the underlying market;
	(c)	require a person to terminate or reduce a position on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply; and	
	(d)	where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.	
(2)	The position management controls must take account of the nature and composition of market participants and of the use they make of the contracts submitted to trading and must-		
	(a)	be transparent;	
	(b)	be non-discriminatory; and	
	(c)	specify how they apply to persons.	
(3)	A [<i>UK RIE</i>] must inform the FCA of the details of the position management controls in relation to each trading venue it operates.		
Paragraph 7BB – Position reporting			
(1)	This paragraph applies to a [<i>UK RIE</i>] operating a trading venue which trades commodity derivatives, emission allowances, or emission allowance derivatives.		
(2)	The [<i>UK RIE</i>] must -		
	(a)	where it meets the minimum threshold, as specified in a delegated act adopted by the European Commission pursuant to Article 58.6 of the markets in financial instruments directive, make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives, emission allowances, or emission allowance derivatives traded on the trading venue specifying -	
		(i)	the number of long and short positions by such categories;
		(ii)	changes of those positions since the previous report;
		(iii)	the percentage of the total open interest represented by

			each category; and
		(iv)	the number of persons holding a position in each category; and
	(b)		provide the FCA with a complete breakdown of the positions held by all persons, including the members and participants and their clients, on the trading venue on a daily basis, or more frequently if that is required by the FCA.
(3)			For the weekly report mentioned in sub-paragraph (2)(a) the [UK RIE] must -
	(a)		categorise persons in accordance with the classifications required under sub-paragraph (4); and
	(b)		differentiate between positions identified as-
		(i)	positions which in an objectively measurable way reduce risks directly relating to commercial activities; or
		(ii)	other positions.
(4)			The [UK RIE] must classify persons holding positions in commodity derivatives, emission allowances, or emission allowance derivatives according to the nature of their main business, taking account of any applicable authorisation or registration, as -
	(a)		an investment firm or credit institution;
	(b)		an investment fund, either as an undertaking for collective investments in transferrable securities as defined in the UCITS Directive, or an alternative investment fund or alternative investment fund manager as defined in the alternative investment fund managers directive;
	(c)		another financial institution, including an insurance undertaking and reinsurance undertaking as defined in the Solvency 2 Directive and an institution for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement;
	(d)		a commercial undertaking; or
	(e)		in the case of emission allowances, or emission allowance derivatives, an operator with compliance obligations under Directive 2003/87/EC of the European Parliament and the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community.

(5)	The [UK RIE] must communicate the weekly report mentioned in sub-paragraph (2)(a) to the FCA and ESMA.
-----	--

- 2.7A.2 G The *recognition requirements* in respect of position management and position reporting set out in *REC 2.7A.1UK* apply to a *UK RIE* operating a *trading venue*. An *investment firm* operating a *trading venue* which trades:
- (1) *commodity derivatives* must apply position management controls on that venue in accordance with *MAR 10.3*.
 - (2) *commodity derivatives* or *emission allowances* must provide position reports in accordance with *MAR 10.4*.

Amend the following as shown.

2.8 Settlement and clearing facilitation services

- 2.8.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(d)

[Note: This sub-paragraph is relevant to *regulated markets* only. See *REC 2.16A* regarding *MTFs* or *OTFs*.]

Without prejudice to the generality of sub-paragraph [4(1), the [UK RIE] must ensure that –

satisfactory arrangements which comply with paragraph 7D are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the [UK RIE] (being rights and liabilities in relation to those transactions);

[Note: article 29 of *MiFIR* and *MiFID RTS 26* contain requirements for the clearing of *derivative* transactions for operators of *regulated markets*]

...

- 2.8.3 G In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions effected on its *regulated markets*, the *FCA* may have regard to ~~the UK recognised body's~~:
- (1A) (in relation to transactions in *derivatives*) the *UK recognised body's* ability to demonstrate that such transactions are cleared by a *CCP* in accordance with article 29(1) of *MiFIR*;
 - (1B) (in relation to transactions in *derivatives* which are to be cleared pursuant to article 29(1) of *MiFIR* or under article 4 of *EMIR*) the *UK recognised body's* ability to demonstrate that its *regulated markets* ensure such transactions are submitted and accepted for

clearing as quickly as technologically practicable using automated systems in accordance with article 29(2) of MiFIR and MiFID RTS 26; and

- (1C) (in relation to other types of transactions effected on the UK recognised body's regulated markets) the following factors:
- (a) the rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services, and where relevant the degree of oversight or supervision already exercised by central banks or other supervisory authorities with respect to such other provider of clearing and settlement services;
 - (b) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
 - (c) where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions;
 - (d) procedures to detect and deal with the failure of a member to settle in accordance with its rules;
 - (e) arrangements for taking action to settle a trade if a member does not settle in accordance with its rules;
 - (f) arrangements for monitoring its members' settlement performance; and
 - (g) (where appropriate) default rules and default procedures.
- (1) ~~rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services; [deleted]~~
- (2) ~~arrangements for matching trades and ensuring that the parties are in agreement about trade details; [deleted]~~
- (3) ~~where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions; [deleted]~~
- (4) ~~procedures to detect and deal with the failure of a member to settle in accordance with its rules; [deleted]~~
- (5) ~~arrangements for taking action to settle a trade if a member does not settle in accordance with its rules; [deleted]~~
- (6) ~~arrangements for monitoring its members' settlement performance; and [deleted]~~
- (7) ~~(where appropriate) default rules and default procedures. [deleted]~~

...

2.9 Transaction recording

2.9.1 UK Schedule to the Recognition Requirements Regulations, paragraph 4(2)(c)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that –

satisfactory arrangements are made for recording transactions effected on the [UK RIE], and transactions (whether or not effected on the [UK RIE]) which are cleared or to be cleared by means of its *facilities*;

[Note: article 25 of MiFIR requires the operator of a trading venue to keep relevant data relating to all orders in financial instruments which are advertised through their systems at the disposal of the FCA]

...

2.9.3 G ...

- (1) whether the *UK recognised body* has arrangements for creating, maintaining and safeguarding an audit trail of transactions for at least ~~three years~~ (five years in respect of transactions carried out by ~~members who are not incorporated in the United Kingdom if the UK recognised body is a regulated market~~); and
- (2) the type of information recorded and the extent to which the record includes ~~details for each transaction of~~ :
 - (a) ~~the name of the investment (and, if relevant, the underlying asset) and the price, quantity and date of the transaction;~~ for each transaction traded on or completed through its facilities which the UK recognised body is responsible for reporting in accordance with article 26 of MiFIR, the details set out in:
 - (i) article 26(3) of MiFIR;
 - (ii) MiFID RTS 22 on the reporting of transactions to competent authorities;
 - (iii) article 27(1) of MiFIR; and
 - (iv) MiFID RTS 23 on the data standards and formats for financial instrument reference data;
 - (b) ~~the identities and, where appropriate, the roles of the counterparties to the transaction;~~ for other transactions effected on the UK recognised body's facilities, details of:

- (i) the name of the *investment* (and if relevant, the underlying asset) and the price, quantity and date of the transaction;
 - (ii) the identities and, where appropriate, the roles of the counterparties to the transaction;
 - (iii) if the *UK recognised body's* rules make provision for transactions or *clearing facilitation services* to be effected, in more than one type of *facility*, or under more than one part of its rules, the type of *facility* in which, or the part of its rules under which, the transaction or *clearing facilitation service* was effected; and
 - (iv) the date and manner of settlement of the transaction.
- (e) ~~if the *UK recognised body's* rules make provision for transactions or *clearing facilitation services* to be effected, in more than one type of *facility*, or under more than one part of its rules, the type of *facility* in which, or the part of its rules under which, the transaction or *clearing facilitation service* was effected; and~~
- (d) ~~the date and manner of settlement of the transaction.~~

...

2.12 Availability of relevant information and admission of financial instruments to trading (UK RIEs only)

...

2.12.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(3)

In sub-paragraph [4(2)(c)],
“ <i>relevant information</i> ” means information which is relevant in determining the current value of the [<i>specified investments</i>].

2.12.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 7A

(1)	The [<i>UK RIE</i>] must make clear and transparent rules concerning the admission of <i>financial instruments</i> to trading on any financial market <u>trading venue</u> operated by it.
[Note: <i>MiFID RTS 17</i> specifies further conditions for <i>financial instruments</i> to be admitted to trading on <i>regulated markets</i>]	

(2)	<p>The rules must ensure that all <i>financial instruments</i> admitted to trading on any <i>regulated market</i> operated by the [UK RIE] are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the [MiFID Regulation], where applicable).</p> <p><u>[Note: the MiFI Regulations amending the Recognition Requirements Regulations]</u></p>	
(3)	The rules must ensure that –	
	(a)	all <i>transferable securities</i> admitted to trading on a <i>regulated market</i> operated by the [UK RIE] are freely negotiable (in accordance with Chapter V of the [MiFID Regulation], where applicable); and
	(b)	all contracts for derivatives admitted to trading on a <i>regulated market</i> operated by the [UK RIE] are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions. <u>[deleted]</u>
(4)	The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable the users of a <i>multilateral trading facility</i> operated by it to form investment judgments, taking into account both the nature of the users and the types of instrument traded. <u>[deleted]</u>	
(5)	The [UK RIE] must maintain effective arrangements to verify that issuers of <i>transferable securities</i> admitted to trading on a <i>regulated market</i> operated by it comply with the <i>disclosure obligations</i> . <u>[deleted]</u>	
(6)	The [UK RIE] must maintain arrangements to assist users of a <i>regulated market</i> operated by it to obtain access to information made public under the <i>disclosure obligations</i> . <u>[deleted]</u>	
(7)	The [UK RIE] must maintain arrangements regularly to review whether the <i>financial instruments</i> admitted to trading on a <i>regulated market</i> operated by it comply with the admission requirements for those instruments. <u>[deleted]</u>	
(8)	The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a <i>regulated market</i> operated by it a <i>transferable security</i> which has been admitted to trading on another <i>regulated market</i> , the [UK RIE] –	
	(a)	must inform the issuer of that security as soon as is reasonably practicable; and
	(b)	may not require the issuer of that security to demonstrate

	compliance with the <i>disclosure obligations</i>. [deleted]
(9)	The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a <i>multilateral trading facility</i> operated by it a transferable security which has been admitted to trading on a <i>regulated market</i>, it may not require the issuer of that security to demonstrate compliance with the <i>disclosure obligations</i>. [deleted]
...	
(11)	This paragraph is without prejudice to the generality of paragraph 4. [deleted]

2.12.2AA UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZB

[Note: This paragraph is relevant to *regulated markets* only. See *REC 2.16A* regarding *MTFs* or *OTFs*.]

(1)	The rules of the [UK RIE] must ensure that all -
	(a) <u>[<i>financial instruments</i>] admitted to trading on a [<i>regulated market</i>] operated by it are capable of being traded in a fair, orderly and efficient manner;</u>
	(b) <u>[<i>transferable securities</i>] admitted to trading on a [<i>regulated market</i>] operated by it are freely negotiable; and</u>
	(c) <u>contracts for derivatives admitted to trading on a [<i>regulated market</i>] operated by it are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.</u>
[Note: <i>MiFID RTS 17</i> specifies further conditions for <i>financial instruments</i> to be admitted to trading on <i>regulated markets</i>]	
(2)	The rules of the [UK RIE] must provide that where the [UK RIE], without obtaining the consent of the issuer, admits to trading on a <u>regulated market</u> operated by it a transferable security which has been admitted to trading on another regulated market, the [UK RIE] -
	(a) <u>must inform the issuer of that security as soon as is reasonably practicable; and</u>
	(b) <u>may not require the issuer of that security to demonstrate compliance with the disclosure obligations.</u>
(3)	The [UK RIE] must maintain effective arrangements to verify that <u>issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations.</u>

(4)	<u>The [UK RIE] must maintain arrangements to assist members of or participants in a regulated market operated by it to obtain access to information made public under the disclosure obligations.</u>
(5)	<u>The [UK RIE] must maintain arrangements to regularly review regularly whether financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.</u>
	[Note: see MiFID RTS 17]
(6)	<u>In this paragraph -</u>
	<u>“the disclosure obligations” are the initial ongoing and ad hoc disclosure requirements contained in-</u>
(a)	<u>Articles 17, 18 and 19 of the market abuse regulation;</u>
(b)	<u>Articles 3, 5, 7, 8, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading;</u>
(c)	<u>Articles 4 to 6, 15 and 16 to 19 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 relating to harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; and</u>
(d)	<u>EU legislation made under the provisions mentioned in paragraphs (a) to (c);</u>
	<u>and the legislation referred to in paragraphs (b) and (c) is given effect-</u>
(a)	<u>in the United Kingdom by Part 6 of the [Financial Services and Markets Act 2000] Act and Part 6 rules (within the meaning of section 73A of the Act); or</u>
(b)	<u>in another EEA State by legislation transposing the relevant Articles in that State.</u>

2.12.2B EU Article 35 of the MiFID Regulation

Transferable securities	
1.	<i>Transferable securities shall be considered freely negotiable for the purposes of Article 49(1) of [MiFID] [(see REC 2.12.2AUK)] if they can be traded between the parties to a transaction, and subsequently transferred without restriction, and if all securities within the same</i>

	class as the security in question are fungible.	
2.	<i>Transferable securities</i> which are subject to a restriction on transfer shall not be considered as freely negotiable unless the restriction is not likely to disturb the market.	
3.	<i>Transferable securities</i> that are not fully paid may be considered as freely negotiable, if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.	
4.	When exercising its discretion whether to admit a share to trading, a <i>regulated market</i> shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:	
	(a)	the distribution of those shares to the public; and
	(b)	such historical information, information about the <i>issuer</i> , and information providing a business overview as is required to be prepared under [the <i>PD</i>], or is or will be otherwise publicly available.
5.	A <i>transferable security</i> that is officially listed in accordance with [CARD], and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.	
6.	For the purposes of Article 40(1) of [<i>MiFID</i>] [(see <i>REC 2.12.2AUK</i>)], when assessing whether a <i>transferable security</i> referred to in Article 4(1)(18)(c) of [<i>MiFID</i>] is capable of being traded in a fair, orderly and efficient manner, the <i>regulated market</i> shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:	
	(a)	the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;
	(b)	the price or other value measure of the underlying is reliable and publicly available;
	(c)	there is sufficient information publicly available of a kind needed to value the security;
	(d)	the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying;

	(e)	where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about that underlying.
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[**Note:** article 1 of *MiFID RTS 17*]

2.12.2C EU Recital 19 to the MiFID Regulation [deleted]

For the purposes of the provisions of [the <i>MiFID Regulation</i>] as to the admission to trading on a <i>regulated market</i> of a <i>transferable security</i> as defined in article 4(1)(18)(c) of [<i>MiFID</i>], [(see <i>REC 2.12.2BEU6(c)</i>)], in the case of a security within the meaning of [the <i>PD</i>], there should be considered to be sufficient information publicly available of a kind needed to value that <i>financial instrument</i> .
--

2.12.2D EU Article 36 of the MiFID Regulation

Units in collective investment undertakings		
1.		A <i>regulated market</i> shall, when admitting to trading units in a collective investment undertaking, whether or not that undertaking is constituted in accordance with [the <i>UCITS Directive</i>], satisfy itself that the collective investment undertaking complies or has complied with the registration, notification or other procedures which are a necessary precondition for the marketing of the collective investment undertaking in the jurisdiction of the <i>regulated market</i> .
2.		Without prejudice to [the <i>UCITS Directive</i>] or any other Community legislation or national law relating to collective investment undertakings, Member States may provide that compliance with the requirements referred to in paragraph 1 is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a <i>regulated market</i> .
3.		When assessing whether units in an open ended investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 40(1) of [<i>MiFID</i>] [(see <i>REC 2.12.2AUK</i>)], the <i>regulated market</i> shall take the following aspects into account:
	(a)	the distribution of those units to the public;
	(b)	whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units;

	(e)	whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.
4.	When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, in accordance with Article 40(1) of [MiFID] [(see REC 2.12.2AUK)], the <i>regulated market</i> shall take the following aspects into account:	
	(a)	the distribution of those units to the public;
	(b)	whether the value of the units is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of the net asset value.
[Note: article 2 of MiFID RTS 17]		

2.12.2E EU Article 37 of the MiFID Regulation

Derivatives		
1.	When admitting to trading a <i>financial instrument</i> of a kind listed in points 4 to 10 of Section C of Annex I to [MiFID], <i>regulated markets</i> shall verify that the following conditions are satisfied:	
	(a)	the terms of the contract establishing the <i>financial instrument</i> must be clear and unambiguous, and enable a correlation between the price of the <i>financial instrument</i> and the price or other value measure of the underlying;
	(b)	the price or other value measure of the underlying must be reliable and publicly available;
	(c)	sufficient information of a kind needed to value the derivative must be publicly available;
	(d)	the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying;
	(e)	where the settlement of the derivative requires or provides for the possibility of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant information about that underlying, as well as adequate settlement and delivery procedures for the underlying.
2.	Where the <i>financial instruments</i> concerned are of a kind listed in Sections C (5), (6), (7) or (10) of Annex I to [MiFID], point (b) of	

	paragraph 1 shall not apply if the following conditions are satisfied:	
(a)		the contact establishing that instrument must be likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;
(b)		the <i>regulated market</i> must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such <i>financial instruments</i> ;
(c)		the <i>regulated market</i> must ensure that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those <i>financial instruments</i> .

[**Note:** article 3 of *MiFID RTS 17*]

...

Proper information

2.12.11 G In determining whether appropriate arrangements have been made to make *relevant information* available to *persons* engaged in *dealing in specified investments admitted to trading on the UK RIE*, the *FCA* may have regard to:

- (1) the extent to which *members* and *clients* for whom they act are able to obtain information about those *specified investments*, either through accepted channels for dissemination of information or through regularly and widely accessible communication media, to make a reasonably informed judgment about the value and the risks associated with those *specified investments* in a timely fashion;
- (2) what restrictions, if any, there are on the dissemination of *relevant information* to the *UK RIE's members* and *clients* for whom they act; and
- (3) whether *relevant information* is or can be kept in restricted groups of *persons* in such a way as to facilitate or encourage *dealing in* contravention of the *Code of Market Conduct* (see *MAR 1*): [deleted]

Own means of dissemination

2.12.12 G *UK RIEs* do not need to maintain their own arrangements for disseminating news or information about *specified investments* (or underlying assets) to their *members* where they have made adequate arrangements for other *persons* to do so on their behalf or there are other effective and reliable arrangements for this purpose. [deleted]

...

~~Rules concerning admission of financial instruments to trading on a multilateral trading facility~~

2.12.14 G ~~In determining whether a UK RIE has clear and transparent rules concerning the admission of *financial instruments* to trading on any *multilateral trading facility* operated by it, the FCA considers that it is reasonable that the rules be based on criteria designed to promote fair and orderly trading (see REC 2.6.2UK). In determining whether the rules are based on such criteria, the FCA may have regard to:~~

- ~~(1) whether there is a sufficient range of *persons* already holding the *financial instrument* (or, where relevant, the underlying asset) or interested in *dealing* in it to bring about adequate forces of supply and demand;~~
- ~~(2) the extent to which there are any limitations on the *persons* who may hold or deal in the *financial instrument*, or the amounts of the *financial instrument* which may be held; and~~
- ~~(3) whether the UK RIE has adequate procedures for obtaining information relevant for determining whether or not to suspend or discontinue trading in that *financial instrument*. [deleted]~~

...

2.16A Operation of a multilateral trading facility (MTF) or an organised trading facility (OTF)

2.16A.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 9A-9H

(1)	[A UK RIE] operating a <i>multilateral trading facility</i> <u>multilateral trading facility</u> or an organised trading facility must also operate a <i>regulated market</i> <u>regulated market</u> .
(2)	[A UK RIE] operating a <i>multilateral trading facility</i> <u>multilateral trading facility</u> or an organised trading facility must comply with those requirements of -
(a)	Chapter 1 of Title II of [<i>MiFID</i>] ; <u>and</u>
(b)	<i>MiFID implementing Directive</i> , <u>any directly applicable EU legislation made under Chapter I;</u>
	which are applicable to a <i>market operator</i> <u>market operator</u> ...operating such a facility.
(3)	The requirements of this paragraph do not apply for the purposes of

	section 292(3)(a) of the Act (requirements for overseas investment exchanges and overseas clearing houses).
(4)	<u>A [UK RIE] operating a multilateral trading facility or organised trading facility must provide the FCA with a detailed description of -</u>
(a)	<u>the functioning of the multilateral trading facility or organised trading facility;</u>
(b)	<u>any links to another trading venue owned by the same [UK RIE] or to a systematic internaliser owned by the same exchange; and</u>
(c)	<u>a list of the facility's members, participants and users.</u>
<u>[Note: MiFID ITS 19 prescribes the content and format of the description of the functioning of a MTF or OTF to be provided to the FCA]</u>	
(5)	<u>Any multilateral trading facility or an organised trading facility operated by the [UK RIE] must have at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation.</u>
<u>Paragraph 9B – Specific requirements for multilateral trading facilities: execution of orders</u>	
(1)	<u>A [UK RIE] must have non-discretionary rules for the execution of orders on a multilateral trading facility operated by it.</u>
(2)	<u>A [UK RIE] must not on a multilateral trading facility operated by it -</u>
(a)	<u>execute any client orders against its proprietary capital; or</u>
(b)	<u>engage in matched principal trading.</u>
<u>Paragraph 9C – Specific requirements for multilateral trading facilities: access to a facility</u>	
<u>The rules of the [UK RIE] about access to, or membership of, a multilateral trading facility regulated market operated by it must permit the [UK RIE] to give access to or admit to membership to (as the case may be) only -</u>	
(a)	<u>an investment firm authorised under Article 5 of the markets in financial instruments directive;</u>
(b)	<u>a credit institution authorised in accordance with the capital requirements directive; or</u>
(c)	<u>a person who –</u>

	(i)	<u>is of sufficient good repute;</u>
	(ii)	<u>has a sufficient level of trading ability, and competence and experience;</u>
	(iii)	<u>where applicable, has adequate organisational arrangements; and</u>
	(iv)	<u>has sufficient resources for the role it is to perform, taking account of the financial arrangements the [UK RIE] has established in order to guarantee the adequate settlement transactions.</u>

Paragraph 9D – Specific requirements for multilateral trading facilities: disclosure

- | | |
|-----|---|
| (1) | <u>The rules of the [UK RIE] must provide that where it, without obtaining the consent of the issuer, admits to trading on a multilateral trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the [UK RIE] may not require the issuer of that security to demonstrate compliance with the disclosure obligations.</u> |
| (2) | <u>The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of a multilateral trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.</u> |
| (3) | <u>In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.</u> |

Paragraph 9E – SME growth markets

- | | |
|-----|--|
| (1) | <u>A [UK RIE] operating a multilateral trading facility which has registered that facility as an SME growth market in accordance with Article 33 of the markets in financial instruments directive (an “exchange-operated SME growth market”) must comply with rules made by the FCA for the purposes of this paragraph.</u> |
| (2) | <u>An exchange-operated SME growth market must not admit to trading a financial instrument which is already admitted to trading on another SME growth market unless the issuer of the instrument has been informed of the proposed admission to trading and has not objected.</u> |
| (3) | <u>Where an exchange-operated SME growth market exchange admits a financial instrument to trading in the circumstances of paragraph (2), that exchange-operated SME growth market may not require the issuer of the financial instrument to demonstrate compliance</u> |

	with -	
	(a)	<u>any obligation relating to corporate governance, or</u>
	(b)	<u>the disclosure obligations.</u>
(4)	<u>In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.</u>	
<u>Paragraph 9F – Specific requirements for organised trading facilities: execution of orders</u>		
(1)	<u>[A UK RIE] operating an organised trading facility must -</u>	
	(a)	<u>execute orders on that facility on a discretionary basis in accordance with sub-paragraph (4);</u>
	(b)	<u>not execute any client orders on that facility against its proprietary capital or the proprietary capital of any entity that is part of the same group or legal person as the [UK RIE] unless in accordance with sub-paragraph (2);</u>
	(c)	<u>not operate a systematic internaliser within the same legal entity;</u>
	(d)	<u>ensure that the organised trading facility does not connect with a systematic internaliser in a way which enables orders in an organised trading facility and orders or quotes in a systematic internaliser to interact; and</u>
	(e)	<u>ensure that the organised trading facility does not connect with another organised trading facility in a way which enables orders in different organised trading facilities to interact.</u>
(2)	<u>A [UK RIE] may only engage in -</u>	
	(a)	<u>matched principal trading on an organised trading facility operated by it in respect of-</u>
	(i)	<u>bonds,</u>
	(ii)	<u>structured finance products,</u>
	(iii)	<u>emission allowances,</u>
	(iv)	<u>derivatives which have not been declared subject to the clearing obligation in accordance with Article 5 of the EMIR regulation,</u>
	<u>where the client has consented to that; or</u>	

	(b)	<u>dealing on own account on an organised trading facility operated by it, otherwise than in accordance with sub-paragraph (a), in respect of sovereign debt instruments for which there is not a liquid market.</u>
(3)		<u>If the [UK RIE] engages in matched principal trading in accordance with sub-paragraph (2)(a) it must establish arrangements to ensure compliance with the definition of matched principal trading in article 4.1.38 of the markets in financial instruments directive.</u>
(4)		<u>The discretion which the [UK RIE] must exercise in executing a client order may only be the discretion mentioned in sub-paragraph (5) or in sub-paragraph (6) or both.</u>
(5)		<u>The first discretion is whether to place or retract an order on the organised trading facility.</u>
(6)		<u>The second discretion is whether to match a specific client order with other orders available on the organised trading facility at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the client and in accordance with the [UK RIE's] obligations under Article 27 of the markets in financial instruments directive.</u>
(7)		<u>Where the organised trading facility crosses client orders the [UK RIE] may decide if, when and how much of two or more orders it wants to match within the system.</u>
(8)		<u>Subject to the requirements of this paragraph, with regard to a system that arranges transactions in non-equities, the [UK RIE] may facilitate negotiation between clients so as to bring together two or more comparable potentially trading interests in a transaction.</u>
(9)		<u>The [UK RIE] must comply with rules made by the FCA as to how Articles 24, 25, 27 and 28 of the markets in financial instruments directive apply to its operation of an organised trading facility.</u>
(10)		<u>Nothing in this paragraph prevents a [UK RIE] from engaging an investment firm to carry out market making on an independent basis on an organised trading facility operated by the [UK RIE] provided the investment firm does not have close links with the [UK RIE].</u>
(11)		<u>In this paragraph - “close links” has the meaning given in Article 4.1.1 of the markets in financial instruments directive; “investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive; “non-equities” means bonds, structured finance products, emissions</u>

	<u>allowances and derivatives traded on a trading venue to which Article 8(1) of the markets in financial instrument regulation applies.</u>
<u>Paragraph 9G – Specific requirements for organised trading facilities: disclosure</u>	
(1)	<u>The rules of the [UK RIE] must provide that where it, without obtaining the consent of the issuer, admits to trading on an organised trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the [UK RIE] may not require the issuer of that security to demonstrate compliance with the disclosure obligations.</u>
(2)	<u>The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of the organised trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.</u>
(3)	<u>In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.</u>
<u>Paragraph 9H – Specific requirements for organised trading facilities: FCA request for information</u>	
(1)	<u>A [UK RIE] must, when requested to do so, provide the FCA with a detailed explanation in respect of an organised trading facility operated by it, or such a facility it proposes to operate, of -</u>
	(a) <u>why the organised trading facility does not correspond to and cannot operate as a multilateral trading facility, a regulated market or a systematic internaliser;</u>
	(b) <u>how discretion will exercised in executing client orders, and in particular when an order to the organized trading facility may be retracted and when and how two or more client orders will be matched within the facility; and</u>
	(c) <u>its use of matched principal trading.</u>
(2)	<u>Any information required under sub-paragraph (1) must be provided to the FCA in the manner which it considers appropriate.</u>

2.16A.1A G In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions effected on its *multilateral trading facility*, the FCA may have regard to:

- (1) (in relation to transactions in derivatives which are to be cleared pursuant to article 4 of *EMIR* or otherwise agreed by the relevant

transacting parties to be cleared) the UK recognised body's ability to demonstrate that its *multilateral trading facility* ensures such transactions are submitted and accepted for clearing as quickly as technologically practicable in accordance with article 29(2) of *MiFIR* and *MiFID RTS 26*; and

- (2) (in relation to other types of transactions effected on the UK recognised body's *multilateral trading facility*) the following factors:
- (a) the rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services, and where relevant the degree of oversight or supervision already exercised by central banks or other supervisory authorities with respect to such other provider of clearing and settlement services;
 - (b) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
 - (c) where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions;
 - (d) procedures to detect and deal with the failure of a *member* to settle in accordance with its rules;
 - (e) arrangements for taking action to settle a trade if a *member* does not settle in accordance with its rules;
 - (f) arrangements for monitoring its *members'* settlement performance; and
 - (g) where relevant, *default rules* and default procedures.

- 2.16A.1B R For the purposes of compliance with paragraph 9F(9) of the Schedule to the *Recognition Requirements Regulations*, MAR 5A.3.9R applies to a UK RIE as though it was a *firm*.
- 2.16A.1C R In paragraphs 9H(1) and (2) of the Schedule to the *Recognition Requirements Regulations* where the UK RIE must provide information in respect of an *organised trading facility* operated by it, such information must be provided to the FCA in writing and delivered by any one of the methods set out in REC 3.2.3R.
- 2.16A.2 G In determining whether a UK RIE operating a *multilateral trading facility* (including an *SME growth market*) or *organised trading facility*) complies with those requirements of Chapter I of Title II of *MiFID* and the *MiFID implementing Directive* which are applicable to a *market operator* operating such a facility this chapter, the FCA will have regard to the compliance of the UK RIE with equivalent *recognition requirements*. A UK RIE operating such facilities should also have regard to the *guidance*

set out in MAR 5 (Multilateral trading facilities (MTFs)) and MAR 5A (Organised trading facilities (OTFs)).

After REC 2.16A insert the following new section. The text is not underlined.

2.16B Operation of a data reporting service

Schedule to the Recognition Requirements Regulations, Paragraph 9I

- | | | |
|---------|----|--|
| 2.16B.1 | UK | A [<i>UK RIE</i>] providing data reporting services must comply with Title V of the markets in financial instruments directive. |
| 2.16B.2 | G | A <i>UK RIE</i> offering, or applying to offer, the operation of a <i>data reporting service</i> should have regard to the <i>guidance</i> relating to such service in <i>MAR 9</i> (Data reporting services). |

Amend the following as shown.

3 Notification rules for UK recognised bodies

...

3.4 ~~Key individuals~~ Members of the management body and internal organisation

Purpose

- | | | |
|-------|---|--|
| 3.4.1 | G | The purpose of <i>REC 3.4</i> is to enable the <i>FCA</i> to monitor <u>the changes in the arrangements</u> a <i>UK recognised body</i> makes <u>in the arrangements</u> for the carrying out of its <i>relevant functions</i> or for overseeing the work of key individuals or departments responsible for its relevant functions. |
|-------|---|--|

...

~~Key individuals~~

- | | | |
|--------|---|---|
| 3.4.2A | R | Where, in relation to a <i>UK RIE</i> a proposal has been made to appoint or elect a <i>person</i> as a key individual <u>member of the management body</u> , that <i>UK RIE</i> must at least 30 days before the date of the appointment or election give notice of that event, and give the information specified for the purposes of this <i>rule</i> in <i>REC 3.4.4AR</i> to the <i>FCA</i> . |
|--------|---|---|

[~~Note: Article 37(1), paragraph 1, second sentence~~ article 45(8) of *MiFID*]

- | | | |
|--------|---|---|
| 3.4.2B | R | Where, in relation to a <i>UK RIE</i> a <i>person</i> has resigned as, or has ceased to be, a key individual <u>member of the management body</u> , that <i>UK RIE</i> must immediately give notice of that event, and give the name of the person <u>the</u> |
|--------|---|---|

information specified for the purposes of this rule in REC 3.4.4AR to the FCA.

[~~Note: Article 37(1), paragraph 1, second sentence~~ article 45(8) of MiFID]

- 3.4.3 G (1) ~~Key individuals~~ Members of the management body include the persons who, under the operational or managerial arrangements of the UK recognised body, are appointed to manage the departments responsible for carrying out its *relevant functions*, whether or not they are members of its *governing body*. A person appointed to carry out specific tasks, such as to conduct a particular investigation into a specific set of facts, would not usually be a ~~key individual~~ member of the management body.
- (2) A ~~key individual~~ member of the management body need not be an employee of a UK recognised body. For example, an employee of an undertaking in the same group or a self-employed contractor of a UK recognised body might be a ~~key individual~~ member of the management body, depending on the role he or she plays in that body.
- (3) A department of a UK recognised body should be regarded as responsible for carrying out a relevant function if it is responsible for any activity or activities which form a significant part of a relevant function or which make a significant contribution to the performance of a relevant function.
- (4) The FCA does not need to be notified where minor changes are made to the responsibilities of a ~~key individual~~ member of the management body, but where a major change in responsibilities is made which amounts to a new appointment, the FCA should be notified under REC 3.4.2AR.

...

- 3.4.4A R The following information is specified for the purposes of REC 3.4.2AR:
- (1) that *person's* name;
- (2) his or her date of birth;
- (3) where applicable, a description of the responsibilities which he or she will have in the post to which he or she is to be appointed or elected, including for a UK RIE which operates an RAP where the *person* has responsibilities both in the UK RIE and RAP, a description of the responsibilities he has in respect of each body ;
- (4) where applicable, a description of the responsibilities in the post from which he or she resigned or otherwise ceased to act, including for a UK RIE which operates an RAP where the *person* had responsibilities both in the UK RIE and the RAP, a description

of the responsibilities he or she had in respect of each body; and

- (5) the information necessary for the FCA to assess whether the UK RIE complies with REC 2.4.1UK, REC 2.4A.1UK and REC 2.4A.2UK in relation to the member of the management body's appointment, election, resignation or otherwise ceasing to act.

[~~Note: Article 37(1), paragraph 1, second sentence~~ article 45(8) of MiFID]

...

3.5 **Disciplinary action and events relating to key individuals members of the management body**

Disciplinary action

- 3.5.1 R Where any ~~key individual~~ member of the management body of a UK recognised body:
- (1) is the subject of any disciplinary action because of concerns about his or her alleged misconduct; or
 - (2) resigns as a result of an investigation into his or her alleged misconduct; or
 - (3) is dismissed for misconduct;
- that body must immediately give the FCA notice of that event, and give the information specified for the purposes of this rule in REC 3.5.2R.

- 3.5.2 R The following information is specified for the purposes of REC 3.5.1R:
- (1) the name of the ~~key individual~~ member of the management body and his or her responsibilities within the UK recognised body;
 - (2) details of the acts or alleged acts of misconduct by that ~~key individual~~ member of the management body; and
 - (3) details of any disciplinary action which has been or is proposed to be taken by that body in relation to that ~~key individual~~ member of the management body.

Other events

- 3.5.3 R Where a UK recognised body becomes aware that any of the following events has occurred in relation to a ~~key individual~~ member of the management body, it must immediately give the FCA notice of that event:
- (1) a petition for bankruptcy is presented (or similar analogous proceedings under the law of a jurisdiction outside the United Kingdom are commenced) against that ~~key individual~~ member of

the management body; or

- (2) a bankruptcy order (or a similar or analogous order under the law of a jurisdiction outside the *United Kingdom*) is made against him or her; or
- (3) he or she enters into a voluntary arrangement (or a similar or analogous arrangement under the law of a jurisdiction outside the *United Kingdom*) with his or her creditors.

...

3.13 Delegation of relevant functions

Application

- 3.13.1-2 R This section applies to a UK RIE where it is outsourcing its operational functions other than in relation to systems allowing or enabling algorithmic trading.
- 3.13.1-1 G The notification requirements in MiFID RTS 7, specifying organisational requirements of regulated markets allowing algorithmic trading through their systems, apply to a UK RIE where those operational functions are to be outsourced.
- 3.13.1 G (1) The purpose of REC 3.13 is to enable the FCA to monitor any significant instances where UK recognised bodies outsource their functions to other persons (as permitted under Regulation 6 of the Recognition Requirements Regulations or, in relation to an RAP, under regulation 13 of the RAP regulations. See REC 2.2 and REC 2A.2).

...

...

3.14 Products, services and normal hours of operation

...

- 3.14.2A R When a UK RIE removes a *financial instrument* from trading on a ~~regulated market trading venue~~, it must immediately give the FCA notice of that event and relevant information including particulars of that *financial instrument*, any derivative that is also removed from trading that relates or is referenced to that financial instrument, and the reasons for the action taken.

[~~Note: Article 41(1), paragraph 2~~ articles 32(2) and 52(2), paragraph 1 of MiFID. REC 2.6.6AR(3) requires that the FCA be notified when a trading

suspension for a *financial instrument* is lifted or a *financial instrument* is re-admitted to trading. *MiFID ITS 2* specifies a format for communication by the operator to the *FCA*.]

...

3.14A **Operation of a regulated market or MTF trading venue**

Purpose

- 3.14A.1 G The purpose of *REC 3.14A* is to ensure that the *FCA* is informed of planned changes to a *UK RIE*'s markets and their regulatory status as either a *regulated market* or, *MTF* or *OTF*.

[Note: *MiFID RTS 3* and *MiFID ITS 4*, Annex IV provide for the format for notification by the operator of an *MTF* or *OTF* to its *Home State competent authority* of any arrangements to facilitate access to and trading on the *trading venue* by remote users, members or participants within the territory of another *EEA State*]

...

Operation of an *MTF* or *OTF*

- 3.14A.4 R Where a *UK RIE* proposes to operate a new *MTF* or *OTF* or close an existing *MTF* or *OTF* it must give the *FCA* notice of that event and the information specified for the purposes of this rule in *REC 3.14A.5R*, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

- 3.14A.5 R The following information is specified for the purposes of *REC 3.14A.4R*:

(1) ~~where the *UK RIE* proposes to operate a new *MTF*:~~

(a) ~~a description of the *MTF*; and~~

(b) ~~a description of the *specified investments* which will be admitted to trading on that *MTF*.~~

[Note: *REC 2.16A.1(2)* requires the *FCA* to be provided with a detailed description of the operation of an *MTF* or *OTF*. The description must be provided in the form set out in *MiFID ITS 19*.]

(2) ~~where~~ Where the *UK RIE* proposes to close a *MTF* or *OTF*, the name of that *MTF* or *OTF*.

Operation of a recognised auction platform

- 3.14A.6 G ...

Pre- and post- trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

3.14A.7A D A UK RIE operating a trading venue that proposes to take advantage of a waiver in accordance with articles 4 or 9 of MiFIR (in relation to pre-trade transparency for equity or non-equity instruments) must make an application for it to the FCA using the form in MAR 5 Annex 1D.

[Note: articles 4 and 9 of MiFIR, and MiFID RTS 1 and MiFID RTS 2]

3.14A.7B G According to article 4(7) of MiFIR, waivers granted by competent authorities in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by ESMA by 3 January 2020. ESMA shall issue an opinion to the competent authority, assessing the continued compatibility of those waivers with the requirements established in MiFIR and any regulations made pursuant to it. The FCA will cooperate with ESMA in relation to the continued effect of existing waivers.

3.14A.7C D A UK RIE operating a trading venue that proposes to take advantage of a deferral in accordance with articles 7 or 11 of MiFIR in relation to post-trade transparency for equity or non-equity instruments must apply for it in writing to the FCA.

[Note: articles 7 and 11 of MiFIR, and MiFID RTS 1 and MiFID RTS 2]

3.14A.7D G A UK RIE should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the FCA by telephone or by other prompt means of communication, before submitting written notification. Oral notifications should be given directly to its usual supervisory contact at the FCA. An oral notification left with another person or left on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

3.15 Suspension of services and inability to operate facilities

Purpose

- 3.15.1 G (1) The purpose of REC 3.15.2R to REC 3.15.5G is to enable the FCA to obtain information where a UK recognised body decides to suspend the provision of its services in relation to particular investments or (for an RAP) decides to cancel an auction. Planned changes to the provision of services should be notified to the FCA under REC 3.14.
- (2) REC 3.15.6R to REC 3.15.7R provide for notification to the FCA where a UK recognised body is unable to operate or provide its facilities for reasons outside its control or where it decides to extend its hours of operation in an emergency.

- (3) *REC 3.15.8R to REC 3.15.9G* provide for notification to the *FCA* where an *RAP* has to cancel an auction in specified circumstances.

[Note: *REC 2.5.1(8)* also requires a *UK RIE* to report its parameters for halting trading to the *FCA*]

Suspension of services

- 3.15.2 R Where, for any reason, an *RIE*: halts trading in a *financial instrument* on a *trading venue* which is material in terms of liquidity in that *financial instrument*,
- (1) ~~suspends trading in any *derivative* (other than an *option* in relation to a *security*), in any type of *security* or in any type of *option* in relation to a *security*; or~~
- (2) ~~temporarily calls a trading halt in respect of any type of *security* or in any type of *option* in relation to a *security*;~~

it must immediately give the *FCA* notice of that event, particulars of that ~~*derivative*, type of *security* or type of *option* in relation to a *security*~~, as the case may be *financial instrument*, and the reasons for the action taken.

[Note: article 48(5) of *MiFID* and *MiFID RTS 12*]

- 3.15.2A R When a *UK RIE* suspends trading on a ~~*regulated market trading venue*~~ in any *financial instrument*, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument* and the reasons for the action taken.

[Note: ~~Article 41(1), paragraph 2~~ articles 32(2) and 52(2), paragraph 1 of *MiFID*. *REC 2.6.6A(3)* requires that the *FCA* be notified when a trading suspension for a *financial instrument* is lifted or a *financial instrument* is re-admitted to trading. *MiFID ITS 2* specifies a format for communication by the operator to the *FCA*.]

...

3.16 Information technology systems

- 3.16.1 G The purpose of *REC 3.16* is to ensure that the *FCA* receives a copy of the *UK recognised body's* plans and arrangements for ensuring business continuity if there are major problems with its computer systems. The *FCA* does not need to be notified of minor revisions to, or updating of, the *documents* containing a *UK recognised body's* business continuity plan (for example, changes to contact names or telephone numbers).

[Note: *MiFID RTS 7* requires that the operator of a *trading venue* assess whether the capacity of its trading systems remains adequate when the number of messages has exceeded the historical peak. After each assessment, the operator of the *trading venue* must inform its *competent authority* about

any measures planned to expand capacity or add new capabilities, and the timeframe for such measures. *MiFID RTS 7* also requires the operator to report to its *competent authority* any severe trading interruption not due to market volatility and any other material connectivity disruptions.]

...

3.18 Membership

3.18.1 G ...

- (3) The information required under *REC 3.18* is relevant to the *FCA's* supervision of the *UK recognised body's* obligations in relation to the enforceability of compliance with the *UK recognised body's* rules. It is also relevant to the *FCA's* broader responsibilities concerning integrity of the *UK* financial system and, in particular, its functions in relation to *market abuse* and *financial crime*. It may also be necessary in the case of members based outside the *United Kingdom* to examine the implications for the enforceability of *default rules* or collateral and the settlement of transactions, and thus the ability of the *UK RIE* to continue to meet the *recognition requirements*. It follows that the admission of a *member* from outside the *United Kingdom* who is not an *authorised person* could require notification under both *REC 3.18.2R* and *REC 3.18.3R*, although a single report from the *UK recognised body* covering both notifications would be acceptable to the *FCA*.

[Note: *REC 2.5.1R(4)(d)* requires a *UK RIE* to inform the *FCA* about the content of a written agreement entered into with a member investment firm pursuing a market making strategy on a trading venue operated by the *UK RIE*]

...

3.21 Criminal offences and civil prohibitions

3.21.1 R Where a *UK recognised body* has evidence tending to suggest that any *person* has:

- (1) been carrying on any *regulated activity* in the *United Kingdom* in contravention of the *general prohibition*; or
- (2) been engaged in *market abuse*; or
- (3) committed a criminal offence under the *Act* or subordinate legislation made under the *Act*; or
- (4) committed a criminal offence under Part V of the Criminal Justice Act 1993 (Insider dealing); or

- (5) committed a criminal offence under the *Money Laundering Regulations*;

it must immediately give the *FCA* notice of that event, and full details of that evidence in writing.

[~~Note: Article 26(2)~~ article 31(2), first sentence (part) and ~~Article 43(2)~~ article 54(2), first sentence (part) of *MiFID*. The rest of ~~Article 26(2)~~ article 31(2), first sentence (in so far as it relates to *market operators* operating an *MTF* or *OTF*) and ~~Article 43(2)~~ article 54(2), first sentence of *MiFID* is implemented by *REC 3.25.1R*]

...

3.24 Transfers of ownership

- 3.24.1 R When a *UK RIE* becomes aware of a transfer of ownership of the *UK RIE* which gives rise to a change in the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (in the case of a *UK RIE* that is also an *RAP*) over the management of the *RAP*, whether directly or indirectly, it must immediately notify the *FCA* of that event, and:

- (1) give the name of the *person(s)* concerned; and
- (2) give details of the transfer.

[~~Note: Article 38(2)(b)~~ article 46(2)(b) of *MiFID*]

...

3.25 Significant breaches of rules and disorderly trading conditions

- 3.25.1 R A *UK RIE* and an *RAP* must immediately notify the *FCA* of:
- (1) significant breaches of its rules; or
 - (2) disorderly trading conditions on any of its markets or auctions; or
 - (3) conduct that may indicate behaviour prohibited under the *Market Abuse Regulation*; or
 - (4) system disruptions in relation to a *financial instrument*.

[~~Note: Article 26(2)~~ article 31(2), first sentence (part) and ~~Article 43(2)~~ article 54(2), first sentence (part) of *MiFID*. The rest of ~~Article 26(2)~~ article 31(2), first sentence (in so far as it relates to *market operators* operating an *MTF* or *OTF*) and ~~Article 43(2)~~ article 54(2), first sentence of *MiFID* is implemented by *REC 3.21.1R(2)*.]

4 Supervision

...

4.2 The supervisory relationship with UK recognised bodies

- 4.2.1 G ... The *FCA* will usually arrange meetings between the ~~Markets Division~~ Infrastructure and Trading Firms Department and ~~key individuals~~ members of the management body of the *UK recognised body* for this purpose. The frequency and nature of these meetings may vary in accordance with the risk profile of the *UK recognised body*.

...

4.2A Publication of information by UK RIEs and RAPs

...

- 4.2A.3 G Under subsection 292A(5) of the *Act*, a *UK RIE* must publish such particulars of any decision it makes to suspend or remove a *financial instrument* from trading on a *regulated market* operated by it, or lift a suspension or readmit the instrument, as the *FCA* may reasonably require.

4.2B Exercise of passport rights by a UK RIE

- 4.2B.1 G Under section 312C of the *Act*, if a *UK RIE* wishes to make arrangements in an *EEA State* other than the *UK* to facilitate access to or use of a *regulated market, multilateral trading facility, organised trading facility or auction platform* operated by it, it must give the *FCA* written notice of its intention to do so. The notice must:

- (1) describe the arrangements; and
- (2) identify the *EEA State* in which the *UK RIE* intends to make them.

[Note: MiFID RTS 3 and MiFID ITS 4, Annex IV provide for the format for notification by the operator of an MTF or OTF to its Home State competent authority of any arrangements to facilitate access to and trading on the trading venue by remote users, members or participants within the territory of another EEA State]

...

4.2D Suspension and removal of financial instruments from trading by the FCA

...

- 4.2D.3 G Under section ~~313C(1)~~ of the *Act*, if the *FCA* exercises its power to require a *UK RIE* to suspend or remove a financial instrument from trading, it must as soon as reasonably practicable:
- (1) ~~publish its decision in such manner as it considers appropriate, unless the~~

- decision has already been published under section 313B(2)(b) of the *Act*; and
(2) inform *ESMA* and the competent authorities of all other *EEA States* of its decision. [deleted]
- 4.2D.4 G Under section 313C(2) of the *Act*, if the *FCA* receives notice from a *UK RIE* that the *UK RIE* has suspended or removed a *financial instrument* from trading on a *regulated market* operated by it, the *FCA* must inform the competent authorities of all other *EEA States* of the action taken by the *UK RIE*. [deleted]
- 4.2D.5 G Under sections 313C(3) and (4) of the *Act*, if the *FCA* receives notice from the competent authority of another *EEA State* that that authority, pursuant to Article 41.2 of *MiFID* has required the suspension of a *financial instrument* from trading, the *FCA* must require each *UK RIE* to suspend the instrument from trading on any *regulated market* or *multilateral trading facility* operated by the *UK RIE*. [deleted]
- 4.2D.6 G Under sections 313C(3) and (5) of the *Act*, if the *FCA* receives notice from the competent authority of another *EEA State* that that authority, pursuant to Article 41.2 of *MiFID* has required the removal of a *financial instrument* from trading, the *FCA* must require each *UK RIE* to remove the instrument from trading on any *regulated market* or *multilateral facility* operated by the *UK RIE*. [deleted]
- 4.2D.7 G Under sections 313CA(2) and (3) of the *Act*, if the *FCA* imposes a requirement to suspend or remove a *financial instrument* from trading, the *FCA* must require any trading venue or *systematic internaliser*, falling under its jurisdiction as defined in section 313D of the *Act*, which trades the same instrument to suspend or remove the instrument if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of *inside information* about the *issuer* or the instrument, unless such a step would cause significant damage to the interests of investors or the orderly functioning of the financial markets. The same applies in relation to a derivative which relates to or is referenced to the *financial instrument*.
- 4.2D.8 G Under sections 313CB (2) and (3) of the *Act*, if the *FCA* receives notice that a *person* operating a trading venue has suspended or removed a *financial instrument* from trading on the trading venue because the instrument no longer complies with the venue's rules, the *FCA* must require any other trading venue or *systematic internaliser*, falling under its jurisdiction as defined in section 313D of the *Act*, which trades the same instrument to suspend or remove the instrument if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of *inside information* about the *issuer* or the instrument, unless such a step would cause significant damage to the interests of investors or the orderly functioning of the financial markets. The same applies in relation to a derivative which relates to or is referenced to the *financial instrument*.
- 4.2D.9 G The *FCA* receives notice for the purposes of REC 4.2D.8G when it is informed of the suspension or removal decision by the *RIE, investment firm*

with a Part 4A permission enabling it to carry on MiFID business, or CRD credit institution that operates the trading venue.

- 4.2D.10 G Under sections 313CC (2) and (3) of the Act, if the FCA receives notice that a competent authority of another EEA State has suspended or removed a financial instrument from trading on a trading venue or systematic internaliser pursuant to articles 32.2, 52.2 or 69.2 of MiFID, the FCA must require any trading venue or systematic internaliser falling under its jurisdiction as defined in section 313D of the Act, and which trades the same instrument, to suspend or remove the instrument from trading if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of inside information about the issuer or the instrument. The same applies in relation to a derivative which relates to or is referenced to the financial instrument. The FCA must revoke the requirement if the other EEA State informs the FCA it has lifted the suspension or removal.
- 4.2D.11 G The FCA receives notice for the purposes of REC 4.2D.10G when it is provided by a competent authority of another EEA State or ESMA in accordance with section 313CC(4) of the Act.

...

4.3 Risk assessments for UK recognised bodies

...

- 4.3.3 G The risk assessment will guide the FCA's supervisory focus. It is important, therefore, that there is good dialogue between the FCA and the *recognised body*. The FCA expects to review its risk assessment with the staff of the *UK recognised body* to ensure factual accuracy and a shared understanding of the key issues, and may discuss the results of the risk assessment with ~~key individuals~~ members of the management body of the *UK recognised body*. ...

...

4.8 The section 298 procedure

...

- 4.8.6 G Before exercising its powers under section 296 or section 297 of the Act or (for RAPs) regulation 3 or 4 of the *RAP regulations*, the FCA will usually discuss its intention, and the basis for this, with the ~~key individuals~~ members of the management body or other appropriate representatives of the *recognised body*. It will usually discuss its intention not to make a *recognition order* with appropriate representatives of the applicant.

...

6 Overseas Investment Exchanges

6.1 Introduction and legal background

- 6.1.1 G The *Act* prohibits any *person* from carrying on, or purporting to carry on, *regulated activities* in the *United Kingdom* unless that *person* is an *authorised person* or an *exempt person*. If an *overseas investment exchange* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:
- (1) obtain a *Part 4A permission* from the *FCA*;
 - (2) (in the case of an *EEA firm* or a *Treaty firm*) qualify for *authorisation* under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty rights) to the *Act*, respectively; or
 - (3) (in the case of an *EEA market operator*) obtain *exempt person* status by exercising its passport rights under ~~Articles 31(5) and 31(6)~~ article 34(6) of *MiFID* (in the case of arrangements relating to a *multilateral trading facility* or *organised trading facility*) or ~~Article 42(6)~~ article 53(6) of *MiFID* (in the case of arrangements relating to a *regulated market*); or
 - (4) obtain *exempt person* status by being declared by the *FCA* to be an *ROIE*.

...

6.2 Applications

...

- 6.2.2 G A prospective applicant may wish to contact the ~~Markets Division~~ Infrastructure and Trading Firms Department at the *FCA* at an early stage for advice on the preparation, scheduling and practical aspects of an application to become an *overseas recognised body*.
- 6.2.3 G Applicants for *authorised person* status should refer to the *FCA* website "How do I get authorised": <http://www.fca.org.uk/firms/about-authorisation>. Applications for recognition as an *overseas recognised body* should be addressed to:

The Financial Conduct Authority (~~Markets Division~~ Infrastructure and Trading Firms Department)
 25 The North Colonnade
 Canary Wharf
 London E14 5HS

...

6.3 Recognition requirements

...

6.3.2 UK Sections 292(3) and 292(4) state:

Section 292(3)	
	The requirements are that -
(a)	investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with -
	(i) <i>recognition requirements</i> , other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph; <u>and</u>
	(ii) <u>requirements contained in any directly applicable Community regulation made under the markets in financial instruments directive or markets in financial instruments regulation;</u>
(b)	there are adequate procedures for dealing with a <i>person</i> who is unable, or likely to become unable, to meet his obligations in respect of one or more <i>market contracts</i> connected with the [ROIE]
(c)	the applicant is able and willing to co-operate with the [FCA] by the sharing of information and in other ways; and
(d)	adequate arrangements exist for co-operation between the [FCA] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.
Section 292(4)	
	In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the [FCA] is to have regard to -
(a)	the relevant law and practice of the country or territory in which the applicant's head office is situated;
(b)	the rules and practices of the applicant.

...

6A EEA market operators in the United Kingdom

...

6A.2 Removal of passport rights from EEA market operator

6A.2.1 G Under section 312B of the *Act*, the *FCA* may prohibit an *EEA market operator* from making or, as the case may be, continuing arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, ~~or~~ *multilateral trading facility* ; or organised trading facility operated by the operator if:

- (1) the *FCA* has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement₂; and
- (2) the *FCA* has first complied with sections 312B(3) to (9) of the *Act*.

...

6A.2.6 G The operator's right to make arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, ~~or~~ *multilateral trading facility* or organised trading facility, operated by the operator may be reinstated (together with its *exempt person* status) if the *FCA* is satisfied that the contravention which led the *FCA* to exercise its prohibition power has been remedied.

...

Sch 2 Notification requirements

2.1G The following table summarises the notification requirements applicable to all *recognised bodies*. The *notification rules* are set out in detail in REC 3 (Notification rules for UK recognised bodies) and *REC 6.7* and, to avoid unnecessary repetition, are not set out in detail here. The *notification rules* for *RAPs* differ in some respects from the *notification rules* for *UK RIEs* (for example, due to requirements contained in the *auction regulation*).

For completeness, summary details of the main notification requirements in the *Act* itself and the ~~Companies Act~~ Act 1989 are also included in the table. The summary of these statutory provisions here should not be taken to imply that these are obligations imposed by the *FCA* under its powers nor that the following summary supersedes or alters the meaning of these provisions.

Guidance on the statutory notification requirements for *ROIEs* is given in *REC 6.6*.

2.2G

Reference to	Matter to be	Contents of	Trigger event	Time allowed
--------------	--------------	-------------	---------------	--------------

legislation or Handbook	notified	notification		
<i>UK RIEs</i>				
The Act <u>Acts</u> 293(5)	Changes to <i>rules</i> and <i>guidance</i>	Details of change	Change to rule or guidance	Without delay
The Act s300B(1)	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay
Companies Act 1989 s157	Proposed changes to <i>default rules</i>	Details of proposed change	Proposal to change <i>default rules</i>	14 days in advance of change
The Act s293(6)(a)	Changes to arrangements for <i>clearing facilitation services</i> in respect of <i>on-exchange</i> transactions	Details of change	Change to arrangements	Without delay
The Acts <u>Act</u> s293(6)(b)	Changes to criteria determining to whom it will provide <i>clearing facilitation services</i>	Details of change	Change to criteria	Without delay
The Act s300B(1)	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay
<i>RAPs</i>				
...
<i>Notification rules for UK recognised bodies (see REC 3 (Notification rules for UK recognised bodies))</i>				
REC 3.4	<i>Key individuals</i> <i>Members of the management body</i> and internal organisation	Details of change	See REC 3.4	See REC 3.4
REC 3.5	Disciplinary action and events relating	Details of disciplinary	Disciplinary action or	Immediately

	to <i>key individuals</i> <i>members of the</i> <i>management body</i>	action or event	awareness of event	
...
REC 3.14A	Operation of a <i>regulated market</i> or <i>MTF trading</i> <u><i>venue</i></u>	Details of proposal to operate a new <i>regulated market</i> or <i>MTF trading</i> <u><i>venue</i></u> or close an existing <i>regulated</i> <i>market or MTF</i> <u><i>trading venue</i></u>	Communication of proposal to <i>members</i> or shareholders	Immediately
...

Annex P

Amendments to the Service Companies Handbook Guide (SERV)

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

1 Handbook requirements for service companies

...

1.2 Parts of the Handbook applicable to service companies

...

Parts of the Handbook applicable to service companies

1.2.2 G This table belongs to *SERV* 1.2.1G

	Part of Handbook	Applicability to service companies
...		
Business Standards	...	...
	Market Conduct sourcebook (<i>MAR</i>)	<i>MAR</i> 1 (Market Abuse), <i>MAR</i> 2 (Stabilisation) and <i>MAR</i> 4 (Endorsement of the Takeover Code) apply to <i>service companies</i> . <i>MAR</i> 5 (Multilateral Trading Facilities), <u><i>MAR</i> 5A (Organised Trading Facilities)</u> , <i>MAR</i> 6 (Systematic Internalisers) and <i>MAR</i> 7 (Disclosure of information on certain trades undertaken outside a regulated market or <i>MTF</i>) , <u><i>MAR</i> 7A (Algorithmic Trading)</u> , and <u><i>MAR</i> 8 (Benchmarks)</u> , do not apply to <i>service companies</i> .
	...	
...		

Annex Q

Amendments to the Enforcement Guide (EG)

In this Annex, striking through indicates deleted text.

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

...

8.4 Limitations and requirements that the FCA may impose when exercising its section 55J and 55L powers

...

8.4.2 Examples of the *limitations* that the *FCA* may impose when exercising its *own-initiative variation power* in support of its enforcement function include *limitations* on: the number, or category, of *customers* that a *firm* can deal with; the number of specified investments that a *firm* can deal in; and the activities of the *firm* so that they fall within specific regulatory regimes (for example, so that *oil market participants*, ~~*traders*~~, *corporate finance advisory firms* and service providers are permitted only to carry on those types of activities).

...

Appendix

This appendix comprises the following forms by reference to corresponding provisions in SUP 13:

SUP 13 Annex 1AR (Passporting: Branch passport notifications and tied agent notifications under MiFID ITS 4A)

Part 1: Notice of intention to establish a branch or change branch particulars in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)

Part 2: Notice of intention to use a tied agent established in another EEA State or to amend the details of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (tied agent passport notification)

Part 3: Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)

SUP 13 Annex 2R (Passporting: MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under MiFID ITS 4A)

Part 1: Notice of intention to provide cross border services and activities in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)

Part 2: Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)

SUP 13 Annex 2AR (Passporting: Notification to cease the provision of cross border services under MiFID)

Part 1: Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)

Part 2: Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)



Notice of intention to establish a branch or change branch particulars in another EEA state in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)

FIRM NAME:	
FIRM REFERENCE NUMBER (FRN):	
DATE:	

Purpose of this form

This form replicates Annex VI of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A.

You should complete this form if you are a UK firm that wishes to exercise a passport right to establish a branch in another EEA state or wishes to make changes to the details of your current branch in another EEA state under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to establish a branch in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
3. All firms should answer sections 1, 2 and 3. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.

1. Contact Information	
Type of notification:	Branch passport notification/ Changes to existing branch notification
Member State in which the investment firm intends to establish a branch:	
Name of investment firm:	
Address of investment firm:*	
Telephone number of investment firm:*	
E-mail of investment firm:	
Name of the contact person at the investment firm:	
Name of the branch:	
Address of the branch:*	
Telephone number of the branch:*	
E-mail of the branch:	
Name(s) of those responsible for the management of the branch:	
Home Member State:	United Kingdom
Authorisation Status:	Authorised by the Financial Conduct Authority
Authorisation Date:	

** to be completed only if amended*

Note:

- 1) If you are applying to change the branch manager, i.e. the name of the person responsible for the management of the branch, please submit a CV for the new branch manager.
- 2) If the investment firm has more than one branch in the considered country, please include the first line of the address next to the name of the branch.

2. Intended investment services, activities and ancillary services

Please indicate all the investment services, activities, ancillary services or financial instruments provided by the branch.

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities, ancillary services or financial instruments, please list all the investment services, activities, ancillary services or financial instruments the firm will provide.

3 Business Plan and structural organisation of the branch

1.	Business plan	1.	Business plan
	(a) How will the branch contribute to the strategy of the firm/group?	(a)	
	(b) What will the main functions of the branch be?	(b)	
	(c) Describe the main objectives of the branch.	(c)	
2.	Commercial strategy	2.	Commercial strategy
	(a) Describe the types of clients/counterparties the branch will be dealing with.	(a)	
	(b) Describe how the firm will obtain and deal with these clients.	(b)	
3.	Organisational structure	3.	Organisational structure
	(a) Briefly describe how the branch fits into the corporate structure of the firm/group (This may be facilitated by attaching an organisational chart).	(a)	
	(b) Set out the organisational structure of the branch, showing functional, geographical and legal reporting lines.	(b)	
	(c) Who will be responsible for the branch operations on a day-to-day basis? Provide details of the professional experience of the persons responsible for the management of the branch (Please attach CV(s)).	(c)	
	(d) Who will be responsible for the internal control functions at the branch?	(d)	
	(e) Who will be responsible for dealing with complaints in relation to the branch?	(e)	
	(f) How will the branch report to the head office?	(f)	
	(g) Detail any critical outsourcing arrangements.	(g)	
4.	Tied agents	4.	Tied agents
	(a) Will the branch use a tied agent?	(a)	

	(b) What is the identity of the tied agent?	(b)	
	(i) Name	(i)	
	(ii) Address	(ii)	
	(iii) Telephone	(iii)	
	(iv) E-mail	(iv)	
	(v) Contact point	(v)	
	(vi) Reference or hyperlink to the public register where the tied agent is registered	(vi)	
5.	Systems & controls	5.	Systems & controls
	Provide a brief summary of arrangements for:		
	(a) safeguarding client money and assets;	(a)	
	(b) compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to Art 35(8) and record keeping under Art 16(6);	(b)	
	(c) staff code of conduct, including personal account dealing;	(c)	
	(d) anti-money laundering;	(d)	
	(e) monitoring and control of critical outsourcing arrangements (if applicable); and	(e)	
	(f) details of the accredited compensation scheme of which the investment firm is a member.	(f)	
6.	Financial forecast	6.	Financial forecast
	Attach a forecast statement for profit and loss and cash flow, both over an initial thirty-six-month period.		

Note:

Please make sure you provide sufficiently detailed answers to the questions in this section, or your notification may experience processing delays.

* An investment firm that intends to use tied agents in another Member State shall complete a separate notification in respect of each tied agent it intends to use.

4 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory	
Signature (to be signed on the printed version only)	
Date	



**Notice of intention to use a tied agent established in another EEA state
or to amend the details of a tied agent established in another EEA state
in accordance with the Markets in Financial Instruments Directive
(MiFID) (tied agent passport notification)**

FIRM NAME:	
FIRM REFERENCE NUMBER (FRN):	
DATE:	

Purpose of this form

This form replicates Annex VII of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm that wishes to exercise a passport right to use a tied agent established in another EEA state or wishes to make changes to the details of a tied agent established in another EEA state under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to establish a tied agent in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 2.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 2.
3. All firms should answer sections 1, 2 and 3. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.

1. Contact information	
Type of notification:	Tied agent passport notification under the right of establishment/ Change of tied agent particulars notification
Member State in which the investment firm intends to use/ is using a tied agent:	
Name of investment firm:	
Address of investment firm:*	
Telephone number of investment firm:*	
E-mail of investment firm:	
Name of the contact person at the investment firm:	
Name of the tied agent:	
Address of the tied agent:*	
Telephone number of the tied agent:*	
E-mail of the tied agent:	
Name(s) of those responsible for the management of the tied agent:	
Home Member State:	United Kingdom
Authorisation Status:	Authorised by the Financial Conduct Authority
Authorisation Date:	
Reference or hyperlink to the public register where the tied agent is registered	

* to be completed only if amended

Note:

If you are applying to change the person responsible for the management of the tied agent, please submit a CV for the new manager.

2 Intended investment services, activities and ancillary services

Please indicate all the investment services, activities, ancillary services or financial instruments provided by the tied agent.

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities or financial instruments, please list all the investment services, activities or financial instruments the tied agent will provide.

3 Business Plan and structural organisation of the tied agent

1.	Business plan and structural organisation of the tied agent	1.	Business plan and structural organisation of the tied agent
	(a) How will the tied agent contribute to the strategy of the firm/group?	(a)	
	(b) What will the main functions of the tied agent be?	(b)	
	(c) Describe the main objectives of the tied agent.	(c)	
2.	Commercial strategy	2.	Commercial strategy
	(a) Describe the types of clients/ counterparties the tied agent will be dealing with.	(a)	
	(b) Describe how the firm will obtain and deal with these clients.	(b)	
3.	Organisational structure	3.	Organisational structure
	(a) Briefly describe how the tied agent fits into the corporate structure of the firm/group (This may be facilitated by attaching an organisational chart).	(a)	
	(b) Set out the organisational structure of the tied agent, showing functional, geographical and legal reporting lines.	(b)	

	(c) Who will be responsible for the tied agent operations on a day-to-day basis? Provide details of the professional experience of the persons responsible for the management of the tied agent (Please attach CV(s));	(c)	
	(d) Who will be responsible for the internal control functions at the tied agent?	(d)	
	(e) Who will be responsible for dealing with complaints in relation to the tied agent?	(e)	
	(f) How will the tied agent report to the head office?	(f)	
	(g) Detail any critical outsourcing arrangements.	(g)	
4.	Systems & controls	4.	Systems & controls
	Provide a brief summary of arrangements for:		
	(a) safeguarding client money and assets (not applicable – see note 3);	(a)	
	(b) compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to Art 35(8) and record keeping under Art 16(6);	(b)	
	(c) staff code of conduct, including	(c)	

	personal account dealing;		
	(d) anti-money laundering;	(d)	
	(e) monitoring and control of critical outsourcing arrangements (where applicable); and	(e)	
	(f) details of the accredited compensation scheme of which the investment firm is a member.	(f)	
5.	Financial forecast	5.	Financial forecast
	Attach a forecast statement for profit and loss and cash flow, both over an initial thirty-six-month period.		

Note:

- 1) Please make sure you provide sufficiently detailed answers to the questions in this section, or your notification may experience processing delays.
- 2) Please make sure you submit a separate notification for each tied agent you wish to appoint.
- 3) Point 4(a) is not applicable to tied agents in the UK. See SUP 12.6.

4 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory	
Signature (to be signed on the printed version only)	
Date	



Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA state in accordance with the Markets in Financial Instruments Directive (MiFID)

FIRM NAME:	
FIRM REFERENCE NUMBER (FRN):	
DATE:	

Purpose of this form

This form replicates Annex X of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm that wishes to notify us of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA state under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to establish a branch in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 3.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 3.
3. All firms should answer sections 1 and 2.

1. Contact Information

Type of notification: Termination of the operation of a branch/ the use of a tied agent

Member State in which the branch/ tied agent is established:

Name of investment firm:

Address of investment firm:

Telephone number of investment firm:

E-mail of investment firm:

Name of the contact person responsible for the termination of the operations of the branch/ tied agent:

Name of the branch/ tied agent in the territory of the host Member State:

Home Member State: United Kingdom

Home Member State Competent Authority: Financial Conduct Authority

Authorisation Status: Authorised by the Financial Conduct Authority

Authorisation Date:

Date from which the termination will be effective:

2 Schedule for the planned termination

Description of the schedule for the planned termination:

Information on the process of winding down the business operations, including details of how client interests are to be protected, complaints resolved and any outstanding liabilities discharged:

3 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory	
Signature (to be signed on the printed version only)	
Date	



Notice of intention to provide cross border services and activities in another EEA state in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)

FIRM NAME:	
FIRM REFERENCE NUMBER (FRN):	
DATE:	

Purpose of this form

This form replicates Annex 1 of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm that wishes to:

- exercise a passport right to provide investment services and activities in another EEA State; or
- use one or several tied agent(s) established in the UK to provide investment services in another EEA State; or
- change the particulars of an investment services and activities passport notification under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to provide cross border services into another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
3. An investment firm wishing to provide investment services or activities through a tied agent shall complete only those parts of the form relevant to the tied agent.
4. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.

1. Contact information

Type of notification: New/Change to investment services and activities passport notification

Member State in which the investment firm intends to operate:

Name of investment firm:

Trading name:*

Address:*

Telephone number:*

E-mail:

Name of the contact person at the investment firm:

Home Member State: United Kingdom

Authorisation Status: Authorised by the Financial Conduct Authority

Authorisation Date:

** to be completed only if information amended*

Note:

Please submit one passport notification for each country.

2 Intended investment services, activities and ancillary services

Please indicate all the investment services, activities, ancillary services or financial instruments the firm will provide.

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities, ancillary services or financial instruments, please list all the investment services, activities, ancillary services or financial instruments the firm will provide.*

3 Details of tied agent located in the home Member State

Please provide separate matrices with the intended investment services for each tied agent the investment firm intends to use.

FRN	Name of tied agent	Address	Telephone	E-mail	Contact

Intended investment services to be provided by the tied agent:*

	Investment services and activities										Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C2	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C3	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C4	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C5	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C6	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C7	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C8	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C9	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C10	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C11	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									

* Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities or financial instruments provided by the tied agent, please list all the investment services, activities or financial instruments the firm will provide.

4 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory	
Signature (to be signed on the printed version only)	
Date	



Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)

FIRM NAME:	
FIRM REFERENCE NUMBER (FRN):	
DATE:	

Purpose of this form

This form replicates Annex IV of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm or market operator that wishes to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State, or to make changes to existing arrangements, under MiFID.

Important information you should read before completing this form

A UK firm or market operator can only use this form if it is entitled to provide such arrangements subject to the conditions of MiFID (see Schedule 3 to, and section 312C of, the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms and market operators should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP) and REC 4.2B). In particular, a UK firm or market operator that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 3.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 3.
3. All firms should answer sections 1 and 2. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.

1. Contact information

Type of notification: Provision of/ Changes to the particulars of the notification for the provision of arrangements to facilitate access to MTF /OTF

Member State in which the investment firm/ market operator intends to provide arrangements:

Name of investment firm/ market operator:

Address:*

Telephone number:*

E-mail:

Name of the contact person at the investment firm / market operator:

Home Member State: United Kingdom

Authorisation Status: Authorised by the Financial Conduct Authority

Applicable Law:

Authorisation Date:

Name of the MTF/ OTF:

Date at which the arrangements will be provided: With immediate effect

** to be completed only if information amended*

2 Business Model's description

Type of traded financial instruments:*

Type of trading participants:*

Type of appropriate arrangements:*

Marketing:*

** to be completed only if information amended*

Note:

Please note you can only use this form to provide access to an MTF or OTF. If you would like to passport other activities, please submit another notification.

3 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory	
Signature (to be signed on the printed version only)	
Date	



Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)

FIRM NAME:	
FIRM REFERENCE NUMBER (FRN):	
DATE:	

Purpose of this form

You should complete this form if you are a UK firm that wishes to notify us that it wishes to cancel its passport right to provide cross border services and activities or to cease using a tied agent providing cross border services under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to provide cross border services in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 2.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 2.
3. All firms should answer section 1.

1. Contact information

Type of notification: Cancellation of service passport/ termination of the use of a tied agent

Member State in which the investment firm operated:

Name of investment firm:

Address of investment firm:

Telephone number of investment firm:

E-mail of investment firm:

Name of the contact person at the investment firm:

Name of the tied agent located in the Home Member State:

Home Member State: United Kingdom

Home Member State Competent Authority: Financial Conduct Authority

Authorisation Status:

Authorisation Date:

Date from which the termination will be effective:

Note:

Please submit one passport notification for each country.

2 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory	
Signature (to be signed on the printed version only)	
Date	



Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)

FIRM NAME:	
FIRM REFERENCE NUMBER (FRN):	
DATE:	

Purpose of this form

You should complete this form if you are a UK firm or market operator that wishes to cancel existing arrangements to facilitate the access to an MTF or an OTF from another EEA State under the MiFID Directive.

Important information you should read before completing this form

A UK firm or market operator can only use this form if it is entitled to provide such arrangements subject to the conditions of MiFID (see Schedule 3 to, and section 312C of, the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms and market operators should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm or market operator that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 2.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 2.
3. All firms should answer section 1.

1. Contact information

Type of notification: Cancel the provision of arrangements to facilitate access to MTF / OTF

Member State in which the investment firm/ market operator provided arrangements:

Name of investment firm/ market operator:

Address of investment firm/ market operator:

Telephone number of investment firm/ market operator:

E-mail of investment firm/ market operator:

Name of the contact person at the investment firm / market operator:

Name of the MTF/ OTF:

Home Member State: United Kingdom

Home Member State Competent Authority: Financial Conduct Authority

Authorisation Status: Authorised by the Financial Conduct Authority

Applicable Law :

Authorisation Date:

Date from which the termination will be effective:

2 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

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Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory	
Signature (to be signed on the printed version only)	
Date	

[*Editor's note:* This instrument is made immediately after the Markets and Organisational Requirements (MiFID 2) Instrument 2017. The text in this instrument therefore takes into account the changes to the Handbook made by the Markets and Organisational Requirements (MiFID 2) Instrument 2017.]

CONDUCT, PERIMETER GUIDANCE AND MISCELLANEOUS PROVISIONS (MiFID 2) INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 64A (Rules of conduct);
 - (b) section 69 (Statement of policy);
 - (c) section 73A (Part 6 Rules);
 - (d) section 84 (Matters which may be dealt with by prospectus rules);
 - (e) section 89A (Transparency rules);
 - (f) section 96 (Obligations of issuers of listed securities);
 - (g) section 137A (The FCA’s general rules);
 - (h) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (i) section 137H (General rules about remuneration);
 - (j) section 137R (Financial promotion rules);
 - (k) section 137T (General supplementary powers);
 - (l) section 138C (Evidential provisions);
 - (m) section 138D (Action for damages);
 - (n) section 138N (Temporary product intervention rules: statement of policy);
 - (o) section 139A (Power of the FCA to give guidance);
 - (p) section 226 (Compulsory jurisdiction);
 - (q) section 247 (Trust scheme rules);
 - (r) section 248 (Scheme particulars rules);
 - (s) section 261I (Contractual scheme rules);
 - (t) section 261J (Contractual scheme particulars rules);
 - (u) section 293 (Power to make notification rules in respect of recognised bodies);
 - (v) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
 - (w) paragraph 19 (Establishment) of Schedule 3 (EEA Passport Rights);
 - (x) paragraph 20 (Services) of Schedule 3 (EEA Passport Rights); and
 - (y) sub-paragraphs (1), (3) and (4) of paragraph 13 (FCA’s rules) of Schedule 17 (The Ombudsman Scheme);
 - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001, (SI 2001/1228);

- (3) paragraph 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001, (SI 2001/2326);
- (4) paragraph 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints relating to General Insurance and Mortgages) Order 2004, (SI 2004/454);
- (5) the power in regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001/995, as inserted by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, (SI 2017/701);
- (6) the powers of direction, guidance and related provisions in or under the following provisions of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, (SI 2017/701):
 - (a) regulation 27 (Power to require information);
 - (b) paragraph 7 of Schedule 1 (Guidance);
 - (c) paragraph 8 of Schedule 1 (Reporting requirements);
 - (d) paragraph 14 of Schedule 1 (Statements of policy); and
 - (e) paragraph 22 of Schedule 1 (Application of Part 26 of the Act);
- (7) the powers of direction, guidance and related provisions in or under the following provisions in or under the following provisions of the Data Reporting Services Regulations 2017, (SI 2017/699):
 - (a) regulation 20 (Guidance);
 - (b) regulation 21 (Reporting requirements);
 - (c) regulation 27 (Statement of policy); and
 - (d) regulation 37 (Application of Part 26 of the Act); and
- (8) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. Save for the provisions set out in (1) to (5), this instrument comes into force on 3 January 2018, immediately after those parts of the Markets and Organisational Requirements (MiFID 2) Instrument 2017 which also come into force on the same day:
- (1) GEN TP 1.3 in Annex E (General provisions), which relates to the making of notifications and applications and the undertaking of administrative

procedures in relation to MiFID, equivalent third country or optional exemption business to be carried on from 3 January 2018, which comes into force on 3 July 2017;

- (2) MAR 10.4.1G and MAR 10.4.11G, which relates to provision of position limit reports to the FCA, which come into force on 3 July 2017;
- (3) SUP 17A2.1AG and SUP 17A.2.1BG, which relates to provision of reference data to the FCA, which come into force on 3 July 2017;
- (4) SUP 12.7.1R in Annex J (Supervision manual), which relates to the appointment of appointed representatives and tied agents, which comes into force on 3 July 2017; and
- (5) DEPP in Annex K (Decision Procedure and Penalties Manual), which comes into force on 3 July 2017.

Amendments to the Handbook

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

(1)	(2)
Principles for Businesses (PRIN)	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
The Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)	Annex C
Training and Competence (TC)	Annex D
General Provisions (GEN)	Annex E
Conduct of Business sourcebook (COBS)	Annex F
Banking: Conduct of Business sourcebook (BCOBS)	Annex G
Client Assets sourcebook (CASS)	Annex H
Market Conduct sourcebook (MAR)	Annex I
Supervision manual (SUP)	Annex J
Decision Procedure and Penalties manual (DEPP)	Annex K
Dispute Resolution: Complaints sourcebook (DISP)	Annex L
Collective Investment Schemes sourcebook (COLL)	Annex M
Investment Funds sourcebook (FUND)	Annex N
Professional Firms sourcebook (PROF)	Annex O
Recognised Investment Exchanges sourcebook (REC)	Annex P
Listing Rules sourcebook (LR)	Annex Q
Prospectus Rules sourcebook (PR)	Annex R
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex S

Making the Product Intervention and Product Governance sourcebook (PROD)

- E. The Financial Conduct Authority makes the rules and gives the guidance in Annex T to this instrument.

Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex U to this instrument.

Notes

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

European Union Legislation

- H. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the electronic Official Journal of the European Union is deemed authentic.

Citation

- I. This instrument may be cited as the Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017.

By order of the Board
30 June 2017

Annex A

Amendments to the Principles for Business (PRIN)

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

1 Introduction

1.1 Application and purpose

...

1 Annex 1R Non-designated investment business - clients that a firm may treat as an eligible counterparty for the purposes of PRIN

...			
1.2	A <i>firm</i> may classify a <i>client</i> (other than another <i>firm</i> , <i>regulated collective investment scheme</i> , or an <i>overseas financial services institution</i>) as an <i>eligible counterparty</i> for the purposes of <i>PRIN</i> under 1.1(7) if:		
	(1)	the <i>client</i> at the time he is classified is one of the following:	
		...	
		(c)	a local authority or public authority; [deleted]
		...	
	...		

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Application and purpose

1.1A Application

...

1 Annex Detailed application of SYSC

1

...

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

...

Provision <i>SYSC 5</i>	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, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms

...
<u>SYSC 5.1.5AG</u>	...	...	...	...
<u>SYSC 5.1.5AAR</u>	<u>Rule</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Rule applicable to the branch of an incoming EEA firm in relation to its MiFID business</u> <u>Other firms:</u> <u>Not applicable</u>
<u>SYSC 5.1.5ABR</u>	<u>Rule</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Rule applicable to the branch of an incoming EEA firm in relation to its MiFID business</u> <u>Other firms:</u> <u>Not applicable</u>
<u>SYSC 5.1.5ACG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment</u>	<u>Not applicable</u>	<u>Guidance applicable to the branch of</u>

		<u>firm and its MiFID business</u>		<u>an incoming EEA firm in relation to its MiFID business</u> <u>Other firms:</u> <u>Not applicable</u>
<u>SYSC 5.1.5ADG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Guidance applicable to the branch of an incoming EEA firm in relation to its MiFID business</u> <u>Other firms:</u> <u>Not applicable</u>
<u>SYSC 5.1.5AEG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Guidance applicable to the branch of an incoming EEA firm in relation to its MiFID business</u>

				<u>Other firms:</u> <u>Not applicable</u>
...				
Provision SYSC 10	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, managing agents the Society, full-scope UK AIFMs of unauthorised AIFs, article 3 MiFID firms and third country firms
...				
SYSC 10.1.4R	Not applicable	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with COBS 12.2, or the

				production or dissemination of non-independent research, in accordance with <i>COBS</i> 12.3 <u>12.2</u>
...				
<i>SYSC</i> 10.1.6R	Not applicable	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with <i>COBS</i> 12.2 , or the production or dissemination of non-independent research, in accordance with <i>COBS</i> 12.3 <u>12.2</u>
...				
<i>SYSC</i> 10.1.10R	Not applicable	Rule	Not	Guidance

			applicable	– but applies as a rule in relation to the production or arrangement of investment research in accordance with COBS 12.2 , or the production or dissemination of non-independent research, in accordance with COBS 12.3 <u>12.2</u>
SYSC 10.1.11R	Not applicable	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with COBS 12.2 , or the production or dissemination

				ion of non-independent research, in accordance with <i>COBS</i> 12.3 <u>12.2</u>
...				

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
...		
SYSC 5		
...
<i>SYSC 5.1.5AG</i>	...	...
<u><i>SYSC 5.1.5AAR</i></u>	<u>Not applicable</u>	<u>Rule</u>
<u><i>SYSC 5.1.5ABR</i></u>	<u>Not applicable</u>	<u>Rule</u>
<u><i>SYSC 5.1.5ACG</i></u>	<u>Not applicable</u>	<u>Guidance</u>
<u><i>SYSC 5.1.5ADG</i></u>	<u>Not applicable</u>	<u>Guidance</u>
<u><i>SYSC 5.1.5AEG</i></u>	<u>Not applicable</u>	<u>Guidance</u>
...
SYSC 10		
...		
<i>SYSC 10.1.4R</i>	Rule	<u>Guidance – but applies as a rule in relation to the production or arrangement of investment research, or the</u>

		<u>production or dissemination of non-independent research, in accordance with COBS 12.2</u>
...		
SYSC 10.1.6R	Rule	Guidance – <u>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</u>
...		
SYSC 10.1.10R	Rule	Guidance – <u>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</u>
SYSC 10.1.11R	Rule	Guidance – <u>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</u>
...		

5 Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

...

Application to a common platform firm

5.1.-2 G For a *common platform firm*:

(1) ...

(2) the *rules* and *guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
<u>Competent employees rule, knowledge and competence and Segregation segregation of functions</u>	<i>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</i>
...	

...

...

~~Segregation of functions~~ Competent employees rule

...

- 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 ~~recommended examinations~~ appropriate qualifications maintained by the ~~Financial Skills Partnership~~ *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 firm must ensure, and be able to demonstrate to the FCA, at the FCA's request, that any relevant individuals possess the necessary knowledge and competence so as to ensure that the firm is able to meet its obligations under:
- (1) those rules which implement articles 24 and 25 of MiFID (including those rules which implement related provisions under the MiFID Delegated Directive); and
 - (2) related provisions of the MiFID Org Regulation.
- [Note: article 25(1) of MiFID]
- 5.1.5AC G The rules which implement articles 24 and 25 of MiFID can be found in COBS and PROD and are identified with a 'Note:'.
- 5.1.5AD G ESMA has issued guidelines specifying the criteria for the assessment of knowledge and competence for the purposes of SYSC 5.1.5ABR. The ESMA guidelines can be found at <https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence>.
- 5.1.5AE G
- (1) The FCA expects a firm to act consistently with the ESMA guidelines referred to in SYSC 5.1.5ADG in relation to its MiFID or equivalent third country business.
 - (2) The FCA is required to publish various information on its website in relation to firms' assessment of relevant individuals' knowledge and competence. That information can be found at
[Editor's note: The content of the link to follow - <https://www.fca.org.uk/firms/training-competence>].
 - (3) A firm to which the Training and Competence sourcebook (TC) 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 TC.

Segregation of functions

5.1.6 R ...

...

10 Conflicts of interest

10.1 Application

...

Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research

- 10.1.16 R The *rules* relating to:
- (1) types of conflict (see SYSC 10.1.4R);
 - (2) records of conflicts (see SYSC 10.1.6R); and
 - (3) *conflicts of interest policies* (see SYSC 10.1.10R and SYSC 10.1.11R);
- 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 ~~in accordance with COBS 12.2~~, and when it produces or disseminates *non-independent research* ~~in accordance with COBS 12.3~~ in accordance with COBS 12.2.

...

After SYSC 10 (Conflicts of interest) insert the following new chapter. All the text is new and is not underlined.

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) *UK MiFID investment firm*; or
 - (b) *full-scope UK AIFM*; or
 - (c) *small authorised UK AIFM* or *residual CIS operator*; or
 - (d) *incoming EEA AIFM*; or
 - (e) *UCITS management company*; or
 - (f) *MiFID optional exemption firm*, performing activities covered by the exemption; or
 - (g) *EEA MiFID investment firm*; or
 - (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 *depository* 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*; 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 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 G 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 an *EEA firm*.
- 10A.1.3 R 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*, apply to the extent relevant to the subject matter of this chapter as if it 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 *depositories*, 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
 - (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
 - (4) 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*.
 - (5) *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]

Insert the following new row in SYSC Sch 1 (Record keeping requirements) in numerical order.

Sch 1 Record keeping requirements

...

Sch 1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
SYSC 10.1.6R	...	...	...	...
<u>SYSC 10A.1.6R</u>	<u>Telephone conversations and electronic communications in relation to stipulated activities in <i>financial instruments</i> (see <u>SYSC 10A.1.1R</u>)</u>	<u>Those activities in <i>financial instruments</i></u>	<u>At the time of the conversation or communication</u>	<u>Five years from the date of the conversation or communication unless the <i>FCA</i> requests a period of seven years</u>
...

Annex C

Amendments to the Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)

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

1 General

...

1.2 Introduction

...

1.2.4A G (1) Under Article ~~5~~ 21(1)(d) of the *MiFID ~~Implementing Directive~~ Org Regulation* and articles ~~34~~ 34 and ~~32~~ 35 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of:

~~(1)~~ a person to perform a *controlled function*; or

(a)

~~(2)~~ a *certification employee*;

(b)

solely in relation to the *MiFID business* of an *incoming EEA firm*, the ~~appropriate regulator~~ FCA will not have regard to that *person's* competence and capability.

(2) Where the ~~controlled function~~ function relates to:

(a) matters outside the scope of *MiFID*, for example ~~money laundering responsibilities (see CF11) or~~ activities related to a *specified benchmark* (see the benchmark submission function (CF 40), ~~the benchmark administration function (and CF 50) ;~~ and the benchmark submission and administration FCA-specified significant-harm functions (see *SYSC 5.2.33R*); or ~~to~~

(b) business outside the scope of the *MiFID business* of an *incoming EEA firm*, for example *insurance mediation activities* in relation to *life policies* ; or

(c) matters within the responsibility of the FCA as the Host State regulator, for example *money laundering responsibilities* (see the money laundering reporting function (CF11 and SMF17))

or (3) below;

the *FCA* will have regard to a ~~candidate's~~ person's competence and capability as well as ~~his~~ their honesty, integrity, reputation and financial soundness.

- (3) The *FCA* will have regard to a natural *person's* competence and capability to the extent they give a *personal recommendation* or *information about financial instruments, structured deposits, investment services* or *ancillary services* on behalf of a *UK branch* of:
- (a) an *investment firm* authorised under *MiFID*;
 - (b) an *AIFM investment firm* carrying out activities under article 6(4) of the *AIFMD* (provision of additional services);
 - (c) a *UCITS investment firm* carrying out activities under article 6(3) of the *UCITS Directive* (provision of additional services); or
 - (d) a *credit institution*.
- (4) (3) is the result of the combined effect of articles 25(1) (Assessment of suitability and appropriateness and reporting to clients) and 35(8) (Establishment of a branch) of *MiFID*.
- (5) (1) to (4) are also relevant to the matters an *EEA relevant authorised person* should take into account when assessing any *staff being assessed under FIT*. Where, under (1) to (4):
- (a) the *FCA* will have regard to a *person's* competence and capability, so should a *firm* when assessing any *staff being assessed under FIT*; and
 - (b) the *FCA* will not have regard to a *person's* competence and capability, a *firm* need not do so either when assessing any *staff being assessed under FIT*.

...

Annex D

Amendments to the Training and Competence sourcebook (TC)

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

1 Application and Purpose

1.1 Who, what and where?

Who and what?

1.1.1 R ...

1.1.1A R The application of this sourcebook is modified for a *MiFID investment firm* and a *third country investment firm* by the provisions in TC 4.1 where its *employee* carries on an activity in TC App 1 which is also an activity in TC 4.1.2R.

1.1.1B G ESMA has issued guidelines specifying criteria for the assessment of knowledge and competence. The ESMA guidelines can be found at <https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence>.

...

Purpose

1.1.3 G The *competent employees rule* is the main ~~Handbook~~ requirement relating to the competence of *employees*. The purpose of this sourcebook is to support the FCA's supervisory function by supplementing the *competent employees rule* for retail activities.

...

Insert the following new chapter after TC 3 (Record keeping). All the text is new and is not underlined.

4 Specified modified requirements

4.1 Specified requirements for MiFID investment firms and for third country investment firms

4.1.1 R For a *firm* in relation to its *MiFID or equivalent third country business* the *rules* set out in column 1 of the table in TC 4.1.4R below are amended as

set out in column 2.

4.1.2 R In this section, references to relevant individuals are natural persons who, on behalf of the *firm*:

- (1) make *personal recommendations to retail clients* in relation to *financial instruments* ; or
- (2) provide information to *retail clients* about *financial instruments*, *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 (1) or (2).

4.1.3 R References in *TC 4.1.4R* to a relevant individual’s knowledge and competence are to the knowledge and competence necessary to ensure that the *firm*, on behalf of which the relevant individual acts, is able to meet its obligations under:

- (1) those *rules* which implement articles 24 and 25 of *MiFID* (including those *rules* which implement related provisions under the *MiFID Delegated Directive*); and
- (2) related provisions of the *MiFID Org Regulation*.

4.1.4 R Unless the context requires otherwise the *rules* in column 1 of the table are amended as set out in column 2:

Column 1	Column 2
Relevant rule	Amendments
TC 2.1.1R(1)	<p>Insert the following at the end of <i>TC 2.1.1R(1)</i>:</p> <p>“In addition, a <i>firm</i> must not assess a relevant individual as competent unless the <i>firm</i> has satisfied itself that the relevant individual possesses the knowledge and competence to enable the <i>firm</i> to meet its obligations under <i>SYSC 5.1.5ABR</i>. This means that the relevant individual has also:</p> <p>(a) obtained appropriate experience which means that the relevant individual has successfully demonstrated the ability to carry on the activities through previous work experience. This work must have been performed, on a full-time equivalent basis, for a minimum period of 6 <i>months</i>; and</p> <p>(b) attained an appropriate qualification which means a qualification or other test or training</p>

	<p>course that meets the criteria set out by the <i>ESMA</i> guidelines.</p> <p>The level of knowledge and competence needed to fulfil the <i>firm's</i> obligations reflects the scope and degree of the activities, as described in <i>TC 4.1.2R</i> above, carried out by the relevant individual.”</p>
TC 2.1.2R	<p>The provision is amended by adding after <i>TC 2.1.2R</i>:</p> <p>“A relevant individual, who has not acquired the necessary knowledge or competence to carry out the activities in <i>TC 4.1.2R</i> above, cannot provide those activities under supervision for a period exceeding 48 <i>months</i>.”</p>
TC 2.1.5R(1)	<p>The provision is amended by adding after <i>TC 2.1.5R</i>:</p> <p>“Where a relevant individual has not acquired the necessary knowledge and competence to carry out the activities described in <i>TC 4.1.2R</i> above:</p> <p>(a) the <i>firm</i> must ensure that the individual supervising the relevant individual:</p> <ul style="list-style-type: none"> (i) has been assessed as competent to provide such <i>personal recommendation</i> or information; (ii) has the necessary skills and resources to act as a competent supervisor; and (iii) takes responsibility for the <i>personal recommendation</i> or information, referred to in <i>TC 4.1.2R</i> above, provided by the relevant individual under supervision as if the supervisor is providing the <i>personal recommendation</i> including any <i>suitability report (COBS 9)</i> or information; and <p>(b) the <i>firm</i> must ensure that the supervision provided to a relevant individual is tailored to the services provided by the individual.”</p>

- 4.1.3 G Rules in this section relate to the requirements in *SYSC 5.1.5ABR*.
- 4.1.4 G For relevant individuals of an *incoming EEA firm*, with an establishment maintained by that *firm* (or its *appointed representative*) in the *United Kingdom*, the matters covered by *SYSC 5.1.5ABR* are matters reserved for the *United Kingdom* as the *Host State regulator*.

Amend the following as shown.

App 2.1 TCs Territorial Scope subject to the limitation in TC Appendix 3

App
2.1.1R

	<i>UK domestic firm</i>	<i>Incoming EEA firm</i>	<i>Overseas firm (other than an incoming EEA firm)</i>
<i>MiFID business and equivalent third country business</i>	<p><i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</i></p> <p>and</p> <p><i>TC also applies insofar as if an activity is carried on from an establishment maintained by the firm (or its appointed representative or, where applicable, its tied agent) in, and within the territory of, another EEA State, TC applies although matters which would otherwise be covered by SYSC 5.1.5ABR are matters reserved for the Host State regulator</i></p>	<i>TC does not apply</i>	<p><i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</i></p>
...			

...

TP 1 Designated Investment Business: Assessments of competence before commencement

1.1	R	(1)	...
		...	
<u>1.1A</u>	<u>G</u>	<p>Notwithstanding <i>TC</i> TP1 1.1R, a <i>firm</i> that is subject to <i>SYSC</i> 5.1.5ABR in respect of such an <i>employee</i> should have regard to the guidelines <i>ESMA</i> has issued specifying the criteria for the assessment of knowledge and competence. The <i>ESMA</i> guidelines can be found at https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence.</p>	

Annex E

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text.

1 FCA approval and emergencies

...

1.2 Referring to approval by the FCA

...

1.2.2A R ...

(1A) Paragraph (1) does not apply to a firm to the extent that it is incompatible with the United Kingdom's obligations under article 44(8) of the MiFID Org Regulation.

...

...

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.16EU.

...

4 Statutory status disclosure

...

4.2 Purpose

...

4.2.2 G There are other pre-contract information requirements outside this chapter, including:

...

(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);

...

...

TP 1 Transitional provisions

...

TP 1.3 (3) Transitional Provisions applying to GEN only

(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
...					
<u>15</u>	<u>Rules and directions implementing MiFID II</u>	<u>R</u>	<u>A firm that is required or wishes to make any notification, application or undertake any other administrative procedure enabling it to carry on MiFID, equivalent third country or optional exemption business in the UK from 3 January 2018, may do so before that date subject to the requirements of any applicable statutory provision, rule, direction or EU regulation that will be in force on 3 January 2018.</u>	<u>3 July 2017 to 2 January 2018</u>	<u>3 July 2017</u>
<u>16</u>	<u>Rules and directions implementing MiFID II</u>	<u>G</u>	<u>(1) The purpose of this transitional provision is to help a firm to take the necessary administrative or regulatory steps to enable them to carry on investment services or activities in the UK from 3 January 2018.</u> <u>(2) This could take the</u>	<u>3 July 2017 to 2 January 2018</u>	<u>3 July 2017</u>

			<p><u>form, for example, of making notifications to the FCA in the case of algorithmic trading notifications (see MAR 7A.3.6R), before 3 January 2018.</u></p> <p><u>(3) It also enables a firm wishing to classify clients in accordance with the client categorisation requirements in COBS 3 (to take effect on 3 January 2018) to take steps towards doing so before 3 January 2018.</u></p>		
--	--	--	--	--	--

...

TP 2 Transitional Provisions applying across the FCA Handbook and the PRA Rulebook

...

Table 2: Transitional Provisions applying across the FCA Handbook and the PRA Rulebook

(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	Paragraph 3 [deleted]	G	For example, a <i>firm</i> which <i>executes</i> an aggregated order shortly before cutover must comply with <i>COBS 11.3.8R</i> (Requirement for fair allocation) if the allocation occurs after cutover .	From cutover	Cutover
...					
18	Every provision in	G	References in the <i>FCA</i>	From 3 January	3 January

	<u>the FCA Handbook</u>		<u>Handbook to Directive 2004/39, where not otherwise amended, shall be interpreted as references to <i>MiFID II</i> or <i>MiFIR</i> or the corresponding provisions in or under <i>MiFID II</i> or <i>MiFIR</i>, except where the context indicates otherwise.</u>	<u>2018</u>	<u>2018</u>
--	-------------------------	--	---	-------------	-------------

Annex F

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Application

1.1 ~~The general application rule~~ General application

~~[Note: ESMA has issued guidelines under article 16(3) of the ESMA Regulation on certain aspects of the MiFID suitability requirements which also includes guidelines on conduct of business obligations. See <http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-suitability-requirements>.]~~

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

1.1.1 R ...

Deposits (including structured deposits)

- 1.1.1A R This sourcebook ~~does not apply~~ applies to a *firm* with respect to ~~the activity of accepting deposits~~ activities carried on in relation to deposits from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*, ~~except for COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1R (Direct offer financial promotions), COBS 4.10 (Systems and controls and approving and communicating financial promotions), COBS 13 (Preparing product information), COBS 14 (Providing product information to clients) and COBS 15 (Cancellation) which apply as set out in those provisions, COBS 4.1 and the Banking: Conduct of Business sourcebook (BCOBS).~~ only as follows:

	<u>Section / chapter</u>	<u>Application in relation to deposits</u>
(1)	<u>Rules in this sourcebook which implement articles 24, 25, 26, 28 and 30 of MiFID (and related provisions of the MiFID Delegated Directive) (see COBS 1.1.1ADG.</u>	<u>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.</u>
(2)	<u>COBS 4.6 (Past, simulated past and future performance)</u>	<u>Communication or approval of a financial promotion relating to a structured deposit that is addressed to, or disseminated in</u>

		<u>such a way that it is likely to be received by, a retail client.</u>
(3)	<u>COBS 4.7 (Direct offer financial promotions)</u>	<u>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.</u>
(4)	<u>COBS 4.10 (Systems and controls and approving and communicating financial promotions)</u>	<u>To the extent that other rules in COBS 4 apply.</u>
(5)	<u>COBS 13 (Preparing product information)</u>	<u>Producing a cash-deposit ISA, cash-only lifetime ISA or cash-deposit CTF.</u>
(6)	<u>COBS 14 (Providing product information to clients)</u>	<u>Selling, personally recommending or arranging the sale of a cash-deposit ISA, cash-only lifetime ISA or cash-deposit CTF to a retail client.</u>
(7)	<u>COBS 15 (Cancellation)</u>	<u>A cancellable contract between a consumer and a firm.</u>

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 EU 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 referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under 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 articles of MiFID referred to in COBS 1.1.1AR(2), 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 provisions of MiFID and the MiFID Delegated Directive referred to in COBS 1.1.1AR(2) can be found in the chapters of COBS in the following table and are followed by a 'Note:'.

<u>COBS chapter</u>	<u>Description</u>
<u>COBS 2</u>	<u>Conduct of business obligations</u>
<u>COBS 3</u>	<u>Client categorisation</u>
<u>COBS 4</u>	<u>Communicating with clients, including financial promotions</u>
<u>COBS 6</u>	<u>Information about the firm, its services and remuneration</u>
<u>COBS 8A</u>	<u>Client agreements</u>
<u>COBS 9A</u>	<u>Suitability (MiFID provisions)</u>
<u>COBS 10A</u>	<u>Appropriateness (for non-advised services) (MiFID provisions)</u>
<u>COBS 11</u>	<u>Dealing and managing</u>
<u>COBS 14</u>	<u>Providing product information to clients</u>
<u>COBS 16A</u>	<u>Reporting information to clients (MiFID provisions)</u>

[Note: article 1(4) of MiFID]

Electronic money

1.1.1B R ...

Auction regulation bidding

1.1.1C R ~~The following rules in COBS apply 5 (Distance communications) applies to a firm in relation to its carrying on of auction regulation bidding :~~

- (1) ~~COBS 5 (Distance communications);~~
- (2) ~~(for a firm that has exercised an opt-in to CASS in accordance with CASS 1.4.9R in relation only to those clients for which it holds client money or safe custody assets in accordance with CASS) COBS 3~~

~~(Client categorisation), COBS 6.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money), COBS 6.1.11R (Timing of disclosure) and COBS 16.4 (Statements of client designated investments or client money).~~

Modifications to the general application rule

- 1.1.2 R The ~~general application rule~~ 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 ~~general rule~~ 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.

...

After COBS 1.1 (General application) insert the following new section. All the text is new and is not underlined.

1.2 Markets in Financial Instruments Directive

References in COBS to the MiFID Org Regulation

- 1.2.1 G (1) This sourcebook contains a number of provisions which transpose *MiFID*.
- (2) In order to help *firms* which are subject to the requirements of *MiFID* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the directly applicable *MiFID Org Regulation*, marked with the status letters “EU”. The authentic provisions of the *MiFID Org Regulation* are directly applicable to *firms* in relation to their *MiFID business*.
- (3) This sourcebook does not reproduce the *MiFID Org Regulation* in its entirety. A *firm* to which provisions of the *MiFID Org Regulation* applies should refer to the electronic version of the Official Journal of the European Union for:
- (a) the authentic version of the applicable articles of the *MiFID Org Regulation*; and
- (b) a comprehensive statement of its obligations under the *MiFID Org Regulation*.
- 1.2.2 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 “EU” 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”	as defined in article 4(1)(49) of <i>MiFID</i>
“Directive 2009/65/EC”	<i>UCITS Directive</i>
“Directive 2014/65/EU”	<i>MiFID</i>
“distributing units in collective investment undertakings”	distributing <i>units</i> 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</i>

	<i>business</i> and (if the context requires) its <i>equivalent business of a third country investment firm</i> .
“group”	as defined in article 4(1)(34) of <i>MiFID</i>
“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 Section 1 of Annex II to Directive 2014/65/EU”	<i>per se professional client</i>
“professional client in accordance with Section 2 of Annex II to Directive 2014/65/EU”	<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”	must
“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 “EU” to assist in interpreting any such references or cross-references.

Interpretation – “in good time”

- 1.2.5 G (1) Certain of the provisions in this sourcebook which implement *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*]

ESMA Guidelines

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

guidelines on certain aspects of the *MiFID* suitability requirements which also include guidelines on conduct of business obligations. See

[https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf];

guidelines on cross-selling practices. See

[https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf]; and

guidelines on complex debt instruments and *structured deposits*. See [https://www.esma.europa.eu/sites/default/files/library/2015-1787_-

	COBS 11.2 <u>11.2A</u> , <u>COBS 11.2B</u> and <u>COBS 11.3</u> and COBS 11.6	Best execution, <u>quality of execution</u> and <u>client order handling</u> and use of dealing commission
	COBS 12.3.1R to COBS 12.3.3R <u>COBS 12.2.18EU</u>	Labelling of non-independent research
	<u>COBS 14.3</u>	Information about designated investments (<u>non-MiFID provisions</u>)
	<u>COBS 16</u>	Reporting information to clients (<u>non-MiFID provisions</u>)
[Note: article 24(1) paragraphs 1 and 2 of article 30(1) of <i>MiFID</i>]		
2.	Transactions between an MTF operator and its users	
2.1	R	The COBS provisions in paragraph 1.1R and COBS 11.4 (Client limit orders) (<u>applicable to <i>MiFID</i> business</u>) 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> .
	<u>COBS provision</u>	<u>Description</u>
	<u>COBS 2 (other than COBS 2.4)</u>	<u>Conduct of business obligations</u>
	<u>COBS 4 (other than COBS 4.4.1R)</u>	<u>Communicating with clients, including financial promotions</u>
	<u>COBS 6.1ZA</u>	<u>Information about the firm and compensation information (MiFID provisions)</u>
	<u>COBS 8A</u>	<u>Client agreements (MiFID provisions)</u>
	<u>COBS 10A</u>	<u>Appropriateness (for non-advised services) (MiFID provisions)</u>
	<u>COBS 11.2A</u> , <u>COBS 11.2B</u> , <u>COBS 11.3</u> and <u>COBS 11.4</u>	<u>Best execution, quality of execution, client order handling and client limit orders</u>
	<u>COBS 14.3A</u>	<u>Information about financial instruments (MiFID provisions)</u>
	<u>COBS 16A</u>	<u>Reporting information to clients (MiFID provisions)</u>

	[Note: article 14(3) 19(4) of <i>MiFID</i>]	
3.	Transactions concluded on an MTF	
3.1	R	The <i>COBS</i> provisions in paragraph 1.1R 2.1R and <i>COBS</i> 11.4 (client limit orders) do not apply to transactions concluded under the rules governing an <i>MTF</i> between members or participants of the <i>MTF</i> . 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 14(3) 19(4) of <i>MiFID</i>]	
3A.	Operators of OTFs	
3A.1	G	<u>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.</u>
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 <i>COBS</i> provisions in paragraph 1.1R 2.1R and <i>COBS</i> 11.4 (Client limit orders) . However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients'</i> behalf, it is executing their orders on a <i>regulated market</i> .
	[Note: article 42(4) 53(4) of <i>MiFID</i>]	
5.	Consumer credit products	
5.1	R	If a <i>firm</i> , in relation to its <i>MiFID</i> business, offers an <i>investment service</i> as part of a financial product that is subject to other provisions of <i>EU</i> legislation or common European standards law related to <i>credit institutions</i> and consumer credits with respect to risk assessments of clients and/or information requirements, that service is not subject to the rules in this sourcebook that implement Article 19 <u>articles 24(3), (4) and (5) of <i>MiFID</i>.</u>
	[Note: article 19(9) <u>article 24(6) of <i>MiFID</i></u>]	
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 purpose

		of enabling a <i>client</i> to invest money to repay his obligations under a loan, mortgage or home reversion.
5A.	<u>Mortgages and mortgage bonds</u>	
5A.1	R	The <i>rule</i> in paragraph 5A.2R applies in relation to an <i>MCD credit agreement</i> with a <i>consumer</i> which is subject to the provisions concerning the creditworthiness assessment of <i>consumers</i> in Chapter 6 of the <i>MCD</i> (as 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 implement article 25 of <i>MiFID</i> .
5A.3	R	The conditions in paragraph 5A.2R are that the mortgage bonds:
		(1) are specifically issued to secure the financing of the <i>MCD credit agreement</i> in paragraph 5A.1R; and
		(2) have terms which are identical to the <i>MCD credit agreement</i> in paragraph 5A.1R.
		[Note: article 25(7) of <i>MiFID</i>]
...		

Part 2: Where?

Modifications to the general application ~~rule~~ according to location

...

Part 3: Guidance

1.	The main extensions, <u>modifications</u> and restrictions to the general application rule	
1.1	G	The <i>general application rule</i> general application of this sourcebook is modified in Parts 1 and 2 of Annex 1 and in certain chapters of the <i>Handbook</i> . The modification may be an extension of this rule the <u>general application</u> . For example, <i>COBS 4</i> (Communicating with clients, including financial promotions) has extended the <u>general</u> application of the rule .
1.2	G	The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the <i>general application rule</i> general application of this <u>sourcebook</u> , particularly in relation to territorial scope. However, for the majority of circumstances, the general application rule is likely to apply.

1.3	G	<u>In particular, certain chapters of this sourcebook apply only to firms in relation to their MiFID, equivalent third country or optional exemption business while others apply only to firms' designated investment business which is not MiFID, equivalent third country or optional exemption business.</u>
1.4	G	<u>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. For the avoidance of doubt, nothing in COBS 18 modifies the effect of the EEA territorial scope rule.</u>
2.	The Single Market Directives and other directives	
...		
2.2	G	... If the answer to all three questions is 'yes', the <i>EEA territorial scope rule</i> may change the effect of the general application rule <u>general application of this sourcebook.</u>
...		
3.	MiFID: effect on territorial scope	
3.1	G	<i>PERG 13</i> contains general guidance on the persons and businesses to which <i>MiFID</i> applies.
3.2	G	This guidance concerns the rules within the scope of <i>MiFID</i> including those rules which are in the same subject area as the implementing rules. A rule is within the scope of <i>MiFID</i> if it is followed by a 'Note:' indicating the article of <i>MiFID</i> or the <i>MiFID implementing Directive</i> <u><i>MiFID Delegated Directive</i></u> which it implements.
3.3	G	For a <i>UK MiFID investment firm</i> , rules in this sourcebook that are within the scope of <i>MiFID</i> generally apply to its <i>MiFID business</i> carried on from an establishment in the <i>United Kingdom</i> . They also generally apply to its <i>MiFID business</i> carried on from an establishment in another <i>EEA State</i> , but only where that business is not carried on within the territory of that State. (See articles 31(1) <u>34(1)</u> , and 32(1) <u>35(1)</u> and (7) <u>35(8)</u> of <i>MiFID</i>)
3.4	G	For an <i>EEA MiFID investment firm</i> , rules in this sourcebook that are within the scope of <i>MiFID</i> generally apply only to its <i>MiFID business</i> if that business is carried on from an establishment in, and within the territory of, the <i>United Kingdom</i> . (See article 32(1) <u>35(1)</u> and (7) <u>35(8)</u> of <i>MiFID</i>)
3.5	G	However, the rules on <i>investment research</i> and <i>non-independent research</i> (<i>COBS 12.2</i> and 12.3 , except for <i>COBS 12.2.18EU</i>) and the rules on

		<i>personal transactions (COBS 11.7 11.7A)</i> apply on a “home state” basis. This means that they apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> and do not apply to an <i>EEA MiFID investment firm</i> .
3.6	G	<u><i>Firms to which MiFID applies or which are subject to requirements in MiFID (including MiFID optional exemption firms) should also have regard to the rules and guidance in COBS 1.2.</i></u>
...		
9.	UCITS Directive: effect on territorial scope	
9.1	G	The <i>UCITS Directive</i> covers undertakings for collective investment in transferable securities (<i>UCITS</i>) meeting the requirements of the Directive, and their <i>management companies</i> and <i>depositaries</i> . The <i>rules</i> in this sourcebook within the Directive’s scope (all of which will apply to a <i>management company</i>) are those in:
		...
		(6) <u><i>COBS 11.2 11.2B</i></u> (Best execution <u>for UCITS management companies</u>);
		...
...		
9.1D	G	<i>EEA UCITS management companies</i> should be aware that there is a special narrower application of <i>COBS</i> for <i>scheme management activity</i> provided for by <u><i>COBS 18.5B</i></u> (Residual CIS operators, UCITS management companies and AIFMs).
...		
10.	AIFMD: effect on territorial scope	
...		
10.4	G	<i>Incoming EEA AIFM branches</i> should be aware that there is a special narrower application of <i>COBS</i> for <i>AIFM investment management functions</i> provided for by <u><i>COBS 18.5A</i></u> (Residual CIS operators, UCITS management companies and <u>Full-scope UK AIFMs and incoming EEA AIFM branches</u>).

2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

The client’s best interests rule

- 2.1.1 R (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client's best interests rule*).
- (2) This *rule* applies in relation to *designated investment business* carried on:
- (a) for a *retail client*; and
- (b) in relation to ~~*MiFID or equivalent third country business*~~ *MiFID, equivalent third country or optional exemption business*, for any other *client*.

...

[~~Note: article 19(1)~~ 24(1) of *MiFID*] 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*]

...

AIFMs' best interests rules

- 2.1.4 R ...

...

2.2 Information disclosure before providing services (non-MiFID provisions)

Application

- 2.2.-1 R (1) ~~This section applies in relation to *MiFID or equivalent third country business*.~~ [deleted]
- (2) This section applies in relation to ~~other~~ *designated investment business other than MiFID, equivalent third country or optional exemption business*, carried on for a *retail client*:
- (a) in relation to a *derivative*, a *warrant*, a *non-readily realisable security*, 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.

[~~Note: article 19(3)~~ of *MiFID*]

- 2.2.-1A G COBS 2.2A (Information disclosure before providing services (MiFID provisions)) contains the information disclosure requirements applying to a firm carrying on MiFID, equivalent third country or optional exemption business.

Information disclosure before providing services

- 2.2.1 R ...

~~[Note: article 19(3) of MiFID]~~

...

After COBS 2.2 (Information disclosure before providing services (non-MiFID provisions)) insert the following new section. All the text is new and is not underlined.

2.2A Information disclosure before providing services (MiFID provisions)

Application

- 2.2A.1 R This section applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

Information disclosure in good time

- 2.2A.2 R (1) A *firm* must provide appropriate information in good time to a *client* with regard to:
- (a) the *firm* and its services;
 - (b) the *financial instruments* and proposed investment strategies;
 - (c) execution venues; and
 - (d) all costs and related charges.

[Note: article 24(4) of *MiFID*]

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

- 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* 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*]

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 and *financial instruments* in *COBS* 6.1ZA 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).

2.3 **Inducements relating to business other than MiFID, equivalent third country or optional exemption business**

...

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*; or
 - (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*)).

...

- 2.3.-1C G This section does not apply to the provision of *independent advice* or *restricted advice* on a *retail investment product* in the course of *MiFID*, *equivalent third country* or *optional exemption business*. A *firm* 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).

Rule on inducements

- 2.3.1 R A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* ~~or, in the case of its *MiFID* or *equivalent third country* business, another *ancillary service*~~, carried on for a *client* other than:

...

- (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:
- ...
- (b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, before the provision of the service;
- (i) this requirement only applies to business other than ~~*MiFID or equivalent third country business*~~ the carrying on by a UK UCITS management company or EEA UCITS management company of the collective portfolio management activities of investment management and administration for the relevant scheme if it includes:
- ...
- (ii) where this requirement applies to business other than ~~*MiFID or equivalent third country business*~~ the carrying on by a UK UCITS management company or EEA UCITS management company of the collective portfolio management activities of investment management and administration for the relevant scheme, a *firm* is not required to make a disclosure to the *client* in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-monetary benefits in COBS 2.3.15G as though that table were part of this *rule* for this purpose only;
- (iii) ...
- (c) in relation to ~~*MiFID or equivalent third country business*~~ the carrying on by a UK UCITS management company or EEA UCITS management company of the collective portfolio management activities of investment management and administration for the relevant scheme or when carrying on a *regulated activity* in relation to a *retail investment product*, or when *advising on P2P agreements*, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or
- (3) proper fees which enable or are necessary for the provision of ~~*designated investment business*~~ *or ancillary services*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the *firm's* duties to act honestly, fairly and professionally in accordance with the

best interests of its *clients*.

[~~Note: article 26 of the MiFID implementing Directive and articles 29(1) and 29(2) of the UCITS implementing Directive~~]

[~~Note: The European Securities and Markets Authority has issued recommendations on inducements under MiFID~~]

- 2.3.1A R *COBS 2.3.1R applies to a UK UCITS management company and EEA UCITS management company when providing collective portfolio management services, as if:*
- (1) references to a *client*, were references to any *UCITS* it manages; ~~and~~
 - (2) ~~in (2)(b) and (c) and (3) of that rule, references to MiFID or equivalent third country business were also references to the collective portfolio management activities of investment management and administration for the scheme.~~

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

- 2.3.2 R ...

[~~Note: article 26 of the MiFID implementing Directive and article 29(2) of the UCITS implementing Directive~~]

...

Guidance on inducements

...

- 2.3.4 G ~~*COBS 11.6 (Use of dealing commission) deals with the acceptance of certain inducements by investment managers and builds upon the requirements in this section. Investment managers should ensure they comply with this section and COBS 11.6. [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 UCITS it manages (see COBS 18.5B.6R and COBS 18 Annex 1).*

...

- 2.3.6 G ~~*For the purposes of this section, the receipt by an investment firm of a commission in connection with a personal recommendation or a general recommendation, in circumstances where the advice or recommendation is not biased as a result of the receipt of commission, should be considered as designed to enhance the quality of the recommendation to the client. [deleted]*~~

[~~Note: recital 39 of MiFID implementing Directive~~]

...

2.3.7 G The fact that a fee, commission or non-monetary benefit is paid or provided to or by an *appointed representative* or, where applicable, by a *tied agent*, does not prevent the application of the *rule* on inducements.

2.3.8 G ~~The *rule* on inducements is applicable to a *firm* and those acting on behalf of a *firm* in relation to the provision of an *investment service* or *ancillary service* to a *client*. Small gifts and minor hospitality received by an individual in their personal capacity below a level specified in the *firm's* conflict's of interest policy, will not be relevant for the purpose of the *rule* on inducements. [deleted]~~

...

Reasonable non-monetary benefits

...

2.3.16A G ...

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* 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).

Record keeping: inducements

2.3.17 R ...

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

Insert the new section COBS 2.3A after 2.3 (Inducements relating to business other than MiFID or equivalent third country business). The text is not underlined.

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business

Application

2.3A.1 R This section applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

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 *retail investment product* in the course of carrying on *MiFID, equivalent third country or optional exemption business* with or for that *client* 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* 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 relating to the provision of investment services and ancillary services

2.3A.5 R Except where COBS 2.3A.6R applies, a *firm* must not:

(1) pay to or accept from any party (other than the *client* or a *person* on behalf of the *client*) any fee or commission in connection with the provision of an *investment service* or an *ancillary service*; or

- (2) provide to or receive from any party (other than the *client* or a *person* on behalf of the *client*) any non-monetary benefit in connection with the provision of an *investment service* or an *ancillary service*.

[**Note:** article 24(9) of *MiFID*]

- 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
 - (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* 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) 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:
- (a) prior to the provision of the relevant service; and
 - (b) 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*]

- 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:
- (1) conflicts of interest (see *SYSC* 10); and
 - (2) 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*]

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

- 2.3A.8 R (1) 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 :
- (a) 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;
 - (b) it does not directly benefit the recipient *firm*, its *shareholders* or *employees* without tangible benefit to the *client*;
 - (c) it is justified by the provision of an ongoing benefit to the *client* in relation to an ongoing inducement; and
 - (d) 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.
- (2) 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:
- (1) *restricted advice* on, and access to, a wide range of suitable *financial instruments* including an appropriate number of *financial instruments* 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* 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* that are likely to meet the needs of the *client*, including an appropriate number of *financial instruments* 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* in which they have invested, or providing periodic reports of the performance and costs and charges associated with the *financial instruments*.

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

[**Note:** further guidance on this is contained in the *FCA's* Finalised Guidance on 'Supervising retail investment advice: inducements and conflicts of interest' (FG14/1), available at: <https://www.fca.org.uk/publication/finalised-guidance/fg14-01.pdf>]

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 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 set out in article 24(4)(c) of *MiFID* and article 50 of the *MiFID Org Regulation* (see *COBS 6.1ZA.2.7R* to *6.1ZA.2.9R* and *6.1ZA.2.10EU*).

[**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* or *ancillary service* 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*.
- (3) Paragraph (2) does not apply to:
- (a) acceptable minor non-monetary benefits (see *COBS 2.3A.19R*); 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

- 2.3A.16 R (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) 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*) 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*.

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

- 2.3A.17 G *SYSC 4.1* (General requirements) sets out further organisational requirements relating to *firms*.

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

- 2.3A.18 G 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 article 11(5)(a) of the *MiFID Delegated Directive* (see *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; or
 - (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.

[**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 G *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 fee, commission or non-monetary benefit is capable of enhancing the quality of the service to a *client*.

[**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*]

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 (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*, except where the relevant transaction is between *persons* who are in the same *immediate group*.
- (2) 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).
- (3) 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.
- (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 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*.
- (5) 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.
- (6) Contravention of (2) or (3) may be relied upon as tending to establish contravention of *COBS 2.3A.15R*.

2.3A.28 G 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 G 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/fg12-13.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.

After *COBS 2.3A* (Inducements relating to *MiFID*, equivalent third country or optional exemption business) insert the following new sections *COBS 2.3B* (Inducements and

research) and 2.3C (Research and execution services). All the text is new and is not underlined.

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 either of the following:
- (1) direct payments by the *firm* out of its own resources; or
- (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.

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

Conditions relating to the operation of the research payment account

- 2.3B.4 R 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:
- (a) the *research* charge as budgeted by the *firm*; and
 - (b) 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:
- (a) rebate those funds to relevant *clients*; or
 - (b) 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:
- (1) the *research* budget is managed solely by the *firm* and is based on a reasonable assessment of the need for third party *research*;
 - (2) 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
 - (3) the controls under (2) include a clear audit trail of:
 - (a) payments made to *research* providers; and
 - (b) how the amounts paid were determined with reference to:
 - (i) the quality criteria required by *COBS* 2.3B.4R(4); and

- (ii) the *firm's* policy for using third party *research* established under COBS 2.3B.12R.

[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:
- (a) comply with all elements of COBS 2.3B.4R(4); and
- (b) 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:

- (1) linked to the volume or value of services or benefits that are not *research*; or
- (2) 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*]

Research for the purposes of research payment accounts

- 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).
- 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, 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; and
 - (11) administration of a *research* payment account.

- 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) or (2), that would compromise its ability to meet its best execution obligations as applicable under *COBS* 11.2A.

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 *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) an *incoming EEA AIFM branch*.

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*]

Amend the following as shown.

2.4 Agent as client and reliance on others

- 2.4.1 R This section applies to a *firm* that is conducting *designated investment business* or *ancillary activities* or, in the case of ~~*MiFID or equivalent third country business*~~ *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 ~~and it does not affect;~~ 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 *RTS 22*.

Agent as client

- 2.4.3 R ...
- (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:

...

 - (b) separate confirmations under the requirements on occasional reporting (~~*COBS 16.3*~~ *16.2* or *COBS 16A.3*); and

...

Reliance on other investment firms: MiFID and equivalent business

2.4.4 R (1) This *rule* applies if a *firm* (F1), in the course of performing *MiFID* or equivalent *third country business*, receives an instruction to ~~perform~~ provide an *investment* or *ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:

...

...

(3) F2 will remain responsible for:

(a) ...

(b) the ~~appropriateness~~ suitability for C of any advice or recommendations provided to C.

...

[**Note:** article ~~20~~ 26 of *MiFID*]

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

(2) If F1 is required to perform an appropriateness assessment under *COBS 10 10A*, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in *COBS 10.2 10A.2* or equivalent requirements in another *EEA State* in performing that assessment.

...

3 Client categorisation

3.1 Application

...

3.1.2 G ...

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

...

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 *equivalent third country business* 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.

...

3.2 Clients

General definition

- 3.2.1 R (1) A *person* to whom a *firm* provides, intends to provide or has provided:
- (a) a service in the course of carrying on a *regulated activity*; or
 - (b) in the case of *MiFID or equivalent third country business*, an *ancillary service*,
- is a “client” of that *firm*;
- (2) A “client” includes a potential client.
- (3) In relation to the *financial promotion rules*, a *person* to whom a *financial promotion* is or is likely to be *communicated* is a “client” of a *firm* that *communicates* or *approves* it.
- (4) A client of an *appointed representative* or, if applicable, a *tied agent*, is a “client” of the *firm* for whom that *appointed representative*, or *tied agent*, acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* or *MiFID* (see sections 39 and 39A of the *Act* and SUP 12.3.5R).

[**Note:** article 4(1)(10)(9) of *MiFID*]

...

3.3 General notifications

- 3.3.1 R A *firm* must:

- (1) ~~notify a new *client* of its categorisation as a *retail client*, *professional client*, or *eligible counterparty* in accordance with this chapter; and~~
- (2) ~~prior to the provision of services, inform a *client* in a *durable medium* about:~~
 - (a) ~~any right that the *client* has to request a different categorisation; and~~
 - (b) ~~any limitations to the level of *client* protection that such a different categorisation would entail. [deleted]~~

~~[Note: paragraph 2 of section 1 of annex II to *MiFID* and articles 28(1) and (2) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]~~

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

- 45 (1) Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised as required by Directive 2014/65/EU, 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 3.3.1AEU*) must be provided to *clients* prior to any provision of services.

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

...

3.4 Retail clients

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

[Note: article 4(1)(12) (11) of *MiFID*]

...

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)(H) (10) of *MiFID*]

Per se professional clients

- 3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

...

- (3) in relation to business that is not *MiFID or equivalent third country business* a large undertaking meeting any of the following conditions:

...

- (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):

...

- (ii) assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);

- (f) ~~a local authority or public authority.~~

- (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 ECP, the EIB) or another similar international organisation;

...

- 3.5.2A R ~~In relation to *MiFID or equivalent third country business* a local authority or a public authority is not likely to be a regional government for the purposes of *COBS 3.5.2R(4)*. In the *FCA's* opinion, a local authority may be a *per se professional client* for those purposes if it meets the test for large undertakings in *COBS 3.5.2R(2)*. [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):
- ...
- 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 *firm* should use depends on the application of COBS 3.5.3BR (which applies for UK clients) and COBS 3.5.3ER (which applies for non-UK clients).
- 3.5.3B R (1) A *firm* may treat a UK local public authority or municipality as an *elective professional client* if it complies with COBS 3.5.3R(1) and COBS 3.5.3R(3) and, in addition, paragraph (2) of this rule.
- (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”):
- (a) the size of the *client’s* financial instrument portfolio defined as including cash deposits and financial instruments, exceeds £10,000,000; and
- (b) either:
- (i) the *client* 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 *person* authorised to carry out transactions on behalf of the *client* 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 *client* 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 (1) This rule applies where a firm is subjecting a UK local public authority or municipality to the tests and is following the procedure required as a result of COBS 3.5.3BR in respect of the firm's business carried on in relation to that person's:
- (a) business in the course of or connected to its administration of a pension scheme; and
 - (b) other business as a local public authority or municipality.
- (2) A firm must apply the qualitative and quantitative tests required as a result of COBS 3.5.3BR separately and independently in relation to the client's business under (1)(a) and (1)(b).
- (3) A firm 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 client's business under (1)(a) and (1)(b).

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 firm may be required to categorise a UK local public authority or municipality differently in relation to the two sorts of business described at COBS 3.5.3CR(1)(a) and (b).

- 3.5.3E R (1) A firm may treat a non-UK local public authority or municipality as an elective professional client if it complies with COBS 3.5.3R(1) and COBS 3.5.3R(3) and, in addition, applies the relevant "quantitative test" under paragraph (2).
- (2) The relevant "quantitative test" under this rule is either:
- (a) where the local public authority or municipality is established in an EEA State and the EEA State has adopted alternative or additional criteria to those listed in the fifth paragraph to section II.1 of annex II to MiFID, those criteria as set out in the law or measures of that EEA State; or
 - (b) in any other case the same "quantitative test" that is applied in relation to MiFID or equivalent third country business under COBS 3.5.3R(2).

...

3.5.6 R Before deciding to accept a request for re-categorisation as an *elective professional client* a firm must take all reasonable steps to ensure that the client requesting to be treated as an *elective professional client* satisfies the qualitative test and, where applicable, the relevant quantitative test.

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

...

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

3.5.9 R ...

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID* and article 28(1) of the *MiFID implementing Directive*]

3.6 Eligible counterparties

3.6.1 R ...

[**Note:** article 2430(1) of *MiFID*]

Per se eligible counterparties

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

...

(7) ~~an undertaking exempted from the application of *MiFID* under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive;~~
[deleted]

(8) a national government or its corresponding office, including a public body that deals with the public debt at national level;

(9) a central bank; and

...

[**Note:** first paragraph of article 2430(2) and first paragraph of article 2430(4) of *MiFID*]

...

Elective eligible counterparties

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

(1) the *client* is an undertaking and:

(a) is a *per se professional client* (except for a *client* that is only a

per se professional client because it is an institutional investor under COBS 3.5.2R(5)) and, ~~in relation to business other than MiFID or equivalent third country business:~~

- (i) ...
- (ii) meets the criteria in the *rule* on meeting two quantitative tests (COBS 3.5.2R(3)(b)); ~~or~~ and

(b) ~~requests such categorisation and is an elective professional client, but only in respect of the services or transactions for which it could be treated as a professional client; and~~

- (2) ~~the firm has, in relation to MiFID or equivalent third country business, obtained express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty~~ the firm adheres to the procedure set out at COBS 3.6.4BEU.

...

3.6.4A EU Article 71(1) of the MiFID Org Regulation explains which sorts of *per se professional clients* may be treated as *elective eligible counterparties*.

71 (1) In addition to the categories which are explicitly set out in Article 30(2) of Directive 2014/65/EU, Member States may recognise as eligible counterparty, in accordance with Article 30(3) of that Directive, an undertaking falling within a category of clients who are to be considered professional clients in accordance with paragraphs 1, 2 and 3 of Section I of Annex II to that Directive.

3.6.4B EU 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 Article 30(3) of Directive 2014/65/EU, 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 (1) COBS 3.6.4AEU and COBS 3.6.4BEU apply in relation to *equivalent third country business*.

- (2) COBS 3.6.4AEU and COBS 3.6.4BEU do not apply in relation to any other business that is not *MiFID business*.

...

3.6.6 R ...

[**Note:** second paragraph of article 2430(3) of *MiFID*]

Client and firm located in different jurisdictions

3.6.7 R ...

[**Note:** first paragraph of article 2430(3) of *MiFID*]

3.7 Providing clients with a higher level of protection

3.7.1 R ...

[**Note:** second paragraph of article 24 30(2) of, and second paragraph of section I of annex II to, *MiFID* and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.2 G ...

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

3.7.3 R ~~A firm may, either on its own initiative or at the request of the client concerned:~~

(1) ~~treat as a professional client or a retail client a client that might otherwise be categorised as a per se eligible counterparty;~~

(2) ~~treat as a retail client a client that might otherwise be categorised as a per se professional client;~~

~~and if it does so, the client will be re-categorised accordingly. Where applicable, this re-categorisation is subject to the requirement for a written agreement in COBS 3.7.5R. [deleted]~~

[**Note:** second paragraph of article 24(2) of, and second paragraph of section I of annex II to, *MiFID* and article 28(3) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.3A EU 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 Article 30(2) of Directive 2014/65/EU;
- (b) a retail client where that client that is considered a professional client pursuant to Section I of Annex II to Directive 2014/65/EU.

3.7.3B EU 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 the second subparagraph of Article 30(2) of that Directive 2014/65/EU, an eligible counterparty requests treatment as a client whose business with an investment firm is subject to Articles 24, 25, 27 and 28 of that Directive, the request should be made in writing, and shall indicate whether the treatment as retail client or professional client refers to one or more investment services or transactions, or one or more types of transaction or product.
- (3) Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to Articles 24, 25, 27 and 28 of Directive 2014/65/EU, but does not expressly request treatment as a retail client, the firm shall treat that eligible counterparty as a professional client.
- (4) Where the eligible counterparty expressly requests treatment as a retail client, the investment firm shall treat the eligible counterparty as a retail client, applying the provisions in respect of requests of non-professional treatment specified in the second, third and fourth sub-paragraphs of Section I of Annex II to Directive 2014/65/EU.

3.7.4 R ~~If a *per se* eligible counterparty requests treatment as a client whose business with the firm is subject to conduct of business protections, but does not expressly request treatment as a retail client and the firm agrees to that request, the firm must treat that eligible counterparty as a professional client. [deleted]~~

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

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

counterparty for the purposes of the applicable conduct of business regime.

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

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

...

3.7.7 G ...

[**Note:** second paragraph of article ~~24~~30(2) of *MiFID*]

...

3.8 Policies, procedures and records

...

Records

3.8.2 R ...

[**Note:** article ~~51(3)~~16(6) of the ~~*MiFID implementing Directive*~~ *MiFID*]

...

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*;

...

- (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*.

...

4.1.4 G (1) In *COBS 4.3.1R*, ~~*COBS 4.5.8R*~~ and ~~*COBS 4.7.1R*~~, the defined terms “*financial promotion*” and “*direct offer financial promotion*”

includes, in relation to ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business, all communications that are marketing communications within the meaning of *MiFID*.

- (2) In the case of ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business, certain requirements in this chapter are subject to an exemption for the communication of a *third party prospectus* in certain circumstances (see recital 73 of the *MiFID Org Regulation*). This has a similar effect to the exemption in article 70(1)(c) of the *Financial Promotion Order*, which is referred to in the definition of an *excluded communication*.

...

- 4.1.5 G (1) A *firm* communicating with an *eligible counterparty* should have regard to the application of *COBS* to *eligible counterparty business* (*COBS* 1 Annex 1 Part 1).
- (2) ~~This chapter does not apply in relation to communicating with an eligible counterparty other than the section on compensation information (see COBS 4.4) but elements of the requirements in PRIN may apply.~~
- 4.1.6 G Approving a *financial promotion* without *communicating* it (which includes causing it to be communicated) is not ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business. *Communicating* a *financial promotion* to a *person*, such as a *corporate finance contact* or a *venture capital contact*, who is not a *client* within the meaning of *COBS* 3.2.1R(1), *COBS* 3.2.1R(2) or *COBS* 3.2.1R(4) in respect of the ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business to which the *financial promotion* relates, is also not ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business. Further guidance on what amounts to *MiFID business* may be found in *PERG* 13.
- 4.1.7 G A reference in this chapter to ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business includes a reference to communications that occur before an agreement to perform services in relation to ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business.

[**Note:** see recital 82 16 to the ~~MiFID implementing Directive~~ MiFID Org Regulation]

...

4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

- 4.2.1 R (1) A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.
- (2) This *rule* applies in relation to:
- (a) a communication by the *firm* to a ~~*client*~~ *customer* in relation to *designated investment business* other than a *third party prospectus*;
- (aa) a communication to an *eligible counterparty* that is in relation to *MiFID* or equivalent *third country business*, other than a *third party prospectus*;
- ...
- (3) As part of complying with (1), a *firm* must take into account the nature of the *client*.
- [**Note:** article 19(2) of *MiFID*, recital 52 to the *MiFID implementing Directive* article 24(3) and article 30(1) of *MiFID* 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, ~~and~~ 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*.
- (2) ...
- [**Note:** article 30(1) of *MiFID* and recital 65 to the *MiFID Org Regulation*]

...

4.3 Financial promotions to be identifiable as such

- 4.3.1 R (1) ...
- [**Note:** article ~~19(2)~~ 24(3) of *MiFID* and article 77 of the *UCITS Directive*]
- (2) If a *financial promotion* relates to a *firm's* ~~*MiFID* or equivalent *third country business*~~ *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*.
- ...

...

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*;²
- 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) ~~If a communication relates to a firm's MiFID or equivalent third country business, this section does not apply.~~ This section does not apply to a firm communicating in relation to its MiFID, equivalent third country or optional exemption business.
- (a) ~~to the extent that it is a third party prospectus;~~
 - (b) ~~if it is image advertising.~~
- (3) ~~If a communication relates to a firm's business that is not MiFID or equivalent third country business, this~~ This section does not apply in relation to a communication:

...

General rule

- 4.5.2 R A *firm* must ensure that information:
- (1) includes the name of the *firm*;
 - (2) is accurate and ~~in particular does not emphasise~~ always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks;
 - (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; ~~and~~
 - (4) does not disguise, diminish or obscure important items, statements or warnings;
 - (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.

~~[Note: article 27(2) of the MiFID implementing Directive]~~

...

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, unfair or misleading.

Comparative information

4.5.6 R (1) If information compares *relevant business, relevant investments*, or persons who carry on *relevant business*, a *firm* must ensure that:

(a) the comparison is meaningful and presented in a fair and balanced way; ~~and~~

(b) ~~in relation to MiFID or equivalent third country business;~~

(i) ~~the sources of the information used for the comparison are specified; and~~

(ii) ~~the key facts and assumptions used to make the comparison are included.~~

(2) ~~In this rule, in relation to MiFID or equivalent third country business, ancillary services are to be regarded as relevant business.~~

~~[Note: article 27(3) of the MiFID implementing Directive]~~

Referring to tax

4.5.7 R (1) ...

~~[Note: article 27(7) of the MiFID implementing Directive]~~

(2) This *rule* applies in relation to ~~MiFID or equivalent third country business or, otherwise, to a financial promotion. However, it does not apply to a financial promotion~~ except to the extent that it relates to:

(a) ~~[deleted]~~

- (b) a *pure protection contract* that is a *long-term care insurance contract*.

Consistent financial promotions

- 4.5.8 R (1) A *firm* must ensure that information contained in a *financial promotion* is consistent with any information the *firm* provides to a *retail client* in the course of carrying on *designated investment business* ~~or, in the case of *MiFID* or equivalent third country business, ancillary services.~~

~~[Note: article 29(7) of the *MiFID* implementing Directive]~~

- (2) This *rule* does not apply to a *financial promotion* to the extent that it relates to:

- (a) ~~{deleted}~~
- (b) a *pure protection contract* that is a *long-term care insurance contract*.

...

After COBS 4.5 (Communicating with retail clients (non-MiFID provisions)) insert the following new section. All the text is new and is not underlined.

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 “EU” 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 “EU” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

General requirements

- 4.5A.3 EU 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 EU 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 EU 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 *MiFID Org Regulation*]

Consistent financial promotions

- 4.5A.9 EU 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 *MiFID Org Regulation*]

Past performance

- 4.5A.10 EU 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:
- (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 that of the Member State in which the retail client or potential retail client is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- (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 *MiFID Org Regulation*]

- 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 *periodic statement* in relation to *managing investments* that is sent in accordance with the *rules* 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 EU 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:
- (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;

- (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;
- (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.12EU, the conditions referred to in article 44(5)(b) can be found reproduced in *COBS* 4.5A.10EU.

Future performance

- 4.5A.14 EU 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.14EU. 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 EU 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*]

Amend the following as shown.

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) ~~the provision of information in relation to its *MiFID* or equivalent third country business; [deleted]~~
 - (b) the communication or approval of a *financial promotion*;₂
 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) ~~If a communication relates to a *firm's MiFID* or equivalent third country business, this section does not apply: This section does not apply to a *firm* communicating in relation to its *MiFID*, equivalent third country or optional exemption business~~
- (a) ~~to the extent that the communication is a *third party prospectus*;~~
 - (b) ~~if it is *image advertising*.~~
- (3) ~~If a communication relates to a *firm's* business that is not *MiFID* or equivalent third country business, this This section does not apply in relation to a communication:~~
- ...
- (d) to the extent that it relates to a *deposit* that is not a *structured deposit* (see also COBS 4.1.1R(3));
- ...

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:
- ...
- (2) the information includes appropriate performance information which covers ~~at least the immediately~~ 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 ~~if~~ (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 ~~and show~~ complete 12-month periods;

...

~~[Note: article 27(4) of the MiFID implementing Directive]~~

...

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:

...

(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 4.6.2R) are complied with; and

...

~~[Note: article 27(5) of the MiFID implementing Directive]~~

Future performance

4.6.7 R (1) A *firm* must ensure that information that contains an indication of future performance of *relevant business*, a *relevant investment*, a *structured deposit* or a financial index, satisfies the following conditions:

...

(c) ~~it discloses the effect of commissions, fees or other charges if~~ where the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed; ~~and~~

(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) ...

- (2) ~~Other than in relation to MiFID or equivalent third country business, this~~ 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.

~~[Note: article 27(6) of the MiFID implementing Directive]~~

...

4.7 Direct offer financial promotions

Application

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

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

- 4.7.-1A EU 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 “EU” for third country investment firms and MiFID optional exemption firms

- 4.7.-1B R Provisions in this section marked “EU” apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).
- 4.7.-1C G The effect of *GEN 2.2.22AR* is that provisions in this section marked “EU” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.
- 4.7.-1D G For the purposes of *COBS 4.7.-1AEU*, 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) ~~such of~~ the information referred to in the *rules* on information disclosure (*COBS 6.1.4R*, *COBS 6.1.6R*, *COBS 6.1.7R*, *COBS 6.1.9R*, *COBS 14.3.2R*, *COBS 14.3.3R*, *COBS 14.3.4R* and *COBS 14.3.5R*) as is relevant to that offer or invitation; and
- ~~[Note: article 29(8) of the *MiFID implementing Directive*, the *rules* listed implement Articles 30 to 33 of the *MiFID implementing Directive*]~~
- (b) ~~if it does not relate to *MiFID* or *equivalent third country business*~~, additional appropriate information about the *relevant business* and *relevant investments* so that the *client* is reasonably able to understand the nature and risks of the *relevant business* and *relevant investments* and consequently to take investment decisions on an informed basis.
- (2) ...
- (3) ~~If This section does not apply in relation to a marketing communication that relates to a firm’s *MiFID* or *equivalent third country business*, this section does not apply: *MiFID*, *equivalent*~~

third country or optional exemption business

- (a) ~~to the extent that it is a *third party prospectus*;~~
- (b) ~~if it is *image advertising*.~~
- (4) ~~If a communication relates to a *firm's business that is not MiFID or equivalent third country business*, this This section does not apply in relation to a communication:~~
 - ...
- (5) ~~In this rule, in relation to *MiFID or equivalent third country business*, ancillary services are to be regarded as *relevant business*.~~
[deleted]

Guidance

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

...

Warrants and derivatives

- 4.7.6 R (1) A *firm* must not *communicate* or *approve* a *direct offer financial promotion*:
- ...
 - (c) where the *firm* will not itself be required to comply with the *rules* on appropriateness (see *COBS 10 and 10A*);
 - ...

...

Non-readily realisable securities

- 4.7.7 R ...
- (3) The second condition is that the *firm* itself or the *person* who will *arrange* or *deal* in relation to the *non-readily realisable security* will comply with the *rules* on appropriateness (see *COBS 10 and 10A*) or equivalent requirements for any application or order that the *person* is aware, or ought reasonably to be aware, is in response to the *direct offer financial promotion*.
- 4.7.8 R A *firm* may *communicate* or *approve* a *direct-offer financial promotion* relating to a *non-readily realisable security* 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

...

...

4.10 Systems and controls and approving and communicating financial promotions

...

Approving financial promotions

...

4.10.3 G ...

- (3) *Approving a financial promotion for communication by an unauthorised person is not ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business.*

...

Relying on another firm's confirmation of compliance

4.10.10 R ...

- (2) This rule does not apply in relation to ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business.

4.11 Record keeping: financial promotion

4.11.1 R ...

- (4) If a communication relates to a *firm's* ~~MiFID or equivalent third country business~~ MiFID, equivalent third country or optional exemption business, this section does not apply:

...

...

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

- 4.11.1A 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.

...

4.12 Restrictions on the promotion of non-mainstream pooled investments

...

Advice and preliminary assessment of suitability

- 4.12.5 G (1) Where a *firm* communicates any promotion of a *non-mainstream pooled 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) ...
- (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-mainstream pooled investment* being promoted, in which case the requirements in *COBS 9 or 9A* apply (*as applicable*). However, it requires that the *firm* ~~take~~ takes reasonable steps to acquaint itself with the *client's* profile and objectives in order to ascertain whether the *non-mainstream pooled investment* under contemplation is likely to be suitable for that *client*. The *firm* should not promote the *non-mainstream pooled investment* to the *client* if it does not consider it likely to be suitable for that *client* following such preliminary assessment.

...

6 Information about the firm, its services and remuneration

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

Application

- 6.1.1 R (1) This section applies to a *firm* that carries on *designated investment business, other than MiFID, equivalent third country or optional exemption business*, for:
- (a) ~~a retail client; and~~
 - (b) ~~in the case of MiFID or equivalent third country business, a client.~~
- (2) ~~If expressly provided, this section also applies to ancillary services not covered by (1), but only in the course of MiFID or equivalent third country business carried on with or for a client. [deleted]~~

...

Information about a firm and its services

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

...

- (2) ~~in the case of MiFID or equivalent third country business, the languages in which the client may communicate with the firm, and receive documents and other information from the firm; [deleted]~~

...

- (5) ~~in the case of MiFID or equivalent third country business, the contact address of the competent authority that has authorised the firm; [deleted]~~

- (6) ~~if the firm is acting through an appointed representative or, where applicable, a tied agent, a statement of this fact specifying the EEA State in which that appointed representative or tied agent is registered;~~

...

~~[Note: article 30(1) of the MiFID implementing Directive]~~

...

- 6.1.6 R ...
- (2) If a *firm* proposes to *manage investments* for a ~~retail~~ *client*, the *firm* must provide the *client* with such of the following information as is applicable:

...

~~[Note: articles 30(2) and (3) of the MiFID implementing Directive]~~

Information concerning safeguarding of designated investments belonging to clients and client money

- 6.1.7 R (1) A *firm* that holds *designated investments* or *client money* for a ~~*retail*~~ *client* subject to the *custody chapter* or the *client money chapter* must provide that *client* with the following information:
- ...
- (b) if applicable, that the *designated investments* belonging to the ~~*retail*~~ *client* may be held in an omnibus account by a third party and a prominent warning of the resulting risks;
- ...
- (2) A *firm* that holds *designated investments* or *client money* for a ~~*retail*~~ *client* must inform the *client*:
- ...
- (3) A *firm* within (1) must also, before entering into *securities financing transactions* in relation to *designated investments* held by it on behalf of a ~~*retail*~~ *client*, or before otherwise using such *designated investments* for its own account or the account of another *client*, in good time before the use of those *designated investments* provide the *client*, in a *durable medium*, with clear, full and accurate information on the obligations and responsibilities of the *firm* with respect to the use of those *designated investments*, including the terms for their restitution, and on the risks involved.
- (4) ~~A *firm* within (1) that holds *client designated investments* or *client money* for a *professional client* must provide that *client* with the information in paragraphs (1)(d) and (2)(a) and (b). [deleted]~~
- ~~[Note: articles 29(3), 30(1)(g) and 32 of the *MiFID implementing Directive*]~~

...

Information about costs and associated charges

- 6.1.9 R A *firm* must provide a ~~*retail*~~ *client* with information on costs and associated charges including, if applicable:
- (1) the total price to be paid by the *client* in connection with the *designated investment* or the *designated investment business* ~~or *ancillary services*~~, 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;

...

~~[Note: article 33 of the MiFID implementing Directive]~~

...

Timing of disclosure

6.1.11 R (1) A *firm* must provide a *client* with the information required by this section in good time before the provision of *designated investment business* ~~or ancillary services~~ unless otherwise provided by this *rule*.

(2) A *firm* may instead provide that information immediately after starting to provide *designated investment business* ~~or ancillary services~~ if:

...

(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*.

~~[Note: article 29(2), 29(3) and 29(5) of the MiFID implementing Directive]~~

...

Medium of disclosure

6.1.13 R ...

~~[Note: article 29(4) of the MiFID implementing Directive]~~

Keeping the client up to date

6.1.14 R ...

~~[Note: article 29(6) of the MiFID implementing Directive]~~

Existing clients

6.1.15 G ...

~~[Note: recital 50 to the MiFID implementing Directive]~~

...

Compensation information

6.1.16 R (1) A *firm* ~~carrying on MiFID business~~ must make available to a *client*, who has used or intends to use ~~those~~ the *firm's* services, information necessary for the identification of the *compensation scheme* or any

other investor-compensation scheme of which the *firm* is a member (including, if relevant, membership through a *branch*) or any alternative arrangement provided for in accordance with the *Investor Compensation Directive*.

...

...

After COBS 6.1 (Information about the firm and compensation information (non-MiFID provisions)) insert the following new section. All the text is new and is not underlined.

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

6.1ZA.1 Application

6.1ZA.1.1 R (1) Subject to (2), this section applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

(2) *COBS 6.1ZA.2.12R* does not apply to a *firm* in respect of its *MiFID optional exemption business*.

6.1ZA.1.2 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 “EU” for third country investment firms and MiFID optional exemption firms

6.1ZA.1.3 R Provisions in this section marked “EU” apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).

6.1ZA.1.3 G The effect of *GEN 2.2.22AR* is that provisions in this section marked “EU” 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. See https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf]

6.1ZA.2 Information about a firm and its services

6.1ZA.2.1 EU 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 specifying the Member State in which that agent is registered;
- (f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with Article 25(6) of Directive 2014/65/EU;
- (g) where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a Member State;
- (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.2.2 G Reference in *COBS* 6.1ZA.2.1EU to “Article 25(6) of Directive 2014/65/EU” is to the requirements in *COBS* 16A.2.1R.
- 6.1ZA.2.3 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.

Information about a firm's portfolio management service

- 6.1ZA.2.4 EU 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 financial instruments belonging to clients and client money

- 6.1ZA.2.5 EU 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 a Member State 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.2.6 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).

Information about costs and associated charges

- 6.1ZA.2.7 R *COBS 2.2A.2R* requires a *firm* to provide a *client* with information about all costs and related charges. That information must include:

- (1) information relating to both *investment services* and *ancillary services*;
- (2) where relevant, the cost of any *investment advice*;
- (3) the cost of the *financial instrument* recommended or marketed to the *client*;
- (4) information on how the *client* may pay; and
- (5) details of any third party payments.

[**Note:** article 24(4)(c) of *MiFID*]

- 6.1ZA.2.8 R
- (1) A *firm* must aggregate the information about costs and charges required by *COBS 2.2A.2R* and *COBS 6.1ZA.2.7R*, 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.2.7R* 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*]

- 6.1ZA.2.9 R
- (1) A *firm* must provide the information required by *COBS 6.1ZA.2.7R* and *COBS 6.1ZA.2.8R* 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*]

- 6.1ZA.2.1 EU
0
- 50(1) For the purposes of providing information to clients on all costs and charges pursuant to Article 24(4) of Directive 2014/65/EU, investment firms shall comply with the detailed requirements in paragraphs 2 to 10.
- Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or

portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.

Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.

- 50(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. Investment 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, in accordance with relevant Union legislation.

- 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 in accordance with relevant Union legislation 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.2.1 G The *rules* on inducements in *COBS 2.3A* may also require a *firm* to disclose
1 information to a *client* in relation to the benefits provided to a *firm*.

Information about costs and charges of different services or products

- 6.1ZA.2.1 R (1) This *rule* applies to a *firm* that offers an *investment service* with
2 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*]

Timing of disclosure

- 6.1ZA.2.1 EU 46(2) Investment firms shall, in good time before the provision of
3 investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

[**Note:** article 46(2) of the *MiFID Org Regulation*]

- 6.1ZA.2.1 G The following provisions of *COBS* reproduce the information requirements
4 contained in Articles 47 to 50 of the *MiFID Org Regulation*: *COBS 6.1ZA.2.1EU*, *COBS 6.1ZA.2.4EU*, *COBS 6.1ZA.2.5EU*, *COBS 6.1ZA.2.10EU*, and *COBS 14.3A.5EU*.

Medium of disclosure

- 6.1ZA.2.1 EU 46(3) The information referred to in paragraphs 1 and 2 shall be provided
5 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*]

Keeping the client up to date

- | | | | |
|----------------|----|-------|---|
| 6.1ZA.2.1
6 | EU | 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*]

Existing clients

- | | | | |
|----------------|---|-----|---|
| 6.1ZA.2.1
7 | G | (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. |
|----------------|---|-----|---|

[**Note:** recital 69 to the *MiFID Org Regulation*]

- | | | | |
|--|--|-----|---|
| | | (2) | 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. |
|--|--|-----|---|

Compensation information

- | | | | |
|----------------|---|-----|---|
| 6.1ZA.2.1
8 | R | (1) | A <i>firm</i> must make available to a <i>client</i> , who has used or intends to use a <i>firm's</i> services, information necessary for the identification of the <i>compensation scheme</i> or any other investor-compensation scheme of which the <i>firm</i> is a member (including, if relevant, membership through a <i>branch</i>) or any alternative arrangement provided for in accordance with the <i>Investor Compensation Directive</i> . |
| | | (2) | The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the <i>EEA State</i> pursuant to article 2(3) of the <i>Investor Compensation Directive</i> . |
| | | (3) | A <i>firm</i> must provide, on the <i>client's</i> request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation. |
| | | (4) | The information provided for in this <i>rule</i> must be made available in a <i>durable medium</i> or via a website if the <i>website conditions</i> are satisfied in the official language or languages of the <i>EEA State</i> . |

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

Record keeping: information about the firm and compensation information

6.1ZA.2.1 G *Firms* are reminded of the general record-keeping requirements in SYSC
9 9.

Amend the following as shown.

6.1A Adviser charging and remuneration

...

Requirement to be paid through adviser charges

6.1A.4 R Except as specified in *COBS* 6.1A.4AR, *COBS* 6.1A.4ABR, *COBS*
6.1A.4ACG, ~~and~~ *COBS* 6.1A.4BR and *COBS* 6.1A.5AR(1), a *firm* must:

...

...

6.1A.5 G ...

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) *COBS* 6.1A.5AR(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 of how the conditions in (A) to (C) were satisfied for each such trial period.

6.1A.5B G 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* in relation to *MiFID*, *equivalent third country* or *optional exemption business*. For the purposes of *COBS 2.3A.19R(2)* and *COBS 6.1A.5AR(2)*, those conditions are also likely to be relevant to *firms* considering whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service to a *client* in relation to the restriction in *COBS 6.1A.4R(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*]

...

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

...

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 relation to a *personal recommendation* (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 ...

...

Requirements on firms facilitating the payment of adviser charges

...

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 on providing credit and other benefits to firms that advise on retail investment products or P2P agreements (COBS 2.3.12E and, COBS 2.3.12AG, COBS 2.3A.27E and COBS 2.3A.28G).*

...

6.1F Using a platform service for arranging and advising

Client's best interests rule and using a platform service

...

6.1F.2 G *When selecting and using a platform service for the purpose described in COBS 6.1F.1R, a firm should be mindful of its duty to comply with the client's best interests rule and the ~~rule~~ rules on inducements (COBS 2.3.1R, COBS 2.3A.5R and COBS 2.3A.15R).*

...

COBS 6.2A (Describing advice services) is deleted in its entirety. The deleted text is not shown.

6.2A Describing advice services [deleted]

After the deleted COBS 6.2A insert the following new section COBS 6.2B. All the text is new and is not underlined.

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.

Introduction

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

Interpretation of rules and guidance: relevant products

- 6.2B.6 R 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*]

Interpretation of EU provisions: MiFID business

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

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

Interpretation of EU provisions: non-MiFID business

- 6.2B.9 R In relation to business that is not *MiFID business*, a *firm* must comply with provisions in this section marked “EU” 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.32EU) not to give undue prominence to their *independent advice* services;
- (b) the requirement in article 52(4) of the *MiFID Org Regulation* (reproduced in COBS 6.2B.36EU) to distinguish the range of *financial instruments* issued or provided by entities not being closely linked with the *firm*; and
- (c) the requirement in article 53(3)(c) of the *MiFID Org Regulation* (reproduced in COBS 6.2B.29EU) 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 EU 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.15EU* means that a *firm* providing *independent advice* need not provide advice on all relevant products. A *firm* may market itself as, for example, an independent stockbroker that provides *independent advice* on *shares* only. A *firm* might alternatively market itself on the basis of providing *independent advice* on a particular product market such as ethical and socially responsible investments. The requirements in *COBS 6.2B.15EU* 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.15EU;
 - (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 EU 53(1) Investment firms providing investment advice on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market in accordance with Article 24(7)(a) of Directive 2014/65/EU. 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.15EU*) 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.18EU*).
- 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 EU 53(3) An investment firm offering investment advice on both an independent basis and on a non-independent basis shall comply with the following obligations:

- (a) in good time before the provision of its services, the investment firm has informed its clients, in a durable medium, whether the advice will be independent or non-independent in accordance with Article 24(4)(a) of Directive 2014/65/EU 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 firms 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 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.31 G A *firm* that provides *basic advice* on *stakeholder products* may still use the facilities and stationery it uses for other business in accordance with the rule on basic advice on stakeholder products: other issues (COBS 9.6.17 R (2)).

6.2B.32 EU 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*]

Disclosing the nature of advice provided

6.2B.33 R (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 R (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*]

- 6.2B.35 EU 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.

[**Note:** article 52(1) of the *MiFID Org Regulation*]

- 6.2B.36 EU 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.
- 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.
- 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.

[**Note:** article 52(2), (3) and (4) of the *MiFID Org Regulation*]

Medium of disclosure

- 6.2B.37 G 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.

Additional oral disclosure for firms providing restricted advice

6.2B.38 R 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.

6.2B.39 G Examples of statements which would comply with *COBS* 6.2B.38R include:

- (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”.

Record keeping

6.2B.40 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.

Systems and controls

- 6.2B.41 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

...

Guidance on disclosure requirements for packaged products -

...

6.4.9 G The *rules* in this section build on the disclosure of fees, ~~commissions~~

commission and non-monetary benefits made under the ~~rule~~ rules on inducements (COBS 2.3.1R, COBS 2.3A.5R, COBS 2.3A.6R, COBS 2.3A.15R and COBS 2.3A.16R).

Amend the following as shown.

8 Client agreements (non-MiFID provisions)

8.1 Client agreements: non-MiFID designated investment business

~~Providing a client agreement~~ Application

- 8.1.1 R (1) This chapter applies to a *firm* in relation to *designated investment business* carried on for:
- (a) ~~a retail client; and~~
 - (b) ~~in relation to MiFID or equivalent third country business, a professional client.~~
- (2) ~~If expressly provided, this chapter also applies to a firm in relation to other ancillary services carried on for a client, but only in relation to its MiFID or equivalent third country business. [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) 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.

Providing a client agreement

- 8.1.2 R ...

~~[Note: article 39 of the MiFID implementing Directive]~~

- 8.1.3 R (1) A *firm* must, in good time before a ~~retail~~ *client* is bound by any agreement relating to *designated investment business* ~~or ancillary services~~ or before the provision of those services, whichever is the earlier, provide that *client* with:
- (a) the terms of any such agreement; and
 - (b) the information about the *firm* and its services relating to that agreement or to those services required by *COBS 6.1.4R*, including information on communications, conflicts of

interest and authorised status.

...

(4) ...

~~[Note: article 29(1), (4), (5) and (6) of the MiFID implementing Directive]~~

Record keeping: client agreements

- 8.1.4 R (1) A *firm* must establish a record that includes the document or documents agreed between it and a *client* which set out the rights and obligations of the parties, and the other terms on which it will provide services to the *client*.
- (2) The record must be maintained for ~~at least whichever is the longer of:~~
- (a) ~~5 years; or~~ [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 19(7) of MiFID and article 51(1) of the MiFID implementing Directive. See article 51(3) of the MiFID implementing Directive]~~

8.1.5 R ...

~~[Note: article 19(7) of MiFID and article 39 of the MiFID implementing Directive]~~

- 8.1.6 G When considering its approach to client agreements, a *firm* should be aware of other obligations in the *Handbook* which may be relevant. These include the *fair, clear and not misleading rule* ~~and~~, the *rules* on disclosure of information to a *client* before providing services, ~~and~~ the *rules* on distance communications (principally in *COBS* 2.2, 5, 6 and 13) and the provisions on record keeping (principally in *SYSC* 9).

After COBS 8 (Client agreements (non-MiFID provisions)) insert the following new chapter COBS 8A (Client agreements (MiFID provisions)). All the text is new and is not underlined.

8A Client agreements (MiFID provisions)

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

Application and purpose provisions

- 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 “EU” 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*]

Providing a client agreement: retail and professional clients

- 8A.1.4 EU 58 Investment firms providing any investment service or the ancillary service referred to in Section B(1) of Annex I to Directive 2014/65/EC 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.
- The written agreement shall set out the essential rights and obligations of the parties, and shall include the following:
- (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 Section B(1) of Annex I to Directive 2014/65/EC to be provided, including where applicable the role of the firm with respect to corporate actions relating to client instruments and the terms on which securities financing transactions involving client securities will generate a return for the client.

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

General requirement for information to clients

- 8A.1.5 EU 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 EU 46(2) Investment firms shall, 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.

[**Note:** article 46(2) of the *MiFID Org Regulation*]

- 8A.1.7 EU 46(3) The information referred to in paragraphs 1 and 2 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.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 EU 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*).

Amend the following as shown.

9 Suitability (including basic advice) (non-MiFID provisions)

9.1 Application and purpose provisions

~~**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on certain aspects of the MiFID suitability requirements. See <http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-suitability-requirements> https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf.~~

~~Making personal recommendations 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.*

9.1.1A G COBS 9A contains suitability requirements which apply in respect of a firm's MiFID, equivalent third country or optional exemption business involving the provision of investment advice or portfolio management.

...

Managing investments P2P agreements

9.1.3 R ~~This chapter applies to a firm which manages investments. [deleted]~~

...

~~Business which is not MiFID or equivalent third country business~~

- 9.1.4 R ~~In respect of the business of a firm which is not MiFID or equivalent third country business, this chapter only applies if:~~
- (1) ~~the client is a retail client; or~~
 - (2) ~~the firm is managing the assets of an occupational pension scheme, stakeholder pension scheme or personal pension scheme. [deleted]~~

Life policies for professional clients

9.1.5 R If the *firm* makes a *personal recommendation to a professional client* to take out a *life policy*, this chapter applies, but only those rules which implement the requirements of the Insurance Mediation Directive.

...

9.2 Assessing suitability

Assessing suitability: the obligations

9.2.1 R ...

[~~Note: article 19(4) of MiFID, article 12(2) of the Insurance Mediation Directive~~]

9.2.2 R ...
~~[Note: articles 35(1), (3) and (4) of the *MiFID implementing Directive*]~~

9.2.3 R ...
~~[Note: article 37(1) of the *MiFID implementing Directive*]~~

9.2.4 R ...
~~[Note: article 37(2) of the *MiFID implementing Directive*]~~

Reliance on information

9.2.5 R ...
~~[Note: article 37(3) of the *MiFID implementing Directive*]~~

Insufficient information

9.2.6 R ...
~~[Note: article 35(5) of the *MiFID implementing Directive*]~~

9.2.7 G Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *client's best interests rule* and any obligation it may have under the *rules* relating to appropriateness when providing the different service (see *COBS 10, Appropriateness (for non-advised services)* and *COBS 10A, Appropriateness (for non-advised services) (MiFID provisions)*).

Professional clients (~~MiFID and equivalent third country business~~)

9.2.8 R (1) ~~If a *firm* makes a *personal recommendation* or manages investments for a *professional client* in the course of *MiFID* or *equivalent third country business*, it is entitled to assume that, in relation to the products, transactions and services for which the *professional client* is so classified, the *client* has the necessary level of experience and knowledge for the purposes of *COBS 9.2.2R (1)(e)*.~~

(2) ~~If the service consists of making a *personal recommendation* to a *per se professional client*, the *firm* is entitled to assume that the *client* is able financially to bear any related investment risks consistent with his investment objectives for the purposes of *COBS 9.2.2R (1)(b)*. ~~[deleted]~~~~

~~[Note: article 35(2) of the MiFID implementing Directive]~~

...

9.3 Guidance on assessing suitability

9.3.1 G ...

~~[Note: recital 57 to the MiFID implementing Directive]~~ [deleted]

Churning and switching

9.3.2 G ...

~~[Note: recital 57 to the MiFID implementing Directive]~~ [deleted]

...

9.4 Suitability reports

Providing a suitability report

9.4.1 R ...

~~[Note: article 19(8) of MiFID]~~

...

9.5 Record keeping and retention periods for suitability records

...

9.5.2 R A *firm* must retain its records relating to suitability for a minimum of the following periods:

...

(2) if relating to a *life policy, personal pension scheme or stakeholder pension scheme*, five years; and

(3) ~~if relating to MiFID or equivalent third country business, five years; and~~ [deleted]

...

9.5.3 R A *firm* need not retain its records relating to suitability if

(1) the *client* does not proceed with the recommendation; ~~and~~

(2) ~~they do not relate to MiFID or equivalent third country business.~~

...

After COBS 9 insert the following new chapter COBS 9A Suitability (MiFID provisions). The text is all new and is not underlined.

9A Suitability (MiFID 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. See https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf.

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*.

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

- 9A.1.2 R Provisions in this chapter marked “EU” apply in relation to *MiFID optional exemption business* as if they were *rules*.

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

9A.2 Assessing suitability

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* 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) recommend *investment services* and *financial instruments*, or take the decision to trade, which is 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*]

- 9A.2.2 G *Firms* should undertake a suitability assessment not only when making a *personal recommendation* to buy a *financial instrument* 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*]

Assessing the extent of the information required

- 9A.2.4 EU 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*]

Professional clients

9A.2.5 EU 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 Section 1 of Annex II to Directive 2014/65/EU, the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

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

Obtaining information about knowledge and experience

9A.2.6 EU 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*]

Obtaining information about a client's financial situation

9A.2.7 EU 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*]

Obtaining information about a client's investment objectives

9A.2.8 EU 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*]

Reliability of information

9A.2.9	EU	54(7)	<p>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:</p> <ul style="list-style-type: none"> (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.
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[**Note:** article 54(7) of the *MiFID Org Regulation*]

Maintaining adequate and up-to-date information

9A.2.10	EU	54(7)	<p>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.</p>
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[**Note:** article 54(7) of the *MiFID Org Regulation*]

Discouraging the provision of information

9A.2.11	EU	55(2)	<p>An investment firm shall not discourage a client or potential client from providing information required for the purposes of Article 25(2) and (3) of Directive 2014/65/EU.</p>
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[**Note:** article 55(2) of the *MiFID Org Regulation*]

Reliance on information

- 9A.2.12 EU 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*]

Insufficient information

- 9A.2.13 EU 54(8) Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under Article 25(2) of Directive 2014/65/EU, 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.2.14 G Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *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 provisions))).

Identifying the subject of a suitability assessment

- 9A.2.15 EU 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 Section 2 of Annex II to Directive 2014/65/EU 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*]

Bundled packages

- 9A.2.16 R Where a *firm* provides a *personal recommendation* recommending a package of services or products bundled pursuant to COBS 6.1ZA.2.12R, the *firm* must ensure that the overall bundled package is suitable for the *client*.

[**Note:** second paragraph of article 25(2) of *MiFID*]

- 9A.2.17 G When considering the suitability of a particular *financial instrument* 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

- 9A.2.18 EU 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.

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

Adequate policies and procedures

- 9A.2.19 EU 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

- 9A.2.20 EU 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*]

Guidance on assessing suitability

- 9A.2.21 G (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.
- (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*]

Investments subject to restrictions on retail distribution

- 9A.2.22 G (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *financial instruments*:
- (a) *non-mainstream pooled investments* are subject to a restriction on *financial promotions* (see section 238 of the *Act* and *COBS* 4.12);
- (b) *non-readily realisable securities* are subject to a restriction on *direct offer financial promotions* (see *COBS* 4.7);
- (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).
- (2) A *firm* should be satisfied that an exemption is available before recommending a *financial instrument* 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 a *financial instrument* 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 a *financial instrument* 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 *financial instruments* 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 the investment by the *firm* or a person connected to the *firm*. Nonetheless, if promotion of a *financial instrument* 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

9A.2.23	EU	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.
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[**Note:** second paragraph of article 54(1) of the *MiFID Org Regulation*]

9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability

9A.3.1	EU	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 Article 25(2) of Directive 2014/65/EU. 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.
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[**Note:** first paragraph of article 54(1) of the *MiFID Org Regulation*]

Suitability reports

- | | | | |
|--------|---|-----|--|
| 9A.3.2 | R | (1) | This <i>rule</i> applies in relation to <i>investment advice</i> given to a <i>retail client</i> . |
| | | (2) | When providing <i>investment advice</i> , a <i>firm</i> must, before the transaction is concluded, provide the <i>client</i> with a <i>suitability report</i> in a <i>durable medium</i> specifying the advice given and how that advice |

meets the preferences, objectives and other characteristics of the *client*.

- (3) Where the agreement to buy or sell a *financial instrument* 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 any such agreement, provided both the following conditions are met:
- (a) the *client* has consented to receiving the *suitability report* without undue delay after the conclusion of the transaction; and
 - (b) 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*]

Providing a suitability report

9A.3.3	EU	<p>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.</p> <p>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.</p> <p>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.</p>
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[**Note:** article 54(12) of the *MiFID Org 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

- 9A.3.6 R A *firm* must, 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* recommended to the *client*.

[**Note:** article 24(4)(a)(iii) of *MiFID*]

- 9A.3.7 G *COBS 9A.3.6R* supplements *COBS 2.2A.2R* (information disclosure before providing services (MiFID provisions)).

- 9A.3.8 EU 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 EU 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*]

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

- 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 recording-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 9 for its obligations in relation to record keeping.
- [Note: article 16(7) of MiFID]

Amend the following as shown.

10 **Appropriateness (for non-MiFID non-advised services) (non-MiFID provisions)**

10.1 **Application and purpose provisions**

- 10.1.1 R ~~This chapter applies to a *firm* which provides *investment services* in the course of *MiFID or equivalent third country business* other than making a *personal recommendation* and *managing investments*. [deleted]~~
- 10.1.2 R This chapter applies to a *firm* which *arranges or deals* in relation to a *non-readily realisable security, derivative* or a *warrant* with or for a *retail client*, other than in the course of *MiFID or equivalent third country business*, and the *firm* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*.
- 10.1.3 R ~~This chapter applies to a *firm* which assesses appropriateness on behalf of another *MiFID investment firm* so that the other *firm* may rely on the assessment under COBS 2.4.4R (Reliance on other investment firms: *MiFID and equivalent business*). [deleted]~~

Related rules

- 10.1.4 G A *firm* that is carrying on a *regulated activity* on a non-advised basis, whether or not the *rules* in this chapter apply to its activities, should also consider whether other *rules* in COBS apply. ~~For example, a *firm* carrying on *insurance mediation activity* in relation to a *life policy* that does not involve the provision of advice, should have regard to COBS 7 (Insurance mediation).~~

10.2 **Assessing appropriateness: the obligations**

- 10.2.1 R ...
- (2) When assessing appropriateness, a *firm*:
- (a) must determine whether the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded;
- (b) ~~may assume that a *professional client* has the necessary experience and knowledge in order to understand the risks involved in relation to those particular *investment services* or transactions, or types of transaction or product, for which the *client* is classified as a *professional client*.~~
- ~~[Note: article 19(5) of *MiFID* and article 36 of the *MiFID implementing Directive*]~~

- 10.2.2 R ...
- ~~[Note: article 37(1) of the *MiFID implementing Directive*]~~

- 10.2.3 R ...
- ~~[Note: article 37(2) of the *MiFID implementing Directive*]~~

Reliance on information

- 10.2.4 R ...
- ~~[Note: article 37(3) of the *MiFID implementing Directive*]~~

...

No duty to communicate firm's assessment of knowledge and experience

- 10.2.8 G If a *firm* is satisfied that the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in COBS 9 ~~on suitability~~. (Suitability (including basic advice) (non-MiFID provisions)).

10.3 Warning the client

- 10.3.1 R ...
- ~~[Note: article 19(5) of *MiFID*]~~

- 10.3.2 R ...

~~[Note: article 19(5) of MiFID]~~

...

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*;

...

(2) The *financial instruments* referred to in (1)(a) are:

- (a) ~~shares admitted to trading on a regulated market or an equivalent third country market (that is, one which is included in the list which is published by the European Commission and updated periodically); or [deleted]~~

...

- (c) ~~units in a scheme authorised under the UCITS directive; or [deleted]~~

- (d) other non-complex *financial instruments*.

(3) A *financial instrument* is non-complex if it satisfies the following criteria:

...

~~[Note: article 19(6) of MiFID and article 38 of the MiFID implementing Directive]~~

10.4.2 R If a *client* engages in a course of dealings involving a specific type of product or service through the services of a *firm*, the *firm* is not required to make a new assessment on the occasion of each separate transaction. A *firm* complies with the *rules* in this chapter provided that it makes the necessary appropriateness assessment before beginning that service.

~~[Note: recital 59 to the MiFID implementing Directive]~~

10.4.3 R ~~A *client* who has engaged in a course of dealings involving a specific type of product or service beginning before 1 November 2007 is presumed to have the necessary experience and knowledge in order to understand the risks involved in relation to that specific type of product or service. [deleted]~~

~~[Note: recital 59 of the MiFID implementing Directive]~~

10.5 Assessing appropriateness: guidance

The initiative of the client

- 10.5.1 G A service should be considered to be provided at the initiative of a *client* (see COBS 10.4.1R(1)(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.

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

- 10.5.2 G A service can be considered to be provided at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion or offer of *financial instruments 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*.

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

Personalised communications

- 10.5.3 G ...
- (2) Communications addressed to a *client* (such as, for example, an email, a telephone call or a letter), may or may not be personalised depending on the content.

...

~~Equivalent third country markets~~

- 10.5.4 G ~~[to insert the reference or hypertext link to the list of equivalent third country markets when available] [deleted]~~

~~[Note: article 19(6) of MiFID]~~

Independent valuation systems

- 10.5.5 G The circumstances in which valuation systems will be independent of the issuer (see COBS 10.4.1R(3)(b)) include where they are overseen by a depositary that is regulated as a provider of depositary services in a *EEA State*.

~~[Note: recital 61 to the MiFID implementing Directive]~~

10.6 When a firm need not assess appropriateness

...

- 10.6.2 G ~~A firm may not need to assess appropriateness if it is able to rely on a recommendation made by an investment firm (see COBS 2.4.5 G (Reliance on other investment firms: MiFID and equivalent business)). [deleted]~~

...

After COBS 10 (Appropriateness (for non-MiFID services) (non-MiFID provisions)) insert the following new chapter. All the text is new and is not underlined.

10A Appropriateness (for non-advised services) (MiFID 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. See [https://www.esma.europa.eu/sites/default/files/library/2015-1787_-_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf]

Application

- 10A.1.1 R This chapter applies to a *firm* which provides *investment services* in the course of *MiFID or equivalent third country business* other than making a *personal recommendation* or carrying 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)*.
- Effect of provisions marked EU
- 10A.1.3 R The effect of *GEN 2.2.22AR* is that provisions in this chapter marked “EU” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

10A.2 Assessing appropriateness: the obligations

- 10A.2.1 R When providing a service to which this chapter applies, 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*]

Bundled packages

- 10A.2.2 R Where a bundle of services or products is envisaged pursuant to *COBS* 6.1ZA.2.12R, the assessment made pursuant to *COBS* 10A.2.1R must consider whether the overall bundled package is appropriate.

[Note: article 25(3) of *MiFID*]

Assessing a client's knowledge and experience

- 10A.2.3 EU 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 Article 25(3) of Directive 2014/65/EU 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*]

Information regarding a client's knowledge and experience

- 10A.2.4 EU 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*]

Discouraging the provision of information

- 10A.2.5 EU 55(2) An investment firm shall not discourage a client or potential client) from providing information required for the purposes of Article 25(2) and (3) of Directive 2014/65/EU.

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

Reliance on information

- 10A.2.6 EU 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*]

Use of existing information

- 10A.2.7 G When assessing appropriateness, a *firm* may use information it already has in its possession.

Knowledge and experience

- 10A.2.8 G Depending on the circumstances, a *firm* may be satisfied that the *client's* knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a *firm* may infer knowledge from experience.

Increasing the client's understanding

- 10A.2.9 G If, before assessing appropriateness, a *firm* seeks to increase the *client's* level of understanding of a service or product by providing information to him, relevant considerations are likely to include the nature and complexity of the information and the *client's* existing level of understanding.

No duty to communicate firm's assessment of knowledge and experience

- 10A.2.10 G If a *firm* is satisfied that the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in COBS 9A (MiFID provisions)).

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*]

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*]

10.A.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.4 Assessing appropriateness: when it need not be done

10A.4.1 R (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if:

(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*; and

(iii) is provided at the initiative of the *client*;

(b) the *client* has been clearly informed (whether in a standardised format or not) that, in the provision of this service, the *firm* is not required to assess the appropriateness of the *financial instrument* or service 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
 - (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
 - (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*.
- (3) For the purposes of this *rule*, a third country market is considered to be equivalent to a *regulated market* if it is a market in relation to which the Commission has adopted an affirmative equivalence decision in accordance with the requirements in article 4(1)(c) of Directive 2003/71/EC and the condition in article 4(1)(d) of Directive 2003/71/EC is satisfied.

[Note: article 25(4) of *MIFID*]

[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. The guidelines can be found here:

[https://www.esma.europa.eu/sites/default/files/library/2015-1787_-_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf.]

Non-complex financial instruments

- 10A.4.2 EU 57 A financial instrument which is not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU shall be considered as non-complex for the purposes of Article 25(4)(a)(vi) of Directive 2014/65/EU if it satisfies the following criteria:
- (a) it does not fall within Article 4(1)(44)(c) of, or points (4) to (11) of Section C of Annex I to Directive 2014/65/EU;
 - (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.5 Assessing appropriateness: guidance

The initiative of the client

- 10A.5.1 G A service should be considered to be provided at the initiative of a *client* (see *COBS* 10A.4.1R(1)(a)(iii)), 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* or specific transaction.

[Note: recital 85 to *MIFID*]

- 10A.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 for, or offer of, *financial instruments* 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

- 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 When a firm need not assess appropriateness

- 10A.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 9A* (Suitability (MiFID, equivalent third country and optional exemption business)).
- 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)).

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 EU 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.7.2 G A *firm* should refer to SYSC 9 for its obligations in relation to record keeping. This requires records kept for the purposes of this chapter to be retained for a period of at least five years.

Amend the following as shown.

11 Dealing and managing

11.1 Application

...

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

~~Application to section on the use of dealing commission~~

- 11.1.3 R ~~The section on the use of dealing commission applies to a *firm* that acts as an *investment manager*.~~ [deleted]

...

- 11.1.5 G The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see *COBS 11.7* and *COBS 11.7A*) to the extent necessary to be compatible with European law. This means that the relevant section on personal account dealing also applies to passported

activities carried on by a *UK MiFID investment firm or a UK UCITS management company from a branch in another EEA State*, but does not apply to the *UK branch of an EEA MiFID investment firm* in relation to its *MiFID business* or of an *EEA UCITS management company* in relation to activities it is entitled to carry on in the *United Kingdom* under the *UCITS Directive*.

11.1.6 R The section on best execution (*COBS 11.2A*) does not apply to a *firm* when:
...

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 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 and an incoming EEA AIFM branch, 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 and an incoming EEA AIFM branch:

- (1) COBS 11.2.5G;
- (2) COBS 11.2.17G;
- (3) COBS 11.2.23AR;
- (4) COBS 11.2.24R;
- (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.

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 customer or client are to any fund for which the firm 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 UK AIFM of an unauthorised AIF which is a collective investment scheme, or a residual CIS operator, when a firm is required by the rules in this section to provide information to, or obtain consent from, a fund, 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.

11.2.-1 G In accordance with COBS 18.5.3R(3) and COBS 18.5A.9R, references to the service of portfolio management in this section are to be read as references to the management by a firm of financial instruments held for or within the fund.

Obligation to execute orders on terms most favourable to the client

11.2.1 R ...

~~[Note: article 21(1) of MiFID and article 25(2) first sentence of the UCITS implementing Directive]~~

[Note: The Committee of European Securities Regulators (CESR) has issued a Question and Answer paper on best execution under MiFID. This paper also incorporates the European Commission's responses to CESR's questions regarding the scope of the best execution obligations under MiFID. The paper can be found at:

http://www.esma.europa.eu/system/files/07_320.pdf

https://www.esma.europa.eu/sites/default/files/library/2015/11/07_320.pdf]

Execution of decisions by UCITS management companies to deal on behalf of the schemes they manage

11.2.1A R ~~A management company must, in relation to each UCITS scheme or EEA UCITS scheme it manages, act in the best interests of the scheme when executing decisions to deal on its behalf in the context of the management of its portfolio, and COBS 11.2.1R applies in relation to all such decisions.~~
[deleted]

~~[Note: article 25(1) of the UCITS implementing Directive]~~

Application of best execution obligation

11.2.2 G ...

~~[Note: recital 33 to MiFID]~~

11.2.3 G ~~Dealing on own account with *clients* by a *firm* should be considered as the execution of *client* orders, and therefore subject to the requirements under *MiFID*, in particular, those obligations in relation to best execution. [deleted]~~

~~[Note: first sentence of recital 69 to the MiFID implementing Directive]~~

11.2.4 G ...

~~[Note: second sentence of recital 69 to the MiFID implementing Directive]~~

11.2.5 G ...

~~[Note: recital 70 to the MiFID implementing Directive]~~

Management companies: execution and transmission of orders

11.2.5A G (1) ~~A *management company* should, for each *UCITS scheme* or *EEA UCITS scheme* it manages, act in the best interests of the *scheme* when directly executing orders to deal on its behalf or when transmitting those orders to third parties.~~

(2) ~~When executing orders on behalf of any such *scheme* it manages, a *management company* is expected to take all reasonable steps to obtain the best possible result for the *scheme* on a consistent basis, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order. [deleted]~~

~~[Note: recital (19) to the UCITS implementing Directive]~~

Best execution criteria

11.2.6 R When executing a *client* order, a *firm* must take into account the following criteria for determining the relative importance of the *execution factors*:

...

(3) the characteristics of *financial instruments* that are the subject of that order; and

(4) the characteristics of the *execution venues* to which that order can be directed; and .

- (5) ~~for a *management company*, the objectives, investment policy and risks specific to the *UCITS scheme* or *EEA UCITS scheme*, as indicated in its *prospectus* or *instrument constituting the fund*.~~
~~[deleted]~~

~~[Note: article 44(1) of the *MiFID implementing Directive* and article 25(2) second sentence of the *UCITS implementing Directive*]~~

Role of price

11.2.7 R ...

~~[Note: paragraph 1 of article 44(3) of the *MiFID implementing Directive*]~~

11.2.8 G ...

~~[Note: recital 67 to the *MiFID implementing Directive*]~~

11.2.9 G ...

Delivering best execution where there are competing execution venues

11.2.10 R ...

~~[Note: article 44(3) of paragraph 2 of the *MiFID implementing Directive*]~~

11.2.11 G ...

~~[Note: recital 71 to the *MiFID implementing Directive*]~~

11.2.12 R ...

~~[Note: article 44(4) of the *MiFID implementing Directive*]~~

11.2.13 G ...

~~[Note: recital 73 to the *MiFID implementing Directive*]~~

Requirement for order execution arrangements including an order execution policy

11.2.14 R ...

~~[Note: article 21(2) of *MiFID* and article 25(3) first paragraph of the *UCITS implementing Directive*]~~

11.2.15 R ...

~~[Note: paragraph 1 of article 21(3) of *MiFID*]~~

11.2.16 G ...

~~[Note: recital 66 to the MiFID implementing Directive]~~

11.2.17 G ...

~~[Note: recital 72 to the MiFID implementing Directive]~~

11.2.18 G ...

~~[Note: recital 74 to the MiFID implementing Directive]~~

Following specific instructions from a client

11.2.19 R (1) ...

~~[Note: article 21(1) of MiFID]~~

(2) ...

~~[Note: article 44(2) of the MiFID implementing Directive]~~

11.2.20 G ...

~~[Note: recital 68 to the MiFID implementing Directive]~~

11.2.21 G ...

~~[Note: recital 68 to the MiFID implementing Directive]~~

Information about the order execution policy

11.2.22 R ...

~~[Note: paragraph 2 of article 21(3) of MiFID]~~

11.2.23 R ...

~~[Note: article 46(2) of the MiFID implementing Directive]~~

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

~~[Note: article 25(3) second part of the second paragraph of the UCITS implementing Directive]~~

11.2.24 R ...

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

Client consent to execution policy and execution of orders outside a regulated market or MTF

- 11.2.25 R (1) ~~A firm (other than a management company providing collective portfolio management services for a UCITS scheme or an EEA UCITS scheme) must obtain the prior consent of its clients to the execution policy.~~
- (2) ~~In the case of a management company providing collective portfolio management services for an ICVC that is a UCITS scheme, or for an EEA UCITS scheme that is structured as an investment company, the management company must obtain the prior consent of the ICVC or investment company to the execution policy. [deleted]~~
- (3) ~~In the case of a management company that is the ACD of an ICVC that is a UCITS scheme, (2) does not apply where the ACD is the sole director of the ICVC. [deleted]~~

~~[Note: paragraph 2 of article 21(3) of MiFID and article 25(3) first part of the second paragraph of the UCITS implementing Directive]~~

11.2.26 R ...

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

Monitoring the effectiveness of execution arrangements and policy

11.2.27 R ...

~~[Note: article 21(4) of MiFID and article 25(4) first paragraph of the UCITS implementing Directive]~~

Review of the order execution policy

11.2.28 R ...

~~[Note: article 46(1) of the MiFID implementing Directive and article 25(4) second paragraph of the UCITS implementing Directive]~~

Demonstration of execution of orders in accordance with execution policy

- 11.2.29 R (1) ~~A firm other than a management company 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 management company must be able to demonstrate that it has executed orders on behalf of any UCITS scheme or EEA UCITS scheme it manages in accordance with its execution policy. [deleted]~~

~~[Note: article 21(5) of MiFID and article 25(5) of the UCITS implementing Directive]~~

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 *portfolio management* ~~or, for a management company, collective portfolio management~~, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

~~[Note: article 45(1) of MiFID implementing Directive and article 26(1) of the UCITS implementing Directive]~~

- 11.2.31 R ...

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

- 11.2.32 R ...

~~[Note: article 45(3) of the MiFID implementing Directive and article 26(1) of the UCITS implementing Directive]~~

- (1) ...

~~[Note: paragraph 1 and 2 of article 45(4) of the MiFID implementing Directive and article 26(2) first paragraph of the UCITS implementing Directive]~~

- (2) establish and implement a policy to enable it to comply with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. The policy must identify, in respect of each class of instruments, the entities with which the orders are placed or to which the *firm* transmits orders for execution. The entities identified must have execution arrangements that enable the *firm* to comply with its obligations under this section ~~or, for a management company, must only enter into arrangements for execution where those arrangements are consistent with the requirements of this section~~, when it places an order with, or transmits an order to, that entity for execution;

~~[Note: paragraph 1 of article 45(5) of the MiFID implementing Directive and article 26(2) second paragraph of the UCITS implementing Directive]~~

- (3) provide appropriate information to its *clients* on the policy established in accordance with ~~COBS 11.2.32R(2)~~ ~~or, for a management company, make available to Unitholders appropriate information on that policy and on any material changes to it~~ paragraph (2);

~~[Note: paragraph 2 of article 45(5) of the MiFID implementing Directive and article 26(2) second paragraph last sentence of the UCITS implementing Directive]~~

(4) ...

~~[Note: first paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) first paragraph of the *UCITS implementing Directive*]~~

(5) ...

~~[Note: second paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) second paragraph of the *UCITS implementing Directive*]~~

11.2.32A R ~~A management company must be able to demonstrate that it has placed orders on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages in accordance with the policy referred to in *COBS 11.2.32R(2)*. [deleted]~~

~~[Note: article 26(4) of the *UCITS implementing Directive*]~~

11.2.33 G ...

~~[Note: recital 75 to the *MiFID implementing Directive*]~~

11.2.34 R ...

~~[Note: article 45(7) of the *MiFID implementing Directive* and article 25 of the *UCITS implementing Directive*]~~

Insert the new 11.2A, 11.2B and 11.2C after COBS 11.2 (Best execution for AIFMs and residual CIS operators). All of the text is new and is not underlined.

11.2A Best execution – MiFID provisions

- 11.2A.1 R (1) Subject to (2) and (3), the following provisions apply to a *firm's* business other than *MiFID business* as if they were *rules*:
- (a) provisions within this chapter marked “EU”; and
 - (b) *COBS 11 Annex 1EU*.
- (2) The following provisions do not apply to *MiFID optional exemption firm's business*:
- (a) the part of the first sub-paragraph of article 65(6) to the *MiFID Org Regulation* (reproduced at *COBS 11.2A.34EU*) that reads:

“In particular, when the investment firm select other firms to provide order execution services, it shall summarise and

make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU.”; and

(b) *COBS* 11 Annex 1EU.

(3) This chapter does not apply to *UCITS management companies*, which are subject to *COBS* 11.2B.

(4) This chapter does not apply to *AIFMs* and *residual CIS operators*, which are subject to *COBS* 11.2.

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*]

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.2R) 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 EU Article 64 of the *MiFID Org Regulation* sets out best execution criteria.

- 64 (1) When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in Article 27(1) of Directive 2014/65/EU:
- (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 Article 27(1) of Directive 2014/65/EU 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*]

Following specific instructions from a client

- 11.2A.12 R 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*]

Delivering best execution where there are competing execution venues

- 11.2A.15 R 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*]

- 11.2A.25 EU Article 66 of the *MiFID Org Regulation* sets out requirements concerning execution policies

- 66 (1) Investment firms shall review, at least on an annual basis execution policy established pursuant to Article 27(4) of Directive 2014/65/EU, 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 Article 27(1) of Directive 2014/65/EU, 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 Article 24(9) of Directive 2014/65/EU and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.
- (7) Where an investment firm charges more than one participant in a transaction, in compliance with Article 24(9) of Directive 2014/65/EU and its implementing measures, 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. The summary shall also provide a link to the most recent

execution quality data published in accordance with Article 27(3) of Directive 2014/65/EU for each execution venue listed by the investment firm in its execution policy.

- 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 published in accordance with:

- (1) COBS 11.2A.38G;
- (2) COBS 11.2A.39R;
- (3) COBS 11.2C; and
- (4) by other internal analyses conducted by *investment firms*.

[**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*]

Monitoring and review of the order execution arrangements including the order execution policy

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 the information published in accordance with:

- (a) COBS 11.2A.38G;
- (b) COBS 11.2A.39R; and
- (c) COBS 11.2C.

(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, including that made public in accordance with *COBS* 11.2A.38G, *COBS* 11.2C and article 27(3) of *MiFID* and respective implementing measures.

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

- 65 (1) Investment firms, when providing portfolio management, shall comply with the obligation under Article 24(1) of Directive 2014/65/EU to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.
- (2) Investment firms, when providing the service of reception and transmission of orders, shall comply with the obligation under Article 24(1) of Directive 2014/65/EU 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. In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU.

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 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 published in accordance with:

- (1) *COBS* 11.2A.38G;
- (2) *COBS* 11.2A.39R;
- (3) *COBS* 11.2C; and
- (4) by internal analysis conducted by *investment firms*.

[**Note:** recital 100 to the *MiFID Org Regulation*]

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*]

Publishing information on execution quality

- 11.2A.38 G *Execution venues* (other than *market makers* and other liquidity providers to which *COBS* 11.2C applies) are reminded of the need to comply with the following provisions:

- (1) *MAR* 5.3.1A R(5);
- (2) *MAR* 5A.4.2R(3);
- (3) *MAR* 6.3A.1R; and

- (4) paragraph 4C of the Schedule to the *Recognition Requirements Regulations*.

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

- 11.2A.39 R In accordance with the requirements of *COBS 11 Annex 1EU*, a *firm* which executes *client* orders must summarise and make public on an annual basis, for each class of *financial instruments*, the top five *execution venues* in terms of trading volumes, where they executed *client* orders in the preceding year, together with information on the quality of execution obtained.

[**Note:** article 27(6) of *MiFID* and *MiFID RTS 28*]

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* or an *EEA 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.

Placing orders to deal on behalf of the scheme with other entities for execution

- 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.

Requirement for order execution arrangements including an order execution

policy

- 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:
- (a) relevant data published in accordance with *COBS* 11.2A.39R, *COBS* 11.2B.36R, *COBS* 11.2C and the provisions referred to in *COBS* 11.2B.30G; or
- (b) other internal analyses conducted by the *management company*.

- 11.2B.23 R A *management company* must be able to demonstrate that it has executed or placed orders on behalf of each *scheme* it manages in accordance with its execution policy.

[**Note:** articles 25(5) and 26(4) of the *UCITS implementing Directive*]

- 11.2B.24 G A *management company* should apply its execution policy to each *scheme* order that it executes with a view to obtaining the best possible result for the *scheme* 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 *management company* 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 *management company* of an *ICVC* that is a *UCITS scheme*, or an *EEA UCITS scheme* that is structured as an investment company,

must obtain the prior consent of the *ICVC* or investment company to the execution policy.

- (2) In the case of a *management company* that is the *ACD* of an *ICVC* that is a *UCITS scheme*, (1) does not apply where the *ACD* is the sole *director* of the *ICVC*.

[**Note:** article 25(3) first sentence of the second paragraph of the *UCITS implementing Directive*]

Monitoring and review of the order execution arrangements including the order execution policy

- 11.2B.27 R (1) A *management company* 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 *management company* 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 *management company* 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 *schemes* it manages; and
- (b) whether it needs to make changes to its execution arrangements taking into account the information published in accordance with *COBS 11.2A.39R*, *COBS 11.2B.36R*, *COBS 11.2C* and the provisions referred to in *COBS 11.2B.30G*.

[**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, including that made public in accordance with:
- (1) *MAR* 5.3.1AR(5) (Functioning of an MTF);
 - (2) *MAR* 5A.4.2R(3) (Functioning of an OTF);
 - (3) *MAR* 6.3A.1R (Quality of execution); and
 - (4) paragraph 4C of the Schedule to the *Recognition Requirements Regulations*.

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 (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
- (a) 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 (1) Where a *management company* executes *scheme* orders or selects other *firms* to provide order execution services, it must summarise and make public, on an annual basis, for each type of *financial instrument*:
- (a) the top five *execution venues* or *investment firms* where it transmitted or placed orders for execution in terms of trading volumes in the preceding year; and
- (b) information on the quality of execution obtained.
- (2) The information must be consistent with the information published in accordance with *COBS 11 Annex 1EU* (Regulatory technical standard 28) (which applies as *rules* in accordance with *COBS 18.5B.2R*).

- 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 A *market maker* or other liquidity provider must make available the data detailed in COBS 11.2C.2R to the public in the following manner:
- (1) at least on an annual basis; and
 - (2) without any charges.
- 11.2C.2 R COBS 11.2C.1R applies to data relating to the quality of execution of transactions by that *market maker* or other liquidity provider, including details about price, costs, speed and likelihood of execution for individual *financial instruments*.

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

Amend the following as shown.

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 ~~22(4)~~ 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 ~~22(4)~~ 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* or *EEA 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 “EU” apply to a firm’s business other than MiFID business as if they were rules.
- (2) Provisions marked “EU” which derive from recitals to MiFID or the MiFID Org Regulation apply to all firms as guidance.
- (3) COBS 11.3.4AEU, which reproduces article 67(2) of the MiFID Org Regulation, does not apply to a UCITS management company.

- 11.3.2 **R** ~~A firm must satisfy the following conditions when carrying out client orders:~~
- (1) ~~it must ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;~~
- (2) ~~it must carry out otherwise comparable orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise; and~~
- (3) ~~it must inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty. [deleted]~~

[**Note:** article 47(1) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 27(1) second paragraph of the *UCITS implementing Directive*]

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

- 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 78 110 to the *MiFID implementing Directive Org Regulation*]

- 11.3.4 R Where a *firm* is responsible for overseeing or arranging the settlement of an executed order or *management company* executes the order itself in the course of providing *collective portfolio management* services, it must take all reasonable steps to ensure that any *client financial instruments* or *client funds* received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate *client UCITS scheme*.

[**Note:** ~~article 47(2) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 27(1) third paragraph of the *UCITS implementing Directive*]~~

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

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 ~~A *firm* must not misuse information relating to pending *client* orders, and shall take all reasonable steps to prevent the misuse of such information by any of its *relevant persons*. [deleted]~~

[**Note:** ~~article 47(3) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 27(2) of the *UCITS implementing Directive*]~~

- 11.3.5A EU Article 67(3) of the *MiFID Org Regulation* sets out requirements concerning the use of information relating to pending *client* orders.

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 *Market Abuse Regulation*, for the purposes of the ~~*rule provision*~~ on the misuse of information (see *COBS 11.3.5RAEU*), any use by a *firm* of information relating to a pending *client* order in order to deal on own account in the *financial instruments* to which the *client* order relates, or in related *financial instruments*, should be considered a misuse of that information. However, the mere fact that *market makers* or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling *financial instruments*, or that

persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.

[**Note:** recital 78 110 to the *MiFID implementing Directive Org Regulation*]

Aggregation and allocation of orders

11.3.7 R ~~A firm is not permitted to carry out a *client* order or a transaction for own account in aggregation with another *client* order unless the following conditions are met:~~

- ~~(1) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any *client* whose order is to be aggregated;~~
- ~~(2) it must be disclosed to each *client* whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;~~
- ~~(3) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions. [deleted]~~

~~[**Note:** article 48(1) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 28(1) of the *UCITS implementing Directive*]~~

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

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

[Note: article 28(1) of the UCITS implementing Directive]

11.3.8 R ~~If a firm aggregates a client order with one or more other orders and the aggregated order is partially executed, it must allocate the related trades in accordance with its order allocation policy. [deleted]~~

~~[Note: article 48(2) of the MiFID implementing Directive, article 19(1) of MiFID and article 28(2) of the UCITS implementing Directive]~~

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

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.

Aggregation and allocation of transactions for own account

11.3.9 R ~~A firm which has aggregated transactions for own account with one or more client orders must not allocate the related trades in a way which is detrimental to a client. [deleted]~~

~~[Note: article 49(1) of the MiFID implementing Directive, article 19(1) of MiFID and article 28(3) of the UCITS implementing Directive]~~

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

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.

11.3.10 R (1) ~~If a firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it must allocate the related trades to the client in priority to the firm.~~

~~(2) However, if the firm is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy. [deleted]~~

~~[Note: article 49(2) of the MiFID implementing Directive, article 19(1) of~~

~~MiFID and article 28(4) of the UCITS implementing Directive]~~

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

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.

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).

- 11.3.11 R ~~A firm must, as part of its order allocation policy, put in place procedures to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders. [deleted]~~

~~[Note: article 49(3) of the MiFID implementing Directive and article 19(1) of MiFID]~~

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

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 client if, as an effect of that reallocation, unfair precedence is given to the firm or to any particular person.

~~[Note: recital 77 109 to the MiFID implementing Directive Org Regulation]~~

- 11.3.13 G In this section, carrying out client orders includes:
- (1) the execution of orders on behalf of clients;
 - (2) the placing of orders with other entities for execution that result from decisions to deal in financial instruments on behalf of clients when providing the service of portfolio management or collective portfolio

management;

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

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

11.4 Client limit orders

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

Obligation to make unexecuted client limit orders public

- 11.4.1 R Unless a *client* expressly instructs otherwise, a *firm* must, in the case of a *client limit order* in respect of shares admitted to trading on a *regulated market* 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 22 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 42 105 to *MiFID*]

How client limit orders may be made public

- 11.4.3 EU ~~An investment firm shall be considered to disclose *client limit orders* that are not immediately executable if it transmits the order to a *regulated market* or *MTF* that operates an order book trading system, or ensures that the order is made public and can be easily executed as soon as market conditions allow. [deleted]~~

~~[Note: article 31 of *MiFID Regulation*]~~

- 11.4.3A EU Article 70(1) of the *MiFID Org Regulation* provides when *client limit orders* shall be considered as being available to the public.

70 (1) A client limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue which have not been immediately executed under prevailing market condition as referred to in Article 28(2) of Directive 2014/65/EU shall be considered available to the public when the investment firm has been submitted the order for execution to a regulated market or a MTF or the order has been published by a data reporting services provider located in one Member State and can be easily executed as soon as market conditions allow.

- 11.4.4 G ~~MAR 5.8.2EU sets out the conditions required for an arrangement to make *client limit orders* public under this section. MAR 5.8.3G and MAR 5.8.4G provide guidance on these conditions. [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*]

Orders that are large in scale

- 11.4.5 R The obligation in *COBS 11.4.1R* to make public a *limit order* ~~will not apply to a *limit order* that is~~ is disapplied in respect of transactions that are large in scale compared with normal market size as determined under article 4 of *MiFIR*.

[**Note:** article ~~22~~ 28(2) of *MiFID*]

- 11.4.6 G ~~MAR 5.7.10EU and MAR 5.7.11EU set out when an order shall be considered large in scale compared with normal market size. [deleted]~~

COBS 11.5 is deleted in its entirety. The deleted text is not shown.

11.5 Record keeping: client orders and transactions [deleted]

Insert the new section 11.5A after the deleted *COBS* 11.5 (Record keeping: client orders and transactions). All the text is new and is not underlined.

11.5A Record keeping: client orders and transactions

- 11.5A.1 R (1) Subject to (2), in this chapter provisions marked “EU” apply to a *firm’s* business other than *MiFID business* as if they were *rules*.
- (2) Provisions in this chapter which are marked “EU” do not apply to *corporate finance business* carried on by a *firm* which is not a *MiFID investment firm*.
- 11.5A.2 EU Article 74 of the *MiFID Org Regulation*, together with Section 1 of Annex IV to that Regulation which is reproduced at *COBS* 11.5A.4EU, makes provision for record keeping of initial orders from *clients*.
- 74 An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV [reproduced below at *COBS* 11.5A.4EU] 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.
- 11.5A.3 EU Article 75 of the *MiFID Org Regulation*, together with Section 2 of Annex IV to that Regulation which is reproduced at *COBS* 11.5A.5EU, makes provision for record keeping in relation to transactions and order processing.

75 Investment firms shall, immediately after receiving a client order or

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

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.

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

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 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 under the standards on clock synchronisation under Article 50(2)

Directive 2014/65/EU.

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

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 (Algo 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 indicate "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 under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU.
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 any events affecting an order. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU.
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

COBS 11.6 (Use of dealing commission) is deleted in its entirety. The deleted text is not shown.

11.6 Use of dealing commission **[deleted]**

Amend the following as shown.

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)*).

Rule on personal account dealing

- 11.7.1 R A *firm* that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the *Market Abuse 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) ...
 - ...
 - (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~~ *designated investments* which, if a personal transaction of the relevant person, would be covered by (1) or a relevant

provision;

- (b) to advise or procure another *person* to enter into such a transaction.

[**Note:** ~~article 12(1) of MiFID implementing Directive~~ and 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* in ~~COBS 12.2.5R (1) and (2)~~ copied out in *COBS 12.2.21EU* which apply as *rules* as a result of *COBS 12.2.15R*;
- (2) ~~the rule~~ article 67(3) of the *MiFID Org Regulation* on the misuse of information relating to pending *client orders* in ~~COBS 11.3.5R~~ copied out in *COBS 11.3.5AEU* which applies as a *rule* as a result of *COBS 11.3.1AR*.

...

11.7.4 R The arrangements required under this section must in particular be designed to ensure that:

- (1) ...

[**Note:** ~~article 12(2) of MiFID implementing Directive~~ and 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) ...

[**Note:** ~~article 12(3) of MiFID implementing Directive~~ and article 13(3) of the *UCITS implementing Directive*]

...

Successive personal transactions

11.7.7 R Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this section do not apply:

- (1) ...

[**Note:** ~~recital 17 to MiFID implementing Directive~~]

Insert the new *COBS* 11.7A after *COBS* 11.7 (Personal account dealing). All of the text is new and is not underlined.

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 *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.
- 11.7A.2 R (1) Subject to (2), in this chapter provisions marked “EU” apply to a *firm* in relation to its *equivalent third country or optional exemption business* as if they were *rules*.
- (2) In this chapter, provisions marked “EU” which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to a *firm* in relation to its *equivalent third country or optional exemption business* as *guidance*.
- 11.7A.3 R A *firm* that conducts *designated investment business* must establish appropriate rules governing personal transactions undertaken by managers, *employees* and *tied agents*.

[**Note:** article 16(2) of *MiFID*]

Scope of personal transactions

- 11.7A.4 EU Article 28 of the *MiFID Org Regulation* sets out the scope of personal transactions.
- 28 For the purposes of the Article 29 and Article 37, a personal transaction 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:
- (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:
- (i) the relevant person;
- (ii) any person with who 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 EU Article 29 of the *MiFID Org Regulation* sets out detailed provision concerning personal transactions.

- 29
- (1) Investment firms shall ensure that relevant persons do establish, implement and maintain adequate arrangements aimed at preventing the activities set out in paragraphs 2 and 3 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 not enter into a personal transaction which meets at least one of the following criteria:
 - (a) that person is prohibited from entering into it under Regulation (EU) No 596/2014;
 - (b) it involves the misuse or improper disclosure of that confidential information;
 - (c) it conflicts or is likely to conflict with an obligation of the investment firm under Directive 2014/65/EU.
 - (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 point (a) 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 point (a) 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 firms 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 persons, 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 a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

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 not 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*]

COBS 11.8 (Recording telephone conversations and electronic communications) is deleted in its entirety. The deleted text is not shown.

11.8 Recording telephone conversations and electronic communications [deleted]

Insert new COBS 11 Annex 1EU after COBS 11.8 (Recording telephone conversations and electronic communications). The material in this Annex comprises the text of Regulatory Technical Standard 28 (C(2016) 3337) made under Directive 2014/65/EU (MiFID II) and the annexes to that text. All the text is new and is not underlined.

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

COMMISSION DELEGATED REGULATION (EU) .../... of 8.6.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2004/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p.349), and in particular point (b) of the first subparagraph of Article 27(10),

Whereas:

(1) It is essential to enable the public and investors to evaluate the quality of an investment firm's execution practices and to identify the top five execution venues in terms of trading volumes where investment firms executed client orders in the preceding year. In order to make meaningful comparisons and analyse the choice of top five execution venues it is necessary that information is published by investment firms specifically in respect of each class of financial instruments. In order to be able to fully evaluate the order flow of client orders to execution venues, investors and the public should be able to clearly identify if the investment firm itself was one of the top five execution venues for each class of financial instrument.

(2) In order to fully assess the extent of the quality of execution being obtained on execution venues used by investment firms to execute client orders, including execution venues in third countries, it is appropriate that investment firms publish information required under this Regulation in relation to trading venues, market makers or other liquidity providers or any entity that performs a similar function in a third country to the functions performed by any of the foregoing.

(3) In order to provide precise and comparable information, it is necessary to set out classes of financial instruments based on their characteristics relevant for publication purposes. A class of financial instruments should be narrow enough to reveal differences in order execution behaviour between classes but at the same time broad enough to ensure that the reporting obligation on investment firms is proportionate. Given the breadth of the equity class of financial instruments, it is appropriate to divide this class into subclasses based on liquidity. As liquidity is an essential factor governing execution behaviours and as execution venues are often competing to attract flows of the most frequently traded stocks, it is appropriate that equity instruments are classified according to their liquidity as determined under the tick size regime as set out in Directive 2014/65/EU of the European Parliament and the Council.

(4) When publishing the identity of the top five execution venues on which they execute client orders it is appropriate for investment firms to publish information on the volume and number of orders executed on each execution venue, so that investors may be able to form an opinion as to the flow of client orders from the firm to execution venue. Where, for one or several classes of financial instruments, an investment firm only executes a very small number of orders, information on the top five execution venues would not be very meaningful nor representative of order execution arrangements. It is therefore appropriate to require investment firms to clearly indicate the classes of financial instruments for which they execute a very small number of orders.

(5) To prevent potentially market sensitive disclosures on the volume of business being conducted by the investment firm, the volume of execution and the number

of executed orders should be expressed as a percentage of the investment firm's total execution volumes and total number of executed orders in that class of financial instrument, respectively, rather than as absolute values.

(6) It is appropriate to require investment firms to publish information which is relevant to their order execution behaviour. To ensure that investment firms are not held accountable for order execution decisions for which they are not responsible, it is appropriate for investment firms to disclose the percentage of orders executed on each of the top five execution venues where the choice of execution venue has been specified by clients.

(7) There are several factors which may potentially influence the order execution behaviour of investment firms such as close links between investment firms and execution venues. Given the potential materiality of these factors it is appropriate to require analysis of such factors in assessing the quality of execution obtained on all execution venues.

(8) The different order types can be an important factor in explaining how and why investment firms execute orders on a given execution venue. It may also impact the way an investment firm will set its execution strategies, including programming of smart order routers to meet the specific objectives of those orders. It is therefore appropriate that a distinction between the different categories of order types be clearly marked in the report.

(9) In order to properly analyse information it is important that users are in a position to differentiate between execution venues used for professional client orders and execution venues used for retail client orders, given the notable differences in how investment firms obtain the best possible result for retail clients as compared to professional clients, namely that investment firms must predominantly assess the factors of price and cost when executing orders from retail clients. Therefore it is appropriate that information on the top five execution venues be provided separately for retail clients and for professional clients respectively, permitting a qualitative assessment to be made of the order flow to such venues.

(10) In order to comply with the legal obligation of best execution, investment firms, when applying the criteria for best execution for professional clients, will typically not use the same execution venues for securities financing transactions (SFTs) and other transactions. This is because the SFTs 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 SFTs are typically defined bilaterally between the counterparties ahead of the execution. Therefore, the choice of execution venues for SFTs 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. It is therefore appropriate that

investment firms summarise and make public the top five execution venues in terms of trading volumes where they executed SFTs in a separate report so that a qualitative assessment can be made of the order flow to such venues. Due to the specific nature of SFTs, and given that their large size would likely distort the more representative set of client transactions (namely, those not involving SFTs), it is also necessary to exclude them from the tables concerning the top five execution venues on which investment firms execute other client orders.

(11) It is appropriate that investment firms should publish an assessment of quality of execution obtained on all venues used by the firm. This information will provide a clear picture of the execution strategies and tools used to assess the quality of execution obtained on those venues. This information will also allow investors to assess the effectiveness of the monitoring carried out by investment firms in relation to those execution venues.

(12) In specifically assessing the quality of execution obtained on all execution venues in relation to cost, it is appropriate that an investment firm also performs an analysis of the arrangements it has with these venues in relation to payments made or received and to discounts, rebates or non-monetary benefits received. Such an assessment should also allow the public to consider how such arrangements impact the costs faced by the investor and how they comply with Article 27(2) of Directive 2004/65/EC.

(13) It is also appropriate to determine the scope of such publication and its essential features, including the use that investment firms make of the data on execution quality available from execution venues under Commission Delegated Regulation (EU) 2017/575.

(14) Information on identity of execution venues and on the quality of execution should be published annually and should refer to order execution behaviour for each class of financial instruments in order to capture relevant changes within the preceding calendar year.

(15) Investment firms should not be prevented from adopting an additional level of reporting which is more granular, provided that in such case the additional report complements and does not replace what is required under this Regulation.

(16) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

(17) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(18) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

HAS ADOPTED THIS REGULATION:

Article 1 Subject matter

This Regulation lays down rules on the content and the format of information to be published by investment firms on an annual basis in relation to client orders executed on trading venues, systematic internalisers, market makers or other liquidity providers or entities that perform a similar function to those performed by any of the foregoing in a third country.

Article 2 Definitions

(a) ‘Passive order’ means an order entered into the order book that provided liquidity;

(b) ‘Aggressive order’ means an order entered into the order book that took liquidity;

(c) ‘Directed order’ means an order where a specific execution venue was specified by the client prior to the execution of the order.

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

1. Investment firms shall publish the top five execution venues in terms of trading volumes for all executed client orders per class of financial instruments referred to in Annex I. Information regarding retail clients shall be published in the format set out in Table 1 of Annex II and information regarding professional clients shall be published in the format set out in Table 2 of Annex II. The publication shall exclude orders in Securities Financing Transactions (SFTs) and shall contain the following information:

(a) class of financial instruments;

(b) venue name and identifier;

(c) volume of client orders executed on that execution venue expressed as a percentage of total executed volume;

(d) number of client orders executed on that execution venue expressed as a percentage of total executed orders;

(e) percentage of the executed orders referred to in point (d) that were passive and aggressive orders;

(f) percentage of orders referred to in point (d) that were directed orders;

(g) confirmation of whether it has executed an average of less than one trade per business day in the previous year in that class of financial instruments.

2. Investment firms shall publish the top five execution venues in terms of trading volumes for all executed client orders in SFTs for class of financial instruments referred to in Annex I in the format set out in Table 3 of Annex II. The publication shall contain the following information:

- (a) volume of client orders executed on that execution venue expressed as a percentage of total executed volume;**
- (b) number of client orders executed on that execution venue expressed as a percentage of total executed orders;**
- (c) confirmation of whether the investment firm has executed an average of less than one trade per business day in the previous year in that class of financial instruments.**

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

- (a) an explanation of the relative importance the firm gave to the execution factors of price, costs, speed, likelihood of execution or any other consideration including qualitative factors when assessing the quality of execution;**
- (b) a description of any close links, conflicts of interests, and common ownerships with respect to any execution venues used to execute orders;**
- (c) a description of any specific arrangements with any execution venues regarding payments made or received, discounts, rebates or non-monetary benefits received;**
- (d) an explanation of the factors that led to a change in the list of execution venues listed in the firm's execution policy, if such a change occurred;**
- (e) an explanation of how order execution differs according to client categorisation, where the firm treats categories of clients differently and where it may affect the order execution arrangements;**
- (f) an explanation of whether other criteria were given precedence over immediate price and cost when executing retail client orders and how these other criteria were instrumental in delivering the best possible result in terms of the total consideration to the client;**
- (g) an explanation of how the investment firm has used any data or tools relating to the quality of execution, including any data published under Commission Delegated Regulation (EU) 2017/575;**
- (h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider established under Article 65 of Directive 2014/65/EU.**

Article 4 Format

Investment firms shall publish the information required in accordance with Article 3(1) and 3(2) on their websites, by filling in the templates set out in Annex II, in a machine-readable electronic format, available for

downloading by the public and the information required in accordance with Article 3(3) shall be published on their websites in an electronic format available for downloading by the public.

Article 5 Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU

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

Done at Brussels, 8.6.2016

For the Commission

The President Jean-Claude JUNCKER

ANNEXES to the COMMISSION DELEGATED REGULATION supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution

ANNEXES

Annex I: Classes of financial instruments

- (a) Equities – Shares & Depositary Receipts
 - (i) Tick size liquidity bands 5 and 6 (from 2000 trades per day)
 - (ii) Tick size liquidity bands 3 and 4 (from 80 to 1999 trades per day)
 - (iii) Tick size liquidity band 1 and 2 (from 0 to 79 trades per day)
- (b) Debt instruments
 - (i) Bonds
 - (ii) Money markets instruments
- (c) Interest rates derivatives
 - (i) Futures and options admitted to trading on a trading venue
 - (ii) Swaps, forwards, and other interest rates derivatives
- (d) credit derivatives
 - (i) Futures and options admitted to trading on a trading venue
 - (ii) Other credit derivatives
- (e) currency derivatives

- (i) Futures and options admitted to trading on a trading venue
- (ii) Swaps, forwards, and other currency derivatives
- (f) Structured finance instruments
- (g) Equity Derivatives
 - (i) Options and Futures admitted to trading on a trading venue
 - (ii) Swaps and other equity derivatives
- (h) Securitized Derivatives
 - (i) Warrants and Certificate Derivatives
 - (ii) Other securitized derivatives
- (i) Commodities derivatives and emission allowances Derivatives
 - (i) Options and Futures admitted to trading on a trading venue
 - (ii) Other commodities derivatives and emission allowances derivatives
- (j) Contracts for difference
- (k) Exchange traded products (Exchange traded funds, exchange traded notes and exchange traded commodities)
- (l) Emission allowances
- (m) Other instruments

Annex II

Table 1

Class of Instrument					
Notification if <1 average trade per business day in the previous year	Y/N				
Top five execution venues ranked in terms of trading volumes (descending order)	Proportion of volume traded as a percentage of total in that class	Proportion of volume traded as a percentage of total in that class	Percentage of passive orders	Percentage of aggressive orders	Percentage of directed orders
Name and Venue Identifier (MIC or LEI)					
Name and Venue Identifier (MIC or LEI)					

Name and Venue Identifier (MIC or LEI)					
Name and Venue Identifier (MIC or LEI)					
Name and Venue Identifier (MIC or LEI)					

Table 2

Class of Instrument					
Notification if <1 average trade per business day in the previous year	Y/N				
Top five execution venues ranked in terms of trading volumes (descending order)	Proportion of volume traded as a percentage of total in that class	Proportion of orders executed as percentage of total in that class	Percentage of passive orders	Percentage of aggressive orders	Percentage of directed orders
Name and Venue Identifier (MIC or LEI)					
Name and Venue Identifier (MIC or LEI)					
Name and Venue Identifier (MIC or LEI)					
Name and Venue Identifier (MIC or LEI)					

Name and Venue Identifier (MIC or LEI)					
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Table 3

Class of Instrument		
Notification if < 1 average trade per business day in the previous year	Yes/No	
Top 5 Venues ranked in terms of volume (descending order)	Proportion of volume executed as a percentage of total in that class	Proportion of orders executed as percentage of total in that class.
Name and Venue Identifier (MIC or LEI)		
Name and Venue Identifier (MIC or LEI)		
Name and Venue Identifier (MIC or LEI)		
Name and Venue Identifier (MIC or LEI)		
Name and Venue Identifier (MIC or LEI)		

Insert the new chapter COBS 11A after COBS 11 (Dealing and managing). All of the text is new and is not underlined.

11A Underwriting and placing

General requirements concerning 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 “EU” apply to the *equivalent business of a third country investment* as if they were *rules*.
- (3) In this chapter, provisions marked “EU” which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to the *equivalent business of a third country investment firm* as *guidance*.
- 11A.1.2 EU Article 38(1) of the *MiFID Org Regulation* sets out requirements for *firms* to provide specified information to issuer *clients* before accepting a mandate to manage an offering.
- 38 (1) Investment firms which provide advice on corporate finance strategy, as set out in Section B(3) of Annex I, 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 persons individuals involved in the provision of corporate finance advice on the price and allotment; 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 of with its own proprietary book.
- 11A.1.3 EU Article 38(2) and (3) of the *MiFID Org Regulation* sets out requirements to identify all underwriting and placing operations of a *firm* and to ensure that adequate controls are in place to manage any potential conflicts of interest.

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

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

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

- 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 the inducements requirements laid down in Article 24 or 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 EU Article 41 of the MiFID Org Regulation sets out additional requirements in relation to advice, distribution and self-placement.

- 41 (1) Investment firms shall have in place systems, controls and procedures to identify and manage the conflicts of interest that arise when providing investment service to an investment client to participate in a new issue, where the investment firm receives commissions, fees or any monetary or non-monetary benefits in relation to arranging the issuance. Any commissions, fees or monetary or non-monetary benefits shall comply with the requirements in Article 24(7), 24(8) and 24(9) of Directive 2014/65/EU 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 engaging in the offering of financial instruments issued by themselves or other group entities to their clients and those instruments are included in the calculation of prudential requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council¹, 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 such 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 Directive 2014/49/EU of the European Parliament and of the Council.

11A.1.8 EU Article 42 of the MiFID Org Regulation sets out additional requirements in relation to lending on provision of credit in the context of underwriting or placement.

- 41 (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.

11A.1.9 EU Article 43 of the MiFID Org Regulation sets out record keeping requirements in relation to underwriting or placing.

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, 12.6.2014, p.190)

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.

COBS 11.8 [delete]

COBS Sch [delete]
1.3G, row
24 (COBS
11.8.5R)

COBS [delete]
18.2.3, row
7 (COBS
11.8)

COBS [delete]
18.3.1, row
9 (COBS
11.8)

12 Investment research

12.1 Purpose and application

...

Application: Where?

12.1.3 G The *EEA territorial scope rule* modifies the general *rule* of application to the extent necessary to be compatible with European law (see paragraph 1.1 of Part 2 of *COBS 1 Annex 1*). This means that *COBS 12.2* and *COBS 12.3.4G* also apply applies to *passported activities* carried on by a *UK MiFID investment firm* from a *branch* in another *EEA state*, but ~~do~~ does not apply to the *United Kingdom branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*.

12.2 Investment research and non-independent research

Application

12.2.1 R This section applies to a *firm* which produces, or arranges for the

~~production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, under its own responsibility or that of a member of its *group*. [deleted]~~

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

- 12.2.2 G ~~The concept of dissemination of *investment research* to *clients* or to the public is not intended to include dissemination exclusively to *persons* within the *group* of the *firm*. [deleted]~~

~~[Note: recital 33 of the *MiFID implementing Directive*]~~

Measures and arrangements required for investment research

- 12.2.3 R ~~A *firm* must ensure the implementation of all of the measures for managing conflicts of interest in SYSC 10.1.11R in relation to the *financial analysts* involved in the production of *investment research* and other *relevant persons* whose responsibilities or business interests may conflict with the interests of the *persons* to whom *investment research* is disseminated. [deleted]~~

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

- 12.2.4 G ~~*Persons* whose responsibilities or business interests may reasonably be considered to conflict with the interests of the *persons* to whom *investment research* is disseminated include corporate finance personnel and *persons* involved in sales and trading on behalf of *clients* or the *firm*. [deleted]~~

~~[Note: recital 30 of the *MiFID implementing Directive*]~~

- 12.2.5 R ~~A *firm* must have in place arrangements designed to ensure that the following conditions are satisfied: [deleted]~~

~~(1) if a *financial analyst* or other *relevant person* has knowledge of the likely timing or content of *investment research* which is not publicly available or available to *clients* and cannot readily be inferred from information that is so available, that *financial analyst* or other *relevant person* must not undertake *personal transactions* or trade on behalf of any other *person*, including the *firm*, other than as *market maker* acting in good faith and in the ordinary course of market making or in the execution of an unsolicited *client order*, in *financial instruments* to which the *investment research* relates, or in any *related financial instruments*, until the recipients of the *investment research* have had a reasonable opportunity to act on it;~~

~~[Note: article 25(2)(a) of the *MiFID implementing Directive*]~~

~~(2) in circumstances not covered by (1), *financial analyst* and any other *relevant persons* involved in the production of *investment research* must not undertake *personal transactions* in *financial instruments* to which the *investment research* relates, or in any *related financial instrument*, contrary to current recommendations, except in~~

~~exceptional circumstances and with the prior approval of a member of the firm's legal or compliance function;~~

~~[Note: article 25(2)(b) of the MiFID implementing Directive]~~

- ~~(3) the firm itself, financial analysts, and other relevant persons involved in the production of investment research must not accept inducements from those with a material interest in the subject matter of the investment research;~~

~~[Note: article 25(2)(c) of the MiFID implementing Directive]~~

- ~~(4) the firm itself, financial analysts, and other relevant persons involved in the production of investment research must not promise issuers favourable research coverage; and~~

~~[Note: article 25(2)(d) of the MiFID implementing Directive]~~

- ~~(5) issuers, relevant persons other than financial analysts, and any other persons must not, before the dissemination of investment research, be permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that investment research, or for any other purpose other than verifying compliance with the firm's legal obligations, if the draft includes a recommendation or a target price.~~

~~[Note: article 25(2)(e) of the MiFID implementing Directive]~~

12.2.5A G ~~Firms are reminded that they must also comply with COBS 11.7 (Rule on personal account dealing). [deleted]~~

12.2.6 G ~~Knowledge by a financial analyst or other relevant person that the firm intends to produce or disseminate investment research to its clients or to the public (including in circumstances where research material has not yet been written) could constitute knowledge of the likely timing and content of investment research under COBS 12.2.5R(1). [deleted]~~

12.2.7 G ~~For the purposes of COBS 12.2.5R(2):~~

- ~~(1) current recommendations should be considered to be those recommendations contained in investment research which have not been withdrawn and which have not lapsed; and~~

~~[Note: recital 34 of the MiFID implementing Directive]~~

- ~~(2) exceptional circumstances in which financial analysts and other relevant persons may, with prior written approval, undertake personal transactions in financial instruments to which investment research relates should include those circumstances where, for personal reasons relating to financial hardship, the financial analyst or other relevant person is required to liquidate a position. [deleted]~~

~~[Note: recital 31 of the MiFID implementing Directive]~~

- 12.2.8 G ~~Small gifts or minor hospitality below a level specified in the firm's conflicts of interest policy and mentioned in the description of that policy that is made available to clients in accordance with COBS 6.1.4R(8) should not be considered as inducements for the purposes of COBS 12.2.5R(3).
[deleted]~~

~~[Note: recital 32 of the MiFID implementing Directive]~~

- 12.2.9 G ~~A financial analyst should not become involved in activities other than the preparation of investment research where such involvement is inconsistent with the maintenance of the financial analysts objectivity. The following should ordinarily be considered as inconsistent with the maintenance of a financial analyst's objectivity:~~

- ~~(1) participating in investment banking activities such as corporate finance business and underwriting; or~~
- ~~(2) participating in 'pitches' for new business or 'road shows' for new issues of financial instruments; or~~
- ~~(3) being otherwise involved in the preparation of issuer marketing.
[deleted]~~

~~[Note: recital 36 of the MiFID implementing Directive]~~

~~Exemption from investment research measures and arrangements~~

- 12.2.10 R ~~A firm which disseminates investment research produced by another person to the public or to clients is exempt from complying with the requirements in COBS 12.2.3R and COBS 12.2.5R if the following criteria are met:~~

- ~~(1) the person that produces the investment research is not a member of the group to which the firm belongs;~~
- ~~(2) the firm does not substantially alter the recommendations within the investment research;~~
- ~~(3) the firm does not present the investment research as having been produced by it; and~~
- ~~(4) the firm verifies that the producer of the investment research is subject to requirements equivalent to those in COBS 12.2.3R and COBS 12.2.5R in relation to the production of that investment research, or has established a policy setting such requirements.
[deleted]~~

~~[Note: article 25(3) of the MiFID implementing Directive]~~

~~Means and timing of publication of investment research~~

- 12.2.11 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; and~~
 - ~~(2) inappropriate for an employee (whether or not a financial analyst) to communicate the substance of any investment research, except as set out in the firm's conflicts of interest policy. [deleted]~~
- 12.2.12 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. [deleted]~~

~~Investment research for internal use~~

- 12.2.13 G ~~The FCA considers that the significant conflicts of interest which could arise are likely to mean it is inappropriate for a financial analyst or other relevant person to prepare investment research which is intended firstly for internal use for the firm's own advantage, and then for later publication to its clients (in circumstances in which it might reasonably be expected to have a material influence on its clients' investment decisions). [deleted]~~

Application

- 12.2.14 G This section applies to a firm that:
- (1) produces, or arranges for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public, under its own responsibility or that of a member of its group; or
 - (2) produces or disseminates non-independent research.
- 12.2.15 R Where this section applies to a firm in relation to business other than its MiFID business, provisions in this section marked "EU" shall apply as if they were rules, other than those that copy out recitals, which shall apply as if they were guidance.
- 12.2.16 G (1) This section applies to both investment research and non-independent research.

- (2) Non-independent research is not presented as objective or independent and is accordingly considered a marketing communication.
- (3) Both investment research and non-independent research are sub-categories of the type of information defined as an investment recommendation in COBS 12.4.

Investment research and non-independent research

- 12.2.17 EU Article 36(1) of the MiFID Org Regulation defines investment research.
- 36(1) For the purposes of Article 37 investment research shall be research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:
- (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 Directive 2014/65/EU.
- 12.2.18 EU Article 36(2) of the MiFID Org Regulation deals with the treatment of non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation (see COBS 12.4) and in contrast to investment research as defined in article 36(1) (see COBS 12.2.17EU).
- 36(2) A recommendation of the type covered by point (35) of Article 3(1) of Regulation (EU) 596/2014 that does not meet the conditions set out in paragraph 1 shall be treated as a marketing communication for the purposes of Directive 2014/65/EU 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

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

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 12.2.19EU 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 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

- 12.2.21 EU Article 37(2) of the MiFID Org Regulation requires firms to put arrangements in place around the production of investment research to ensure the conditions set out in that article are satisfied. Recitals 53, 54 and 56 relate to those arrangements and the article 37(2) conditions.
- 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) .../... [to be inserted before adoption] of XXX supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

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.

12.2.22

EU

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

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.

COBS 12.3 (Non-independent research) is deleted in its entirety as shown below.

12.3 Non-independent research [deleted]

Application

- ~~12.3.1 R This section applies to a firm that produces or disseminates non-independent research.~~

~~[Note: article 24(2) of the MiFID implementing Directive]~~

Labelling of non-independent research

- ~~12.3.2 R A firm which produces or disseminates non-independent research must ensure that it:~~
- ~~(1) is clearly identified as a marketing communication; and~~
 - ~~(2) contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it:~~
 - ~~(a) has not been prepared in accordance with legal requirements designed to promote the independence of investment research; and~~

- (b) ~~is not subject to any prohibition on dealing ahead of the dissemination of *investment research*.~~

~~[Note: article 24(2) of the *MiFID implementing Directive*]~~

- 12.3.3 R ~~The *financial promotion rules* apply to *non-independent research* as though it were a marketing communication.~~

~~[Note: article 24(2) of the *MiFID implementing Directive*]~~

~~Management of conflicts of interest in area of non-independent research~~

- 12.3.4 G ~~In accordance with SYSC 10, a *firm* will be expected to take reasonable steps to identify and manage conflicts of interest which may arise in the production of *non-independent research*. Situations where conflicts of interest can arise include:~~

- (1) ~~*relevant persons* trading in *financial instruments* that are the subject of *non-independent research* which they know the *firm* has published or intends to publish before *clients* have had a reasonable opportunity to act on it (other than when the *firm* is acting as *market maker* in good faith and in the ordinary course of market making, or in the execution of an unsolicited *client* order); and~~
- (2) ~~preparation of *non-independent research* which is intended firstly for internal use by the *firm* and then for later publication to *clients*.~~

13 Preparing product information

...

13.4 Contents of a key features illustration

...

- 13.4.5 G Although there may be no obligation to include a projection in a *key features illustration*, where a *firm* chooses to include one, the *projection* must follow the appropriate requirements, as outlined in this section, or for *financial instruments* under COBS 4.6.7R 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.14EU) 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.

13.5 Preparing product information: other projections

...

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

- 13.5.3 R A firm that communicates a *projection* of benefits for a *packaged product* which is not a *financial instrument*, as part of a combined *projection* where other benefits being projected include those for a *financial instrument* or *structured deposit*, is not required to comply with the *projection rules* in COBS 13.4, COBS 13.5 and COBS 13 Annex 2 to the extent that ~~it~~ the combined projection complies with the future performance ~~rule (COBS 4.6.7R)~~ requirements in either:
- (1) article 44(6) of the MiFID Org Regulation (see COBS 4.5A.14EU) 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 G The general requirement that communications be fair, clear and not misleading will nevertheless mean that a firm that elects to comply with the future performance ~~rule~~ in article 44(6) of the MiFID Org Regulation (see COBS 4.5A.14EU), 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, ~~and, in~~ In particular, the firm should identify where a *projection* in real terms is required under COBS 13.

...

14 Providing product information to clients

...

14.3 Information about designated investments (non-MiFID provisions)

Application

- 14.3.1 R This section applies to a firm in relation to:
- (1) ~~MiFID or equivalent third country business; and~~ [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 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.

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)).

Providing a description of the nature and risks of designated investments

14.3.2 R ...

~~[Note: article 31(1) and (2) of the MiFID implementing Directive]~~

14.3.3 R ...

~~[Note: article 31(3) of the MiFID implementing Directive]~~

14.3.4 R ...

~~[Note: article 31(4) of the MiFID implementing Directive]~~

14.3.5 R ...

~~[Note: article 31(5) of the MiFID implementing Directive]~~

Satisfying the provision rules

14.3.6 G (1) ~~A firm need not treat each of several transactions in respect of the same type of financial instrument as a new or different service and so does not need to comply with the provision rules (COBS 14.3.2R to COBS 14.3.5R) in relation to each transaction.~~

(2) ~~But a firm should ensure that the client has received all relevant~~

~~information in relation to a transaction, such as details of product charges that differ from those already disclosed. [deleted]~~

~~[Note: in respect of (1), recital 50 to the *MiFID implementing Directive*]~~

...

Product information: form

14.3.8 R ...

~~[Note: article 29(4) of the *MiFID implementing Directive*]~~

The timing rules

14.3.9 R (1) The information to be provided in accordance with the *rules* in this section must be provided in good time before a *firm* carries on *designated investment business* ~~or ancillary services~~ with or for a *retail client*.

...

~~[Note: article 29(2) and (5) of the *MiFID implementing Directive*]~~

Keeping the client up-to-date

14.3.10 R ...

~~[Note: article 29(6) of the *MiFID implementing Directive*]~~

Information about UCITS schemes

14.3.11 R ...

~~[Note: article 34 of the *MiFID implementing Directive*]~~

...

Distributor disclosure requirements for UCITS or KII-compliant NURS

14.3.12 G ...

~~[Note: recital 55 to the *MiFID implementing Directive*]~~

After COBS 14.3 (Information about designated investments (non-MiFID provisions)) insert the following new section. All the text is new and is not underlined.

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 “EU” for third country investment firms and MiFID optional exemption firms

- 14.3A.2 R Provisions in this section marked “EU” apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).
- 14.3A.2 G The effect of *GEN 2.2.22AR* is that provisions in this section marked “EU” 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 25 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 EU 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 Directive 2003/71/EC, 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*]

Satisfying the provision rules

- 14.3A.6 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 EU 46(2) Investment firms shall, 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.

[**Note:** article 46(2) 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.2.1 EU, *COBS* 6.1ZA.2.4EU, *COBS* 6.1ZA.2.5 EU, *COBS* 6.1ZA.2.10EU and *COBS* 14.3A.5EU.

Medium of disclosure

- 14.3A.9 EU 46(3) The information referred to in paragraphs 1 and 2 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*]

Keeping the client up-to-date

- 14.3A.10 EU 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 accordance with the UCITS Directive and the PRIIPs Regulation

- 14.3A.11 EU 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 Annex Lifetime ISA information 1

...

4 Projections

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

...

- (2) where a *firm* that communicates a *projection* for a *lifetime ISA* in relation to its *MiFID* or equivalent third country business, the *projection* complies with the future performance ~~rule in *COBS* 4.6.7R~~ requirements in article 44(6) of the *MiFID Org Regulation* (see *COBS* 4.5A.14EU); and

...

...

Amend the following as shown.

16 Reporting information to clients (non-MiFID provisions)

16.1 General client reporting requirement Application

- 16.1.1 R ~~A *firm* must ensure in relation to *MiFID* or equivalent third country business that a *client* receives adequate reports on the services provided to it by the *firm*. The reports must include, where applicable, the costs associated with the transactions and services undertaken by the *firm* on behalf of the *client*.~~

[deleted]

~~[Note: article 19(8) of *MiFID*]~~

- 16.1.2 R This chapter applies 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 ...

~~[Note: article 40 paragraphs (1) to (4) of the *MiFID implementing Directive* and article 24 of the *UCITS implementing Directive*]~~

...

- 16.2.3 R ...

~~[Note: article 40(4) of the *MiFID implementing Directive*]~~

...

Special cases

- 16.2.6 R ~~In relation to business that is not *MiFID or equivalent third country business*, a A firm need not despatch a confirmation if:~~

...

Record keeping: occasional reporting

- 16.2.7 R A firm must retain a copy of any confirmation despatched to a *client* under this section:

(a) ~~for *MiFID or equivalent third country business*, for a period of at least five years; or~~

(b) ~~for business that is not *MiFID or equivalent third country business*, for a period of at least three years;~~

from the date of despatch.

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

16.3 Periodic reporting

Provision by the firm and contents

- 16.3.1 R (1) If a *firm* is *managing investments* on behalf of a *client*, it must provide the *client* with a *periodic statement* in a *durable medium* unless:
- (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) ...

~~[Note: article 41(1) and (2) of the *MiFID implementing Directive*]~~

16.3.2 R ...

~~[Note: article 41(3) of the *MiFID implementing Directive*]~~

16.3.3 R ...

- (2) If the *client* is a *retail client*, the *firm* must send ~~him~~ 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:

...

~~[Note: article 41(4) of the *MiFID implementing Directive*]~~

...

16.3.5 R ...

~~[Note: article 40(4) of the *MiFID implementing Directive*]~~

16.3.6 R ...

~~[Note: article 42 of the MiFID implementing Directive]~~

Contingent liability transactions

16.3.7 R ...

~~[Note: recital 63 of the MiFID implementing Directive]~~

...

Guidance on contingent liability transactions

...

Periodic reporting: special situations

16.3.10 R ~~In relation to business that is not MiFID or equivalent third country business, a~~ A firm need not provide a *periodic statement*:

...

Record keeping: periodic reporting

16.3.11 R *A firm* must make, and retain, a copy of any *periodic statement*:

~~(1) for MiFID or equivalent third country business, for a period of at least five years; or~~

~~(2) for business that is not MiFID or, for a period of at least three years;~~

from the date of despatch.

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

16.4 Statements of client designated investments or client money

16.4.1 R (1) *A firm* that holds *client designated investments* or *client money* for a *client* must send that *client* at least once a year a statement in a *durable medium* of those *designated investments* or that *client money* unless:

(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.

...

(3) This rule does not apply in relation to a firm holding client designated investments or client money under a personal pension scheme or a stakeholder pension scheme, ~~where doing so is not MiFID or equivalent third country business~~

(4) A CTF account provider holding client designated investments or client money under a CTF ~~where doing so is not MiFID or equivalent third country business~~ must provide a statement but need not do so more frequently than required by Regulation 10 of the CTF Regulations.

~~[Note: article 43(1) of the MiFID implementing Directive]~~

16.4.2 R A firm must include the following information in a statement of client assets referred to under this section ~~the following information:~~

...

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

16.4.3 R ...

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

16.4.4 R ...

~~[Note: see article 43(3) of the MiFID implementing Directive]~~

...

16 Annex 1R Trade confirmation and periodic information

This annex forms part of COBS 16.2.1R

	<p>The information below must be provided, where relevant for the purposes of reporting to a retail client, in accordance with SUP 17 Annex 1</p>	<p>(1) Trade confirmation information</p>	<p>(2) Periodic information (where trade confirmation information is not provided on a transaction basis, to be provided for each transaction carried out during the reporting period)</p>
--	--	--	---

General			
...			
7.	...		
<u>7A.</u>	<u>the underlying instrument identification (Note 1);</u>	<u>Y</u>	<u>Y</u>
<u>7B.</u>	<u>the instrument type (Note 2);</u>	<u>Y</u>	<u>Y</u>
<u>7C.</u>	<u>the maturity date (Note 3);</u>	<u>Y</u>	<u>Y</u>
<u>7D.</u>	<u>the derivative type (Note 4);</u>	<u>Y</u>	<u>Y</u>
<u>7E.</u>	<u>put/call (Note 5);</u>	<u>Y</u>	<u>Y</u>
<u>7F.</u>	<u>the strike price (Note 6);</u>	<u>Y</u>	<u>Y</u>
<u>7G.</u>	<u>the price multiplier (Note 7);</u>	<u>Y</u>	<u>Y</u>
...			
9.	...	...	...
<u>9A.</u>	<u>the counterparty;</u>	<u>Y</u>	<u>Y</u>
10.	...	...	...
<u>10 A.</u>	<u>the quantity notation (Note 8);</u>	<u>Y</u>	<u>Y</u>
...			
17.	the <i>client's</i> responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the <i>client</i> ; and	Y	
18.	if the <i>client's</i> counterparty was the <i>firm</i> itself or any person in the <i>firm's group</i> or another <i>client</i> of the <i>firm</i> , the fact that this was the case unless the order was <i>executed</i> through a trading system that facilitates	Y	

	anonymous trading;		
19.	<u>the transaction reference number (Note 9); and</u>	<u>Y</u>	<u>Y</u>
20.	<u>the customer / client identification (Note 10).</u>	<u>Y</u>	<u>Y</u>
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.			
<u><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.</u>			
The following Notes explain certain of the information requirements in the table above.			
<u>Note 1</u>	<u>This is the instrument identification applicable to the security that is the underlying asset in a derivative contract.</u>		
<u>Note 2</u>	<u>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.</u>		
<u>Note 3</u>	<u>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.</u>		
<u>Note 4</u>	<u>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).</u>		
<u>Note 5</u>	<u>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.</u>		
<u>Note 6</u>	<u>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.</u>		

<u>Note 7</u>	<u>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.</u>
<u>Note 8</u>	<u>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.</u>
<u>Note 9</u>	<u>This should be the unique identification number for the transaction provided by the <i>firm</i>.</u>
<u>Note 10</u>	<u>This is the identity of the <i>client</i> or customer on whose behalf the <i>firm</i> was acting.</u>

...

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

This annex forms part of COBS 16.3.1R.

...		
[Note: article 41(2) of MiFID implementing Directive]		

After COBS 16 (Reporting information to clients (non-MiFID provisions)) insert the following new chapter. All the text is new and is not underlined.

16A Reporting information to clients (MiFID provisions)

16A.1 Application

- 16A.1.1 R This chapter applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

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

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

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* 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*]

- 16A.2.2 G A *firm* should refer to SYSC 9 (Record-keeping) for the requirements that apply in relation to the retention of records.

16A.3 Occasional reporting

Execution of orders other than when undertaking portfolio management

- 16A.3.1 EU 59(1) Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order:
- (a) promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;
 - (b) send a notice to the 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 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 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 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 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 client;
 - (n) the rate of exchange obtained where the transaction involves a conversion of currency;
 - (o) the 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 client;

- (p) where the client's counterparty was the investment firm itself or any person in the investment firm's group or another 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 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 client with information about the price of each tranche upon request.

- 59(5) The investment firm may provide the 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 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.
- 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 EU 61 The requirements applicable to reports for *retail* and *professional clients* under Articles 49 and 59 shall apply unless *investment firms* enter into agreements with *eligible counterparties* to determine content and timing of reporting.

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

16A.4 Periodic reporting

Provision by a firm and contents

- 16A.4.1 EU 60(1) Investments firms which provide the service of portfolio management to 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:
- (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 once every three months, except in the following cases:

- (a) where the investment firm provides its 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 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 4(1)(44)(c) of, or any of points 4 to 11 of Section C in Annex I to Directive 2014/65/EU.

60(4) Investment firms, in cases where the client elects to receive information about executed transactions on a transaction-by-

transaction basis, shall provide promptly to the 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 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 client by another person.

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

- 16A.4.2 G In accordance with *COBS 2.4.9R*, a *firm* may dispatch a *periodic statement* (as required by article 60(1) of the *MiFID Org Regulation*, see *COBS 16A.4.1EU*) to an agent, other than the *firm* or an *associate* of the *firm*, nominated by the *client* in writing.

Additional reporting obligations for portfolio management or contingent liability transactions

- 16A.4.3 EU 62(1) Investment firms providing the service of portfolio management shall 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 EU 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 authorised under Directive 2000/12/EC of the European Parliament and of the Council in respect of deposits within the meaning of that Directive 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 Directive 2014/65/EU and its implementing measures 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).

Amend the following as shown.

18 Specialist Regimes

...

18.1 Trustee Firms

Application

- 18.1.1 R (1) This section applies to the ~~*MiFID or equivalent third country business*~~ *MiFID, equivalent third country or optional exemption business* carried on by a trustee firm.

...

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
...	
6.2A	Describing advice services
...	
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
16.3.9 16A.4.5	Guidance on contingent liability transaction <u>transactions</u>
16.5	Quotations for surrender values
16.6	Life insurance contracts – communications to clients
16 Annex 1R (1)14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

- 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.

...

18.2 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
...	
6.2A <u>6.2B</u>	Describing advice services
...	
11.6	Use of dealing commission
...	

...

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* 18.2.4R.

COBS	Description
...	
11.8	Recording telephone conversations and electronic communications
12	Investment research <u>and non-independent research</u>
...	

...

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
...	
6.2A <u>6.2B</u>	Describing advice services
...	
11.6	Use of dealing commission
11.8	Recording telephone conversations and electronic communications
...	
16.3.9 <u>16.3.7</u>	Guidance on contingent liability transaction
...	

...

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 optional exemption business.

COBS	Description
...	
2.3 <u>2.3A</u>	Inducements
...	
11.7 <u>11.7A</u>	Personal account dealing
12	Investment research <u>and non-independent research</u>
...	

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*.

<u>COBS</u>	<u>Description</u>
<u>1</u>	<u>Application</u>
<u>2.1.1</u>	<u>Acting honestly, fairly and professionally</u>
<u>2.2A</u>	<u>Information disclosures before providing services</u>
<u>2.3A</u>	<u>Inducements</u>
<u>2.4</u>	<u>Agent as client and reliance on others</u>
<u>3</u>	<u>Client categorisation</u>
<u>4</u>	<u>Communication to clients including financial promotions, except COBS 4.5-COBS 4.6 and COBS 4.8 - COBS 4.11</u>
<u>5.1</u>	<u>The information and other requirements of the Distance Marketing Directive, but only in relation to distance contracts concluded with consumers</u>
<u>5.2</u>	<u>E-commerce</u>
<u>6.1A</u>	<u>Information about the firm, its services and remuneration</u>
<u>6.2B</u>	<u>Describing advice services</u>
<u>8A</u>	<u>Client agreements</u>
<u>9A</u>	<u>Suitability</u>
<u>11.7A</u>	<u>Personal account dealing</u>
<u>12</u>	<u>Investment research</u>
<u>14.3.1A</u>	<u>Information about financial instruments</u>
<u>15</u>	<u>Cancellation, but only in relation to distance contracts concluded with consumers</u>
<u>16A</u>	<u>Reporting information to clients</u>

...

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* which is ~~*MiFID* or equivalent third country business~~:

COBS	Subject
...	
6.2A <u>6.2B</u>	Describing advice services
...	
11.6	Use of dealing commission
16.3.9 <u>16A.4.5</u>	Guidance on contingent liability transaction
...	

- 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* which is ~~*MiFID* or equivalent third country business~~:

COBS	Description
...	
18.3	Corporate finance business
...	

...

18.5 **Residual CIS operators, ~~UCITS management companies~~ and small authorised UK AIFMs**

Application

- 18.5.1 R Subject to *COBS* 18.5.1AR and ~~*COBS* 18.5.1BR~~, this section applies to a *firm* which is:
- (1) ~~a *UCITS management company*~~; [deleted]
 - (2) ~~a *full-scope UK AIFM*~~; [deleted]
 - (3) a *small authorised UK AIFM*; or
 - (4) a *residual CIS operator*; ~~or~~
 - (5) ~~an *incoming EEA AIFM branch*~~. [deleted]

...

- 18.5.1B R (1) The following apply to a *full-scope UK AIFM* in relation to its *AIF management functions*:
- (a) ~~COBS 18.5.1R to COBS 18.5.2 AG;~~
 - (b) ~~COBS 18.5.3R;~~
 - (c) ~~COBS 18.5.4AR; and~~
 - (d) ~~COBS 18.5.10AR and COBS 18.5.10BG, except as set out in (2).~~
- (2) ~~COBS 18.5.10AR does not apply to a full-scope UK AIFM of:~~
- (a) ~~a UK ELTIF or an EEA ELTIF; or~~
 - (b) ~~an unauthorised AIF which is not a collective investment scheme.~~
- (3) ~~In addition to (1) and (2), COBS 18.5.4CR to COBS 18.5.4DG apply to a full-scope UK AIFM that is an internally managed AIF. [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*.

<u>Table: Application of conduct of business rules</u>	
<u>Chapter, section, rule</u>	<u>Small authorised UK AIFM and a residual CIS operator</u>
<u>1 (Application)</u>	<u>Applies</u>
<u>2.1.1R (The client's best interests rule)</u>	<u>Applies</u>
<u>2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)</u>	<u>Applies</u>
<u>2.3B (Inducements and research)</u>	<u>Applies, as modified by COBS 18 Annex 1</u>
<u>2.4 (Agent as client and reliance on others)</u>	<u>Applies</u>

<u>4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)</u>	<u>Applies</u>
<u>5.2 (E-commerce)</u>	<u>Applies</u>
<u>11.2 (Best execution for AIFMs and residual CIS operators)</u>	<u>Applies to a <i>small authorised UK AIFM</i> of an <i>authorised AIF</i>. Applies (as modified by <i>COBS 18.5.4R</i>) to a <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or <i>residual CIS operator</i>.</u>
<u>11.3 (Client order handling)</u>	<u>Applies</u>
<u>16.3 (Periodic reporting)</u>	<u>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 <i>COBS 18.5.4BR</i>. Otherwise does not apply.</u>
<u>18.5 (Residual CIS operators and small authorised UK AIFMs)</u>	<u>Applies</u>
<u>18 Annex 1 (Research and inducements for collective portfolio managers)</u>	<u>Applies (subject to <i>COBS 18.5.3CR</i>)</u>
<u>18 Annex 2 (Record keeping: client orders and transactions)</u>	<u>Applies</u>

- 18.5.2-A G For activities carried on by *firms* which are not *scheme management activities* or, for an *AIFM*, *AIFM investment management functions*, the *COBS rules* apply under the general application rule, as modified in *COBS 1 Annex 1*.

Table: Application of conduct of business rules

This table belongs to *COBS 18.5.2R* [deleted]

Chapter, section, rule	<i>Full-scope UK AIFM</i>	<i>Small authorised UK AIFM and a residual CIS operator</i>	<i>Incoming EEA AIFM branch</i>	<i>UCITS management company</i>
†	Applies	Applies	Applies	Applies
2.1.1	Does not apply	Applies	Does not apply	Applies
2.1.4	Applies	Does not apply	Applies	Does not apply

2.3	Does not apply	Applies	Does not apply	Applies
2.4	Does not apply	Applies	Does not apply	Applies
4.2.1–4.2.3	Applies	Applies	Applies	Applies
5.2	Applies	Applies	Applies	Applies
6.1G.2	Applies	Applies	Applies	Applies
11.2	Applies as modified by <i>COBS 18.5.4AR</i>	Applies to a <i>small authorised UK AIFM</i> of an <i>authorised AIF</i> . Applies (as modified by <i>COBS 18.5.4R</i>) to a <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or <i>residual CIS operator</i>	Applies as modified by <i>COBS 18.5.4AR</i>	Applies
11.3	Does not apply	Applies	Does not apply	Applies
11.5	Does not apply	Applies as <i>rules</i>	Does not apply	Does not apply
11.6	Applies, but as modified by <i>COBS 18.5.4CR</i> for <i>internally managed AIFs</i> .	Applies	Applies	Applies
11.8	Applies	Applies	Applies	Applies
16.3	Does not apply	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	Does not apply	Does not apply

		modified by <i>COBS</i> 18.5.4BR. Otherwise does not apply.		
18.5	Applies as modified by <i>COBS</i> 18.5.1BR	Applies	Applies	Applies

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*.

~~Additional application of *COBS* rules for management companies~~

18.5.2A R ~~A *management company* must:~~

(1) ~~in addition to complying with the *COBS rules* specified in *COBS 18.5.2R*, comply with *COBS 11.7 (Personal account dealing)*; and~~

(2) ~~comply with *COBS 2.3 (Inducements)* as modified by *COBS 2.3.2AR [deleted]*~~

~~[**Note:** article 13(1) to 13(4) of the *UCITS implementing Directive*]~~

~~General modifications~~

18.5.3 R Where *COBS rules* specified in the table in *COBS 18.5.2R* apply to a *firm* carrying on *scheme management activities 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* ~~in respect of~~ for which the *firm* is acting or intends to act, ~~and with or for the benefit of which the relevant activity is to be carried on;~~

(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~~ 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 *COBS 11.3 (Client order handling)* ~~and *COBS 11.5 (Record keeping: client*~~

~~orders and transactions~~) are to be read as references to the management by a *firm* of *financial instruments* held for or within the *fund*; and .

- (4) ~~references to *investment firm* in COBS 11.5 are to be read as references to *small authorised UK AIFM* or *residual CIS operator*.
[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 *depository*; or
- (b) physically delivered to the *depository*; 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 ~~applying 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* ~~do not apply in relation to~~ 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 Only the following provisions in ~~COBS 11.2~~ apply to a *full-scope UK AIFM*:

- (1) ~~COBS 11.2.5G;~~
- (2) ~~COBS 11.2.17G;~~
- (3) ~~COBS 11.2.23AR, but references to *management company* should be read as references to an *AIFM* and references to *Unitholders* read as references to investors. This obligation only applies for the execution policy required under article 27(3) of the *AIFMD level 2 regulation* (Execution of decisions to deal on behalf of the managed AIF);~~
- (4) ~~COBS 11.2.24R;~~
- (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 their order execution arrangements or execution policy. [deleted]~~

...

Modification of dealing commission rules for internally managed AIFs

- 18.5.4C R Only ~~COBS 11.6.1G to COBS 11.6.11G~~ apply to a *full scope UK AIFM* that is an *internally managed AIF* and references to an *investment manager* in ~~COBS 11.6~~ are to be read as including an *internally managed AIF* which manages *designated investments* on its own account and references to a *customer order* as a decision by an *internally managed AIF* to execute a transaction for these purposes. [deleted]
- 18.5.4D G To be an *investment manager*, a *person* needs to manage *designated investments* on a discretionary or non-discretionary basis under the terms of a management agreement. The purpose of ~~COBS 18.5.4CR~~ is to modify ~~COBS 11.6.1G to COBS 11.6.11G~~ so that these provisions apply to a *full scope UK AIFM* that is an *internally managed AIF* because such *firms* manage *designated investments* on their own account rather than under the terms of a management agreement. [deleted]

...

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 18.5.5R*.

- (3) Contravention of (1) may be relied on as tending to establish contravention of *COBS* 18.5.5R.

Table: Content of fund documents

Content of fund documents

The fund documents should include provision about:	
...	
(16)	<p>Use of dealing commission <u>Research and inducements</u></p> <p>if the <i>firm</i> receives goods or services in addition to the <i>execution</i> of its <i>customer orders</i> in accordance with the section on the use of dealing commission, the prior disclosure required by the <i>rule</i> on prior disclosure (see <i>COBS</i> 11.6.2R) <u>how the <i>firm</i> intends to pay for research. For example, whether the <i>firm</i> proposes to pay for research directly or to use a <i>research</i> payment account;</u></p>
...	

Application of *COBS* 18.5.10E to a full scope UK AIFM

18.5.10 R ~~A full scope UK AIFM which markets an unauthorised AIF to a retail~~
 A ~~client must, in addition to providing the information in *FUND* 3.2, take reasonable steps to offer and, if requested, provide to that potential investor information about the following items in the *COBS* 18.5.10E table (content of fund documents): [deleted]~~

- (1) ~~(1) (Regulator);~~
- (2) ~~(4) (Commencement);~~
- (3) ~~(5) (Accounting);~~
- (4) ~~(6) (Termination method);~~
- (5) ~~(7) (Complaints procedure);~~
- (6) ~~(8) (Compensation);~~
- (7) ~~(13) (Exchange rates);~~
- (8) ~~(14) (Stabilised investments);~~
- (9) ~~(16) (Use of dealing commission);~~
- (10) ~~(17) (Acting as principal);~~
- (11) ~~(23) (Underwriting commitments);~~

~~(12) (24) (Investments in other funds); and~~

~~(13) (25) (Investments in securities underwritten by the firm).~~

18.5.10B 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 18.5.10AR*.
[deleted]~~

...

Insert the following new sections after COBS 18.5 (Residual CIS operators and small authorised UK AIFMs). The text is not underlined.

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*;

(b) an *EEA AIF*; and

(c) a *non-EEA AIF*; or

(2) an *incoming EEA AIFM branch*.

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

(1) a *UK ELTIF* or an *EEA ELTIF*; or

(2) an *unauthorised AIF* which is not a *collective investment scheme*.

Application or modification of general COBS rules

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

(1) must comply with the *COBS rules* specified in the table, as modified by this section; and

(2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

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

- 18.5A.4 G (1) For activities that are not *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 *AIF*, *marketing* and activities related to the assets of the *AIF*.

General modifications

- 18.5A.5 R Where *COBS rules* specified in the table in *COBS* 18.5A.3R apply to a *firm* carrying on *AIFM investment management functions*, references to *customer* or *client* are to be construed as references to any *AIF* for which the *firm* is acting or intends to act.

Research and inducements

- 18.5A.6 R Subject to *COBS* 18.5A.7R, 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*.

- 18.5A.7 R *COBS* 18 Annex 1 does not apply in relation to an *AIF* 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 *depository*; or
 - (b) physically delivered to the *depository*; 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

- 18.5A.8 R Only the following provisions in *COBS* 11.2 apply:
- (1) *COBS* 11.2.5G;
 - (2) *COBS* 11.2.17G;
 - (3) *COBS* 11.2.23AR;
 - (4) *COBS* 11.2.24R;
 - (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* or another *EEA State*, *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.

18.5B UCITS management companies

Application

- 18.5B.1 R This section applies to a *UCITS management company*.

Application or modification of general COBS rules

- 18.5B.2 R 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
2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)	Applies, as modified by <i>COBS</i> 2.3.1AR and <i>COBS</i> 2.3.2AR
2.3B (Inducements and research)	Applies, as modified by <i>COBS</i> 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 (1) For activities which are not *scheme management activity*, 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 *marketing* of the *scheme*.

General modifications

- 18.5B.4 R Where *COBS rules* specified in the table in *COBS 18.5B.2R* apply to a *firm* carrying on *scheme management activities*, the following modifications apply:
- (1) subject to (2), references to *customer* or *client* are to be construed as references to any *scheme* in respect of which the *firm* is acting or intends to act; and
- (2) references to the service of *portfolio management* in *COBS 11.3 (Client order handling)* are to be read as references to *collective portfolio management*.
- 18.5B.5 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 the following sections that are applied in the table in *COBS 18.5B.2R*:
- (a) *COBS 11.3 (Client order handling)*; and

(b) COBS 11 Annex 1EU (Regulatory technical standard 28).

Research and inducements

- 18.5B.6 R 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*.

Distance marketing

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

Amend the following as shown. Underlining indicates new text and striking though indicates deleted text.

18.9 ICVCs

...

- 18.9.2 G *Firms* should note that the *operator* of an *ICVC* when it is undertaking *scheme management activity* will be subject to:
- (1) 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 an *incoming EEA AIFM branch*; or
 - (3) COBS 18.5B.2R if the *operator* is a *UCITS management company*.

...

18.11 Authorised professional firms

...

- 18.11.1 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*.

...

After COBS 18.11 (Authorised professional firms) insert the following new Annexes. The text is all new and is not underlined.

18 Research and inducements for collective portfolio managers

Annex 1

1	Application	
1.1	G	This section applies to:
	(1)	a <i>small authorised UK AIFM</i> and a <i>residual CIS operator</i> , in accordance with <i>COBS 18.5.2R</i> ;
	(2)	a <i>full-scope UK AIFM</i> and an <i>incoming EEA AIFM branch</i> , in accordance with <i>COBS 18.5A.3R</i> ;
	(3)	a <i>UCITS management company</i> , in accordance with <i>COBS 18.5B.2R</i> .
1.2	G	In accordance with <i>COBS 18.5.3CR</i> and <i>COBS 18.5A.7R</i> , this section does not apply in relation to an <i>AIF</i> or <i>CIS</i> which in accordance with its core investment policy:
	(1)	does not generally invest in <i>financial instruments</i> that can be:
	(a)	registered in a <i>financial instruments</i> account opened in the books of a <i>depository</i> ; or
	(b)	physically delivered to the <i>depository</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> .
2	Rule on research and inducement	
2.1	R	When <i>executing</i> 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:
	(1)	accept and retain any fees, commissions or monetary benefits; or
	(2)	accept any non-monetary benefits,
		where these are paid or provided by any third party or a <i>person</i> acting on behalf of a third party.
2.2	R	A <i>firm</i> must:
	(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	Paragraph 2.1R does not apply to:	
		(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> , an <i>incoming EEA AIFM branch</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)	<i>research</i> relating to an issue of <i>shares, debentures, warrants</i> or <i>certificates representing certain securities</i> by an <i>issuer</i> , which is:
		(a)	produced by a <i>person</i> 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
		(6)	free sample <i>research</i> provided for a limited trial period where:
		(a)	the trial period lasts no longer than three months;
		(b)	the trial period is not commenced with a provider within 12 <i>months</i> 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.
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:	
		(1)	consists of:
		(a)	short term market commentary on the latest economic statistics; or
		(b)	company results or information on upcoming releases or events;
		(2)	contains only a brief unsubstantiated summary of the third party's own

			opinion on such information; and
		(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).
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.	
4	Inducements and research		
4.1	R	A <i>firm</i> must comply with <i>COBS</i> 2.3B, as modified by this section, when <i>executing</i> 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> .	
	General modifications		
4.2	R	The application provision in <i>COBS</i> 2.3B.1R (Application) and associated <i>guidance</i> in <i>COBS</i> 2.3B.2G do not apply.	
4.3	R	Where <i>COBS</i> 2.3B applies to a <i>firm</i> , the following modifications apply:	
		(1)	in <i>COBS</i> 2.3B.3R:
		(a)	the reference to “providing <i>investment services</i> or <i>ancillary services</i> to <i>clients</i> ” is to be construed as a reference to “ <i>executing</i> 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> ”; and
		(b)	the reference to “ <i>COBS</i> 2.3A.5R, <i>COBS</i> 2.3A.15R or <i>COBS</i> 2.3A.16R” is to be construed as a reference to <i>COBS</i> 18 Annex 1 2.1R;
		(2)	in <i>COBS</i> 2.3B.4R(1)(a), the reference to “third party <i>research</i> in respect of <i>investment services</i> rendered to its <i>clients</i> ” is to be construed as a reference to “third party <i>research</i> in respect of <i>scheme management activity</i> or, for an <i>AIFM</i> , <i>AIFM investment management functions</i> ”;
		(3)	in <i>COBS</i> 2.3B.11R(3)(b)(ii), the reference to “the <i>firm</i> ’s policy for using third party <i>research</i> established under <i>COBS</i> 2.3B.12R” is to be construed as a reference to “the <i>firm</i> ’s written statement made in accordance with <i>COBS</i> 18 Annex 1 4.8R”;
		(4)	in <i>COBS</i> 2.3B.22G:
		(a)	the reference to “ <i>COBS</i> 2.3A.19R or <i>COBS</i> 2.3A” is to be construed as a reference to “ <i>COBS</i> 18 Annex 1 3.1R or <i>COBS</i> 18 Annex 1 3.2G”; and

		(b)	the reference to “ <i>COBS 2.3A.15R</i> or <i>COBS 2.3A</i> ” is to be construed as a reference to “ <i>COBS 18 Annex 1 2.1R</i> ”; and
		(5)	in <i>COBS 2.3B.24G</i> , the reference to <i>COBS 11.2A</i> is to be construed as a reference to:
		(a)	<i>COBS 11.2</i> for <i>small authorised UK AIFMs, residual CIS operators, full-scope UK AIFMs</i> and <i>incoming EEA AIFM branches</i> ; and
		(b)	<i>COBS 11.2B</i> for <i>UCITS management companies</i> .
4.4	R		<i>COBS 2.3B.8R(1)</i> and the reference to “agreeing the <i>research charge</i> with its <i>clients</i> ” in <i>COBS 2.3B.4R(2)(a)</i> only apply if the <i>fund</i> has its own <i>governing body</i> which is independent of the <i>firm</i> .
4.5	G	(1)	An example of a <i>fund</i> that has its own <i>governing body</i> 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 not a <i>director</i> of the <i>fund</i> .
		(2)	An example of a <i>fund</i> that does not have its own <i>governing body</i> 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 <i>director</i> of the <i>fund</i> .
4.6	G		In accordance with <i>COBS 18.5.3R(1)</i> , <i>COBS 18.5A.5R</i> and <i>COBS 18.5B.4R(1)</i> , 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 <i>COBS 2.3B</i> are to be ignored:
		(1)	<i>COBS 2.3B.5R</i> ;
		(2)	<i>COBS 2.3B.6G</i> ;
		(3)	<i>COBS 2.3B.8R(2)</i> ;
		(4)	<i>COBS 2.3B.9G</i> ;
		(5)	<i>COBS 2.3B.12R</i> ; and
		(6)	<i>COBS 2.3B.20R</i> .
			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 <i>COBS 2.3B.4R(4)</i> ;

		(2)	how <i>research</i> purchased through the <i>research</i> payment account 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</i> charge 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 <i>COBS</i> 18 Annex 1 4.11R can be obtained.
4.9	R		An <i>authorised fund manager</i> of an <i>authorised fund</i> must publish the information in paragraph 4.8 in the <i>fund's prospectus</i> .
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 <i>FUND</i> 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 <i>COBS</i> 18.5.5R (Scheme documents for an unauthorised fund).
4.11	R	(1)	A <i>firm</i> using a <i>research</i> payment account must publish:
		(a)	the budgeted amount for <i>research</i> ; and
		(b)	the amount of the estimated <i>research</i> charge for each <i>fund</i> .
		(2)	A <i>firm</i> must not increase its <i>research</i> budget or <i>research</i> charge 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> .
			Periodic disclosure of the research payment account to investors
4.12	R		A <i>firm</i> using a <i>research</i> payment account 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.
4.13	R		An <i>authorised fund manager</i> of an <i>authorised fund</i> must publish the information in paragraph 4.12 in the annual long report of the <i>authorised fund</i> .
4.13	G		A <i>full-scope UK AIFM</i> 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 <i>FUND</i> 3.3 (Annual report of an AIF).

4.14	R	A <i>firm</i> using a <i>research</i> payment account must, on request, make available a summary of the following information to investors for the most recent annual accounting period:	
		(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.

18 Record keeping: client orders and transactions

Annex 2

1	Application		
1.1	R	This section applies to:	
		(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 <i>equivalent third country business</i> ; 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 <i>COBS 18.5.3R(1)</i> , 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	(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:
		(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> .
		(2)	The details referred to in (1) are:
		(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	Immediately after executing a <i>client</i> order, or, in the case of <i>firms</i> that transmit orders to another <i>person</i> for <i>execution</i> , immediately after receiving confirmation that an order has been <i>executed</i> , <i>firms</i> must record the following details of the transaction in question:	
		(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 <i>executed</i> the transaction or who is responsible for the <i>execution</i> .
3.2	R	If a <i>firm</i> transmits an order to another <i>person</i> for <i>execution</i> , 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 <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.
				(b) 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.
		(10)	Venue identification	Identification of the venue where the transaction was executed. That identification must consist of: where the venue is a <i>trading venue</i> , its unique harmonised identification code; otherwise, the code ‘OTC’.

TP 1 Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
			Overview of transitional provisions for client categorisation		
1.1	COBS 3	G	COBS TP 1.2 contains default transitional categorisation provisions in relation to the existing <i>clients</i> of a <i>firm</i> on 1	From 1 November 2007 indefinitely	1 November 2007

		<p>November 2007. In many cases, they allow a <i>client</i> to be automatically provided with the nearest equivalent categorisation under <i>COBS 3</i> to their previous categorisation.</p> <p><i>COBS</i> TP 1.3 explains how the transitional provisions for <i>client</i> categorisation relate to the requirement for a <i>firm</i> to act if it becomes aware that an <i>elective professional client</i> no longer satisfies the initial conditions for its categorisation. The default provisions do not prevent a <i>firm</i> categorising such a <i>client</i> differently in accordance with <i>COBS 3</i>.</p> <p><i>COBS</i> TP 1.4 provides guidance on how some of the procedural requirements in <i>COBS 3</i> apply in some such cases.</p> <p><i>COBS</i> TP 1.5 contains transitional notification obligations, which apply if the default provisions do not allow that <i>client</i> to be provided with the nearest equivalent categorisation or a <i>firm</i> chooses not to take advantage of those provisions in relation to a <i>client</i>.</p> <p><i>COBS</i> TP 1.6 contains a transitional notification obligation that applies to a <i>firm</i> that, in relation to <i>MiFID or 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>		
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			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 equivalent third country business.		
			Categorisation of existing clients		
1.2	COBS 3	R	<p>An existing <i>client</i> that was correctly categorised as a <i>private customer</i> immediately before 1 November 2007 is a <i>retail client</i> unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>An existing <i>client</i> that was correctly categorised as an <i>intermediate customer</i> immediately before 1 November 2007:</p> <p>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;</p> <p>or</p> <p>is otherwise a <i>per se professional client</i>;</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>An existing <i>client</i> that was correctly categorised as a <i>market counterparty</i> immediately before 1 November 2007 is:</p>	From 1 November 2007 indefinitely to 2 January 2018	1 November 2007

			<p>for <i>eligible counterparty business</i> that is not <i>MiFID</i> or <i>equivalent third country business</i>, an <i>eligible counterparty</i>; and</p> <p>otherwise, a <i>per se professional client</i>;</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p>		
			<p>[Note: Article 71(6) of, and third paragraph of section II.2 of Annex II to, <i>MiFID Directive 2004/39/EC of the European Parliament and of the Council</i>]</p>		
1.3	<i>COBS 3</i>	G	<p>Under <i>COBS 3.5.9R</i>, if a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i>, the <i>investment firm</i> must take the appropriate action. In the case of a <i>client</i> that has been classified as an <i>elective professional client</i> under <i>COBS TP 1.2R(2)(a)</i>, the initial conditions are those that applied to the <i>client's</i> initial categorisation as an <i>intermediate customer</i>.</p>	<p>From 1 November 2007 indefinitely to <u>2 January 2018</u></p>	1 November 2007
			Former inter-professional business		
1.4	<i>COBS 3</i>	G	<p>The requirement to provide notices under <i>COBS 3.3.1R</i> only applies in relation to new <i>clients</i>. The requirement to obtain confirmation under <i>COBS 3.6.4R(2)</i> only applies in relation to prospective counterparties. These obligations are therefore</p>	<p>From 1 November 2007 indefinitely to <u>2 January 2018</u></p>	1 November 2007

			not relevant to the extent that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under <i>COBS 3</i> in relation to <i>eligible counterparty business</i> .		
			Transitional notification obligations		
1.5	<i>COBS 3</i>	R	<p>(1) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>private customer</i> immediately before 1 November 2007 as a <i>retail client</i>, it must notify that <i>client</i> of its categorisation as a <i>professional client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>(2) If a <i>firm</i> does not categorise a <i>client</i> that was an <i>intermediate customer</i> immediately before 1 November 2007 as a <i>professional client</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>(3) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>market counterparty</i> immediately before 1 November 2007 as an <i>eligible counterparty</i>, it must notify that <i>client</i> of its</p>	From 1 November 2007 indefinitely <u>to 2 January 2018</u>	1 November 2007

			categorisation as a <i>retail client</i> or <i>professional client</i> on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i> .		
			[Note: article 28(1) of the <i>MiFID implementing Directive</i>]		
1.6	<i>COBS</i> 3	R	If a <i>firm</i> , in relation to <i>MiFID</i> or equivalent third country business, categorises a <i>client</i> who would not otherwise have been a <i>professional client</i> as a <i>professional client</i> under <i>COBS</i> TP 1.2(2)(b) or (3)(b), it must inform that <i>client</i> about the relevant conditions for the categorisation of <i>clients</i> . This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i> .	From 1 November 2007 indefinitely to 2 January 2018	1 November 2007
			[Note: article 71(6) of <i>MiFID Directive</i> 2004/39/EC of the <u>European Parliament and of the Council</u>]		
1.7		G	A notice to a <i>professional client</i> under <i>COBS</i> TP 1.6 should inform that <i>client</i> : that they have been categorised as a <i>professional client</i> ; and of the main differences between the treatment of a <i>retail client</i> and a <i>professional client</i> .	From 1 November 2007 indefinitely to 2 January 2018	1 November 2007
1.8		R	The record-keeping	From 1	1 November

			requirements under <i>COBS</i> 3.8.2R apply in relation to any <i>client</i> categorisations or re-categorisations made under the transitional provisions for <i>COBS</i> 3.	November 2007 indefinitely	2007
...					

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
<u>2.- 2B</u>	<u>COBS 2.3A</u>	<u>R</u>	<u>The rules and guidance on inducements in COBS 2.3A:</u>	<u>From 3 January 2018</u>	<u>3 January 2018</u>
			(1) <u>apply to fees, commission, monetary and non-monetary benefits which are paid, provided or received by a firm in respect of services that are provided to a client on or after 3 January 2018; and</u>		
			(2) <u>do not apply to fees, commission, monetary or non-monetary benefits which are paid, provided or received in respect of services that are provided to a client before 3 January 2018.</u>		
...					

Sch 1 Record keeping requirements

...

Sch 1.2A 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. 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*]

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>COBS 2.3.17R(2)</u>	Each benefit given to another <i>firm</i> which does not have to be disclosed to the <i>client</i> in accordance with <u>COBS 2.3.1R (2)(b)(ii)</u>	Each benefit given	When benefit is given	5 years from date of benefit
<u>COBS 2.3A.19R(f) (iv)</u>	<u>Trial periods of research received in accordance with COBS 2.3A.19(f).</u>	<u>Dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in COBS 2.3A.19(f)(i) to (iii).</u>	<u>When the trial period is received</u>	
<u>COBS 2.3A.32R</u>	<u>Evidence that any fees, commissions and non-monetary benefits paid or received are designed to enhance the quality of the relevant</u>	<u>(1) List of all fees, commissions and non-monetary benefits received; and (2) record of how any fees, commissions or non-</u>	<u>When the relevant fee, commission or non-monetary benefit is paid or received</u>	<u>Not specified</u>

	<u>service to the client</u>	<u>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 client</u>		
<u>COBS 2.3B.11R</u>	<u>Audit trail in relation to the operation of any research payment accounts</u>	(1) <u>Payments made to research providers; and</u> (2) <u>how the amounts paid were determined</u>	<u>When a payment for research is made</u>	<u>Not specified</u>
<u>COBS 2.3B.20R</u>	<u>Summary details in relation to the operation of a research payment account</u>	<u>A summary of:</u> (1) <u>the providers paid from the account;</u> (2) <u>the total amount paid over a defined period;</u> (3) <u>the benefits and services received; and</u> (4) <u>how the total amount spent compares to</u>	<u>From when the research payment account is established</u>	<u>Not specified</u>

		<u>the budget</u>		
...				
<i>COBS</i> 4.11.2G	Compliance of <i>financial</i> <i>promotions</i>	<i>Firms</i> encouraged to consider recording why a <i>financial</i> <i>promotion</i> is considered compliant.	Date of assessment of compliance	
<u><i>COBS</i> 6.1A.5AR (2)(e)(vi)(D)</u>	<u>Trial periods of research received in accordance with <i>COBS</i> 6.1A.5AR(2) (e)(vi)</u>	<u>Dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in <i>COBS</i> 6.1A.5AR(2) (e)(vi)(A) to (C)</u>	<u>When the trial period is received</u>	
...				
<i>COBS</i> 6.3.11R	<i>Menu</i>	Copy of each <i>menu</i>	From date on which it was updated or replaced	5 years
<i>COBS</i> 8.1.4R	<i>Client</i> <i>agreements</i> <u>Client agreements (non-MiFID provisions)</u>	Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i>	From date of agreement	From whichever is the longer of 5 years or <u>At least</u> the duration of the relationship with the <i>client</i> . Records relating unless the record relates to a <i>pension</i> <i>transfer</i> ,

				<i>pension conversion, pension opt-out or FSAVC in which case it must be retained indefinitely</i>
<u>COBS 8A.1.9R</u>	<u>Client agreements (MiFID provisions)</u>	<u>Documents setting out rights and obligations of the firm and the client</u>	<u>From date of agreement</u>	<u>At least the duration of the relationship with the client</u>
...				
<u>COBS 9.5.1G</u>	<u>Suitability (non-MiFID provisions)</u>	<i>Client information for suitability report and suitability report</i>	From date of <i>suitability report</i>	See <i>COBS 9.5.2R</i>
...				
<u>COBS 9A.4.1G</u>	<u>Suitability (MiFID provisions)</u>	<u>Client information for suitability report</u>	<u>From date of suitability report</u>	<u>At least 5 years</u>
<u>COBS 10.7.1G</u>	<u>Appropriateness (non-MiFID provisions)</u>	<i>Client information obtained in making assessment of appropriateness and the appropriateness assessment</i>	Date of assessment	<u>At least 5 years</u>
<u>COBS 10A.7.2EU</u>	<u>Appropriateness (MiFID provisions)</u>	<u>Records of appropriateness assessments including the results of such assessments</u>	<u>Date of assessment</u>	<u>At least 5 years</u>

		<u>and any warnings given to clients</u>		
<i>COBS</i> 11.3.2R	Client orders	Orders executed for <i>clients</i>	See <i>COBS</i> 11.5	5 years
<i>COBS</i> 11.5.1EU	<i>Client orders and decisions to deal in portfolio management</i>	Orders received from <i>clients</i> and decisions taken – details in <i>COBS</i> 11.5.1 EU	See <i>COBS</i> 11.5.1 EU	5 years
<i>COBS</i> 11.5.2EU	<i>Client orders</i>	Execution of orders	See <i>COBS</i> 11.5.1 EU	5 years
<i>COBS</i> 11.5.3EU	<i>Client orders</i>	Transmission details (see <i>COBS</i> 11.5.3 EU)	Date of transmission	5 years
<u><i>COBS</i> 11.5A.4EU</u>	<u><i>Client orders</i></u>	<u>Initial orders from <i>clients</i> and decisions to deal</u>	<u>Immediately</u>	<u>At least 5 years</u>
<u><i>COBS</i> 11.5A.5EU</u>	<u><i>Client orders</i></u>	<u>Transactions and order processing</u>	<u>Immediately</u>	<u>At least 5 years</u>
<i>COBS</i> 11.6.19R	Prior and periodic disclosure	Prior and periodic disclosure on use of dealing commission	From date of disclosure to <i>customers</i>	5 years
...				
<u><i>COBS</i> 11.7A.5EU</u>	<u>Personal account dealing (MiFID provisions)</u>	<u>A record of any personal transaction notified or identified, including any authorisation</u>	<u>Date of notification, identification or decision</u>	<u>At least 5 years</u>

		<u>or prohibition</u>		
<i>COBS</i> 11.8.5R	Telephone conversations and electronic communications subject to the taping obligation (see <i>COBS</i> 11.8.5R)	Telephone conversations and electronic communications recorded under <i>COBS</i> 11.8.5R	When the conversation or electronic communication is made, sent or received	6 months
<u><i>COBS</i></u> <u>11A.1.9EU</u>	<u>Underwriting and placing</u>	<u>Content and timing of instructions received from clients and allocation decisions</u>	<u>Date of receipt of instructions or of allocation decision</u>	<u>5 years</u>
...				
<i>COBS</i> 16.2.7R	Confirmation to <i>clients</i> (<u>non-MiFID provisions</u>)	Copy of a confirmation	From date of despatch to <i>client</i>	<i>MiFID or equivalent third country business</i> —5 years Other business— <u>At least 3 years</u>
<i>COBS</i> 16.3.11R	<i>Periodic statements</i> (<u>non-MiFID provisions</u>)	A copy of a <i>periodic statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	<i>MiFID or equivalent third country business</i> —5 years Other business— <u>At least 3 years</u>
<u><i>COBS</i></u> <u>16A.3.1EU</u>	<u>Confirmation to clients</u> (<u>MiFID provisions</u>)	<u>A copy of a confirmation</u>	<u>From date of despatch to client</u>	<u>At least 5 years</u>
<u><i>COBS</i></u>	<u><i>Periodic statements</i></u>	<u>A copy of a periodic</u>	<u>From date of despatch to</u>	<u>At least 5</u>

<u>16A.4.1EU</u>	<u>(MiFID provisions)</u>	<u>statement sent to a client</u>	<u>client</u>	<u>years</u>
...				
<u>COBS 18 Annex 2 2.1R</u>	<u>Client orders and decisions to deal in portfolio management</u>	<u>Orders received from clients and decisions taken - details in COBS 18 Annex 2 2.1R(2)</u>	<u>Immediately</u>	<u>5 years</u>
<u>COBS 18 Annex 2 3.1R</u>	<u>Client orders</u>	<u>Execution of orders</u>	<u>Immediately after executing a client order, or, in the case of firms that transmit orders to another person for execution, immediately after receiving confirmation that an order has been executed</u>	<u>5 years</u>
<u>COBS 18 Annex 2 3.2R</u>	<u>Client orders</u>	<u>Transmission details (see COBS 18 Annex 2 3.2R)</u>	<u>Immediately on transmitting an order to another person for execution</u>	<u>5 years</u>

Annex G

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

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

1 Application

1.1 General application

...

Limitations on the general application rule

1.1.2 R The general application *rule* is modified:

(1) in the chapters of this sourcebook for particular purposes; and

(2) in BCOBS 1 Annex 1 for certain types of firm in relation to the sale of structured deposits.

...

Structured deposits

1.1.8 G A firm that carries on the activity of accepting deposits which are structured deposits should refer to BCOBS 1 Annex 1.

Insert the following new Annex after BCOBS 1 (Application). All the text is new and is not underlined.

1 Annex Structured deposit business

1

Application of BCOBS to firms selling structured deposits

1.1 R The BCOBS provisions shown below do not apply to a *MiFID investment firm*, a *third country investment firm* or a *MiFID optional exemption firm* in relation to the sale of *structured deposits* subject to the rules specified in COBS 1.1.1AR(2).

BCOBS provision	Description
<i>BCOBS 2</i>	Communications with banking customers

	and financial promotions
<i>BCOBS 4 (other than BCOBS 4.1.4AG and BCOBS 4.3)</i>	Information to be communicated to banking customers

- 1.2 G A *firm* to which *BCOBS 1 Annex 1* paragraph 1.1R applies should read and understand the reference to the appropriate information *rule* in *BCOBS 4.1.4AG* as referring to *COBS 2.2A.2R*.
- 1.3 G A *MiFID investment firm*, a *third country investment firm* or a *MiFID optional exemption firm* that sells *structured deposits* should consider *COBS 1.1.1AR* to *COBS 1.1.1ABR*. These *rules* specify how certain provisions in *COBS* apply to a *firm* in relation to the sale of *structured deposits*.

Financial promotions relating to structured deposits

- 1.4 G (1) *BCOBS 2* contains *rules* which apply to a *firm* when it *communicates* a *financial promotion* that is not an *excluded communication* or when the *firm* *approves* a *financial promotion*.
- (2) If a *financial promotion* relates to a *structured deposit*, *rules* relating to past, simulated past and future performance in *COBS 4.5A* or *COBS 4.6* will also apply.

Structured deposits as PRIIPs

- 1.5 G *Firms* are reminded that *structured deposits* are *PRIIPs* and that the provisions of the *PRIIPs Regulation* are also relevant to such products. The *PRIIPs Regulation* requires a *person* who advises on, or sells, a *PRIIP* to provide a retail investor (as defined in the *PRIIPs Regulation*) with the *key information document* for that *PRIIP*.
- 1.6 G Where a *firm* is required to provide information in a *key information document*, it will not be required to provide the same information under *BCOBS 4.1*.

[**Note:** *BCOBS 1.1.4R(3)* and article 13 of the *PRIIPs Regulation*]

Amend the following as shown.

2 Communications with banking customers and financial promotions

2.1 Purpose and Application: Who and what?

...

- 2.1.4 G In accordance with *BCOBS 1 Annex 1* paragraph 1.1R, *BCOBS 2* does not

apply to a MiFID investment firm, a third country investment firm or a MiFID optional exemption firm in relation to the sale of structured deposits. A MiFID investment firm, a third country investment firm or a MiFID optional exemption firm is subject to the rules specified in COBS 1.1.1AR(2) in relation to the sale of structured deposits.

...

2.3 Other general requirements for communications and financial promotions

...

- 2.3.6 G ~~The Credit Institutions (Protection of Deposits) Regulations 1995~~ Depositor Protection Part of the PRA Rulebook may apply in relation to communications with a *banking customer*.

...

2.4 ~~Structured deposits, cash~~ Cash deposit ISAs and cash deposit CTFs

- 2.4.1 G ~~If a financial promotion relates to a structured deposit, rules in COBS 4.6 (Past, simulated past and future performance) will also apply.~~ [deleted]

...

Annex H

Amendments to the Client Assets sourcebook (CASS)

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

1 Application and general provisions

...

1.4 Application: particular activities

...

Auction regulation bidding

- 1.4.9 R ~~Where a *firm* carries on *auction regulation bidding* it may elect to comply with CASS (but not CASS 5) in respect of this activity, subject to the general modifications in CASS 1.4.10R. [deleted]~~
- 1.4.10 R ~~Where a *firm* has made an election in accordance with CASS 1.4.9R, CASS is modified so that in relation to that *firm*: [deleted]~~
- (1) ~~each reference to:~~
- (a) ~~*designated investments*;~~
- (b) ~~*safe custody assets*; and~~
- (c) ~~*contingent liability investments*;~~
- ~~includes a reference to a *two-day emissions spot*;~~
- (2) ~~each reference to *designated investment business* includes *auction regulation bidding*;~~
- (3) ~~each reference to *safeguarding and administering investments*, including *safeguarding and administration of assets (without arranging)* and *arranging safeguarding and administration of assets*, includes those activities where they are carried on in relation to a *two-day emissions spot*; and~~
- (4) ~~the reference in CASS 6.2.3AR to an ‘*emissions auction product*’ that is a *financial instrument*’ includes a *two-day emissions spot*;~~
- 1.4.11 G ~~The effect of CASS 1.4.10R is that when a *firm* makes an election in accordance with CASS 1.4.9R: [deleted]~~

- (1) ~~a two-day emissions spot falls within the scope of each chapter in CASS (save for CASS 5), for example:~~
- (a) ~~the reference in CASS 6.1.1R(1)(b) to *safeguarding and administering investments* is modified to include the activity of safeguarding and administering a two-day emissions spot; and~~
 - (b) ~~any money that the firm receives or holds for or on behalf of a client in the course of or in connection with its *auction regulation bidding* activities will be treated as *client money* and so will need to be dealt with in accordance with the *client money rules*; and~~
- (2) ~~that election also has effect in relation to *rules and guidance* elsewhere in the *Handbook*, including:~~
- (a) ~~COBS 3 (Client categorisation);~~
 - (b) ~~COBS 6.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money);~~
 - (c) ~~COBS 6.1.11R (Timing of disclosure);~~
 - (d) ~~COBS 16.4 (Statements of client designated investments or client money);~~
 - (e) ~~SUP 3 (Auditors);~~
 - (f) ~~SUP 10A.4.4R (the *table of controlled functions*) and SUP 10A.7.9R (CASS operational oversight function (CF10a));~~
 - (fa) ~~SUP 10 (Table of FCA controlled functions for relevant authorised persons), SYSC 5.2.30R (Table: FCA specified significant harm functions) and SYSC 5.2.32R (CASS oversight and the certification regime); and~~
 - (g) ~~SUP 16.14 (Client money and asset return).~~
- 1.4.12 G The option to elect to comply with CASS set out in CASS 1.4.9R only applies to the extent the *firm* is carrying on *auction regulation bidding*. Where a *firm* is carrying on *MiFID business bidding*, CASS applies to it in accordance with the general application *rules* in CASS for a *firm* that is carrying on *MiFID business*. [deleted]
- 1.4.13 R Where a *firm* makes an election in accordance with CASS 1.4.9R it must: [deleted]
- (1) make a written record of the election, including the date from which the election is to be effective, on the date it makes the election;

~~(2) keep that record from the date that it is made for a period of five years after ceasing to use the opt in.~~

1.4.14 R ~~Where a *firm* that has opted in to CASS under CASS 1.4.9R subsequently decides to cease its use of that opt in it must: [deleted]~~

~~(1) make a written record of this decision, including the date from which the decision is to be effective, on the date it takes the decision;~~

~~(2) keep that record from the date that it is made for a period of five years after the date it is to be effective; and~~

~~(3) discharge any outstanding fiduciary obligations that had arisen because the *firm* had elected to comply with CASS.~~

...

1A CASS firm classification and operational oversight

...

1A.3 Responsibility for CASS operational oversight

...

1A.3.1 R (1) A CASS *small firm* must allocate to a single director or a senior manager of sufficient skill and authority responsibility for:

...

...

[Note: article 7, first paragraph of the MiFID Delegated Directive]

...

The approved persons regime and the certification regime

1A.3.1A R A CASS *medium firm* and a CASS *large firm* must allocate to a single director or senior manager of sufficient skill and authority the function of:

...

[Note: article 7, first paragraph of the MiFID Delegated Directive]

...

1A.3.2A R Where a *firm* allocates the responsibilities in CASS 1A.3.1R or CASS 1A.3.1AR (“the CASS oversight responsibilities”) to a *director* or *senior manager* (“P”), the *firm* must not allocate any other responsibilities to P in addition to the CASS oversight responsibilities, unless the *firm* is satisfied on

reasonable grounds that:

- (1) P will still be able to discharge the CASS oversight responsibilities effectively; and
- (2) the firm's full compliance with CASS will not be compromised.

[Note: article 7, second paragraph of the MiFID Delegated Directive]

1A.3.2B R A firm may allow the CASS oversight responsibilities to be shared amongst one or more directors or senior managers where this is done as part of a job share between those persons.

...

3 Collateral

...

3.2 Requirements

...

3.2.4 G When appropriate, *firms* that enter into the arrangements with *retail clients* covered in this chapter will be expected to identify in the statement of *custody assets* sent to the *client* in accordance with COBS 16.4 (Statements of client designated investments or client money), article 63 of the MiFID Org Regulation (see COBS 16A.5) or CASS 9.5 (Reporting to clients on request) details of the assets which form the basis of the arrangements. Where the *firm* utilises global netting arrangements, a statement of the assets held on this basis will suffice.

...

6 Custody rules

6.1 Application

6.1.1 R This chapter (the *custody rules*) applies to a *firm*:

...

- (1E) in respect of any arrangement for a *client* to transfer full ownership of a safe custody asset (or an asset which would be a safe custody asset but for the arrangement) to the *firm* which is:
 - (a) in the course of, or in connection with, the *firm's designated investment business*; and
 - (b) for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations,

~~but~~ and the application of the *custody rules* to a *firm* under this paragraph is ~~limited to~~ set out in the rules and guidance in CASS 6.1.6R to CASS 6.1.9G; and

...

...

Business in the name of the firm

6.1.4 R ...

[**Note:** recital ~~26~~ 51 to *MiFID*]

...

Title transfer collateral arrangements

6.1.6 R (1) ~~The *custody rules* do not apply where a *client* transfers full ownership of a *safe custody asset* to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations. [deleted]~~

~~[**Note:** recital 27 to *MiFID*]~~

(2) ~~Excepted from (1) is a transfer of the full ownership of a *safe custody asset*: [deleted]~~

~~(a) belonging to a *retail client*;~~

~~(b) whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and~~

~~(c) which is made to that *firm* or to any other *person* arranging on its behalf.~~

(3) (a) A *firm* must not enter into a *TTCA* in respect of an asset belonging to a *retail client*.

(b) Where a *firm* entered into a *TTCA* in respect of an asset belonging to a *retail client* (or one which would belong to a *retail client* but for the arrangement) before 3 January 2018, the *firm* must terminate that *TTCA*.

~~[**Note:** article 16(10) of *MiFID* and article 5(5) of the *MiFID Delegated Directive*]~~

(4) Except for CASS 6.1.6BR to CASS 6.1.9G and provided that the *TTCA* is not with a *retail client*, the *custody rules* do not apply to a

firm in respect of an asset which is subject to a *TTCA* and which would otherwise be a *safe custody asset*.

[**Note:** recital 52 to *MiFID*]

- 6.1.6A R (1) ~~Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's safe custody assets*. [deleted]~~
- (2) The application of (1) is confined to the taking of a transfer of full ownership:
- (a) ~~whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and~~
- (b) ~~which is made to that *firm* or to any other *person arranging* on its behalf.~~
- 6.1.6B R (1) A *firm* must ensure that any arrangement relating to the transfer of full ownership of a *client's safe custody asset* to the *firm* for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) *TTCA* is the subject of a written agreement made on a *durable medium* between the *firm* and the *client*.
- ...
- ...
- 6.1.6D R (1) A *firm* must properly consider and document the use of *TTCAs* in the context of:
- (a) the relationship between the *client's* obligation to the *firm*;
and
- (b) the *safe custody assets* subjected to *TTCAs* by the *firm*.
- (2) A *firm* must be able to demonstrate that it has complied with the requirement under (1).
- (3) When considering, and documenting, the appropriateness of the use of *TTCAs*, a *firm* must take into account the following factors:
- (a) whether there is only a very weak connection between the *client's* obligation to the *firm* and the use of *TTCAs*, including whether the likelihood of a *client's* liability to the *firm* is low or negligible;

- (b) the extent by which the amount of *safe custody assets* subject to a *TTCA* is in excess of the *client's* obligations (including where the *TTCA* applies to all *safe custody assets* from the point of receipt by the *firm*) and whether the *client* might have no obligations at all to the *firm*; and
 - (c) whether all the *client's safe custody assets* are made subject to *TTCA*s, without consideration of what obligation the *client* has to the *firm*.
- (4) Where a *firm* uses a *TTCA*, it must highlight to the *client* the risks involved and the effect of any *TTCA* on the *client's safe custody assets*.

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

6.1.6E G A *firm* may choose to combine its *client* communication under CASS 6.1.6DR(4) with any communication made in order to comply with article 15.1(a)(ii) of the *SFTR* or CASS 9.3.1R(2)(d).

6.1.7 G ~~A title transfer financial collateral arrangement under the *Financial Collateral Directive* is a type of transfer of instruments to cover obligations where the *financial instrument* will not be regarded as belonging to the *client*. [deleted]~~

...

Termination of title transfer collateral arrangements

6.1.8A R (1) ~~If a *client* communicates to a *firm* that it wishes (whether pursuant to a contractual right or otherwise) to terminate an arrangement relating to the transfer of full ownership of its *safe custody asset* to a *firm* for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) a *TTCA* and the *client's* communication is not in writing, the *firm* must make a written record of the *client's* communication which also records the date the communication was received.~~

...

- (3) (a) ~~If a *firm* agrees to the termination of an arrangement relating to the transfer of full ownership of its *safe custody asset* to a *firm* a *TTCA*, it must notify the *client* of its agreement in writing. The notification must state when the termination is to take effect and whether or not the *client's safe custody asset* will be held under the *custody rules* by the *firm* thereafter.~~
- (b) ~~If a *firm* does not agree to terminate an arrangement relating to the transfer of full ownership of a *client's safe custody asset* to the *firm* a *TTCA*, it must notify the *client* of its disagreement in writing.~~

...

6.1.8B G CASS 6.1.8AR(3)(a) refers only to a *firm's* agreement to terminate an existing arrangement relating to the transfer of full ownership of a *client's safe custody asset to the firm TTCA*. Such agreement by a *firm* does not necessarily need to amount to the termination of its entire agreement with the *client*.

6.1.8C G When a *firm* notifies a *client* under CASS 6.1.8AR(3)(a) of when the termination of an arrangement relating to the transfer of full ownership of the *safe custody asset to a firm a TTCA* is to take effect, it should take into account:

...

6.1.8D R If an arrangement relating to the transfer of full ownership of *safe custody assets to a firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) a TTCA* is terminated, then the exemption at CASS 6.1.6R(4) (4) no longer applies.

6.1.8E G (1) Following the termination of an arrangement relating to the transfer of full ownership of *safe custody assets to a firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) a TTCA*, where a *firm* does not immediately return the *safe custody assets* to the *client* the *firm* should consider whether the *custody rules* apply in respect of the *safe custody assets* pursuant to CASS 6.1.1R(1A) to CASS 6.1.1R(1C).

(2) Where the *custody rules* apply to a *firm* for *safe custody assets* in these circumstances then the *firm* is required to comply with those *rules* and should, for example, update the registration under CASS 6.2 (Holding of client assets), update its records under CASS 6.6 (Records, accounts and reconciliations) and treat any *shortfall* in accordance with CASS 6.6.54R (in each case as appropriate).

6.1.9 G *Firms* are reminded that, in certain cases, the *collateral rules* apply where a *firm* receives collateral from a *client* in order to secure the obligations of the *client*.

...

6.2 Holding of client assets

Requirement to protect clients' safe custody assets

6.2.1 R A *firm* must, when holding *safe custody assets* belonging to *clients*, make adequate arrangements so as to safeguard *clients'* ownership rights, especially in the event of the *firm's* insolvency, and to prevent the use of *safe custody assets* belonging to a *client* on the *firm's* own account except with the *client's* express consent.

[**Note:** article ~~13(7)~~ 16(8) of *MiFID*]

Requirement to have adequate organisational arrangements

- 6.2.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *clients' safe custody assets*, or the rights in connection with those *safe custody assets*, as a result of the misuse of the *safe custody assets*, fraud, poor administration, inadequate record-keeping or negligence.

[**Note:** article ~~16(1)(f)~~ 2(1)(f) of the *MiFID implementing Delegated Directive*]

...

6.3 Depositing assets and arranging for assets to be deposited with third parties

Depositing safe custody assets with third parties

- 6.3.1 R ...
- (3) When a *firm* makes the selection, appointment and conducts the periodic review referred to under this *rule*, it must take into account:
- ...
- (b) any legal requirements ~~or market practices~~ related to the holding of those *safe custody assets* that could adversely affect *clients' rights*.

...

[**Note:** article ~~17~~ 3(1) of the *MiFID implementing Delegated Directive*]

- 6.3.2 G In discharging its obligations under CASS 6.3.1R, a *firm* should also consider, as appropriate, together with any other relevant matters:
- ...
- (2) ...
- (2A) market practices related to the holding of the *safe custody asset* that could adversely affect *clients' rights*.

...

...

- 6.3.4 R (1) Subject to (2), a *firm* must only deposit *safe custody assets* with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of *safe custody assets* for the account of another ~~person~~ person with a third party who is subject to such

regulation.

- (2) A *firm* must not deposit *safe custody assets* held on behalf of a *client* with a third party in a ~~country that is not an EEA State (third country)~~ ~~and~~ *third country* which does not regulate the holding and safekeeping of *safe custody assets* for the account of another ~~person~~ *person* unless:
- (a) the nature of the *safe custody assets* or of the *investment services* connected with those *safe custody assets* requires them to be deposited with a third party in that ~~third country~~ *third country*; or
 - (b) the *safe custody assets* are held on behalf of a *professional client* and the *client* requests the *firm* in writing to deposit them with a third party in that ~~third country~~ *third country*.

...

- (4) The requirements under paragraphs (1) and (2) of this rule also apply when the third party has delegated any of its functions concerning the holding and safekeeping of *safe custody assets* to another third party.

[**Note:** article ~~17(2) and (3)~~ 3(2)-(4) of the *MiFID implementing Delegated Directive*]

6.3.4A-2 **G** CASS 6.3.4R(4) applies to a *firm* which deposits a *safe custody asset* into an account opened with a third party under CASS 6.3.1R(1). It is therefore possible for more than one *firm* in a chain of custody to be subject to CASS 6.3.4R(4) in respect of the same *safe custody asset*.

6.3.4A-1 **R** A *firm* must take the necessary steps to ensure that any *client's safe custody assets* deposited with a third party are identifiable separately from the *applicable assets* belonging to the *firm* and from the *applicable assets* belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.

[**Note:** article ~~16(1)(d)~~ 2(1)(d) of the *MiFID implementing Delegated Directive*]

...

6.3.5 **R** ~~Subject to CASS 6.3.6R, in relation to a third party with which a *firm* deposits *safe custody assets* belonging to a *client*, a *firm* must ensure that any agreement with that third party relating to the custody of those assets does not include the grant to that party, or to any other *person*, of a lien or a right of retention or sale over the *safe custody assets*, or a right of set-off over any *client money* derived from those *safe custody assets*. [deleted]~~

6.3.6 **R** ~~A *firm* may conclude an agreement with a third party relating to the custody of *safe custody assets* which confers on that party, or on another *person*~~

~~instructed by that party to provide custody services for those assets, a lien, right of retention or sale, or right of set-off in favour of that party or that other *person* only if that lien or right: [deleted]~~

- ~~(1) is confined to those *safe custody assets* held in an account with that third party or that other person and extends only to properly incurred charges and liabilities arising from the provision of custody services in respect of *safe custody assets* held in that account; or~~
- ~~(2) arises under the operating terms of a securities depository, securities settlement system or central counterparty in whose account *safe custody assets* are recorded or held, and provided that it does so for the purpose only of facilitating the settlement of trades involving the assets held in that account; or~~
- ~~(3) arises in relation to those *safe custody assets* held in a jurisdiction, outside the *United Kingdom* provided that:

 - ~~(a) it does so as a result of local applicable law in that jurisdiction or is necessary for that *firm* to gain access to the local market in that jurisdiction; and~~
 - ~~(b) in respect of each *client* to which those assets belong, either:

 - ~~(i) the *firm* has taken reasonable steps to determine that holding those assets subject to that, lien or right is in the best interests of that *client*; or~~
 - ~~(ii) where a *client* is a *professional client*, the *firm* is instructed by that *client* to hold those assets in that jurisdiction notwithstanding the existence of that lien or right.~~~~~~

- 6.3.6A R (1) A firm must not grant any security interest, lien or right of set-off to another person over clients' safe custody assets that enable that other person to dispose of the safe custody assets in order to recover debts unless condition (a) or (b) is satisfied:
- (a) those debts relate to:
 - (i) one or more of the firm's clients; or
 - (ii) the provision of services by that other person to one or more of the firm's clients; or
 - (b) to the extent those debts relate to anything else then:
 - (i) the security interest, lien or right of set-off is required by applicable law in a third country jurisdiction in which the safe custody assets are held;

- (ii) the firm discloses information to the client so that the client is informed of the risks associated with these arrangements; and
- (iii) the firm has taken reasonable steps to determine that holding safe custody assets subject to that security interest, lien or right of set-off is in the best interests of the firm's clients.

(2) Where security interests, liens or rights of set-off are granted by a firm over safe custody assets, or where the firm has been informed that they are granted, these must be recorded in client contracts and the firm's own books and records to make the ownership status of safe custody assets clear, such as in the event of an insolvency.

[Note: article 2(4) of the MiFID Delegated Directive]

- 6.3.6B G Under CASS 6.3.6AR(1)(a), a security interest, lien or right of set-off to facilitate the clearing or settlement of transactions referring to clients of the firm may be regarded as being granted in order to recover debts that relate to the provision of services to one or more clients.
- 6.3.6C G (1) Under CASS 6.3.6AR(1)(b)(i) a security interest, lien or right of set-off may be regarded as being required by applicable law in a third country for example where:
- (a) because of applicable law it is mandatory for such a security interest, lien or right of set-off to be given in order for the safe custody assets to be held in that third country; or
 - (b) (i) in the context of the service being provided for the firm's client the applicable law of that third country requires the use of a central securities depository, securities settlement system or central counterparty;
 - (ii) the rules of that central securities depository, securities settlement system or central counterparty are subject to the oversight of a regulator that performs that function under the applicable law; and
 - (iii) those rules require such a security interest, lien or right of set-off to be given.
- (2) But a firm should not grant a security interest, lien or right of set-off under CASS 6.3.6AR(1)(b)(i) that is wider than that under CASS 6.3.6AR(1)(a) where another person in a third country simply requests or demands this as a condition of business.
- 6.3.6D G To comply with CASS 6.3.6AR(2) and in relation to any security interests, liens or rights of set-off over safe custody assets, a firm should ensure that:

- (1) the written terms of its *client* contracts include the *client's* agreement to another *person* having such a security interest, lien or right of set-off over the *client's* assets; and
- (2) its books and records are able to show the *safe custody assets* in respect of which the *firm* is aware that such security interests, liens, or rights of set-off exist.

6.3.7 G ~~A firm will be considered to be acting on the instructions of its professional client under CASS 6.3.6R (3)(b)(ii) where: [deleted]~~

- (1) ~~the *firm* has received an individual instruction or has a standing instruction in its terms of business which results in it holding *safe custody assets* in the relevant jurisdiction; and~~
- (2) ~~prior to acting on the instruction, the *firm* has expressly informed the *client* that holding that *client's safe custody assets* in the relevant jurisdiction will involve the granting of a lien or right over those assets. The *firm* may do this by discussing the lien or right individually with the *client* or by including reference to it in terms of business (which may themselves cross refer to a separate list of relevant jurisdictions to which CASS 6.3.6R(3)(a) applies maintained on the *firm's* website in a form accessible to *clients*) or by a similar method.~~

6.3.8 R ~~For the purpose of CASS 6.3.6R, references to a *safe custody asset* include any *client money* derived from that *safe custody asset*. *Client money* derived from a *safe custody asset* may be regarded as held in the same account as that *safe custody asset* even though that money and those assets may be recorded separately. [deleted]~~

...

6.4 Use of safe custody assets

- 6.4.1 R (1) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* or otherwise use such *safe custody assets* for its own account or the account of any other *person* or ~~another~~ *client* of the *firm*, unless:
- (a) the *client* has given express prior consent to the use of the *safe custody assets* on specified terms; and
 - (b) the use of that *client's safe custody assets* is restricted to the specified terms to which the *client* consents.
- (2) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* in an omnibus account ~~held~~ maintained by a third party, or

otherwise use *safe custody assets* held in such an account for its own account or for the account of ~~another client~~ any other person unless, in addition to the conditions set out in (1):

- (a) each *client* whose *safe custody assets* are held together in an omnibus account has given express prior consent in accordance with (1)(a); or
 - (b) the *firm* has in place systems and controls which ensure that only *safe custody assets* belonging to *clients* who have given express prior *consent* in accordance with ~~the requirements of~~ (1)(a) are so used.
- (3) For the purposes of obtaining the express prior consent of a ~~retail client~~ retail client under this *rule*, the consent must be clearly evidenced in writing and the signature of the ~~retail client~~ retail client or an equivalent alternative ~~mechanism~~ means of affirmative execution is required.

[**Note:** article ~~19~~ 5(1) and (2) of the *MiFID implementing Delegated Directive*]

6.4.1A G The *FCA* expects *firms* which enter into arrangements under CASS 6.4.1R with *retail clients* to only enter into *securities financing transactions* and not otherwise use *retail client's clients' safe custody assets*.

6.4.1B G (1) Prior express consent by *clients* should be given and recorded by *firms* in order to allow the *firm* to demonstrate clearly what the *client* agreed to and to help clarify the status of *safe custody assets*.

(2) *Clients' consent may be given once at the start of the commercial relationship, as long as it is sufficiently clear that the client has consented to the use of their safe custody assets.*

(3) Where a *firm* is acting on a *client* instruction to lend *safe custody assets* and where this constitutes consent to entering into the transaction, the *firm* should hold evidence to demonstrate this.

[**Note:** recital 10 to the *MiFID Delegated Directive*]

6.4.1C R A *firm* must take appropriate measures to prevent the unauthorised use of *safe custody assets* for its own account or the account of any other *person*, such as:

(1) the conclusion of agreements with *clients* on measures to be taken by the *firm* in case the *client* does not have enough provision on its account on the settlement date, such as borrowing of the corresponding securities on behalf of the *client* or unwinding the position;

(2) the close monitoring by the *firm* of its projected ability to deliver on the settlement date;

(3) the putting in place of remedial measures if the *firm* cannot deliver on the settlement date; and

(4) the close monitoring and prompt requesting of undelivered securities outstanding on the settlement day and beyond.

[Note: article 5(3) of the *MiFID Delegated Directive*]

6.4.1D G Examples of remedial measures in CASS 6.4.1.CR(2) can be found in CASS 6.6.54R.

...

6.4.2A R A *firm* must adopt specific arrangements for all *clients* to ensure that the borrower of *client safe custody assets* provides the appropriate collateral and that the *firm* monitors the continued appropriateness of such collateral and takes the necessary steps to maintain the balance with the value of the *client safe custody assets*.

[Note: article 5(4) of the *MiFID Delegated Directive*]

6.4.2B G The requirement to monitor collateral under CASS 6.4.2AR applies to a *firm* where it is party to a *securities financing transaction*, including when acting as an agent for the conclusion of a *securities financing transaction* or in the case of a tripartite transaction between a borrower, a *client* and the *firm*.

[Note: recital 9 to the *MiFID Delegated Directive*]

6.4.3 R Where a *firm* uses *safe custody assets* as permitted in this section, the records of the *firm* must include details of the *client* on whose instructions the use of the *safe custody assets* has been effected, as well as the number of *safe custody assets* used belonging to each *client* who has given consent, so as to enable the correct allocation of any loss.

[Note: article ~~19(2)~~ 5(2), second sub-paragraph of the *MiFID implementing Delegated Directive*]

...

6.6 Records, accounts and reconciliations

...

6.6.2 R A *firm* must keep such records and accounts as necessary to enable it at any time and without delay to distinguish *safe custody assets* held for one *client* from *safe custody assets* held for any other *client*, and from the *firm's* own *applicable assets*.

[Note: article ~~16(1)(a)~~ 2(1)(a) of the *MiFID implementing Delegated Directive*]

- 6.6.3 R A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *safe custody assets* held for *clients* and that they may be used as an audit trail.

[**Note:** article ~~16(1)(b)~~ 2(1)(b) of the *MiFID implementing Delegated Directive*]

- 6.6.4 R A *firm* must maintain a *client-specific safe custody asset record*.

- 6.6.5 G (1) The requirements in CASS 6.6.2R to CASS 6.6.4R are for a *firm* to keep internal records and accounts of *clients' safe custody assets*. Therefore any records falling under those requirements should be maintained by the *firm*, and should be separate to any records the *firm* may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, *clients' safe custody assets*.

(2) The FCA expects that compliance by a *firm* with CASS 6.6 as a whole (to the extent applicable to that *firm*) will be sufficient to comply with the requirement under CASS 6.6.3R to maintain its records and accounts in a way that ensures they may be used as an audit trail.

...

External custody reconciliations

...

- 6.6.34 R A *firm* must conduct, on a regular basis, reconciliations between its internal records and accounts of *safe custody assets* held by the *firm* for *clients* and those of any third parties by whom those *safe custody assets* are held.

[**Note:** article ~~16(1)(e)~~ 2(1)(c) of the *MiFID implementing Delegated Directive*]

...

7 Client money rules

...

7.10 Application and purpose

...

Credit institutions and approved banks

- 7.10.16 R In relation to the application of the *client money rules* (and any other rule in so far as it relates to matters covered by the *client money rules*) to the firms referred to in (1) and (2), the following is not *client money*:

- (1) any deposits within the meaning of the *CRD* held by a *CRD credit institution*; and

[**Note:** article 43(8) 16(9) of *MiFID* and article 48(4) 4(1) of the *MiFID implementing Delegated Directive*]

...

- 7.10.23 G *Firms* carrying on *MiFID business* are reminded of their obligation to supply investor compensation scheme information to *clients* under *COBS* 6.1.16 R or *COBS* 6.1ZA.2.18R (Compensation Information).

...

7.11 Treatment of client money

Title transfer collateral arrangements

- 7.11.1 R (1) ~~Where a *client* transfers full ownership of *money* to a *firm* for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such *money* should no longer be regarded as *client money*. [deleted]~~

[**Note:** recital 27 to *MiFID*]

- (2) Excepted from (1) is a transfer of the full ownership of *money*:
- (a) ~~belonging to a *retail client*;~~
 - (b) ~~whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and~~
 - (e) ~~which is made to that *firm* or to any other *person* arranging on its behalf. [deleted]~~
- (3) (a) A *firm* must not enter into a *TTCA* in respect of *money* belonging to a *retail client*.
- (b) Where a *firm* entered into a *TTCA* in respect of *money* belonging to a *retail client* (or *money* which would belong to a *retail client* but for the arrangement) before 3 January 2018, the *firm* must terminate that *TTCA*.
- [**Note:** article 16(10) of *MiFID* and article 5(5) of the *MiFID Delegated Directive*]
- (4) *Money* that is subject to a *TTCA* does not amount to *client money*, provided that the *TTCA* is not with a *retail client*.

[Note: recital 52 to MiFID]

- 7.11.2 R (1) ~~Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's money*. [deleted]~~
- (2) ~~The application of (1) is confined to the taking of a transfer of full ownership:~~
- (a) ~~whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and~~
- (b) ~~which is made to that *firm* or to any other *person* arranging on its behalf.~~
- 7.11.3 R (1) ~~A *firm* must ensure that any arrangement relating to the transfer of full ownership of a *client's money* to the *firm* for the purposes set out in CASS 7.11.1R(1) and CASS 7.11.2 R(1) *TTCA* is the subject of a written agreement made on a *durable medium* between the *firm* and the *client*.~~
- ...
- ...
- 7.11.4A R (1) A *firm* must properly consider and document the use of *TTCAs* in the context of the relationship between the *client's* obligation to the *firm* and the *money* subjected to *TTCAs* by the *firm*.
- (2) A *firm* must be able to demonstrate that it has complied with the requirement under (1).
- (3) When considering, and documenting, the appropriateness of the use of *TTCAs*, a *firm* must take into account the following factors:
- (a) whether there is only a very weak connection between the *client's* obligation to the *firm* and the use of *TTCAs*, including whether the likelihood of a liability arising is low or negligible;
- (b) the extent by which the amount of *money* subject to a *TTCA* is in excess of the *client's* obligations (including where the *TTCA* applies to all *money* from the point of receipt by the *firm*) and whether the *client* might have no obligations at all to the *firm*; and

(c) whether all the *client's money* is made subject to *TTCAs*, without consideration of what obligation the *client* has to the *firm*.

(4) Where a *firm* uses a *TTCA*, it must highlight to the *client* the risks involved and the effect of any *TTCA* on the *client's money*.

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

7.11.5 G ~~A title transfer financial collateral arrangement under the Financial Collateral Directive is an example of a type of transfer of *money* to cover obligations where that *money* will not be regarded as *client money*. [deleted]~~

...

7.11.8 G ~~Pursuant to the *client's best interests rule*, a *firm* should ensure that where a *retail client* transfers full ownership of *money* to a *firm*: [deleted]~~

(1) ~~the *client* is notified that full ownership of the *money* has been transferred to the *firm* and, as such, the *client* no longer has a proprietary claim over this *money* and the *firm* can deal with it on its own right;~~

(2) ~~the transfer is for the purposes of securing or covering the *client's* obligations;~~

(3) ~~an equivalent transfer is made back to the *client* if the provision of collateral by the *client* is no longer necessary; and~~

(4) ~~there is a reasonable link between the timing and the amount of the collateral transfer and the obligation that the *client* owes, or is likely to owe, to the *firm*.~~

Termination of title transfer collateral arrangements

7.11.9 R (1) ~~If a *client* communicates to a *firm* that it wishes (whether pursuant to a contractual right or otherwise) to terminate an arrangement relating to the transfer of full ownership of its *money* to the *firm* for the purposes set out in CASS 7.11.1.R(1) and CASS 7.11.2R(1) a *TTCA*, and the *client's* communication is not in writing, the *firm* must make a written record of the *client's* communication, which also records the date the communication was received.~~

...

(3) (a) ~~If a *firm* agrees to the termination of an arrangement relating to the transfer of full ownership of a *client's money* to the *firm* a *TTCA*, it must notify the *client* of its agreement in writing. The notification must state when the termination is to take effect and whether or not the *client's money* will be treated as *client money* by the *firm* thereafter.~~

- (b) If a *firm* does not agree to terminate ~~an arrangement to the transfer of full ownership of a *client's* money to the *firm* a TTCA~~, it must notify the *client* of its disagreement in writing.

...

- 7.11.10 G CASS 7.11.9 R(3)(a) refers only to a *firm's* agreement to terminate an existing ~~arrangement relating to the transfer of full ownership of a *client's* money to the *firm* TTCA~~. Such agreement by a *firm* does not necessarily need to amount to the termination of its entire agreement with the *client*.

- 7.11.11 G When a *firm* notifies a *client* under CASS 7.11.9R(3)(a) of when the termination of ~~an arrangement relating to the transfer of full ownership of the *client's* money to the *firm* a TTCA~~ is to take effect, it should take into account:

...

- 7.11.12 R (1) ~~If an arrangement relating to the transfer of full ownership of a *client's* money to a *firm* for the purposes set out in CASS 7.11.1R(1) and CASS 7.11.2R(1) a TTCA is terminated~~ then, unless otherwise permitted under the *client money rules* and notified to the *client* under CASS 7.11.9R(3)(a), the *firm* must treat that *money* as *client money* from the start of the next business day following the date of termination as set out in the *firm's* notification under CASS 7.11.9R (3)(a).

- (2) Where the *firm's* notification under CASS 7.11.9R(3)(a) does not state when the termination of the arrangement will take effect, the *firm* must treat that *money* as *client money* from the start of the next *business day* following the date on which the *firm's* notification is made.

...

- 7.11.15 G The exclusion from the *client money rules* for delivery versus payment transactions under CASS 7.11.14R is an example of an exclusion from the *client money rules* which is permissible by virtue of recital ~~26~~ of 51 to *MiFID*.

...

7.12 Organisational requirements: client money

Requirement to protect client money

- 7.12.1 R A *firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.

[~~Note~~: article ~~13(8)~~ 16(9) of *MiFID*]

Requirement to have adequate organisational arrangements

- 7.12.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

[~~Note~~: article ~~16(1)(f)~~ 2(1)(f) of the *MiFID implementing Delegated Directive*]

...

7.13 Segregation of client money

...

Depositing client money

- 7.13.3 R A *firm*, on receiving any *client money*, must promptly place this *money* into one or more accounts opened with any of the following:

- (1) a central bank;
- (2) a *CRD credit institution*;
- (3) a bank authorised in a ~~third country~~ *third country*;
- (4) a *qualifying money market fund*.

[~~Note~~: article ~~18(1)~~ 4(1) of the *MiFID implementing Delegated Directive*]

...

Selection, appointment and review of third parties

- 7.13.8 R (1) A *firm* that does not deposit *client money* with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the *CRD credit institution*, bank or *qualifying money market fund* where the *money* is deposited and the arrangements for the holding of this *money*.

- (2) The *firm* must consider the need for diversification as part of its due diligence under (1).

[~~Note~~: article ~~18(3)~~ 4(2) first sub-paragraph of the *MiFID implementing Delegated Directive*]

...

- 7.13.10 R When a *firm* makes the selection, appointment and conducts the periodic

review of a *CRD credit institution*, a bank or a *qualifying money market fund*, it must take into account:

- (1) the expertise and market reputation of the third party with a view to ensuring the protection of *clients'* rights; and
- (2) any legal or regulatory requirements or market practices related to the holding of *client money* that could adversely affect *clients'* rights.

[**Note:** article ~~18(3)~~ 4(2) second sub-paragraph of the *MiFID implementing Delegated Directive*]

...

Client bank accounts

- 7.13.12 R A *firm* must take the necessary steps to ensure that *client money* deposited, in accordance with CASS 7.13.3R, in a central bank, a *credit institution*, a bank authorised in a ~~third country~~ third country or a *qualifying money market fund* is held in an account or accounts identified separately from any accounts used to hold *money* belonging to the *firm*.

[**Note:** article ~~16(1)(e)~~ 2(1)(e) of the *MiFID implementing Delegated Directive*]

...

Diversification of client money

- 7.13.20-
A G (1) In CASS 7.13.20R to CASS 7.13.25R *client money* means *money* deposited under CASS 7.13.3R and therefore includes *money* deposited under CASS 7.13.3R:
- (a) in an account opened with a *qualifying money market fund*; or
 - (b) invested in units or shares of a *qualifying money market fund*.
- (2) But *client money* held under CASS 7.14.2R does not fall within the scope of the diversification provisions at CASS 7.13.20R to CASS 7.13.25R.
- 7.13.20 R Notwithstanding the requirement at CASS 7.13.22R a *firm* must limit the funds that it deposits or holds with a relevant group entity or combination of such entities so that the value of those funds do not at any point in time exceed 20 per cent of the total of all the *client money* held by the *firm* ~~in its client bank accounts~~ under CASS 7.13.3R.

[**Note:** article 4(3) first sub-paragraph of the *MiFID Delegated Directive*]

- 7.13.21 R For the purpose of CASS 7.13.20R an entity is a relevant group entity if it is:
- (1) (a) a *CRD credit institution*; or

- (b) a bank authorised in a ~~third country~~ third country; or
- (c) a qualifying money market fund; or
- (d) the entity operating or managing the qualifying money market fund; and

(2) a member of the same *group* as that *firm*.

[Note: article 4(3) first sub-paragraph of the *MiFID Delegated Directive*]

7.13.21 A **R** (1) A firm need not comply with CASS 7.13.20R if, following an assessment, it is able to demonstrate that the requirement under that rule is not proportionate, in view of:

- (a) the small balance of client money that it holds;
- (b) the nature, scale and complexity of its business; and
- (c) the safety offered by the relevant third parties referred to under CASS 7.13.20R.

(2) A firm must review any assessment it makes under (1) periodically.

(3) A firm must notify its assessment under (1) and its reviewed assessments under (2) to the FCA in accordance with CASS 7.13.21CR.

[Note: article 4(3) second sub-paragraph of the *MiFID Delegated Directive*]

7.13.21 B **G** (1) In relation to the requirement to take account of a firm's "small balance" of client money at CASS 7.13.21AR(1)(a):

- (a) the FCA expects a firm that would not qualify to be a CASS small firm under the rules in CASS 1A.2, ignoring any safe custody assets that it holds, to have difficulty in justifying using the approach in CASS 7.13.21AR(1);
- (b) a firm should calculate its client money balance for these purposes in the same way required under CASS 1A.2.3R, and base its assessment under CASS 7.13.21AR(1)(a) on either:
 - (i) the highest total amount of client money that it held during the year ending on the date of the assessment; or
 - (ii) if it did not hold client money in the previous calendar year, the highest total amount of client money that the firm projects it will hold during the year starting on the date of the assessment;

- (c) this means that it may be possible for a CASS medium firm or a CASS large firm to justify using the approach in CASS 7.13.21AR(1) on the basis of small client money balances; and
- (d) in any case, a firm seeking to take that approach should also consider the points at CASS 7.13.21AR(1)(b) and (c) as part of its assessment.
- (2) In relation to the requirement under CASS 7.13.21AR(2) to review the assessment under CASS 7.13.21AR(1):
- (a) a firm should undertake a review and, where appropriate, consider whether to cease to use the approach in CASS 7.13.21AR(1) when it becomes aware of a change in the circumstances that might have led the firm to a different conclusion on its previous assessment; and
- (b) in any case a firm should undertake a review at least one year after its previous assessment until it ceases to use the approach in CASS 7.13.21AR(1).
- (3) A firm may, subject to paragraph (2)(a), wish to perform the assessment and any periodic reviews under CASS 7.13.21AR when the obligations under CASS 1A.2.9R arise.
- (4) Firms are reminded that, independent of CASS 7.13.21AR, each firm is required by CASS 1A.2.2R to determine once every year whether it is a CASS large firm, CASS medium firm or CASS small firm.
- 7.13.21 C R (1) Where a firm decides following an assessment under CASS 7.13.21AR(1) that it intends to use the approach under that rule, the firm must give the FCA notice of this upon reaching that decision and before it starts to use that approach.
- (2) Where, following a review under CASS 7.13.21AR(2) a firm decides that it will either cease to use the approach under CASS 7.13.21AR(1) or continue to use it, it must give the FCA notice of this upon reaching that decision.
- 7.13.22 R Subject to the requirement at CASS 7.13.20R, and in accordance with *Principle 10* and CASS 7.12.1R, a firm must:
- (1) periodically assess review whether it is appropriate to diversify (or further diversify) the third parties with which it deposits some or all of the *client money* that the firm holds; and
- (2) whenever it concludes that it is appropriate to do so, it must make adjustments accordingly to the third parties it uses and to the amounts of *client money* deposited with them.

[Note: article 4(2) first sub-paragraph of the *MiFID Delegated Directive*]

- 7.13.23 G In complying with the requirement in CASS 7.13.22R to periodically assess review whether diversification (or further diversification) is appropriate, a *firm* should have regard to:

...

...

Qualifying money market funds

- 7.13.26 R Where a *firm* deposits *client money* with a *qualifying money market fund*, the *firm's* holding of those units or shares in that fund will be subject to any applicable requirements of the *custody rules*.

[Note: recital 23 4 to the *MiFID implementing Delegated Directive*]

...

- 7.13.28 R (1) A *firm* must inform a *client* that *money* placed with a *qualifying money market fund* will not be held in accordance with the requirements for holding *client money*.
- (2) A *firm* must give a *client* the right to oppose the placement of his *money* in a *qualifying money market fund* ensure that, having provided the information to the *client* under (1), the *client* gives its explicit consent to the placement of their *money* in a *qualifying money market fund*.

[Note: article 18(3) 4(2) third sub-paragraph to the *MiFID implementing Delegated Directive*]

- 7.13.29 G ~~If a *firm* that intends to place *client money* in a *qualifying money market fund* is subject to the requirement to disclose information before providing services, it should, in compliance with that obligation, notify the *client* that:~~
[deleted]

- (1) ~~*money* held for that *client* will be held in a *qualifying money market fund*; and~~
- (2) ~~as a result, the *money* will not be held in accordance with the *client money rules*; and~~
- (3) ~~if it is the case, that the *units* will be held as the *client's safe custody assets* in accordance with the *custody rules*.~~

- 7.13.29 G A *firm* may comply with CASS 7.13.28 R(1) by informing the *client* that the units or shares in the *qualifying money market fund* will be held as *safe custody assets*.

A

...

7.15 Records, accounts and reconciliations

...

- 7.15.2 R A *firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own money.

[**Note:** article ~~16(1)(a)~~ 2(1)(a) of the *MiFID implementing Delegated Directive*]

- 7.15.3 R A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *client money* held for *clients* and that they may be used as an audit trail.

[**Note:** article ~~16(1)(b)~~ 2(1)(b) of the *MiFID implementing Delegated Directive*]

- 7.15.4 G (1) The requirements in CASS 7.15.2R to CASS 7.15.3R are for a *firm* to keep internal records and accounts of *client money*. Therefore, any records falling under those requirements should be maintained by the *firm* and should be separate to any records the *firm* may have obtained from any third parties, such as those with or through whom it may have deposited, or otherwise allowed to hold, *client money*.

(2) Where a *firm* complies with CASS 7.15 as a whole (to the extent applicable to that *firm*) this will be sufficient to comply with the specific duty in CASS 7.15.3R to maintain its records and accounts in a way that ensures that they can be used as an audit trail.

...

External client money reconciliations

- 7.15.20 R A *firm* must conduct, on a regular basis, reconciliations between its internal records and accounts and those of any third parties which hold *client money*.

[**Note:** article ~~16(1)(e)~~ 2(1)(c) of the *MiFID implementing Delegated Directive*]

...

9 Information to clients

...

9.3 Prime brokerage agreement disclosure annex

...

- 9.3.2 G ...
- (2) ...
- (c) ...
- (i) ...
- (ii) the record-keeping obligations in ~~CASS 6.3.6R(3)(b)(i)~~ 6.3.6AR.
- ...

...

9.4 Information to clients concerning custody assets and client money

- 9.4.1 G (1) Firms to which COBS 6.1 applies are reminded that, under *COBS 6.1.7R*, a *firm* that holds *client designated investments* or *client money* must provide its *clients* with specific information about how the *firm* holds those *client designated investments* and *client money* and how certain arrangements might give rise to specific consequences or risks for those *client designated investments* and *client money*.
- (2) COBS 6.1 (Information about the firm and compensation information (non-MiFID provisions)) applies to a firm in relation to its designated investment business, other than MiFID, equivalent third country or optional exemption business, for a retail client.
- 9.4.2 R A firm to which COBS 6.1 applies that holds *custody assets* or *client money* must, in relation to its business for which COBS 6.1 applies:
- ...
- 9.4.2A G (1) Firms to which COBS 6.1ZA applies are reminded of the requirements under article 49 of the MiFID Org Regulation (which are directly applicable to some firms and which are also applied to firms in other circumstances under COBS 6.1ZA.1.3R) to provide certain information to a client when the firm is holding the client's financial instruments or funds (see COBS 6.1ZA.2.5EU).
- (2) COBS 6.1ZA (Information about the firm and compensation information (MiFID provisions)) applies to a firm in relation to its MiFID, equivalent third country or optional exemption business for a client.
- 9.4.2B R A firm to which COBS 6.1ZA applies that holds *custody assets* or *client money* must, in relation to its business for which COBS 6.1ZA applies:
- (1) provide the information referred to in paragraphs 2 to 7 of article 49 of the MiFID Org Regulation for any custody asset that the firm may

hold for a client, including:

(a) any custody asset which is a designated investment but not a financial instrument; and

(b) any custody asset which is neither a designated investment nor a financial instrument; and

(2) provide the information in (1) to each of its clients.

9.4.3 G A firm should provide the information required in CASS 9.4.2R or CASS 9.4.2BR (as applicable) to any client for whom it holds custody assets or client money, including a retail client, a professional client and an eligible counterparty.

9.4.4 G (1) ...

(2) Firms are also reminded of the requirements in respect of communications made to retail clients under COBS 4.5 and clients under article 44 of the MiFID Org Regulation and COBS 4.5A (as applicable).

9.5 Reporting to clients on request

9.5.1 G (1) Firms to which COBS 16.4 applies are reminded that, under COBS 16.4, they are required to send to each of their clients at least once a year a statement in a durable medium of those designated investments and/or client money they hold for that client. A firm which manages investments may provide this statement in its periodic statement, as required under COBS 16.3.

(2) COBS 16.4 (Statements of client designated investments or client money) applies, in accordance with COBS 16.1.2R, to a firm carrying on designated investment business other than MiFID, equivalent third country or optional exemption business.

9.5.2 G Firms are reminded that the requirements in COBS 16.4, article 63 of the MiFID Org Regulation and COBS 16A.4 only set out the minimum frequency at which firms must report to their clients on their holdings of designated investments and/or client money. Firms may choose to report to their clients more frequently.

9.5.3 G Subject to CASS 9.5.5AR and CASS 9.5.6R, CASS 9.5.4R, CASS 9.5.4BR and CASS 9.5.5R require firms to comply with a client's request for information on the custody assets and/or client money the firm holds for a client under CASS 6 and/or CASS 7, and such request may be made by a client at any time.

9.5.4 R When a firm to which COBS 16.4 applies receives a request, made by a client, or on a client's behalf, for a statement of the custody assets and/or client money that the firm holds for that client, the firm must provide the

client with the statement requested in a *durable medium*.

- 9.5.4A G (1) Firms to which COBS 16A applies are reminded of the requirements under article 63 of the MiFID Org Regulation (which are directly applicable to some firms and which are also applied to firms in other circumstances under COBS 16A.1.2R) in relation to quarterly statements when the firm is holding a client's financial instruments or funds (see COBS 16A.4.1EU and COBS 16A.5.1EU).
- (2) COBS 16A (Reporting information to clients (MiFID provisions) applies to a firm in relation to its MiFID, equivalent third country or optional exemption business.
- 9.5.4B R When a firm to which COBS 16A applies receives a request, made by a client, or on a client's behalf, for a statement of the custody assets that the firm holds for that client, it must provide the client with a statement in a durable medium in relation to any custody assets that are not financial instruments.
- 9.5.4C G A firm to which COBS 16A applies may combine the statement required under CASS 9.5.4BR with a statement issued in response to a request made under the last sentence of the first sub-paragraph of article 63(1) of the MiFID Org Regulation.
- ...
- 9.5.5A R A firm is not required to provide a client with a statement under CASS 9.5.4R or CASS 9.5.4BR, or a copy of a statement under CASS 9.5.5R (as applicable) where the following conditions are met:
- (1) the firm provides the client with access to an online system, which qualifies as a durable medium;
- (2) up-to-date statements of the client's custody assets and/or client money can be easily accessed by the client via the system under (1); and
- (3) the firm has evidence that the client has accessed this statement at least once during the relevant quarter.
- 9.5.6 R Any charge agreed between the *firm* and the *client* for providing the statements in CASS 9.5.4R and, CASS 9.5.4BR or CASS 9.5.5R (as applicable) must reasonably correspond to the firm's actual costs be at a commercial cost.
- 9.5.7 G Any statement provided to a *client* under CASS 9.5.4R or CASS 9.5.5R (as applicable) may, although it is not required to, be in the same form as the statement a *firm* is required to provide to a *client* under *COBS 16.4* or, if appropriate, *COBS 16.3*.
- ...

- 9.5.9 G *Firms* are reminded that under CASS 3.2.4G *firms* that enter into arrangements with ~~retail clients~~ retail clients covered by CASS 3 (Collateral) should, when appropriate, identify in any statement of *custody assets* sent to the *client* under COBS 16.4 (Statements of client designated investments or client money), article 63 of the *MiFID Org Regulation* or COBS 16A.4 (as applicable) or this section, the details of the assets which form the basis of that collateral arrangement.

...

10 CASS resolution pack

10.1 Application, purpose and general provisions

...

Purpose

- 10.1.2 G The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would:
- (1) in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of *client money* and *safe custody assets* held by the *firm* to that *firm's clients*; and
 - (2) in the event of its or another *firm's* resolution, assist the Bank of England in its capacity as resolution authority under the *RRD*; and
 - (3) in either case, assist the *FCA*.

...

- 10.1.7 R In relation to each document in a *firm's CASS resolution pack* a *firm* must:
- (1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and
 - (2) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of an *FCA* or Bank of England request.

[Note: article 2(5) of the *MiFID Delegated Directive*]

...

10.3 Existing records forming part of the CASS resolution pack

- 10.3.1 R A *firm* must include, as applicable, within its *CASS resolution pack* the

records required under:

- (1) ...
- (1A) CASS 6.3.6AR (third party rights over client assets);
- (2) ...
- ...
- (11) COBS 8.1.4R or COBS 8A.1.9R (retail and professional client agreements).

...

12 Commodity Futures Trading Commission Part 30 exemption order

...

12.2 Treatment of client money

...

12.2.2 G The FCA understands that in complying with condition 2(g) of the *Part 30 exemption order*, a *firm* is representing that it will not:

...

- (3) enter into any ~~arrangement relating to the transfer of full ownership of the *client's money* to the *firm* for the purposes set out in CASS 7.11.1R(1) TTCA under CASS 7.11;~~

in relation to business conducted pursuant to the *Part 30 exemption order*.

...

[*Editor's note:* Please re-order rows in their correct numerical sequence to correspond with the order of the Handbook.]

Sch 1 Record keeping requirements

...

1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period

...				
CASS 1.4.12R and, where applicable, CASS 1.4.13R	For a firm which carries on <i>auction regulation bidding</i>, election (under CASS 1.4.9R) to comply with CASS in respect of this activity and, where applicable, decision to discontinue use of that opt in	Record of this election or, where applicable, the decision to discontinue use of the opt in, including the date on which either is to be effective	Upon making the election or, where applicable, upon taking the decision to discontinue use of the opt in	5 years from the date on which the opt in ceases to be used [deleted]
...				
CASS 6.1.6BR(3)	Written agreement regarding any arrangement relating to the transfer of full ownership of a <i>client's safe custody asset</i> to the <i>firm</i> for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) a <u>TTCA</u>	...	...	<u>Five years from date agreement terminated</u> <u>From the date the agreement is entered into and until five years after the agreement is terminated</u>
CASS 6.1.8AR(1) and (2)	Client's <i>Client's</i> communication to <i>firm</i> of wish to terminate TTCA <u>TTCA</u>	Client's <i>Client's</i> communication of wish to terminate TTCA <u>TTCA</u>	...	...
CASS 6.1.8AR(4)	<i>Firm's</i> response to <i>client's</i> wish to terminate TTCA <u>TTCA</u>	<i>Firm's</i> response to <i>client's</i> wish to terminate TTCA <u>TTCA</u>	...	...
CASS <u>CASS</u> 6.1.12R(4)	...	...	...	Not specified (see default)

<u>6.1.12R(5)</u>				provision CASS <u>6.5.3R</u> <u>6.6.7R)</u>
...				
<u>CASS</u> <u>6.3.6AR(2)</u>	<u>Granting of</u> <u>security interests,</u> <u>liens or rights of</u> <u>set-off</u>	<u>Recording of</u> <u>the granting of</u> <u>security</u> <u>interests, liens</u> <u>or rights of set-</u> <u>off in the firm's</u> <u>books and</u> <u>records</u>	<u>On the</u> <u>firm's</u> <u>granting,</u> <u>or where</u> <u>the firm</u> <u>has been</u> <u>informed</u> <u>of the</u> <u>granting</u>	<u>Not</u> <u>specified</u> <u>(see default</u> <u>provision</u> <u>CASS</u> <u>6.6.7R)</u>
CASS 6.4.3R	...	...	...	5 years (from the date the record was made) <u>Not</u> <u>specified</u> <u>(see default</u> <u>provision</u> <u>CASS</u> <u>6.6.7R)</u>
CASS 6.6.2R	...	...	...	5 years (from the date the record was made) <u>Not</u> <u>specified</u> <u>(see default</u> <u>provision</u> <u>CASS</u> <u>6.6.7R)</u>
CASS 6.6.3R	...	...	...	5 years (from the date the record was made) <u>Not</u> <u>specified</u> <u>(see default</u> <u>provision</u> <u>CASS</u> <u>6.6.7R)</u>

CASS 6.5.2AR	<i>Client</i> agreements that include a <i>firm's</i> right to use <i>safe custody assets</i> for its own account	A copy of every executed <i>client</i> agreement that includes a <i>firm's</i> right to use <i>safe custody assets</i> for its own account	Maintain up-to-date records	5 years (from the date the record was made) [deleted]
CASS 6.5.3R	Default record keeping provisions for CASS 6	Refer to the rule concerned	Refer to the rule concerned	Five years from the later of: (1) the date it was created; and (2) if it has been modified since the date in (1), the date it was most recently modified [deleted]
CASS 6.6.4R	...	...	...	Five years (from the date the record was made) <u>Not specified</u> (see default provision <u>CASS 6.6.7R</u>)
<u>CASS 6.6.6R</u>	<u>Client</u> agreements that include a <u>firm's</u> right to use <u>safe custody assets</u> for its own account	A copy of every executed <u>client</u> agreement that includes a <u>firm's</u> right to use <u>safe custody assets</u> for its own account	<u>Not specified</u>	<u>Not specified</u> (see default provision <u>CASS 6.6.7R</u>)

<u>CASS 6.6.7R</u>	<u>Default record keeping provisions for CASS 6</u>	<u>Refer to the rule concerned</u>	<u>Refer to the rule concerned</u>	<u>Five years from the later of:</u> <u>(1) the date it was created; and</u> <u>(2) if it has been modified since the date in (1), the date it was most recently modified</u>
CASS 6.6.8R	Not specified (see default provision CASS 6.6.7R)
CASS 6.6.16R	Not specified (see default provision CASS 6.6.7R)
...				
CASS 6.6.46R(2)	Not specified (see default provision CASS 6.6.7R)
CASS 6.6.54R(2)(a)	Not specified (see default provision CASS 6.6.7R)
CASS 6.6.54R(2)(b)	Not specified (see default

				provision CASS 6.6.7R)
CASS 7.11.3R(3) <u>CASS</u> 7.10.3R(3)	Record of election to comply with the <i>client money chapter</i>	Record of election to comply with the <i>client money chapter</i> , including the date from which the election is to be effective	Date of the election	5 years (from the date the <i>firm</i> ceases to use the election)
CASS 7.10.31R	Record of election in relation to CASS 7.1.15CR <u>7.10.30R</u>	Record of election in relation to CASS 7.1.15CR <u>7.10.30R</u>	Date of the election	Not specified (see default provision CASS 7.6.4R <u>7.15.5R(3)</u>)
...				
<u>CASS</u> 7.11.3R(3)	<u>Written agreement regarding any arrangement relating to a TTCA</u>	<u>The agreement</u>	<u>When agreement made</u>	<u>From the date the agreement is entered into and until five years after the agreement is terminated</u>
CASS 7.2.8AER <u>7.11.20R</u>	<i>Client's</i> agreement to <i>firm's</i> use of the delivery versus payment exemption in CASS 7.2.8R <u>7.11.14R</u>	...	...	During the time the <i>firm</i> makes use or intends to make use of the exemption in CASS 7.2.8R <u>7.11.14R</u> in respect of that <i>client's</i>

				monies
<u>CASS 7.11.24R</u>	<u>Client's agreement to firm's use of the delivery versus payment exemption in CASS 7.11.21R</u>	<u>Client's written agreement</u>	<u>At the time of client's agreement</u>	<u>During the time the firm makes use, or intends to make use, of the exemption in CASS 7.11.21R in respect of that client's monies</u>
CASS 7.11.55R	Client money paid to charity by the firm under CASS 7.2.19R 7.11.50R(4)	...	...	...
CASS 7.11.57R(4)	Client money paid to charity by the firm under CASS 7.2.25R <u>this rule</u>	Indefinite <u>Records of all balances released from client bank accounts, including the information in CASS 7.11.55R(1)(a) and CASS 7.11.55R(1)(b)</u>	...	Not specified (see default provision CASS 7.6.4R 7.15.5R(3))
CASS <u>CASS</u> 7.13.25R(1)	...	...	...	...
<u>CASS 7.13.32R(3)</u>	<u>Physical receipts</u>	<u>Physical receipt of money</u>	<u>When the firm receives client money in the form of cash, a cheque or other payable order</u>	<u>Not specified (see default provision CASS 7.15.5R(3))</u>

<u>CASS 7.13.33R(3)</u>	<u>Future dated cheque</u>	<u>Receipt of money</u>	<u>When the firm receives client money in the form of a cheque that is dated with a future date</u>	<u>Not specified (see default provision CASS 7.15.5R(3))</u>
<u>CASS 7.4.17BR 7.13.55R</u>	...	...	...	...
CASS 7.4.19AR to CASS 7.4.19CR	<i>Alternative approach alternative approach mandatory prudent segregation record</i>	<i>Details of money segregated under CASS 7.4.18BR required by these rules</i>	<i>Maintain up to date</i>	<i>Five years (after the firm ceases to retain money as client money under CASS 7.4.18BR) [deleted]</i>
...				
<u>CASS 7.6.4R 7.15.5R(3)</u>	...	...	...	...
<u>CASS 7.6.7R 7.15.18R</u>	...	<i>Explanation of method of internal reconciliation of client money balances used by the firm, and if different from the standard method of internal-client money reconciliation, an explanation as to how the method used affords equivalent</i>	<i>Date the firm starts using the method</i> <i>Before the firm uses a non-standard method of internal client money reconciliation on or materially changes its method</i>	<i>5 years (from the date the firm ceases to use the method)</i> <i>Not specified (see default provision CASS 7.15.5R(3))</i>

		<p>degree of protection to <i>clients</i>, and how it enables the <i>firm</i> to comply with the <i>client money distribution rules</i></p> <p>The <i>firm's</i> reasons for concluding that the method of <i>internal client money reconciliation</i> it proposes to use meets the criteria at <u>CASS 7.15.18R(1)(a)</u></p>		
<u>CASS 7.8.9R(1)</u> <u>7.18.10R(1)</u>	...	...	...	...
<u>CASS 7.8.9R(2)</u> <u>7.18.10R(2)</u>	...	...	...	...
CASS 7.8.10R <u>7.18.11R</u>	...	...	...	...
...				
CASS 7.11.20R	<i>Client's</i> agreement to <i>firm's</i> use of the delivery versus payment exemption under <u>CASS 7.11.14R</u>	Written evidence of <i>client's</i> agreement	Immediate	Until the <i>firm</i> ceases to use this exemption [deleted]
CASS 7.11.24R	<i>Client's</i> agreement to <i>firm's</i> use of the delivery versus payment exemption under <u>CASS 7.11.21R</u>	Written evidence of <i>client's</i> agreement	Immediate	Until the <i>firm</i> ceases to use this exemption [deleted]

...				
CASS 7.13.50R; CASS 7.13.51R	...	...	...	Five years (after the firm <i>firm</i> ceases to retain <i>money as client money</i> under CASS 7.13.41R)
CASS 7.13.66R; CASS 7.13.67R	...	...	...	Five years (after the firm <i>firm</i> ceases to retain <i>money as client money</i> under CASS 7.13.65R)
CASS 7.13.74R; CASS 7.13.75R	...	...	...	Five years (after the firm <i>firm</i> ceases to retain <i>money as client money</i> under CASS 7.13.73R(3) (a))
CASS 7.15.9R	...	...	...	Not specified (see default provision CASS CASS 7.15.5R(3))
...				

Sch 2 Notification requirements

2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
CASS <u>CASS</u> 6.6.57R(1)	...	...	...	...
...				
CASS <u>CASS</u> 6.6.57R(6)	Inability or material failure to conduct an external custody record check <u>external custody reconciliation</u> in compliance with CASS 6.6.34R to CASS 6.6.37R	...	...	...
...				
<u>CASS</u> 7.13.21CR(1)	<u>Commencement of approach under CASS 7.13.21AR(1)</u>	<u>Notice that the firm will start to use the approach under CASS 7.13.21AR(1)</u>	<u>Whenever a decision to use the approach under CASS 7.13.21AR(1) is taken</u>	<u>Upon reaching the decision and before the firm starts to use that approach</u>
<u>CASS</u> 7.13.21CR(2)	<u>Cessation or continuation of approach under CASS 7.13.21AR(1)</u>	<u>Notice that the firm will cease to use the approach under CASS 7.13.21AR(1)</u>	<u>Whenever a decision to cease the approach under CASS 7.13.21AR(1) is taken</u>	<u>Upon reaching the decision</u>
CASS 7.4.17DR CASS 7.13.57R	...	...	...	...
CASS <u>CASS</u> 7.15.18R(1)(b)	...	...	...	...
CASS 7.6.16R(2)	Non-compliance or inability, in any material respect, to comply with the	The fact that the firm has not complied or is unable,	Non-compliance or inability, in any	Without delay [deleted]

	requirements in CASS 7.6.13R to CASS 7.6.15R (Reconciliation discrepancies)	in any material respect, to comply with the requirements and the reasons for that	material respect, to comply with the requirements	
CASS 7.15.33R(6)	...	...	<u>On becoming aware</u>	...
...				

Annex I

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text.

After MAR 5A (Organised trading facilities) insert the following new chapter. All the text is new and is not underlined.

5AA Multilateral systems

5AA.1 Operation of a multilateral system as an MTF or OTF

5AA.1.1 R Where a *firm* operates a *multilateral system* from an establishment in the *United Kingdom* it must operate it as a *multilateral trading facility* or an *organised trading facility*.

[**Note:** article 1(7) of *MiFID*]

5AA.1.2 G In our view, any system that merely receives, pools, aggregates and broadcasts indications of interest, bids and offers or prices should not be considered a *multilateral system*. This means that a bulletin board should not be considered a *multilateral system*. The reason is that there is no reaction of one trading interest to another other within these types of facilities. However, operating such a facility may amount to performing the activity of *making arrangements with a view to transactions in investments* (see *PERG 2.7.7BG*).

Insert the new section MAR 5.10 after MAR 5.9 (Post-trade transparency requirements for shares). All the text is new and is not underlined.

5.10 Operation of an SME growth market

Registering an MTF as an SME growth market

5.10.1 R A *firm* may apply to the *FCA* to have an *MTF* registered as an *SME growth market*.

[**Note:** article 33(1) of *MiFID*]

5.10.2 R For an *MTF* to be eligible for registration as an *SME growth market*, the *firm* must have effective rules, systems and procedures which ensure that:

(1) at least 50% of the *issuers* whose *financial instruments* are admitted to trading on the *MTF* are *small and medium-sized enterprises* at the

time when the *MTF* is registered as an *SME growth market*, and in any calendar year thereafter;

- (2) appropriate criteria are set for initial and ongoing admission to trading of *financial instruments* of *issuers* on the market;
- (3) on initial admission to trading of *financial instruments* on the market, there is sufficient information to enable investors to make an informed judgement about whether or not to invest in the *financial instruments* published in either:
 - (a) an appropriate admission document; or
 - (b) a prospectus, if the *Prospectus Directive* is applicable in respect of a public offer being made in conjunction with the initial admission to trading of the *financial instrument* on the *MTF*;
- (4) there is appropriate ongoing periodic financial reporting by, or on behalf of, an *issuer* on the market, for example through audited annual reports;
- (5) the following comply with the *Market Abuse Regulation* as applicable to each of them:
 - (a) *issuers* on the market as defined in point (21) of article 3(1) of the *Market Abuse Regulation*;
 - (b) *persons* discharging managerial responsibilities as defined in point (25) of article 3(1); and
 - (c) *persons* closely associated with them as defined in point (26) of article 3(1);
- (6) regulatory information concerning the *issuers* on the market is stored and disseminated to the public; and
- (7) there are effective systems and controls aiming to prevent and detect *market abuse* on that market as required under the *Market Abuse Regulation*.

[**Note:** articles 33(2) and 33(3) of *MiFID*]

The contents of an application for registration as an *SME growth market*

- 5.10.3 G The requirements specified in *MAR* 5.10.2R:
- (1) are subject to the provisions of the *MiFID Org Regulation*, further specifying the requirements laid down in article 33(3) of *MiFID*; and
 - (2) do not detract from other obligations relevant to an *MTF* under this chapter, but a *firm* may impose additional requirements to those

specified in *MAR 5.10.2R*.

[**Note:** articles 33(4) and 33(8) of *MiFID*, and articles 78 and 79 of the *MiFID Org Regulation*]

- 5.10.4 G (1) The *FCA* expects an application for registration as an *SME growth market* to be accompanied by:
- (a) a copy of the rules, systems and procedures supporting the applicant's compliance with the requirements specified in *MAR 5.10.2R*; and
 - (b) such other information as the *FCA* may reasonably require to determine the application in accordance with *MAR 5.10.2R* and *MAR 5.10.3R*.
- (2) A *firm* intending to apply for registration as an *SME growth market* may wish to contact the Infrastructure and Trading Firms Department at the *FCA* for further advice on the preparation, timing and practical aspects of an application to register.
- 5.10.5 R (1) Where a *financial instrument* of an *issuer* is admitted to trading on one *SME growth market*, the *financial instrument* must not be traded on another *SME growth market* unless the *issuer* has been informed and has not objected.
- (2) In the case of (1), the *issuer* shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter *SME growth market*.

[**Note:** article 33(7) of *MiFID*]

- 5.10.6 G The *issuer* of the *financial instrument* referred to in *MAR 5.10.5R* should be informed by notice in writing that another *SME growth market* wishes to admit the instrument to trading, and should generally be given no less than 28 *days* to object.

Deregistering an MTF as an SME growth market

- 5.10.7 R An *MTF* registered as an *SME growth market* may be deregistered by the *FCA* in the following cases:
- (1) the *firm* operating the market applies for its deregistration; or
 - (2) the requirements in *MAR 5.10.2R* are (subject to *MAR 5.10.3G(1)*) no longer complied with.

[**Note:** article 33(5) of *MiFID* and article 79 of the *MiFID Org Regulation*]

10 Commodity derivative position limits and controls, and position reporting

...

10.4 Position reporting

Application

10.4.1 G The application of this section is set out in the following table:

Type of firm	Applicable provisions
<i>UK regulated market</i>	<i>MAR 10.4.2G</i>
<i>UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF</i>	<i>MAR 10.4.3R to MAR 10.4.6G</i>
<i>UK MiFID investment firm</i>	<i>MAR 10.4.7D to MAR 10.4.9D and <u>MAR 10.4.11G</u></i>
<i>UK branch of a third country investment firm when not operating a multilateral trading facility or an OTF</i>	<i>MAR 10.4.7D to MAR 10.4.9D and <u>MAR 10.4.11G</u></i>
<i>Member, participant or a client of a UK trading venue</i>	<i>MAR 10.4.7D</i>
<i>EEA MiFID investment firm who is a member, participant or a client of a UK trading venue</i>	<i>MAR 10.4.10D to <u>MAR 10.4.11G</u></i>

...

- 10.4.11 G (1) This guidance applies to persons subject to MAR 10.4.8D(2) or MAR 10.4.10D(3).
- (2) A firm subject to MAR 10.4.8D(2) or MAR 10.4.10D(3) may use a third party technology provider to submit to the FCA the report referred to in MAR 10.4.8 D(2) provided that it does so in a manner consistent with MiFID. It will retain responsibility for the completeness, accuracy and timely submission of the report and should populate field 5 of MiFID ITS 4 Annex II with its own reporting entity identification. It should be the applicant for, and should complete and sign, the FCA MDP on-boarding application form.
- (3) MAR 10.4.11.G(2) applies to a trading venue subject to MAR 10.4.

- (4) A firm subject to MAR 10.4.8D(2) or MAR 10.4.10D(3) may arrange for the trading venue where that commodity derivative or emission allowance is traded to provide the FCA with the report provided that it does so in a manner consistent with MiFID. The firm will retain responsibility for the completeness, accuracy and timely submission of the report, submitted on its behalf. The firm should populate field 5 of MiFID ITS 4 Annex II with its own reporting entity identification.

Annex J

Amendments to the Supervision manual (SUP)

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

3 Auditors

3.1 Application

...

3.1.2 R Applicable sections (see SUP 3.1.1R)

...

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...			
(7AA)	A <i>firm</i> that has exercised an opt in to CASS in accordance with CASS 1.4.9R	SUP 3.1 to SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10.
...			

...

3.10 Duties of auditors: notification and report on client assets

...

Client assets report: timing of submission

3.10.7 R An auditor must deliver a client assets report under SUP 3.10.4R to the FCA within four months from the end of each period covered, unless it is the auditor of a *firm* falling within category (10) of SUP 3.1.2R.

[Note: article 8 of the MiFID Delegated Directive]

...

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

...

6.4 Applications for cancellation of permission

...

When will the relevant regulator grant an application for cancellation of permission?

...

6.4.22 G In deciding whether to cancel a *firm's Part 4A permission*, the relevant regulator will take into account all relevant factors in relation to business carried on under that *permission*, including whether:

...

- (3) the *firm* has ceased to hold or control *custody assets* in accordance with instructions received from *clients* and *COBS 6.1.7R or article 49 of the MiFID Org Regulation (see COBS 6.1ZA.2.5EU)* (Information concerning safeguarding of designated investments belonging to clients and client money);

...

...

6 Annex Additional guidance for a firm winding down (running off) its business 4G

...

4.2AG	1	A <i>firm</i> must comply with <i>CASS 5.5.80R</i> and <i>CASS 7.11.34R</i> (Client money: discharge of fiduciary duty) and <i>CASS 7.11.50R</i> (Allocated but unclaimed <i>client money</i> <u>client money</u>) if it is ceasing to hold <i>client money</i> . A <i>firm</i> must also cease to hold or control <i>custody assets</i> in accordance with instructions received from <i>clients</i> and <i>COBS 6.1.7R or article 49 of the MiFID Org Regulation (see COBS 6.1ZA.2.5EU)</i> (Information concerning safeguarding of designated investments belonging to clients and client money). These <i>rules</i> apply to both repayment and transfer to a third party.
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...

10A FCA Approved Persons

10A.1 Application

...

Bidders in emissions auctions

10A.1.2 G For a *firm* that is exempt from *MiFID* under article 2(1)(i)(j) and whose only
1 permission is *bidding in emissions auctions*, the only *FCA controlled functions* that apply to it are:

...

(2) the *money laundering reporting function*; and

(3) the *customer function*; and

(4) ~~(where it has exercised an opt-in to CASS in accordance with CASS 1.4.9R and is a CASS medium firm or a CASS large firm) the CASS operational oversight function.~~ [deleted]

...

...

10A.8 Systems and controls functions

...

10A.8.2 R The *systems and controls function* does not apply in relation to *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(i)(j).

...

12 Appointed representatives

12.1 Application and purpose

~~Application~~ General application

12.1.1 R ...

Territorial application: compatibility with EU law

12.1.1A R (1) The territorial scope of SUP 12 is modified to the extent necessary to be compatible with EU law (see SUP 12.1.1BG and 12.1.1CG for guidance on this).

(2) This rule overrides every other rule in this chapter.

12.1.1B G For a UK MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply to its MiFID business carried on from an establishment in the United Kingdom or another EEA State.

[Note: articles 34(1) and 35(1) and (8) of MiFID]

12.1.1C G For an EEA MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply only to its MiFID business to the extent

they relate to the knowledge and competence of one or more of its *UK tied agents*. An *EEA MiFID investment firm* should complete the Appointed representative appointment form in SUP 12 Annex 3R when appointing a *UK tied agent* to carry on *MiFID business* on its behalf.

[Note: article 29(3) of *MiFID*]

Interaction of SUP 12 and other modules in relation to MiFID business

- 12.1.1D G In addition to those *rules* in SUP 12 relating to the *MiFID business* of *appointed representatives* and *tied agents*, there are other *MiFID* obligations in the *Handbook* relevant to the knowledge and competence of *tied agents* and related compliance obligations (see SYSC 5.1, *TC* and *FIT* (in respect of *appointed representatives* that are *approved persons*)). These provisions are subject to the territorial application requirements in their respective chapters.

Purpose

...

- 12.1.4 G ~~The *FCA* has produced a leaflet entitled “Becoming an appointed representative” which provides a comprehensive summary of some of the main features of the appointed representative regime. You may download a copy of this leaflet from our website at <http://www.fca.org.uk/your-fca/documents/factsheet-becoming-an-appointed-representative> *FCA’s* website includes information about becoming and appointing an *appointed representative*. This information can be found at <https://www.fca.org.uk/firms/appointed-representatives-principals>.~~

- 12.1.5 G This chapter also sets out:
- (1) *guidance* about section 39A of the *Act*, which is relevant to a *UK MiFID investment firm* that is considering appointing an *FCA registered tied agent*; and
 - (2) ~~It also sets out~~ the *FCA’s rules*, and *guidance* on those *rules*, in relation to the appointment of:
 - (a) an *EEA tied agent* by a *UK MiFID investment firm*;
 - (b) a *MiFID optional exemption appointed representative*; and
 - (c) a *structured deposit appointed representative*.

12.2 Introduction

What is an appointed representative?

- 12.2.1 G ...

(3) If an *appointed representative* is also a *tied agent* or a *MiFID optional exemption appointed representative* he must also satisfy the condition in section 39(1A) of the *Act* in order to be an *exempt person*. See *SUP 12.4.12G* and *SUP 12.4.13G* for *guidance* on that condition ~~and~~, *SUP 12.2.16G* for more general *guidance* about *tied agents* and *SUP 12.2.17G* for *guidance* about *MiFID optional exemption appointed representatives*.

(3A) If an *appointed representative* is also a *structured deposit appointed representative* he must also satisfy the condition in section 39(1AA) of the *Act* in order to be an *exempt person*. See *SUP 12.4.12G* and *SUP 12.4.13G* for *guidance* on that condition and *SUP 12.2.18G* for *guidance* about *structured deposit appointed representatives*.

...

...

Business for which an appointed representative is exempt

12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 39(1), (1C) and (1E) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the *Act* may not apply, which is business which comprises any of:

...

(b) *arranging (bringing about) deals in investments* (article 25(1) of the *Regulated Activities Order*) (that is in summary, deals in a *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);

(c) *making arrangements with a view to transactions in investments* (article 25(2) of the *Regulated Activities Order*) (that is in summary, transactions in a *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);

...

(i) *advising on investments (except P2P agreements)* (article 53(1) of the *Regulated Activities Order*) (that is in summary, on any *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);

...

- (2) If the *appointed representative* is also a tied agent of an EEA firm, the business for which the *appointed representative* may be exempt includes the following additional activities:

...

...

What is a tied agent?

12.2.16 G ...

- (7) Under *MiFID*, ~~an EEA State may prohibit the appointment of tied agents by MiFID investment firms for which it is the Home State a tied agent must be registered with the competent authority of the EEA State in which it is established. If a UK MiFID investment firm appoints~~ may appoint a tied agent established in such an EEA State, the UK but that does not, and is not likely to, conduct any business as a tied agent in the UK. That tied agent must be registered with the FCA. Such an EEA tied agent is referred to in the Handbook as an FCA registered tied agent.
- (8) If a UK *MiFID investment firm* appoints a *tied agent* established in an *EEA State* ~~that allows MiFID investment firms for which it is the Home State to appoint tied agents~~ other than the UK, the *tied agent* must be registered with the *competent authority* of the *EEA State* in which it is established. Such an *EEA tied agent* is referred to in the *Handbook* as an *EEA registered tied agent*.

What is a MiFID optional exemption appointed representative?

- 12.2.17 G (1) A MiFID optional exemption appointed representative is a person who acts for and under the responsibility of a MiFID optional exemption firm. Such appointed representatives are not also tied agents since they do not act on behalf of a MiFID investment firm in respect of MiFID business.
- (2) Unless otherwise provided, this chapter applies to a firm that appoints a MiFID optional exemption appointed representative in the same way as it applies to the appointment of any other appointed representative.
- (3) The rules in this chapter which apply with respect to UK tied agents appointed by UK firms also apply to a firm that appoints a MiFID optional exemption appointed representative.

What is a structured deposit appointed representative?

- 12.2.18 G (1) If a MiFID investment firm or a third country investment firm

appoints a *person* to act under its full and unconditional responsibility but only for the purpose of selling, or advising *clients* in relation to, *structured deposits* (and not any of the activities within article 4(1)(29) of *MiFID*), that *person* will not be a *tiered agent* in respect of that activity.

- (2) Unless otherwise provided, this chapter applies to a *firm* that appoints a *structured deposit appointed representative* in the same way as it applies to the appointment of any other *appointed representative*.
- (3) The *rules* in this chapter which apply with respect to *UK tiered agents* appointed by *UK firms* also apply to a *firm* that appoints a *structured deposit appointed representative*.

12.3 What responsibility does a firm have for its appointed representatives or EEA tiered agent agents?

...

Responsibility for EEA tiered agents

- 12.3.5 R A *UK MiFID investment firm* must not appoint an *EEA registered tiered agent* or allow such an agent to continue to act for it unless it accepts or has accepted responsibility in writing for the agent's activities in acting as its *EEA registered tiered agent*.

[Note: paragraph 1 of article ~~23(2)~~ 29(2) of *MiFID*]

...

12.4 What must a firm do when it appoints an appointed representative or an EEA tiered agent?

...

Appointment of an appointed representative (other than an introducer appointed representative)

...

- 12.4.2A R (1) A *firm* must ensure that:
- (a) a *tiered agent* that is an *appointed representative*; or
 - (b) a *MiFID optional exemption appointed representative*; or
 - (c) a *structured deposit appointed representative*,
- is of sufficiently good repute and that it possesses appropriate

general, commercial and professional knowledge and competence so as to be able to communicate accurately all relevant information regarding the proposed service to the *client* or potential *client*. This does not limit a *firm's* obligations under SUP 12.4.2R.

- (2) A firm must ensure that its tied agent or MiFID optional exemption appointed representative also possesses appropriate general, commercial and professional knowledge and competence so as to be able to deliver the investment service or ancillary service for which the firm has accepted responsibility.

[**Note:** paragraphs 3 2 and 4 3 of article 23(3) 29(3) of MiFID]

- 12.4.2B G (1) A firm to which SUP 12.4.2AR applies should also have regard to SYSC 5.1 (Skills, knowledge and expertise). The requirements of the Training and Competence sourcebook (TC) and guidance in the Fit and Proper Test for Approved Persons and specified significant-harm functions (FIT) may also be relevant.

- (2) ESMA has issued guidelines for MiFID investment firms specifying the criteria for the assessment of knowledge and competence. These guidelines are relevant to tied agents (see SYSC 5.1.5ADG).

...

Appointment of an FCA registered tied agent

- 12.4.11 R If a UK MiFID investment firm appoints an FCA registered tied agent, SUP 12.4.2R and SUP 12.4.2AR apply to that firm as though the FCA registered tied agent were an appointed representative.

[**Note:** paragraphs 3 2 and 4 3 of article 23(3) 29(3) of MiFID]

Tied agents

- 12.4.12 G (1) A tied agent that is an appointed representative may not start to act as a tied agent until it is included on the applicable register (section 39(1A) of the Act). If the tied agent is established in the UK, the register maintained by the FCA is the applicable register for these purposes. If the tied agent is established in another EEA State, it should consult section 39(1B) of the Act to determine the applicable register is that maintained by the competent authority in the EEA State in which the tied agent is established.

...

- (4) If the tied agent is not established in the UK and is appointed by an EEA MiFID investment firm, it cannot commence acting as a tied agent until it is included on the public register of tied agents in the EEA State in which it is established (~~or in certain cases, of the Home State of the firm~~).

...

MiFID optional exemption appointed representatives and structured deposit appointed representatives

- 12.4.13 G (1) A MiFID optional exemption appointed representative or a structured deposit appointed representative may not start to act as such until it is included on the *Financial Services Register* (sections 39(1A) and 39(1AA) of the Act).
- (2) A firm must notify the FCA of the appointment of a MiFID optional exemption appointed representative or a structured deposit appointed representative before such appointed representative starts acting in that capacity (SUP 12.7.1R).

12.5 Contracts: required terms

Required contract terms for all appointed representatives

...

- 12.5.2 G ...
- (2) Under the *Appointed Representatives Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:
- ...
- where an “investment transaction” means a transaction to *buy, sell, subscribe for or underwrite a security or a relevant investment* (that is, a *designated investment* (other than a *P2P agreement*), *structured deposit (where applicable)*, *funeral plan contract, pure protection contract, general insurance contract* or right to or interest in a funeral plan; or
- ...
- ...
- 12.5.2A G If:
- (1) a *UK MiFID investment firm* or a *third country investment firm* appoints an *appointed representative* that is a *tied agent* or a *MiFID optional exemption appointed representative*, regulation 3(6) of the *Appointed Representatives Regulations* requires the contract between the *firm* and the *appointed representative* to contain a provision that the representative is only permitted to provide the services and carry on the activities referred to in ~~Article 4(1)(25)~~ article 4(1)(29) of

MiFID while entered on the Register.

- (2) a firm appoints an appointed representative that is a structured deposit appointed representative, regulation 3(6) of the Appointed Representatives Regulations requires the contract between the firm and the appointed representative to contain a provision that the representative is only permitted to sell, or advise clients on, structured deposits while entered on the Register.

...

- 12.5.6 G (1) If the *appointed representative* is appointed to give *advice on investments to retail clients* concerning *packaged products*, the *firm* should also satisfy itself that the contract requires compliance with the *rules in COBS 6 or COBS 6.1ZA* (Information about the firm and compensation information).

...

Prohibition of multiple principals for certain activities

- 12.5.6A R ...

[**Note:** articles ~~4(1)(25)~~ 4(1)(29) and ~~23(1)~~ 29(1) of *MiFID*]

...

Required contract terms for EEA tied agents

- 12.5.8 R If a *UK MiFID investment firm* appoints an *EEA tied agent*, *SUP 12.5.6AR(1A)* applies to that *firm* as though the *EEA tied agent* were an *appointed representative*.

[**Note:** articles ~~4(1)(25)~~ 4(1)(29) and ~~23(1)~~ 29(1) of *MiFID*]

...

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

Suitability etc. of appointed representatives

...

- 12.6.1A R A *firm* that is a ~~principal~~ principal of a *tied agent* that is an *appointed representative* must monitor the activities of that *tied agent* so as to ensure the *firm* complies with obligations imposed under *MiFID* (or equivalent obligations relating to the *equivalent business of a third country investment firm*) when acting through that *tied agent*.

[**Note:** paragraph 3 of ~~Article 23(2)~~ article 29(2) of *MiFID*]

...

Obligations of firms under the training and competence rules

12.6.10 G ...

12.6.10 G A firm that is a principal of a tied agent should also refer to the guidelines for MiFID investment firms issued by ESMA specifying criteria for the assessment of knowledge and competence (see SYSC 5.1.5ADG).

A

...

Continuing obligations of firms with tied agents

12.6.13 R A firm must ensure that its *tied agent* discloses the capacity in which he is acting and the *firm* he is representing when contacting a *client* or potential *client* or before dealing with a *client* or potential *client*.

[Note: paragraph 1 of article ~~23(2)~~ 29(2) of MiFID]

12.6.14 R A firm must take adequate measures in order to avoid any negative impact of the activities of its *tied agent* not covered by the scope of MiFID (or relating to the *equivalent business of a third country investment firm*) could have on the activities carried out by the *tied agent* on behalf of the *firm*.

[Note: paragraph 1 of article ~~23(4)~~ 29(4) of MiFID]

12.6.15 R ...

Continuing obligations of firms with MiFID optional exemption appointed representatives or structured deposit appointed representatives

12.6.15 R If a firm appoints a MiFID optional exemption appointed representative or a structured deposit appointed representative, that firm must:

A

(1) monitor the activities of the appointed representative to ensure that the firm complies with those obligations which implement provisions of MiFID and to which it is subject when acting through its appointed representative;

(2) ensure that its appointed representative discloses the capacity in which it is acting and the firm it is representing when contacting a client or potential client or before dealing with a client or potential client; and

(3) take adequate measures to avoid any negative impact that the activities of its appointed representative not covered by the scope of MiFID could have on the activities carried out by the appointed representative on behalf of the firm.

12.6.15B G In SUP 12.6.15AR(1), the obligations which implement relevant provisions

of MiFID to which a firm is subject include:

- (1) in the case of a MiFID optional exemption firm appointing a MiFID optional exemption appointed representative, those conduct requirements which are imposed pursuant to article 3(2) of MiFID; and
- (2) in the case of a firm appointing a structured deposit appointed representative, those requirements which are imposed pursuant to article 1(4) of MiFID.

...

12.7 Notification requirements

Notification of appointment of an appointed representative

- 12.7.1 R (1) This rule applies to a firm which intends to appoint:
- (a) an appointed representative to carry on insurance mediation activities; or
 - (b) a tied agent; or
 - (c) an appointed representative to carry on MCD credit intermediation activity; or
 - (d) a MiFID optional exemption appointed representative; or
 - (e) a structured deposit appointed representative.

...

...

- 12.7.5 G To contact the ~~Individuals, Mutuals and Policy Department~~ FCA's Contact Centre with appointed representatives enquiries:
- (1) telephone ~~on 020 7066 0019~~ 0300 500 0597; fax ~~on 020 7066 4099~~ 0017; or
 - (2) write to: ~~Individuals, Mutuals and Policy Department~~ Customer Contact Centre, The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or
 - (3) email ~~iva@fca.org.uk~~ firm.queries@fca.org.uk.

...

Notification of changes in information given to the FCA

- 12.7.7 R ...

(1A) If:

(a)

(i) the scope of appointment changes such that the *appointed representative* acts as a *tiered agent*, *MiFID optional exemption appointed representative* or *structured deposit appointed representative* for the first time; and

(ii) the *appointed representative* is not included on the ~~Financial Services Register~~ *Financial Services Register*; or

(b) the *appointed representative* ceases to act as a *tiered agent*, *MiFID optional exemption appointed representative* or *structured deposit appointed representative*;

the *appointed representative's* ~~principal~~ *principal* must give written notice to the FCA of that change before the *appointed representative* begins to act as a *tiered agent*, *MiFID optional exemption appointed representative* or *structured deposit appointed representative* (see SUP 12.4) or as soon as the *appointed representative* ceases to act as a *tiered agent*, *MiFID optional exemption appointed representative* or *structured deposit appointed representative*.

...

...

Submission in the event of failure of FCA information technology systems

12.7.10 G If the FCA's information technology systems fail and online submission is unavailable for 24 hours or more, the FCA will endeavour to publish a notice on its website confirming that online submission is unavailable and that *firms*, other than *credit unions*, should use the alternative methods of submission set out in SUP 12.7.1AR(3) and SUP 12.7.8AR(3) (as appropriate), and SUP 15.7.4R to SUP 15.7.9G, addressing applications for the attention of the ~~Individuals~~ Approved Persons, Passporting and Mutuals Team.

...

**12
Annex
3R** **Appointed representative appointment form**

...

...

Yes No

15 Will the appointed representative undertake structured- deposit related regulated activities? † §

...

13A Qualifying for authorisation under the Act

...

13A Application of the Handbook to Incoming EEA Firms

Annex 1G

...		
5. An EEA firm that exercises an EEA right under MiFID to carry on MiFID business bidding is subject to the applicable provisions relating to its carrying on of MiFID business and any applicable EU regulations.		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
SYSC	<p>...</p> <p>The common platform requirements in SYSC 4 - 10 apply as set out in Part 2 of SYSC 1 Annex 1 (Application of the common platform requirement).</p> <p>...</p> <p><u>SYSC 10A applies to an incoming EEA AIFM and an EEA MiFID investment firm.</u></p> <p>...</p> <p>SYSC 19A, 19B, 19C and 19D do not apply.</p> <p><u>SYSC 19F applies to a MiFID</u></p>	<p>...</p> <p>The common platform requirements in SYSC 4 - SYSC 10 apply as set out in SYSC 1 Annex 1.2.2R.</p> <p>SYSC 10A - SYSC 17 do not apply.</p> <p>SYSC 18 applies.</p> <p>SYSC 19A, <u>19B</u>, 19C and, 19D, <u>19E and 19F</u> do not apply.</p>

	<i>investment firm</i> unless it is a <u>UCITS investment firm</u> or an <u>AIFM investment firm</u> .	
...		
<i>GEN</i>	<p><i>GEN</i> applies (<i>GEN</i> 1.1, <u><i>GEN</i> 1.2</u>, <i>GEN</i> 2.1, <i>GEN</i> 4.1, <i>GEN</i> 5.1 and <i>GEN</i> 6.1). However,</p> <p>(a) <i>GEN</i> 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> (<i>GEN</i> 4.1.1R(3)), and</p> <p>(b) <i>GEN</i> 6 only applies to business that can be regulated under sections 137A and 137G of the <i>Act</i> (The FCA's General rules) and (The PRA's General rules), respectively. It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by an <i>EU instrument</i>. Only GEN <u><i>GEN</i> 4.5</u> applies in relation to <i>MiFID</i> or equivalent <i>third country business</i> (see <i>GEN</i> 4.1.1R). <u>The FCA has supervisory responsibility in respect of a <i>branch of a MiFID investment firm</i> under article 44(8) of the <i>MiFID Org Regulation</i> relating to the prohibition on using the name of a <i>competent authority</i> to suggest its endorsement of the <i>firm's</i> products or services.</u></p>	<p><i>GEN</i> 4 does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (see <i>GEN</i> 4.1.1R).</p> <p>Otherwise, as column (2) <u>except in relation to article 44(8) of the <i>MiFID Org Regulation</i></u>.</p>
<i>FEES</i>	<p>Applies to the extent a <i>firm</i> is required to pay a fee in regards to carrying out any <i>regulated activity</i> in the <i>UK</i>, normally this would be the case when the <i>firm</i> holds a <i>top-up permission</i>. <u><i>FEES</i> 3.2.7R applies in relation to <i>incoming data reporting services providers</i></u>.</p>	<p>As column (2)</p> <p><u>Does not apply in relation to <i>regulated activity</i> in the <i>UK</i></u> <u><i>FEES</i> 3.2.7R applies in relation to <i>incoming data reporting services providers</i></u></p>

...		
<i>MAR</i>	...	...
...	<p><u>MAR 10 (Commodity derivative position limits and controls, and position reporting)</u></p> <p><u>Position limits apply in relation to position limits set by the FCA in accordance with MAR 10.2.2D. Position reporting applies to a member, participant or a client of a UK trading venue in accordance with MAR 10.4.10D.</u></p>	<u>As column (1)</u>
<i>SUP</i>	...	...
...		
	<p>SUP 16 (Reporting requirements)</p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <p>(a) a <i>bank</i>; or</p> <p>(c) an <i>OPS firm</i>; or</p> <p>(e) an <i>insurer</i> with <i>permission</i> to effect or carry out <i>life policies</i>; or</p> <p>(f) a <i>firm</i> with <i>permission</i> to <i>establish, operate or wind up a personal pension scheme</i> or a <i>stakeholder pension scheme</i>; or</p> <p>(g) a <i>firm</i> with <i>permission</i> to <u>carry on MiFID business, advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.</u></p> <p>(SUP 16.1)</p>	<p>SUP 16 (Reporting requirements)</p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <p>(b) an <i>OPS firm</i>; or</p> <p>(d) an <i>insurer</i> with <i>permission</i> to effect or carry out <i>life policies</i>; or</p> <p>(e) a <i>firm</i> with <i>permission</i> to <i>establish, operate or wind up a personal pension scheme</i> or a <i>stakeholder pension scheme</i>; or</p> <p>(f) a <i>firm</i> with <i>permission</i> to <i>advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.</i></p> <p>(SUP 16.1)</p>

	<p>SUP 17 (Transaction reporting)</p> <p>Applies to UK branches of incoming EEA firms which are MiFID investment firms in respect of reportable transactions executed in the course of services provided, whether within in the United Kingdom and outside. (SUP 17.1.2G and SUP 17.1.3AG)</p> <p><u>A MiFID investment firm (other than a collective portfolio management investment firm) reports transactions executed wholly or partly through its branch to the competent authority of its Home State unless otherwise agreed by that competent authority and the FCA, in which case it will report to the FCA.</u></p>	<p>SUP 17 (Transaction reporting)</p> <p>Applies as appropriate to incoming EEA firms which are MiFID investment firms in respect of reportable transactions. (SUP 17.1.1R and SUP 17.1.4R)</p> <p><u>Does not apply.</u></p>
...		
<u>PROD</u>	<p>Applies in respect of the <u>rules which implement article 24(2) MiFID and articles 9 and 10 of the MiFID Delegated Directive in relation to the activities of a branch within the territory of the UK.</u></p>	<u>Does not apply.</u>
<u>DEPP</u>	...	...
<u>DISP</u>	<p>Generally applies (DISP 1.1.1G) but in a limited way in relation to MiFID business.</p> <p><u>In relation to MiFID business carried on from the branch of an EEA firm, the provisions in DISP relating to MiFID complaints generally apply (subject to some limitations, see DISP 1.1A.7R), as do the directly applicable provisions of the MiFID Org Regulation relating to complaints</u></p>	<p>Generally does not apply (DISP 1.1.1G).</p> <p>However, <i>DISP</i> applies (subject to some limitations, see <i>DISP</i> 1.1.3R and <i>DISP</i> 1.1.5R) to:</p> <p>(a) an <i>incoming EEA firm</i> which is a <i>UCITS management company</i> managing a <i>UCITS scheme</i>; or</p> <p>(b) an <i>AIFM</i> managing an</p>

	<u>handling.</u> ...	<i>authorised AIF or a UK ELTIF other than a body corporate that is not a collective investment scheme.</i>
...		
Notes to Annex 1		
<p>Note 1: The following modules or chapters are relevant to firms in both the PRA Handbook and the FCA Handbook: PRIN, SYSC, COCON, APER, FIT, GEN, FEES, GENPRU, BIPRU, MIPRU, IPRU(INV), SUP 2 to 6, 8, 11, 13 to 16, 18 & Appendix 2 and COMP</p> <p><u>PRA-authorized persons should also refer to the relevant parts of the PRA Rulebook.</u></p>		
<p>Note 2: The following modules or chapters are relevant in the FCA Handbook only: COND, INSPRU, COBS, ICOBS, MCOB, CASS, MAR, TC, SUP 1A, 7, 9, 10A, 12 & 17, DEPP, DISP, COLL, FUND, PROF, LR, PR, DTR, and EG <u>The effect of article 35(1) and 35(8) of MiFID (when read with article 1(3) of MiFID) is that if an EEA MiFID investment firm establishes a branch in the UK exercising an EEA right under MiFID or CRD, the FCA has supervisory responsibility for the services and activities provided or performed by the branch within the UK in relation to the rules implementing articles 24, 25, 27 and 28 of MiFID.</u></p>		

**13A
Annex
2G**

Matters reserved to a Home State regulator

Introduction	
1. {FCA/PRA}	...
Requirements in the interest of the general good	
2. {FCA/PRA}	<p>The <i>Single Market Directives</i> , and the <i>Treaty</i> (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the <i>Home State regulator</i>. To summarise, the <i>FCA</i> or <i>PRA</i>, as <i>Host State regulator</i>, is entitled to impose requirements with respect to activities carried on within the <i>United Kingdom</i> if these can be justified in the interests of the “general good” and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the <i>Single Market Directives</i>:</p>

	(1)	the <i>Single Market Directives</i> expressly reserve responsibility for the prudential supervision of a <i>MiFID investment firm</i> , <i>CRD credit institution</i> , <i>UCITS management company</i> , <i>AIFM</i> or passporting <i>Solvency II firm</i> to the <i>Firm's Home State regulator</i> in respect of <u>prudential matters within the scope of the respective <i>Single Market Directives</i></u> . The <i>Insurance Mediation Directive</i> and the <i>MCD</i> reach the same position without expressly referring to the concept of prudential supervision. Accordingly, the <i>FCA</i> , as <i>Host State regulator</i> , is entitled to regulate only the conduct of the firm's business within the <i>United Kingdom</i> ;
	...	
	(3)	for a <i>CRD credit institution</i>, the <i>PRA</i> or <i>FCA</i>, as <i>Host State regulator</i>, is jointly responsible with the <i>Home State regulator</i> under article 156 of the <i>CRD</i> for supervision of the liquidity of a <i>branch in the United Kingdom</i>; [deleted]
	(4)	for a <i>MiFID investment firm</i> including a <i>CRD credit institutions institution</i> which is a <i>MiFID investment firm</i>), the protection of <i>clients' money</i> and <i>clients' assets</i> is reserved to the <i>Home State regulator</i> under <i>MiFID</i> ; and
	(5)	...
3. {FCA/PR A}		It is necessary to refer to the case law of the European Court of Justice to interpret the concept of the "general good". To summarise, to satisfy the general good test, <i>Host State</i> rules must come within a field which has not been harmonised at <i>EU</i> level, satisfy the general requirements that they pursue an objective of the general good, be non-discriminatory, be objectively necessary, be proportionate to the objective pursued and not already be safeguarded by rules to which the <i>firm</i> is subject in its <i>Home State</i> .
Application of <i>SYSC 2</i> and <i>SYSC 3</i>		
4. {FCA/PR A}		...
5. {FCA/PR A}		...
6. {FCA/PR A}		This Annex represents the <i>FCA's</i> and <i>PRA's</i> views, but a firm is also advised to consult the relevant <i>EU</i> instrument and, where necessary, seek legal advice.

	...
...	...
Application of the common platform requirements in SYSC to EEA MiFID investment firms	
8. {FCA/PR A}	Whilst the <i>common platform requirements</i> (located in SYSC 4 - SYSC 10) do not generally apply to <i>incoming EEA firms</i> (but for <i>EEA UCITS management companies</i> , see 8A below), <i>EEA MiFID investment firms</i> must comply with the <i>common platform record-keeping requirements</i> in relation to a branch in the <i>United Kingdom</i> and SYSC 10A (<u>Recording telephone communications and electronic communications</u>).
Application of SYSC to EEA UCITS management companies	
8A. {FCA}	...
Requirements under MiFID	
9. {FCA/PR A}	Article 31(1) Article 34(1) of <i>MiFID</i> prohibits Member States from imposing additional requirements on a <i>MiFID investment firm</i> in relation to matters covered by <i>MiFID</i> if the <i>firm</i> is providing services on a cross-border basis. Such firms will be supervised by their Home State regulator.
10. {FCA/PR A}	Article 32 Article 35(8) of <i>MiFID</i> requires the FSA <i>FCA</i> as the <i>Host State regulator</i> to apply certain obligations to an <i>incoming EEA firm</i> with an establishment in the <i>UK</i> . In summary, these are Articles <u>articles</u> :
	(1) 19 (conduct of business obligations); <u>24 of <i>MiFID</i> (General principles and information to clients);</u>
	(1A) <u>25 of <i>MiFID</i> (Assessment of suitability and appropriateness and reporting to clients);</u>
	(2) 21 <u>27 of <i>MiFID</i> (execution of orders on terms most favourable to the client);</u>
	(3) 22 (client order handling) <u>28 of <i>MiFID</i> (client order handling rules);</u>
	(4) 25 (upholding the integrity of markets, reporting transactions and maintaining records);
	(5) 27 (making public firm quotes); and
	(6) 28 (post-trade disclosure).

	<p><u>In addition, the FCA assumes responsibility for supervision of articles 14 to 26 of MiFIR although article 14 of RTS 22 permits a firm to report transactions executed wholly or partly through its branch to the competent authority of its Home State unless otherwise agreed by that competent authority and the FCA. The remaining obligations under MiFID and MiFIR are reserved to the Home State regulator other than requirements in MAR 10.2 in relation to commodity derivative position limits.</u></p>	
11.	<p><i>MiFID is more highly harmonising than other Single Market Directives. Article 4 of the MiFID implementing Directive Directive 2006/73 permits permitted Member States to impose additional requirements only where certain tests are were met. The FSA has made certain requirements that fall fell within the scope of Article 4, some of which have been retained by the FCA, for example in COBS. MiFID retains an ability for Member States to impose additional requirements in the areas of client assets and investor protection. The FCA has made some further requirements which fall within the scope of these provisions. These requirements apply to an EEA MiFID investment firm with an establishment in the United Kingdom as they apply to a UK MiFID investment firm, in the circumstances contemplated by article 32(7) 35(8) MiFID.</i></p>	
...		
12. [FCA/PR A]	<p>Further guidance on the territorial application of the Handbook can be found at PERG 13.6 and PERG 13.7. [deleted]</p>	
13. [FCA/PR A]	<p>Examples of how SYSC 3 and/or the common platform provisions apply in practice.</p>	
	...	
	(2)	<p>The Conduct of Business sourcebook (COBS) applies to an <i>incoming EEA firm</i>. Similarly, SYSC 3 and SYSC 4-10 do require such a <i>firm</i>, <u>to the extent provided by SYSC 1 Annex 1:</u></p>
	(a)	<p>to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of COBS (SYSC 3.1.1R and SYSC 4.1.1R);</p>
	(b)	<p>to establish systems and controls for compliance with the applicable sections of COBS (SYSC 3.2.6R and SYSC 6.1.1R); and</p>

		(c)	to make and retain records in relation to those aspects of the conduct of its business (SYSC 3.2.20R and SYSC 9.1.1R to 9.1.4G).
See also Question 12 in SYSC 2.1.6G for guidance on the application of SYSC 2.1.3R(2).			

...

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 3

...

- 16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>					
	<i>IFPRU investment firms and BIPRU firms</i>		<i>Firms other than BIPRU firms or IFPRU investment firms</i>			
	<i>IFPRU</i>	<i>BIPRU</i>	<i>IPRU(INV)</i> Chapter 3	<i>IPRU(INV)</i> Chapter 5	<i>IPRU(INV)</i> Chapter 9	<i>IPRU(INV)</i> Chapter 13
...						
Note 18	Except if the <i>firm</i> is an <i>adviser</i> , local or traded options market maker (as referred to in <i>IPRU(INV)</i> 3-60(4)R).					
...						
Note 20	Only required in the case of an <i>adviser</i> , local or traded options market maker (as referred to in <i>IPRU(INV)</i> 3-60(4)R) that is a <i>sole trader</i> .					
...						

...

17A Transaction reporting and supply of reference data

...

17A.2 Connectivity with FCA systems

- 17A.2.1 R ...

17A.2.1A G The FCA expects a systematic internaliser that will be supplying the FCA with financial instrument reference data in respect of a financial instrument traded on its system that is not admitted to trading on a regulated market or traded on an MTF or OTF to establish a technology connection with the FCA for the supply of that reference data.

17A.2.1B G A firm in SUP 17A.1.1.R(4) may use a third party technology provider to submit to the FCA financial instrument reference data in respect of a financial instrument traded on its system provided that it does so in a manner consistent with MiFID and MiFIR. Firms will retain responsibility for the completeness, accuracy and timely submission of the data. A firm should be the applicant for, and should complete and sign, the FCA MDP on-boarding application form.

...

App 3 Guidance on passporting issues

...

App 3.3 Background

...

Interpretative communications

...

3.3.6 G (1) The European Commission has not produced an interpretative communication on *MiFID*. It is arguable, however, that the principles in the communication on the Second Banking Directive can be applied to *investment services and activities*. This is because ~~Chapter~~ Chapter II of Title II of *MiFID* (containing provisions relating to operating conditions for investment firms) also applies to the *investment services and activities* of firms operating under the *Banking Consolidation Directive*, which is repealed and replaced by the *CRD*.

...

...

App 3.6 Freedom to provide services

...

Place of supply

...

App 3.6.7 G In respect of banking services, the European Commission believes that "...to determine where the activity was carried on, the place of provision

of what may be termed the ‘characteristic performance’ of the service i.e. the essential supply for which payment is due, must be determined” (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C/209/04)). In the view of the *FCA and PRA*, this requires consideration of where the service is carried out in practice.

- App 3.6.8 G The *FCA and PRA* are is of the opinion that *UK firms* that are *credit institutions* and *MiFID investment firms* should apply the ‘characteristic performance’ test (as referred to in *SUP App 3.6.7G*) when considering whether prior notification is required for services business. *Firms* should note that other *EEA States* may take a different view. Some *EEA States* may apply a solicitation test. This is a test as to whether it is the consumer or the provider that initiates the business relationship.

...

Monitoring procedures

- App 3.6.15 G The *FCA and PRA* ~~consider~~ considers that, in order to comply with *Principle 3: Management and control* (see *PRIN 2.1.1R*), a *firm* should have appropriate procedures to monitor the nature of the services provided to its *customers*. Where a *UK firm* has non-resident *customers* but has not notified the *EEA State* in which the *customers* are resident that it wishes to exercise its freedom to provide services, the *FCA and PRA* would expect the *firm’s* systems to include appropriate controls. Such controls would include procedures to prevent the supply of services covered by the *Single Market Directives* in the *EEA State* in which the *customers* are resident if a notification has not been made and it is proposed to provide services otherwise than by remote communication. In respect of *insurance business*, the *insurer’s* records should identify the location of the risk at the time the policy is taken out or last renewed. That will, in most cases, remain the location of the risk thereafter, even if, for example, the *policyholder* changes his habitual residence after that time.

...

Membership of ~~regulated markets~~ trading venues

- App 3.6.25 G (1) The *FCA and PRA* are is of the opinion that where a *UK firm* becomes a member of:
- (a) a *regulated market* that has its registered office or, if it has no registered office, its head office, in another *EEA State*; or
 - (b) an *MTF* or *OTF* operated by a *MiFID investment firm* or a *market operator* in another *EEA State*,

the same principles as in the ‘characteristic performance’ test should apply. Under this test, the fact that a *UK firm* has a screen

displaying the *regulated market's* or the *MTF's* or the *OTF's* prices in its ~~UK~~ UK office does not mean that it is *dealing* within the territory of the *Home State* of the *regulated market* or of the *MTF* or *OTF*.

- (2) In such a case, the *FCA* and ~~*PRA*~~ would consider that:
- (a) the *market operator* operating the *regulated market* or the *MTF* or the *OTF* is providing a *cross-border service* into the *UK* and so, provided it has given notice to its *Home State regulator* in accordance with articles 42 ~~53~~(6) or ~~34~~(5) 34(6) of *MiFID*, it will be exempt from the *general prohibition* in respect of any *regulated activity* carried on as part of the business of the *regulated market* ~~or of operating an MTF~~, of operating a multilateral trading facility or of operating an organised trading facility (see section 312A of the Act);
 - (b) the *MiFID investment firm* operating the *MTF* or *OTF* is providing a *cross-border service* into the *UK* and so needs to comply with *SUP 13A*.

App 3.6.26 G *Firms* are reminded of their rights, under article ~~33~~ 36 of *MiFID*, to become members of, or have access to, the *regulated markets* in other Member States.

App 3.6.27 G *Firms* should note that, in circumstances where the *FCA* or ~~*PRA*~~ take the view that a notification would not be required, other *EEA States* may take a different view.

...

App 3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

App 3.9.1 G The following Tables 1, 2, ~~2ZA~~, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passport activities* under the *CRD*, *MiFID*, *AIFMD*, the *UCITS Directive*, the *MCD* and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

...

App 3.9.3 G In considering the issues raised in the tables, *firms* should note that:

- (1) article 64 of the *Regulated Activities Order* (Agreeing to carry on specific kinds of activity) ~~applies~~ may apply in respect of agreeing to undertake the specified activity (see *PERG 2.7.21G*); and

- (2) article 89 of the *Regulated Activities Order* (Rights to or interests in investments) applies in respect of rights to and interests in the types of *investments* to which the category applies.

...

App 3.9.5 G Services set out in Annex 1 to MiFID

Table 2: <i>MiFID investment services and activities</i>		Part II RAO Investments	Part III RAO Investments
	<i>A MiFID investment services and activities</i>		
1.	Reception and transmission of orders in relation to one or more financial instruments	Article 25	Article 76-81, <u>82B</u> , 83-85, 89
2.	Execution of orders on behalf of clients	Article 14, 21	Article 76-81, <u>82B</u> , 83-85, 89
3	Dealing on own account	Article 14	Article 76-81, <u>82B</u> , 83-85, 89
4	Portfolio management	Article 37 (14, 21, 25 - see Note 1)	Article 76-81, <u>82B</u> , 83-85, 89
5	Investment advice	Article 53(1)	Article 76-81, <u>82B</u> , 83-85, 89
6	Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	Article 14, 21	Article 76-81, <u>82B</u> , 83-85, 89
7	Placing of financial instruments without a firm commitment basis	Article 21, 25	Article 76-81, <u>82B</u> , 83-85, 89
8	Operation of Multilateral Trading Facilities	Article 25D (see Note 2)	Article 76-81, <u>82B</u> , 83-85, 89

9	<u>Operation of an OTF</u>	<u>Article 25DA</u> (see Note 3)	<u>Article 77, 77A, 78, 79, 80, 81, 82B, 83-85, 89</u>
	Ancillary services	Part II RAO Activities	Part III RAO Investments
1.	Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management	Article 40, 45, 64	Article 76-81, <u>82B</u> , 83-85, 89
2.	Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the relevant instruments where the firm granting the credit or loan is involved		
3.	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53(1), 64	Article 76-80, <u>82B</u> , 83-85, 89
4.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, 53(1), 64	Article 83-85, 89
5	Investment research and financial analysis or other forms of general recommendation relating to transactions in	Article 53(1), 64	Article 76-81, <u>82B</u> , 83-85, 89

	financial instruments		
6.	Services related to underwriting	Article 25, 53(1), 64	Article 76-81, <u>82B</u> , 83-85, 89
7.	Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10-where these are connected to the provision of investment or ancillary services.	Article 14, 21, 25, 25D, 37, 53(1), 64	Article 83 and 84
Note 1. A <i>firm</i> may also carry on these other activities when it is <i>managing investments</i> .			
Note 2. A <i>firm</i> operating an <i>MTF</i> under article 25D does not need to have a <i>permission</i> covering other <i>regulated activities</i> , unless it performs other <i>regulated activities</i> in addition to <i>operating an MTF</i> .			
Note 3. A <i>firm</i> operating an <i>OTF</i> under article 25DA does not need to <u>have a <i>permission</i> covering other <i>regulated activities</i>, unless it performs other <i>regulated activities</i> in addition to <i>operating an OTF</i>.</u>			

Activities set out in article 6(2) to (4) of the AIFMD

App
3.9.5A

G

Table 2ZA: AIFMD activities		Part II RAO Activities	Part III RAO Investments
...			
2.	Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement in accordance with article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary client-by-client	Articles 14, 21, 25, 37, 40 (arranging only), 64	Articles 76 to 81, <u>82B</u> , 83 to 85, 89

	basis (Note 2).		
3.	Investment advice (Note 2).	Articles 53(1), 64	Articles 76 to 81, <u>82B</u> , 83 to 85, 89
4.	Safe-keeping and administration in relation to <i>shares</i> or <i>units</i> of collective investment undertakings.	Articles 40, 45, 64	Articles 76 to 81, <u>82B</u> , 83 to 85, 89
5.	Reception and transmission or orders in relation to <i>financial instruments</i> .	Articles 25(1), 64	Articles 76 to 81, <u>82B</u> , 83 to 85, 89
...			

Activities set out in Article 6(2) and (3) of the UCITS Directive

App 3.9.6 G

Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
...			
2.	Managing portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 14, 21, 25, 37, 40 (arranging only), 64	Articles 76- 81, <u>82B</u> , 83- 85, 89
3.	Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 53(1), 64	Articles 76- 81, <u>82B</u> , 83- 85, 89
4.	Safekeeping and administration services in relation to units of collective investment undertakings.	Articles 40, 45, 64	Articles 76- 81, <u>82B</u> , 83- 85, 89
...			

Annex K

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

The Small and Medium Sized Business (Finance Platforms) Regulations 2015	Description	Handbook reference	Decision maker
...			

<u>Data Reporting Services Regulations 2017</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 10(8)(a)</u>	<u>when the FCA is proposing to impose a restriction on the applicant for authorisation as a data reporting services provider</u>		<u>Executive procedures</u>
<u>Regulation 10(9)(b)</u>	<u>when the FCA is deciding to impose a restriction on the applicant for authorisation as a data reporting services provider</u>		<u>RDC or executive procedures</u> (see Note 1)
<u>Regulations 8(5) and 10(8)(b)</u>	<u>when the FCA is proposing to refuse an application for verification or authorisation as a data reporting services provider</u>		<u>Executive procedures</u>
<u>Regulations 8(6)(b) and 10(9)(c)</u>	<u>when the FCA is deciding to refuse an application for verification or authorisation as a data reporting services</u>		<u>RDC or executive procedures</u>

	<u>provider</u>		<u>(see Note 2)</u>
<u>Regulations 8(9), 11(4)(a) and 11(5)(b)(i)</u>	<u>when the FCA is proposing or deciding to cancel a verification or the authorisation of a data reporting services provider otherwise than at its request</u>		<u>RDC</u>
<u>Regulations 8(9) and 11(4)(b)</u>	<u>when the FCA is proposing to refuse a request to cancel a verification or authorisation of a data reporting services provider</u>		<u>Executive procedures</u>
<u>Regulations 8(9) and 11(5)(b)(ii)</u>	<u>when the FCA is deciding to refuse a request to cancel a verification authorisation of a data reporting services provider</u>		<u>RDC or executive procedures</u> <u>(see Note 2)</u>
<u>Regulations 8(10) and 12(3)</u>	<u>when the FCA is proposing to refuse a request to vary a verification or the authorisation of a data reporting services provider</u>		<u>Executive procedures</u>
<u>Regulations 8(10) and 12(4)</u>	<u>when the FCA is deciding to refuse a request to vary a verification or the authorisation of a data reporting services provider</u>		<u>RDC or executive procedures</u> <u>(see Note 1)</u>
<p><u>Notes:</u></p> <p><u>1) If representations are made in response to a warning notice, then the RDC will take the decision to give a decision notice if the action proposed involves:</u></p> <p><u>(a) restricting a person from providing a data reporting service; or</u></p> <p><u>(b) refusing an application to include a type of activity in a verification or authorisation.</u></p> <p><u>In all other cases, the decision to give a decision notice will be taken by FCA staff under executive procedures.</u></p> <p><u>(2) If representations are made in response to a warning notice then the RDC will take the decision to give a decision notice. Otherwise the decision to give a decision notice will be taken by FCA staff under executive procedures.</u></p>			

Sch 4 Powers Exercised

...

4.2G

The following additional powers and related provisions have been exercised by the *FCA* to make the statements of policy in *DEPP*:

...

Regulation 29 (Application of Part 26 of the 2000 Act) of the *Immigration Regulations*

Regulation 20 (Guidance) of the *DRS Regulations*

Regulation 37 (Application of Part 26 of the Act) of the *DRS Regulations*

Annex L

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1 Treating complainants fairly

1.1 Purpose and application

...

Application to firms

- 1.1.3 R (1) ...
- (2) ~~For complaints relating to the MiFID business of a firm, the complaints handling rules and the complaints record rule~~ For the MiFID complaints of a MiFID investment firm:
- (a) ~~apply to complaints from retail clients and do not apply to complaints from eligible complainants who are not retail clients; DISP 1.1A applies; and~~
- (b) ~~also apply in respect of activities carried on from a branch of a UK firm in another EEA State; and~~ the other provisions of this chapter apply only as set out in DISP 1.1A.
- (c) ~~do not apply in respect of activities carried on from a branch of an EEA firm in the United Kingdom. [deleted]~~
- (2A) For the MiFID complaints of a third country investment firm received from retail clients or elective professional clients:
- (a) DISP 1.1A applies; and
- (b) the other provisions of this chapter apply only as set out in DISP 1.1A.
- (3) ...
- ...
- ...

Exemptions for firms, payment service providers, electronic money issuers and

designated credit reference agencies

- 1.1.12 R (1) ...
- (2) Notwithstanding (1):
- (a) ~~the complaints handling rules and complaints record rule will continue to apply in respect of complaints concerning MiFID business~~ DISP 1.1A will continue to apply to MiFID complaints; and
- (b) ...
- ...

Insert the following new section after DISP 1.1 (Purpose and application). All the text is new and is not underlined.

1.1A Complaints handling requirements for MiFID complaints

Application: Who? What?

- 1.1A.1 R This section:
- (1) applies to the *MiFID complaints* of a *MiFID investment firm* and does not apply to *complaints* that are not *MiFID complaints*;
- (2) also applies to the *MiFID complaints* of a *third country investment firm* received from a *retail client* or an *elective professional client* but does not apply to *complaints* that are not *MiFID complaints*; and
- (3) applies certain other provisions in *DISP 1* to such complaints.
- 1.1A.2 R For the *MiFID complaints* of a *third country investment firm*, the provisions marked “EU” shall apply as *rules*.
- 1.1A.3 G A *MiFID complaint* is, amongst other things, a complaint to which article 26 of the *MiFID Org Regulation* applies, being a complaint about:
- (1) the provision of *investment services* or *ancillary services* to a *client* by an *investment firm*;
- (2) the provision of one or more *investment services* to a *client* by a *CRD credit institution*;
- (3) selling *structured deposits* to *clients*, or advising *clients* on them, where the sale or advice is provided by an *investment firm* or a *CRD credit institution*;

- (4) the activities permitted by article 6(3) of the *UCITS Directive* when carried on by a *collective portfolio management investment firm*; and
- (5) the activities permitted by article 6(4) of the *AIFMD* when carried on by a *collective portfolio management investment firm*.

[**Note:** see article 1(1), 1(3) and 1(4) of *MiFID*, and article 1 of the *MiFID Org Regulation*]

- 1.1A.4 G A *MiFID complaint* is also a complaint about the *equivalent business of a third country investment firm*.

[**Note:** see articles 39 and 41 of *MiFID*]

- 1.1A.5 G In contrast to the other provisions in *DISP 1* which generally apply to *complaints from eligible complainants*, subject to *DISP 1.1A.6R*:

- (1) the obligations in this section that apply to the *MiFID complaints of MiFID investment firms*, apply to complaints from “clients” as defined in *MiFID* (which includes *retail clients*, *professional clients* and (in relation to *eligible counterparty business*) *eligible counterparties*); and
- (2) the obligations in this section that apply to the *MiFID complaints of third country investment firms*, apply to complaints from *retail clients* and *elective professional clients*.

[**Note:** see recital (103) and article 4(1)(9) of *MiFID* for the definition of “client”]

- 1.1A.6 R (1) Only the provisions in this section marked “EU” and *DISP 1.1A.39R* apply to a *MiFID complaint* received from a *retail client*, *professional client* or an *eligible counterparty* that is not an *eligible complainant*.
- (2) But where the *retail client*, *professional client* or *eligible counterparty* is also an *eligible complainant*, all of the provisions in this section apply.

Application: Where?

- 1.1A.7 R The table below sets out how *DISP 1.1A* applies to *MiFID complaints* relating to:

- (1) the activities of a *MiFID investment firm* carried on from an establishment in the *United Kingdom*;
- (2) the *equivalent business of a third country investment firm* where the complaint is received from a *retail client* or an *elective professional client*;
- (3) activities carried on from a *branch* of a *UK firm* in another *EEA State*; and

- (4) activities carried on from a *branch* of an *EEA firm* in the *United Kingdom*.

Table: Application of DISP 1.1A to the MiFID business of firms in the UK, and the equivalent business of third country investment firms, branches of UK firms and UK branches of EEA firms

(1) Provision	(2) Provision applies to the MiFID business of a firm carried on from an establishment in the UK?	(3) Provision applies to the equivalent third country business of a third country investment firm where the complaint is received from a retail client or an elective professional client?	(4) Provision applies to a branch of a UK firm in another EEA State?	(5) Provision applies to a branch of an EEA firm in the UK?
1.1A.10EU	Yes	Yes	Yes	Yes
1.1A.11R	Yes	Yes	No	Yes
1.1A.12EU	Yes	Yes	Yes	Yes
1.1A.13EU	Yes	Yes	Yes	Yes
1.1A.14G	Yes	Yes	Yes	No
1.1A.15G	Yes	Yes	Yes	No
1.1A.16EU	Yes	Yes	Yes	Yes
1.1A.17EU	Yes	Yes	Yes	Yes
1.1A.18EU	Yes	Yes	Yes	Yes
1.1A.19G	Yes	Yes	Yes	No
1.1A.20R	Yes	Yes	No	Yes
1.1A.21G	Yes	Yes	No	Yes

1.1A.22R	Yes	Yes	No	Yes
1.1A.23R	Yes	Yes	No	Yes
1.1A.24EU	Yes	Yes	Yes	Yes
1.1A.25EU	Yes	Yes	Yes	Yes
1.1A.26R	Yes	Yes	No	Yes
1.1A.27G	Yes	Yes	No	Yes
1.1A.28R	Yes	Yes	No	Yes
1.1A.29EU	Yes	Yes	Yes	Yes
1.1A.30EU	Yes	Yes	Yes	Yes
1.1A.31R	Yes	Yes	No	Yes
1.1A.32G	Yes	Yes	No	Yes
1.1A.33G	Yes	Yes	No	Yes
1.1A.34G	Yes	Yes	No	Yes
1.1A.35R	Yes	Yes	No	Yes
1.1A.36R	Yes	Yes	No	Yes
1.1A.37EU	Yes	Yes	Yes	Yes
1.1A.38EU	Yes	Yes	Yes	Yes
1.1A.39R	Yes	Yes	No	Yes
1.1A.40R	Yes	Yes	No	No
1.1A.41G	Yes	Yes	No	No
1.1A.42R	No	No	Yes	No
Notes				
(1)	The provisions marked “EU” in the table are ‘directly applicable’ which means they apply to all <i>MiFID investment firms</i> in relation to <i>MiFID complaints</i> by virtue of the <i>MiFID Org Regulation</i> .			
(2)	This table should be read in conjunction with the <i>rules and guidance</i> in <i>DISP 1.1A.1R</i> to <i>DISP 1.1A.6R</i> .			

Interpretation of this section

- 1.1A.8 G This section contains a number of provisions marked with the status letters “EU”, which have been selectively reproduced from the *MiFID Org*

Regulation.

- 1.1A.9 G References in column (1) to a word or phrase used in those provisions marked “EU” have the meaning indicated in column (2) of the table below:

(1)	(2)
“complaint”	<i>MiFID complaint</i>
“investment firm” and “firm”	<i>MiFID investment firm</i>

[**Note:** for the definition of “client” see recital (103) and article 4(1)(9) of *MiFID*]

Consumer awareness

- 1.1A.10 EU Investment firms shall publish the details of the process to be followed when handling a complaint. Such details shall include information about the complaints management policy and the contact details of the complaints management function. This information shall be provided to clients or potential clients, on request, or when acknowledging a complaint.

[**Note:** article 26(2) of the *MiFID Org Regulation*]

- 1.1A.11 R A *MiFID investment firm* must provide information to *eligible complainants*, in a clear, comprehensible and easily accessible way, about the *Financial Ombudsman Service* (including the *Financial Ombudsman Service’s* website address):

- (1) on its website, where one exists; and
- (2) if applicable, in the general conditions of its contracts with *eligible complainants*.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.2.1R(4)]

[**Note:** article 13(2) of the *ADR Directive*, article 14(1) of the *ODR Regulation*, and regulation 19 of the *ADR Regulations*]

Complaints handling

- 1.1A.12 EU Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients’ or potential clients’ complaints.

[**Note:** first paragraph, article 26(1) of the *MiFID Org Regulation*]

- 1.1A.13 EU The complaints management policy shall provide clear, accurate and up-to-date information about the complaints-handling process. This policy shall be endorsed by the firm’s management body.

[**Note:** second paragraph, article 26(1) of the *MiFID Org Regulation*]

- 1.1A.14 G The complaints management policy should be set out in a written document e.g. as part of a general fair treatment policy. It should be made available to all relevant staff of the *firm* through appropriate internal channels.

[**Note:** guideline 1(b) and (c) of the complaints handling guidelines for the securities (*ESMA*) and banking (*EBA*) sectors. See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+-+Joint+Committee+-+Final+report+complaints-handling+guidelines.pdf/312b02a6-3346-4dff-a3c4-41c987484e75>]

- 1.1A.15 G The *firm's* senior management should be responsible for the implementation of the complaints management policy and for monitoring compliance with it.

[**Note:** guideline 1(b) and (c) of the complaints handling guidelines for the securities (*ESMA*) and banking (*EBA*) sectors. See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+-+Joint+Committee+-+Final+report+complaints-handling+guidelines.pdf/312b02a6-3346-4dff-a3c4-41c987484e75>]

- 1.1A.16 EU Investment firms shall enable clients and potential clients to submit complaints free of charge.

[**Note:** article 26(2) of the *MiFID Org Regulation*]

- 1.1A.17 EU Investment firms shall establish a complaints management function responsible for the investigation of complaints. This function may be carried out by the compliance function.

[**Note:** article 26(3) of the *MiFID Org Regulation*]

- 1.1A.18 EU Investment firms' compliance function shall analyse complaints and complaints-handling data to ensure that they identify and address any risks or issues.

[**Note:** article 26(7) of the *MiFID Org Regulation*]

- 1.1A.19 G *MiFID complaints* should be handled effectively and in an independent manner.

[**Note:** recital (38) of the *MiFID Org Regulation*]

Complaints resolution

- 1.1A.20 R Once a *MiFID complaint* has been received by a *MiFID investment firm*, the *firm* must:

- (1) investigate the complaint competently, diligently and impartially, obtaining additional information as necessary;

- (2) assess fairly, consistently and promptly:
 - (a) the subject matter of the complaint;
 - (b) whether the complaint should be upheld;
 - (c) what remedial action or redress (or both) may be appropriate; and
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint; and
- (3) comply promptly with any offer of remedial action or redress accepted by the complainant.

[Note: subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.4.1R(1), (2) and (5).]

1.1A.21 G Factors that may be relevant in the assessment of a *MiFID complaint* under *DISP* 1.1A.20R(2) include the following:

- (1) all the evidence available and the particular circumstances of the complaint;
- (2) similarities with other complaints received by the respondent;
- (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 similar complaints received by the *MiFID investment firm*.

[Note: subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.4.2G.]

1.1A.22 R Where a *MiFID complaint* against a *MiFID investment firm* is referred to the *Financial Ombudsman Service*, the *MiFID investment firm* must cooperate fully with the *Financial Ombudsman Service* and comply promptly with any settlements or awards made by it.

[Note: subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.4.4R.]

Complaints resolved by close of the third business day

1.1A.23 R If a *MiFID investment firm* resolves a *MiFID complaint* by close of business on the third *business day* following the day on which it is received, it may choose to comply with *DISP* 1.1A.24EU to *DISP* 1.1A.27G rather than with *DISP* 1.1A.28R to *DISP* 1.1A.34G.

- 1.1A.24 EU When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

[**Note:** article 26(4) of the *MiFID Org Regulation*]

- 1.1A.25 EU Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR or that the client may be able to take civil action.

[**Note:** article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive* at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>]

- 1.1A.26 R The explanation given by *MiFID investment firms* to *clients* or potential *clients* in accordance with *DISP* 1.1A.25EU must also:
- (1) refer to the fact that the complainant has made a *MiFID complaint* and inform the complainant that the *MiFID investment firm* now considers the *MiFID complaint* to have been resolved;
 - (2) inform the complainant that if, still dissatisfied with the resolution of the *MiFID complaint*, the complainant may be able to refer it to the *Financial Ombudsman Service*;
 - (3) indicate whether or not the *respondent* consents to waiving the relevant time limits in *DISP* 2.8.2R or *DISP* 2.8.7R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in *DISP* 1 Annex 3R;
 - (4) provide the website address of the *Financial Ombudsman Service*; and
 - (5) refer to the availability of further information on the website of the *Financial Ombudsman Service*.

[**Note:** article 13 of the *ADR Directive*]

- 1.1A.27 G The information regarding the *Financial Ombudsman Service* required to be provided in a communication sent under *DISP* 1.1A.25EU and referred to in *DISP* 1.1A.26R should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

[**Note:** article 13 of the *ADR Directive*]

Complaints time limits

- 1.1A.28 R On receipt of a *MiFID complaint*, a *MiFID investment firm* must:

- (1) send the complainant a prompt written acknowledgement providing early reassurance that it has received the *MiFID complaint* and is dealing with it; and
- (2) ensure the complainant is kept informed thereafter of the progress of the measures being taken for the *MiFID complaint's* resolution.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.6.1R.]

- 1.1A.29 EU When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

[**Note:** article 26(4) of the *MiFID Org Regulation*]

- 1.1A.30 EU Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR or that the client may be able to take civil action.

[**Note:** article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive* at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>]

- 1.1A.31 R The explanation given by *MiFID investment firms* to *clients* or potential *clients* in accordance with *DISP* 1.1A.30EU must also:
- (1) enclose a copy of the *Financial Ombudsman Service's* standard explanatory leaflet;
 - (2) provide the website address of the *Financial Ombudsman Service*;
 - (3) inform the complainant that if, still dissatisfied with the *respondent's* response, the *complaint* may now be referred to the *Financial Ombudsman Service*; and
 - (4) indicate whether or not the *respondent* consents to waiving the relevant time limits in *DISP* 2.8.2R or *DISP* 2.8.7R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in *DISP* 1 Annex 3R.

[**Note:** article 13 of the *ADR Directive*]

- 1.1A.32 G The information regarding the *Financial Ombudsman Service* required to be provided in a *final response* sent under *DISP* 1.1A.30EU and referred to in *DISP* 1.1A.31R should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

[**Note:** article 13 of the *ADR Directive*]

- 1.1A.33 G When assessing a *MiFID investment firm's* response to a *MiFID complaint*, the *FCA* may have regard to a number of factors, including, the quality of response, as against the above rules, as well as the speed with which it was made.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP 1.6.8G*]

- 1.1A.34 G *DISP 2.8.1R* sets out the circumstances in which the *Ombudsman* can consider a *complaint*, including where eight weeks have elapsed since its receipt by the *MiFID investment firm* and where the *MiFID investment firm* consents (subject to the other requirements of *DISP 2.8.1R(4)*).

Complaints forwarding

- 1.1A.35 R *DISP 1.7* also applies to a *MiFID complaint* received by a *MiFID investment firm*.

Complaints time barring

- 1.1A.36 R If a *MiFID investment firm* receives a *MiFID complaint* which is outside the time limits for referral to the *Financial Ombudsman Service* (see *DISP 2.8*) it may reject the *MiFID complaint* without considering the merits, but must explain this to the complainant in a *final response*.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP 1.8*]

Complaints records

- 1.1A.37 EU Investment firms shall keep a record of the complaints received and the measures taken for their resolution.

[**Note:** article 26(1) of the *MiFID Org Regulation*; see also article 72 of the *MiFID Org Regulation* regarding the retention of records]

Complaints reporting

- 1.1A.38 EU Investment firms shall provide information on complaints and complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution (ADR) entity.

[**Note:** article 26(6) of the *MiFID Org Regulation*]

- 1.1A.39 R The *complaints reporting rules* also apply to the *MiFID complaints* of a *firm*, except that the relevant parts of the report which the *firm* must provide to the *FCA* under *DISP 1.10.1R* must, in relation to *MiFID complaints*, include information about such complaints received from *retail clients*, *professional clients*, and (where relevant) *eligible counterparties* rather than

eligible complainants.

Complaints data publication

- 1.1A.40 R The *complaints data publication rules* apply to the *MiFID complaints* of a *firm*.
- 1.1A.41 G The effect of the *complaints data publication rules* and *DISP 1.1A.37EU* is that, for the purposes of complying with those *rules*, a *firm's complaints data summary* should include relevant data about any *MiFID complaints* received by the *firm*.

ADR entities and branches of UK MiFID investment firms in other EEA States

- 1.1A.42 R A *branch of a UK MiFID investment firm* in another *EEA State* must adhere to one or more relevant *ADR entities* in that *EEA State* in respect of *consumer disputes concerning investment services and ancillary services*.

[**Note:** article 75 of *MiFID*]

Amend the following as shown.

1.3 Complaints handling rules

Complaints handling procedures for respondents

- 1.3.1 R ...

[**Note:** ~~article 10 of the *MiFID implementing Directive* and article 6(1) of the *UCITS implementing Directive*~~]

...

Further requirements for all respondents

- 1.3.3 R ~~In respect of *complaints* that do not relate to *MiFID business*, a Δ respondent must put in place appropriate management controls and take reasonable steps to ensure that in handling *complaints* it identifies and remedies any recurring or systemic problems, for example, by:~~

...

...

- 1.3.4 G ~~In respect of *complaints* that relate to *MiFID business*, a *firm* should put in place appropriate management controls and take reasonable steps, in the same way as for *complaints* that do not relate to *MiFID business* (see *DISP 1.3.3R* and *DISP 1.3.3BG*), in order to detect and minimise any risk of compliance failures (*SYSC 6.1*) and to comply with *Principle 6* (*Customers' interests*).~~ [deleted]

...

1.9 Complaints record rule

1.9.1 R A firm, including, in the case of ~~MiFID business~~ or collective portfolio management services for a UCITS scheme or an EEA UCITS scheme, a branch of a UK firm in another EEA state, must keep a record of each complaint received and the measures taken for its resolution, and retain that record for:

- (1) at least five years where the complaint relates to ~~MiFID business~~ or collective portfolio management services for a UCITS scheme or an EEA UCITS scheme; and
- (2) three years for all other complaints;

from the date the complaint was received.

[~~Note: article 10 of the MiFID implementing Directive~~ and article 6(2) of the UCITS implementing Directive]

...

1 Annex 2G Application of DISP 1 to type of respondent / complaint

...

Type of respondent/ complaint	<u>DISP 1.1A Requirements for MiFID investment firms</u>	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
firm in relation to complaints concerning non-MiFID business (except as specifically provided below)	<u>Does not apply</u>	Applies for eligible complaints	Applies for eligible complaints (DISP 1.3.4G does not apply)	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints
firm in relation to MiFID complaints concerning MiFID business carried on from an	<u>Applies for retail clients and professional clients, and (where relevant) eligible counterpart</u>	<u>Applies for eligible complaints</u> <u>Does not apply</u>	<u>(DISP 1.3.3R does not apply)</u> <u>Does not apply</u>	<u>Applies for eligible complaints</u> <u>DISP 1.7 applies as set out in DISP 1.1A</u>	<u>Applies for retail clients</u> <u>Does not apply (but see DISP 1.1A.37EU)</u>	<u>Applies for eligible complaints</u> <u>Applies as set out in DISP 1.1A</u>	<u>Applies for eligible complaints</u> <u>Applies as set out in DISP 1.1A</u>

<u>establishment in the UK</u>	<u>ies (see also DISP 1.1A.6R)</u>						
<i>UK UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme or an EEA UCITS scheme provided under the freedom to provide cross border services</i>	<u>Does not apply</u>	Applies for unitholders	Applies for unitholders	Applies for eligible complainants	Applies for unitholders	Applies for eligible complainants	Applies for eligible complainants
<i>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme</i>	<u>Does not apply</u>	Applies for unitholders	Applies for unitholders	Does not apply	Applies for unitholders	Does not apply	Does not apply
<i>branch of a UK firm (other than a UK UCITS management company when providing collective portfolio management</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

<i>nt services in respect of an EEA UCITS scheme) in another EEA State in relation to complaints concerning non-MiFID business</i>							
<i>branch of a UK firm in another EEA State in relation to MiFID complaints concerning MiFID business</i>	<u>Applies for retail clients and professional clients, and (where relevant) eligible counterparties (see also DISP 1.1A.6R)</u>	Does not apply	Applies for retail clients (DISP 1.3.3R does not apply)	Does not apply	Applies for retail clients Does not apply (but see <u>DISP 1.1A.37EU</u>)	Does not apply	Does not apply
<i>incoming branch of an EEA firm (other than an EEA UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in relation to complaints concerning non-MiFID business</i>	<u>Does not apply</u>	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Does not apply
<i>incoming branch of an EEA firm in relation to MiFID complaints concerning MiFID business</i>	<u>Applies for retail clients and professional clients, and (where relevant) eligible counterparties (see also DISP</u>	Applies for eligible complainants Does not apply	Does not apply	Applies for eligible complainants Applies as set out in <u>DISP 1.1A</u>	<u>Does not apply (but see DISP 1.1A.37EU)</u>	Applies for eligible complainants Applies as set out in <u>DISP 1.1A</u>	Does not apply

	<u>1.1A.6R)</u>						
<i>incoming branch of an EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme</i>	<u>Does not apply</u>	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Does not apply
<i>incoming EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme provided under the freedom to provide cross border services</i>	<u>Does not apply</u>	Does not apply	Does not apply	Applies for <i>eligible complainants</i>	Does not apply	Applies for <i>eligible complainants</i>	Does not apply
<i>incoming EEA firm providing cross-border services <u>cross border services</u> from outside the UK</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>equivalent business of a third country investment firm in relation to</i>	<u>Applies as set out in DISP 1.1A</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Applies as set out in DISP 1.1A</u>	<u>Does not apply (but see DISP 1.1A.37EU)</u>	<u>Applies as set out in DISP 1.1A</u>	<u>Applies as set out in DISP 1.1A</u>

<i>MiFID complaints</i>							
<i>branch of an overseas firm (in relation to all other complaints)</i>	<u>Does not apply</u>	Applies for eligible complaints					
<i>payment service provider in relation to complaints concerning payment services</i>	<u>Does not apply</u>	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints	Does not apply	Does not apply	Does not apply
<i>EEA branch of a UK payment service provider in relation to complaints concerning payment services</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming branch of an EEA authorised payment institution in relation to complaints concerning payment services</i>	<u>Does not apply</u>	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints	Does not apply	Does not apply	Does not apply
<i>incoming EEA authorised payment institution providing cross border payment services from outside the UK</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>electronic money issuer in relation to complaints concerning issuance of</i>	<u>Does not apply</u>	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints	Does not apply	Does not apply	Does not apply

<i>electronic money</i>							
<i>EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming branch of an EEA authorised electronic money institution in relation to complaints concerning issuance of electronic money</i>	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply
<i>incoming EEA authorised electronic money institution providing cross border electronic money issuance services from outside the UK</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>VJ participant</i>	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants (DISP 1.3.4G to DISP 1.3.5G do not apply)</i>	Applies for <i>eligible complainants (DISP 1.6.8G does not apply)</i>	Does not apply	Does not apply	Does not apply

<i>complaints relating to auction regulation bidding</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>a full-scope UK AIFM, small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate (unless it is a collective investment scheme)</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>a depositary, for complaints concerning activities carried on for an authorised AIF</i>	<u>Does not apply</u>	Applies for eligible complainants	Applies for eligible complainants (DISP 1.3.4G does not apply)	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants
<i>a depositary, for complaints concerning activities carried on for an unauthorised AIF that is a charity AIF (other than a body corporate that is not a collective investment scheme)</i>	<u>Does not apply</u>	Applies for eligible complainants	Applies for eligible complainants (DISP 1.3.4G does not apply)	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants
<i>a depositary, for complaints</i>	<u>Does not apply</u>	Applies for eligible complainants	Applies for eligible complainants (DISP	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants

concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>UK ELTIF</i> (other than a <i>body corporate</i> that is not a <i>collective investment scheme</i>)			1.3.4G does not apply)				
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is not a <i>charity AIF</i> or a <i>UK ELTIF</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>body corporate</i> (other than a <i>collective investment scheme</i>).	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
an <i>incoming EEA AIFM</i> , for <i>complaints</i> concerning <i>AIFM management functions</i> carried on for an <i>authorised AIF</i> or a <i>UK ELTIF</i> under the	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (<i>DISP</i> 1.3.4G does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply

freedom to provide cross-border services							
a CBTL firm in relation to <u>complaints concerning CBTL business</u>	<u>Does not apply</u>	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints	Does not apply	Does not apply	Does not apply
a designated credit reference agency in relation to <u>complaints about providing credit information</u>	<u>Does not apply</u>	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints	Does not apply	Does not apply	Does not apply

2 Jurisdiction of the Financial Ombudsman Service

...

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1 R ...

2.3.1A R The Ombudsman can also consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by:

- (1) an investment firm authorised under MiFID when providing investment services or ancillary services;
- (2) a CRD credit institution when providing one or more investment services;
- (3) an investment firm authorised under MiFID or a CRD credit institution when selling structured deposits to clients, or advising clients on them;
- (4) a collective portfolio management investment firm when providing the activities permitted by article 6(3) of the UCITS Directive; and
- (5) a collective portfolio management investment firm when providing the activities permitted by article 6(4) of the AIFMD.

[Note: see article 1(1), 1(3) and 1(4) and article 75 of *MiFID*, and articles 1 and 26(5) of the *MiFID Org Regulation*]

- 2.3.1B G For the purposes of *DISP* 2.3.1AR, the *Ombudsman* can consider a *complaint* about an act carried out by a *MiFID investment firm* that is preparatory to the provision of an *investment service* or *ancillary service* which is an integral part of such a service. This includes, for example, generic advice given by a *MiFID investment firm* to a *client* prior to, or in the course of, the provision of investment advice or another *investment service* or *ancillary service*.

[Note: recitals 15 and 16 of the *MiFID Org Regulation*]

...

Sch 1 Record keeping requirements

...

Sch
1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u><i>DISP</i> 1.1A.37EU</u>	<u><i>MiFID complaints</i> subject to <i>DISP</i> 1.1A.</u>	<u>Each <i>MiFID complaint</i> received and the <i>complaint handling measures</i> taken to address the <i>MiFID complaint</i> and for its resolution</u> <u>[Note: see article 26(1), article 72, and Annex 1 of the <i>MiFID Org Regulation</i>]</u>	<u>Not specified (see article 26(1), article 72 and Annex 1 of the <i>MiFID Org Regulation</i>)</u>	<u>Not specified (see article 72 of the <i>MiFID Org Regulation</i>)</u>
<i>DISP</i> 1.9.1R	<i>Complaints</i> subject to <i>DISP</i> 1.3 - <i>DISP</i> 1.8.	Each <i>complaint</i> received and the measures taken for its resolution	On <u>From</u> receipt	5 years for <i>complaints</i> relating to <i>MiFID business or</i> <i>collective portfolio management services</i> and 3 years for all other <i>complaints</i>

Sch 2 Notification requirements

...

Sch 2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>DISP</i> 1.10A.4R and (where relevant) <i>DISP</i> 1.1A.40R	Publication of <i>complaints</i> data summary/total number of <i>complaints</i> (as appropriate), ² including <i>MiFID complaints</i> where relevant	Email confirmation of publication, containing also a statement that the data summary or total number of <i>complaints</i> (as appropriate) accurately reflects the report submitted to the <i>FCA</i> and stating where the summary/total number of <i>complaints</i> has been published	Upon publication of <i>complaints</i> data summary/total number of <i>complaints</i> (as appropriate)	Immediately
...				

Annex M

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

6 Operating duties and responsibilities

...

6.6B UCITS depositaries

...

Depositary functions: cash monitoring

6.6B.17 R The *depositary* must ensure that the cash flows of each *UCITS scheme* are properly monitored and that:

...

(2) all cash of the *scheme* has been booked in cash accounts which are:

...

(c) maintained in accordance with the principles in article ~~46~~ 2 (safeguarding of client financial instruments and funds) of the ~~MiFID implementing directive~~ MiFID Delegated Directive; and

...

...

TP 1 Transitional Provisions

TP 1.1

(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
...					
<u>47</u>	<u>COLL 4.3.4R(2); COLL 4.3.6R(2); COLL 8.3.6R(1)</u>	<u>R</u>	<u>A new type of payment out of scheme property,</u>	<u>From 3 January 2018 until 3 January 2020</u>	<u>3 January 2018</u>

	<u>and (2)</u>		<u>which is introduced by a firm to facilitate the operation of a research payment account under COBS 2.3B.3R(2), does not constitute a fundamental change under COLL 4.3.4R(2) or COLL 8.3.6R(1) requiring prior approval by meeting. Such a change will however constitute a significant change under COLL 4.3.6R(2) and COLL 8.3.6R(2) requiring pre-event notification.</u>	
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Annex N

Amendments to the Investment Funds sourcebook (FUND)

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

3 Requirements for alternative investment fund managers

...

3.11 Depositaries

...

Depositary functions: cash monitoring

3.11.20 R *A depositary* must ensure that the *AIF*'s cash flows are properly monitored and that:

...

(2) all cash of the *AIF* has been booked in cash accounts opened:

...

(b) at:

...

(iv) another entity of the same nature, in the relevant market where cash accounts are required, provided such an entity is subject to effective prudential regulation and supervision which have the same effect as *EU* law and are effectively enforced and in accordance with the principles set out in article ~~16~~ 2 (safeguarding of client financial instruments and funds) of the ~~*MiFID*~~ *MiFID Delegated Directive*; and

...

Annex O

Amendments to the Professional Firms sourcebook (PROF)

In this Annex, underlining indicates new text.

2 Status of exempt professional firm

2.1 Designated professional bodies and exempt regulated activities

...

Exempt regulated activities

...

- 2.1.16 **G** (1) An exempt professional firm providing a service which is an investment service is required to do so in accordance with article 4 of the MiFID Org Regulation.
- (2) In the FCA's view, PROF 2.1.14G is also relevant for these purposes as well as the approach to disclosure described in PROF 4.1.4G, noting that article 4(c) of the MiFID Org Regulation imposes a disclosure obligation when an exempt professional firm markets or otherwise promotes its ability to provide investment services.

Annex P

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

2 Recognition requirements

...

2.16A Operation of a multilateral trading facility (MTF) or an organised trading facility (OTF)

2.16A.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 9A-9H

...
Paragraph 9E – SME growth markets
A [<i>UK RIE</i>] operating a multilateral trading facility which has registered that facility as an SME growth market in accordance with Article 33 of the markets in financial instruments directive must comply with rules made by the FCA for the purposes of this paragraph.
<u>[Note: REC 2.16A.1D]</u>
...

...

2.16A.1D R For the purposes of complying with the requirement set out in paragraph 9E of the Schedule to the *Recognition Requirement Regulations* (SME Growth Markets), the *rules* set out by the FCA in MAR 5.10 (Operation of an SME growth market) apply to a *UK RIE* operating a *multilateral trading facility* as an *SME growth market*, as though it was an *investment firm*.

[Note: article 33 of *MiFID*]

...

Annex Q

Amendments to the Listing Rules sourcebook (LR)

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

App 1.1 Relevant definitions

App 1.1.1 **Note:** The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

...	
<i>regulated market</i>	<p>a multilateral system operated and/or managed by a <i>market operator</i>, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in <i>financial instruments</i> - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the <i>financial instruments</i> admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of <i>MiFID</i>.</p> <p>[Note: article 4(1)(14) <u>4(1)(21)</u> of <i>MiFID</i>]</p>
...	

Annex R

Amendments to the Prospectus Rules sourcebook (PR)

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

App 1.1 Relevant definitions

App 1.1.1 **Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

...	
<i>MiFID</i>	<p>The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC).</p> <p>See also <i>MiFID Regulation</i> and <i>MiFID implementing Directive</i>.</p> <p><u>Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the <i>insurance mediation directive</i> and <i>AIFMD</i>.</u></p>
...	
<i>regulated market</i>	<p>a multilateral system operated and/or managed by a <i>market operator</i>, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in <i>financial instruments</i> – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the <i>financial instruments</i> admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of <i>MiFID</i>.</p> <p><u>[Note: article 4(1)(21) of <i>MiFID</i>]</u></p>
...	

Annex S

Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

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

5 Vote Holder and Issuer Notification Rules

...

5.4 Aggregation of managed holdings

...

5.4.2 R (1) The *parent undertaking* of an *investment firm* authorised under *MiFID* shall not be required to aggregate its holdings with the holdings which such *investment firm* manages on a client-by-client basis within the meaning of Article 4(1), ~~point 9~~ point 8, of *MiFID*, provided that:

...

...

...

Annex T

Product Intervention and Product Governance Sourcebook (PROD)

All the text in this Annex is new and is not underlined.

1 Application and purpose

1.1 Purpose

- 1.1.1 G The purpose of *PROD* is to improve *firms'* product oversight and governance processes and to set out the *FCA's* statement of policy on making *temporary product intervention rules*.
- 1.1.2 G Product oversight and governance refers to the systems and controls *firms* have in place to design, approve, market and manage products throughout the products' lifecycle to ensure they meet legal and regulatory requirements.
- 1.1.3 G Good product governance should result in products that:
- (1) meet the needs of one or more identifiable target markets;
 - (2) are sold to *clients* in the target markets by appropriate *distribution channels*; and
 - (3) deliver appropriate *client* outcomes.

1.2 Application of PROD 2

- 1.2.1 R *PROD 2* sets out the *FCA's* approach to issuing *temporary product intervention rules*. It is of relevance to all *firms*.

1.3 Application of PROD 3

General: Who? What?

- 1.3.1 R *PROD 3* applies to:
- (1) a *MiFID investment firm*;
 - (2) a *CRD credit institution*;
 - (3) a *MiFID optional exemption firm*; and
 - (4) *branches of third country investment firms*;

with respect to:

- (5) *manufacturing financial instruments and structured deposits*; and
- (6) *distributing financial instruments, structured deposits and investment services*.

[**Note:** articles 1(3), 1(4), 16(3), 24(2) and 41(2) of *MiFID*]

Other firms manufacturing or distributing financial instruments or structured deposits

- 1.3.2 R Other *firms* which *manufacture* or *distribute financial instruments or structured deposits* should take account of *PROD 3* as if it were *guidance* on the *Principles* and other relevant *rules* and as if “should” appeared in *PROD 3* rules instead of “must”.

Eligible counterparty business

- 1.3.3 R *PROD 3.3.1R* does not apply to *eligible counterparty business*.

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

Where?

- 1.3.4 R *PROD 3* applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

- 1.3.5 R (1) *PROD 3* also applies to a *firm* with respect to activities from an establishment *overseas* with a *client* in the *United Kingdom*.
- (2) But *PROD 3* 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 *Regulated Activities Order*; or
 - (b) would not be regarded as being carried on in the *United Kingdom*.

EEA territorial scope rule: compatibility with European law

- 1.3.6 R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see *PROD 1.3.7G* to *PROD 1.3.10G* for guidance on this).
- (2) This *rule* overrides every other *rule* in this sourcebook.

Effects of the EEA territorial scope rule

- 1.3.7 G One of the effects of *PROD* 1.3.6R is to override the application of this sourcebook to the *overseas* establishments of *EEA firms* in circumstances covered by *MiFID*.
- 1.3.8 G The *guidance* in this chapter provides a general overview only and is not comprehensive.
- 1.3.9 G When considering the impact of a directive on the territorial application of a *rule*, a *firm* will first need to consider whether the relevant situation involves a non-UK element. *PROD* 1.3.6R is unlikely to apply if a *UK firm* is doing business in a *UK establishment* for a *client* located in the *United Kingdom* in relation to a *UK product*, in other words *PROD* 3 will apply to the *UK firm*. However, if there is a non-UK element, the *firm* should consider whether:
- (1) it is subject to the directive (in general, directives only apply to *UK firms* and *EEA firms*, but the implementing provisions may not treat non-*EEA firms* more favourably than *EEA firms*);
 - (2) the business it is performing is subject to the directive; and
 - (3) the particular *rule* is within the scope of the directive.
- If the answer to all three questions is ‘yes’, *PROD* 1.3.6R may change the application of the *rules* in this sourcebook.
- 1.3.10 G When considering a particular situation, a *firm* should also consider whether two or more directives apply.
- MiFID: effect on territorial scope
- 1.3.11 G *PERG* 13 contains general *guidance* on the *persons* and businesses to which *MiFID* applies.
- 1.3.12 G For a *UK MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply to its *MiFID business* carried on from an establishment in the *United Kingdom*. They also generally apply to its *MiFID business* carried on from an establishment in another *EEA State*, although in the case of *rules* that implement article 24(2) *MiFID* only where that business is not carried on within the territory of that *EEA State*. Where a *MiFID investment firm* carries on *MiFID business* from a *branch* in another *EEA State*, organisational requirements, including *rules* implementing product manufacture obligations under article 16 *MiFID* are home state requirements and therefore *FCA* responsibility (see *SUP* 13A Annex 1G).
- [**Note:** see articles 34(1) and 35(1) and (8) of *MiFID*]
- 1.3.13 G For an *EEA MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply only to its *MiFID business* if that business is carried on from an establishment in, and within the territory of, the *United Kingdom* and only to the extent that the *rules* implement article 24(2) of *MiFID*.

[**Note:** see articles 35(1) and (8) of *MiFID*]

Electronic Commerce Directive: effect on territorial scope

- 1.3.14 G The guidance on the *Electronic Commerce Directive* in *COBS 1 Annex 1*, Part 3, paragraph 7 applies equally in relation to the *rules* in *PROD 3*.

Interaction of *PROD 3* and the *RPPD Guide*

- 1.3.15 G A *firm* to which *PROD 3* applies need not apply the *guidance* in *RPPD* for matters covered by *PROD* if the *firm* has complied with *PROD 3*.

2 Statement of policy with respect to the making of temporary product intervention rules

[*Editor's note:* This chapter does not take account of any changes that may be required as a result of *MiFIR* or Regulation (EU) 1286/2014 (PRIIPs)]

2.1 Purpose

- 2.1.1 G This chapter explains the *FCA's* policy with respect to the making of *temporary product intervention rules* under sections 137D and 138M of the *Act*. This statement of policy replaces the “Statement of Policy for making temporary product intervention rules” published in Policy Statement PS13/03 (see <https://www.fca.org.uk/publication/policy/fsa-ps13-03.pdf>).

[**Note:** see section 138N of the *Act*]

- 2.1.2 G Product intervention *rules* are *rules* made under section 137D of the *Act* which apply to specific products (or types of products), product features or marketing practices relating to specific products.
- 2.1.3 G Product intervention *rules* may be made without consultation under section 138M of the *Act* but are limited to a maximum duration of 12 *months* and are referred to as “*temporary product intervention rules*”.

2.2 General rule making and product intervention rules

- 2.2.1 G The *Act* empowers the *FCA* to make general *rules* as appear necessary or expedient for the purpose of advancing one or more of its *operational objectives*.

[**Note:** see section 137A of the *Act*]

- 2.2.2 G The *Act* also provides that the *FCA* may use its general *rule-making* power to make product intervention rules prohibiting *authorised persons* from, among other things, entering into specified agreements (section 137D of the

Act). These *rules* may be made to advance:

- (1) the consumer protection objective; or
- (2) the competition objective; or
- (3) the market integrity objective.

- 2.2.3 G Section 137D(2) of the *Act* sets out that the *FCA* may prohibit *authorised persons* from:
- (1) entering into specified agreements with any *person* or specified person (specified person means a person who meets the description specified by *FCA rules*);
 - (2) entering into specified agreements with any *person* or specified person unless requirements specified in the *rules* have been satisfied;
 - (3) doing anything that would or might result in the entering into of specified agreements by *persons* or specified persons, or the holding by them of a beneficial or other kind of economic interest in specified agreements; and
 - (4) doing anything within paragraph (3) unless requirements specified in the *rules* have been satisfied.
- 2.2.4 G Section 137D of the *Act* makes it clear that a range of options would be available to us in making *rules* prohibiting *authorised persons* from entering into specified agreements.
- 2.2.5 G The extent of the *rules* which are made will generally depend on the type of intervention deemed necessary to address the issues identified, having regard to whether the intervention would be a proportionate response to the perceived risk to *consumers*, competition issues or market integrity issues.
- 2.2.6 G *Rules* may include:
- (1) requiring certain product features to be included, excluded or changed; or
 - (2) requiring amendments to promotional materials; or
 - (3) the imposition of restrictions on sales or marketing of the product; or
 - (4) in more serious cases, a ban on sales or marketing of a product in relation to all or some types of *client*.
- 2.2.7 G Where the product is provided by a business outside of the *UK*, *rules* may be made targeting *regulated activities* by *authorised persons* in the *UK* that would lead to a specified agreement being formed.

[**Note:** see sections 137D(2)(c) and (d) of the *Act*]

2.3 Agreements made in breach of product intervention rules

- 2.3.1 G In relation to agreements entered into in breach of product intervention *rules*, section 137D(7) sets out that the *rules* may:
- (1) provide for a relevant agreement or obligation to be unenforceable against any *person* or specified person;
 - (2) provide for the recovery of any money or other property paid or transferred under a relevant agreement or obligation by any *person* or specified person; and
 - (3) provide for the payment of compensation for any loss sustained by any *person* or specified person as a result of paying or transferring any money or other property under a relevant agreement or obligation.
- 2.3.2 G Where a *rule* provides for a relevant agreement or obligation to be unenforceable, the relevant agreement or obligation would only be unenforceable if the sale of the product was made after the introduction of the *rules* and there was a contravention of those *rules*. *Clients* with products bought after the introduction of *rules* incorporating unenforceability provisions would generally need to seek redress through the usual channels of complaints to the *firm* and to the *Financial Ombudsman Service*, or legal action against the *firm*.
- 2.3.3 G Arrangements made before the introduction of the *rules* would not be affected by the unenforceability and compensation provisions. *Clients* holding contracts made before these *rules* were in place would still be able to seek redress through the usual channels of complaints to the *firm* and to the *Financial Ombudsman Service* or legal action against the relevant *firm*. These *clients* would need to establish their claim to redress in the usual way, for example by demonstrating that the advice they received was unsuitable, or that they bought the product after receiving a misleading *financial promotion*.

2.4 Temporary product intervention rules

- 2.4.1 G Normally the *FCA* must consult the public before making any *rules*. However, the *Act* allows a general exemption in section 138L where the *FCA* considers that the delay involved in complying with the requirement to consult would be prejudicial to the interests of *consumers*.
- 2.4.2 G There is also a specific exemption to the consultation requirement in relation to making *temporary product intervention rules* (section 138M of the *Act*). The *FCA* may make *temporary product intervention rules* without consultation if it considers that it is necessary or expedient not to comply with such a requirement to advance:

- (1) the consumer protection objective, or
 - (2) the competition objective, or
 - (3) the market integrity objective.
- 2.4.3 G The *FCA*'s discretion to act under section 138M is therefore wider than under section 138L.
- 2.4.4 G Decisions to make any *rules*, including *temporary product intervention rules*, will be taken by the *FCA* Board. In doing so, the *FCA* Board will have regard to all the available, relevant evidence, as well as the impact of the measure to be introduced by the *rule*.
- 2.4.5 G The *FCA* Board will consider whether the evidence is sufficient to support the proposed measure and whether the measure is a proportionate response to the issue identified.
- 2.4.6 G In publishing *temporary product intervention rules* the *FCA* will also publish the rationale for these *rules*.
- 2.5 Factors the FCA will consider when making temporary product intervention rules**
- 2.5.1 G In general terms the *FCA* will consider a product intervention *rule* where we identify a risk of *consumer* detriment, a threat to market integrity or ineffective competition arising from a particular product, type of product, or practices associated with a particular product or type of product.
- 2.5.2 G In deciding whether the *rule* should be made as a *temporary product intervention rule*, the *FCA*'s main consideration will generally be whether prompt action is deemed necessary in seeking to reduce or prevent *consumer* detriment or a threat to market integrity or ineffective competition arising from that product, type of product or practices.
- 2.6 General considerations for product intervention rules**
- 2.6.1 G Together with the considerations in *PROD 2.5*, when making temporary or permanent product intervention *rules*, the *FCA* will have regard to the regulatory principles set out in section 3B of the *Act*, (see *PROD 2.9*).
- 2.6.2 G The *FCA* will also take into account general considerations that include, but are not limited to, whether the proposed *rules* are:
- (1) an appropriate and effective means of addressing actual or potential *consumer* detriment associated with a particular product or group of products;

- (2) a proportionate and deliverable means of addressing actual or potential detriment;
- (3) compatible with the *FCA's* duty to promote effective competition in the interests of *consumers* (section 1B(4) of the *Act*);
- (4) supported by sufficient and appropriate evidence;
- (5) transparent in their aim and operation;
- (6) likely to be beneficial for *clients* when taken as a whole; and
- (7) compatible (where relevant) with other applicable law, for example *EU* law.

2.6.3 G In accordance with the Equality Act 2010, the *FCA* will have due regard to the need to:

- (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it;

when making temporary or permanent product intervention *rules*.

2.7 Contextual considerations for product intervention rules

2.7.1 G When the *FCA* is considering whether to make temporary or permanent product intervention *rules* in response to an identified issue with a product, the following factors may be taken into account:

- (1) The potential scale of detriment in the market. Issues involving products with a large or potentially large *client* base are more likely to require product intervention.
- (2) The potential scale of detriment to individual *clients*. Issues that may lead to high detriment for individual *clients* are more likely to require product intervention.
- (3) The social context. Issues that may lead to detriment for particular groups of *clients* (such as, in particular, vulnerable *client* groups) are more likely to require product intervention.
- (4) The market context. Market mechanisms such as information disclosure and competition do not always work to protect *consumers*.

- (5) Possible unintended consequences. Whether the use of product intervention *rules* or the timing of the intervention would in itself create undue risk of further *consumer* detriment, including harm to existing *clients* and in the market (although this will not necessarily comprise a full cost benefit analysis).

2.8 Competition considerations for temporary product intervention rules

- 2.8.1 G When making a temporary or permanent product intervention *rule*, the *FCA* will seek to promote effective competition in the interests of *consumers* where doing so is compatible with its consumer protection objective or integrity objective.
- 2.8.2 G In accordance with section 1E of the *Act* the *FCA* also has a competition objective and may make *rules*, including *temporary product intervention rules*, specifically to advance competition.
- 2.8.3 G Relevant competition-related considerations for the *FCA* in the context of temporary or permanent product intervention *rules* are likely to include:
 - (1) Whether there is reasonable scope for the *rules* under consideration to promote effective competition in the interests of *consumers*, for instance by addressing *consumer* behaviours that impair their ability to benefit from competition, by reducing information asymmetries or by correcting misaligned incentives.
 - (2) Whether the *rule* under consideration may have a negative impact on competition factors such as product innovation and barriers to entry for new market participants.
 - (3) Whether any negative impact on competition factors is proportionate, having regard to the aims of the *rule* under consideration.
 - (4) Whether alternative solutions may deliver the same intended outcome while having a more positive impact on competition.
 - (5) The overall effect of a proposed *rule* upon the operation of effective competition in the market for financial services, having regard to the interests of *consumers*.

2.9 Regulatory principles

- 2.9.1 G The *FCA* will have regard to the regulatory principles set out in section 3B of the *Act* when making *temporary product intervention rules*.
- 2.9.2 G As part of the *FCA*'s consideration of issues including the desirability of facilitating innovation, we will consider the potential deterrent effect on

entry to the market and innovation when making *temporary product intervention rules* against the potential for reducing anticipated *consumer detriment*.

2.10 Process for making temporary product intervention rules

- 2.10.1 G Once initial proposals have been discussed, a paper will be prepared at working group level for a committee (the Committee) with appropriate authority to propose *temporary product intervention rules* to the *FCA Board*.
- 2.10.2 G The Committee will either endorse the proposals and recommend that they are taken to the Board, or suggest rethinking or amending the proposals and coming back at a later date. A decision may be taken to use a different regulatory tool, or not to proceed.
- 2.10.3 G If the Committee decides that the proposals should go to the Board, the paper will be taken to the next available scheduled Board meeting, unless the matter is of great importance or there is an emergency, in which case the Board may convene specifically to consider the issue.
- 2.10.4 G If the Board makes a decision to act on the policy proposals the *FCA* will publish the *temporary product intervention rules* on its website and take the necessary follow-up actions.

2.11 Consulting the panels

- 2.11.1 G The *FCA* will generally seek the views of the Financial Services Practitioner Panel, the Smaller Businesses Practitioner Panel and the Financial Services Consumer Panel during the process for making *temporary product intervention rules* if there is sufficient time to do so.

2.12 Consulting the PRA

- 2.12.1 G Before any proposed product intervention *rules* are made (whether temporary or not) the *FCA* will consult the *PRA*.

2.13 Communication, publication and post-implementation review of temporary product intervention rules

- 2.13.1 G Before making a *temporary product intervention rule*, the Committee will consider how affected *firms* and *clients* are to be informed of the *rule* in good time.

- 2.13.2 G The *FCA* will publish a statement on its website explaining why it is introducing the *rule*. The *FCA* may choose to invite feedback, but this will not amount to a consultation exercise.
- 2.13.3 G The *FCA* may choose to review a *temporary product intervention rule* during the term for which the *rule* is in force. Such a review will generally depend on the perceived risk the *rule* seeks to mitigate. These reviews may be informed by market monitoring and feedback from stakeholders, including product *manufacturers*, *distributors* and *clients*.
- 2.13.4 G Where the *FCA* perceives potential uncertainty about how the *rule* operates, it may consider publishing *guidance*.
- 2.13.5 G Reviews are likely to consider whether a *rule* is functioning as intended, including whether:
- (1) there have been any breaches of the *rule*; or
 - (2) there are any unintended consequences, such as an impact on products that were not intended to be caught by the *rule*; or
 - (3) there is evidence suggesting *firms* are avoiding or seeking to avoid the *rule* rather than complying with it, for instance where new products enter the market or new features are added to existing products that expose *clients* to the same or similar potential detriment; or,
 - (4) new evidence demonstrates that the *rule* is not necessary or detriment is unlikely.
- 2.13.6 G As a result of these reviews, where necessary, the *FCA* may:
- (1) revoke a *temporary product intervention rule*; or
 - (2) amend the *rule*, for example where a *rule* specifies certain criteria under which the sale of a product may continue, change these criteria.
- 2.13.7 G Subsequent changes to a *temporary product intervention rule* will be communicated by issuing a new statement containing the revised *rule* and the rationale for the changes. Such changes will not extend the lifespan of the *temporary product intervention rule*.
- 2.13.8 G However, the *FCA* may consult on a new *rule* to replace the *temporary product intervention rule* from the date on which the *temporary product intervention rule* ceases to have effect. This exercise would be subject to the *FCA*'s standard *rule*-making procedure including market failure analysis, cost benefit analysis and consultation to which all stakeholders, including *manufacturers*, *distributors* and *clients* would be invited to reply.

2.14 Revocation or replacement of rules

- 2.14.1 G When making *temporary product intervention rules* the *FCA* will state the duration of the *rule* and the date from which it will be effective. *Temporary product intervention rules* will have a maximum duration of 12 *months* from when the *rule* is made, but the *FCA* may decide on a shorter duration for a *rule*.
- 2.14.2 G The *FCA* may review or revoke *temporary product intervention rules* at any time before the end of the period for which they apply.
- 2.14.3 G *Rules* may be revoked or amended for a number of reasons, including but not limited to:
- (1) new *rules* are introduced on a permanent basis following a consultation exercise; or
 - (2) industry initiatives are developed that specify sufficient minimum standards to address the sources of *consumer* detriment; or
 - (3) further evidence is submitted that demonstrates that *consumer* detriment will not occur; or
 - (4) demand for, or supply of, the relevant product disappears and is deemed unlikely to return; or
 - (5) the *FCA* identifies unforeseen negative effects of the *rule* which outweigh any positive impact upon consumer protection.
- 2.14.4 G Where *temporary product intervention rules* have been made, the *FCA* may not make further *temporary product intervention rules* containing the same, or substantially the same, provisions within 12 *months* beginning on the day on which the limited duration of the initial *rules* ends (whether or not the *rules* were revoked early). This period does not apply to *rules* that are not *temporary product intervention rules*, (i.e. *rules* which had been made subject to consultation, whether or not of set duration).

3 Product governance: MiFID

3.1 General

Interpretation: financial instruments and structured products

- 3.1.1 R For the purposes of *PROD 3*, references to *financial instruments* include *structured deposits*.

Proportionate application of rules

- 3.1.2 R (1) A *firm* must, when *manufacturing financial instruments* or deciding on the range of *financial instruments* and *investment services* it intends to *distribute* to *clients*, comply, in a way that is appropriate

and proportionate, with the requirements set out in this chapter.

- (2) In complying with these requirements, a *firm* must take into account:
- (a) the nature of the *financial instrument* or *investment service*; and
 - (b) the target market for the *financial instrument*.

[**Note:** articles 9(1) and 10(1) of the *MiFID Delegated Directive*]

- 3.1.3 G A proportionate application of the requirements in this chapter may mean that complying with the *rules* could be relatively simple for simple *financial instruments* distributed on an *execution-only transaction* basis where such *financial instruments* would be compatible with the needs and characteristics of the mass retail market.

3.2 Manufacture of products

General

- 3.2.1 R A *manufacturer* must:
- (1) ensure that the *financial instruments* it *manufactures* are designed to meet the needs of an identified target market of *end clients* within the relevant category of *clients* (see *COBS 3* for client categories);
 - (2) ensure that the strategy for *distribution* of the *financial instruments* is compatible with the identified target market; and
 - (3) take reasonable steps to ensure that the *financial instrument* is *distributed* to the identified target market.

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

- 3.2.2 G Consideration of target market factors should permeate all aspects of product development and *distribution*, as well as ensuring the selection of appropriate *distribution* channels and the promotion of the *financial instruments* are accompanied by sufficient and correct information.

Product governance arrangements

- 3.2.3 R A *manufacturer* must maintain, operate and review a process for the approval of:
- (1) each *financial instrument*, and
 - (2) significant adaptations of existing *financial instruments*,
- in each case before they are marketed or *distributed* to *clients*.

[Note: article 16(3) of *MiFID*]

- 3.2.4 R For each *financial instrument* the product approval process must:
- (1) specify an identified target market of *end clients* within the relevant category of *clients* (see *COBS 3* for client categories);
 - (2) ensure that all relevant risks to the identified target market are assessed; and
 - (3) ensure that the intended *distribution* strategy is consistent with the identified target market.

[Note: article 16(3) of *MiFID*]

- 3.2.5 G When designing *financial instruments*, a *firm* should have in place systems and controls to manage adequately the risks posed by *financial instrument* design.

Manufacture by more than one firm

- 3.2.6 R Where *firms* collaborate to *manufacture* a *financial instrument*, only one target market needs to be identified.

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

- 3.2.7 R Where *firms* collaborate, including with entities which are not authorised and supervised in accordance with *MiFID* or *third country investment firms*, to create, develop, issue and/or design a *financial instrument*, they must outline their mutual responsibilities in a written agreement.

[Note: article 9(8) of the *MiFID Delegated Directive*]

Target market

- 3.2.8 R *Manufacturers* must identify the potential target market for each *financial instrument* at a sufficiently granular level and must:
- (1) specify the type or types of *client* for whose needs, characteristics and objectives the *financial instrument* is compatible; and
 - (2) identify any group or groups of *client* for whose needs, characteristics and objectives the *financial instrument* is not compatible.

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

- 3.2.9 G The level of granularity of the target market and the criteria used to define the target market and determine the appropriate *distribution* strategy should be relevant for the *financial instrument* and should make it possible to assess which *clients* fall within the target market. For simpler, more common *financial instruments*, the target market could be identified with less detail

while for more complicated *financial instruments* such as bail-inable instruments or less common *financial instruments*, the target market should be identified with more detail.

[**Note:** recital 19 of the *MiFID Delegated Directive*]

3.2.10 R *Manufacturers* must determine for each *financial instrument* they *manufacture*, whether it meets the identified needs, characteristics and objectives of the target market, and in doing so must include an examination of the following elements:

- (1) whether the *financial instrument's* risk/reward profile is consistent with the target market; and
- (2) whether the design of the *financial instrument* is driven by features that benefit the *client* and not by a business model which relies on poor *client* outcomes to be profitable.

[**Note:** article 9(11) of the *MiFID Delegated Directive*]

3.2.11 R *Manufacturers* of *financial instruments* that are *distributed* through other *firms* must determine the needs and characteristics of the *clients* for whom the product is compatible based on:

- (1) their theoretical knowledge of, and past experience with, the *financial instrument* or similar *financial instruments*;
- (2) the financial markets, and
- (3) the needs, characteristics and objectives of potential *end clients*.

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

Product testing

3.2.12 R *Manufacturers* must undertake a scenario analysis of their *financial instruments* to assess:

- (1) the risks of poor outcomes for *end clients* posed by the *financial instrument*; and
- (2) in which circumstances those poor outcomes may occur.

[**Note:** article 9(10) *MiFID Delegated Directive*]

3.2.13 R In conducting the scenario analysis *manufacturers* must assess their *financial instruments* under negative conditions covering what would happen if, for example:

- (1) the market environment deteriorated; or

- (2) the *manufacturer* or a third party involved in *manufacturing* and/or the functioning of the *financial instrument* experiences financial difficulties or other counterparty risk materialises; or
- (3) the *financial instrument* fails to become commercially viable; or
- (4) demand for the *financial instrument* is much higher than anticipated, putting a strain on the *firm's* resources and/or on the market of the underlying *financial instrument*.

[**Note:** article 9(10) *MiFID Delegated Directive*]

3.2.14 R *Manufacturers* must consider the charging structure proposed for each *financial instrument*, including examination of the following:

- (1) whether the *financial instrument's* costs and charges are compatible with the needs, objectives and characteristics of the target market;
- (2) whether the charges undermine the *financial instrument's* return expectations, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a *financial instrument*; and
- (3) whether the charging structure of the *financial instrument* is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand.

[**Note:** article 9(12) of the *MiFID Delegated Directive*]

3.2.15 R *Manufacturers* must consider whether the *financial instrument* may represent a threat to the orderly functioning, or to the stability, of financial markets before deciding to proceed with the launch of the *financial instrument*.

[**Note:** article 9(4) of the *MiFID Delegated Directive*]

Information disclosure to distributors

3.2.16 R A *manufacturer* must make available to any *distributor* of that *financial instrument*:

- (1) all appropriate information on the *financial instrument*;
- (2) all appropriate information on the product approval process;
- (3) the identified target market of the *financial instrument*, including information about the target market assessment undertaken;
- (4) information about the appropriate channels for *distribution* of the *financial instrument*;

and must ensure that the information is of an adequate standard to enable *distributors* to understand and recommend or sell the *financial instrument* properly.

[**Note:** article 16(3) of *MiFID II* and 9(13) of the *MiFID Delegated Directive*]

- 3.2.17 G When providing information to *distributors*, a *manufacturer* should make it clear if that information is not intended for *end client* use.
- 3.2.18 G *Manufacturers* may consider, for example, with regard to each *distribution* channel or type of *distributor* what information *distributors* of that type already have, their likely level of knowledge and understanding, their information needs and what form or medium would best meet those needs (which could include discussions, written material or training as appropriate).

Review of financial instruments

- 3.2.19 R (1) A *manufacturer* must regularly review the *financial instruments* it *manufactures* taking into account any event that could materially affect the potential risk to the identified target market.
- (2) In doing so, a *manufacturer* must assess for each *financial instrument* at least the following:
- (a) whether the *financial instrument* remains consistent with the needs, characteristics and objectives of the identified target market;
 - (b) whether the intended *distribution* strategy remains appropriate;
 - (c) whether the *financial instrument* is being *distributed* to the target market; and
 - (d) whether the *financial instrument* is reaching *clients* for whose needs, characteristics and objectives the *financial instrument* is not compatible.

[**Note:** article 16(3) of *MiFID II* and article 9(14) of the *MiFID Delegated Directive*]

- 3.2.20 G In carrying out the reviews in *PROD 3.2.19R* *manufacturers* should collect and analyse appropriate management information to detect patterns in *distribution* as compared with the planned target market in order to assess the performance of the *distribution* channels through which a *financial instrument* is being *distributed*.
- 3.2.21 G (1) When reviewing the *financial instruments* it *manufactures*, a *firm* should communicate to the *end client* contractual “breakpoints” such as the end of a long tie-in period that may have a material impact on

the *end client* that the *end client* cannot reasonably be expected to recall or know about already.

- (2) If the *manufacturer* does not know the identity of the *end client*, it should communicate any contractual breakpoints to the *distributor*.

3.2.22 R *Manufacturers* must:

- (1) review *financial instruments* prior to any further issue or re-launch if they are aware of any event that could materially affect the potential risk to *clients*; and
- (2) identify crucial events that would affect the potential risk or return expectations of the *financial instrument*.

3.2.23 G Crucial events that would affect the potential risk or return expectations of the *financial instrument* include:

- (1) the crossing of a threshold that will affect the return profile of the *financial instrument*; or
- (2) the solvency of certain issuers whose securities and guarantees may impact the performance of the *financial instrument*.

3.2.24 R When a crucial event affecting the potential risk or return expectation of the *financial instrument* occurs, a *manufacturer* must take appropriate action, which may consist of:

- (1) the provision of any relevant information on the event and its consequences on the *financial instrument* to the *clients* or *distributors* of the *financial instrument* if the *manufacturer* does not offer or sell the *financial instrument* directly to the *clients*;
- (2) changing the product approval process;
- (3) stopping further issuance of the *financial instrument*;
- (4) changing the *financial instrument* to avoid unfair contract terms;
- (5) considering whether the sales channels through which the *financial instrument* is sold are appropriate where the *manufacturer* becomes aware that the *financial instrument* is not being sold as envisaged;
- (6) contacting the *distributor* to discuss a modification of the *distribution* process;
- (7) terminating the relationship with the *distributor*; or
- (8) informing the relevant *competent authority*.

3.2.25 R *Manufacturers* must review *financial instruments* at regular intervals to assess whether they function as intended.

- 3.2.26 R *Manufacturers* must determine how regularly to review their *financial instruments* based on relevant factors including factors linked to the complexity or the innovative nature of the investment strategies pursued.

[**Note:** article 9(15) of the *MiFID Delegated Directive*]

Conflicts of interest

- 3.2.27 R *Manufacturers* must establish, implement and maintain procedures and measures to ensure the *manufacture* of *financial instruments* complies with the requirements on proper management of conflicts of interest (see SYSC 10.1.7R), including *remuneration*.

- 3.2.28 R *Manufacturers* must ensure that the design of each *financial instrument*, including its features, does not:
- (1) adversely affect *end clients*; or
 - (2) lead to problems with market integrity by enabling the *firm* to mitigate and/or dispose of its own risks or exposure to the underlying assets of the product where the *firm* already holds the underlying assets on own account.

[**Note:** article 9(2) of the *MiFID Delegated Directive*]

- 3.2.29 R Each time a *financial instrument* is *manufactured* *manufacturers* must analyse potential conflicts of interests.

- 3.2.30 R In analysing potential conflicts of interest *manufacturers* must assess whether the *financial instrument* creates a situation where *end clients* may be adversely affected if *end clients* take:
- (1) an exposure opposite to the one previously held by the *manufacturer* itself; or
 - (2) an exposure opposite to the one that the *manufacturer* wants to hold after the sale of the product.

[**Note:** article 9(3) of the *MiFID Delegated Directive*]

Oversight and training requirements

- 3.2.31 R *Manufacturers* must ensure that their *management bodies* have effective control over their product governance process.
- 3.2.32 R The development and periodic review of product governance arrangements must be monitored by the *person* allocated the *compliance oversight function* of a *firm* in order to detect any risk of failure by the *manufacturer* to comply with applicable provisions of *PROD*.

[**Note:** article 9(6) and article 9(7) of the *MiFID Delegated Directive*]

- 3.2.33 R All relevant staff involved in the *manufacturing of financial instruments* must possess the necessary expertise to understand the characteristics and risks of the *financial instruments* they intend to *manufacture*.

[Note: article 9(5) of the *MiFID Delegated Directive*]

- 3.2.34 G *Firms* should have regard to SYSC 5.1, and in particular SYSC 5.1.5AB R, when considering whether their relevant staff have the necessary expertise.

Compliance reports

- 3.2.35 R Compliance reports to the *management body* must include information about the *financial instruments* that the *firm* has *manufactured*, including information on the *distribution* strategy.

- 3.2.36 R *Manufacturers* must make the compliance reports available to their *competent authority* on request.

[Note: article 9(6) *MiFID Delegated Directive*]

3.3 Distribution of products and investment services

General

- 3.3.1 R A *distributor* must:
- (1) understand the *financial instruments* it *distributes* to *clients*;
 - (2) assess the compatibility of the *financial instruments* with the needs of the *clients* to whom it *distributes investment services*, taking into account the *manufacturer's* identified target market of *end clients*; and
 - (3) ensure that *financial instruments* are *distributed* only when this is in the best interests of the *client* (see COBS 2.1.1R(1)).

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

- 3.3.2 G A *distributor* should consider what impact the selection of a given *manufacturer* could have on the *end client* in terms of charges or the financial strength of the *manufacturer*, or possibly, where information is available to the *distributor*, how efficiently and reliably the *manufacturer* will deal with the *distributor* or *end client* at the point of sale (or subsequently, such as when queries/complaints arise, claims are made, or a *financial instrument* reaches maturity).

Obtaining information from manufacturers

- 3.3.3 R *Distributors* must obtain from *MiFID manufacturers* information to gain the necessary understanding and knowledge of the *financial instruments* they

intend to *distribute* in order to ensure that the *financial instruments* will be *distributed* in accordance with the needs, characteristics and objectives of the target market.

[**Note:** article 16(3) *MiFID* and article 10(2) *MiFID Delegated Directive*]

- 3.3.4 G In ensuring that they have obtained sufficient information about the *financial instruments* they *distribute* and in ensuring they understand the *financial instruments* or *investment services distributed*, *distributors*:
- (1) should consider whether they understand the materials provided by the *manufacturer* or *distributor* earlier in the sales chain;
 - (2) should ask the *manufacturer* to supply additional information or training where this seems necessary to understand the *financial instrument* or *investment service* adequately;
 - (3) should not *distribute* the *financial instrument* or *investment service* if they do not understand it sufficiently; and
 - (4) when providing information to another *distributor* in a distribution chain, should consider how the further *distributor* will use the information, such as whether it will be given to *end clients*. *Firms* should consider what information the further *distributor* requires and the likely level of knowledge and understanding of the further *distributor* and what medium may suit it best for the transmission of information.

Distributing financial instruments manufactured by non-MiFID firms, including third country firms

- 3.3.5 R (1) *Distributors* must take all reasonable steps to comply with *PROD 3.3* when *distributing financial instruments manufactured* by any *firm* to which *MiFID manufacturer* product governance requirements (*PROD 3.2* or equivalent requirements of another *EEA State*) do not apply.
- (2) As part of this, *distributors* must put in place effective arrangements to ensure that they obtain sufficient, adequate and reliable information from the *manufacturer* about the *financial instruments* to ensure that they will be *distributed* in accordance with the characteristics, objectives and needs of the target market.
- (3) This *rule* applies to *financial instruments* sold on either the primary or secondary market.
- 3.3.6 R The obligation to obtain adequate and reliable information applies proportionately depending on:
- (1) the degree to which publicly available information is obtainable; and

(2) the complexity of the *financial instrument*.

[**Note:** articles 10(1) and 10(2) of the *MiFID Delegated Directive*]

- 3.3.7 R Where information relevant to the obligation in *PROD 3.3.5R* is not publicly available, *distributors* must take all reasonable steps to obtain such relevant information from the *manufacturer* or its agent.
- 3.3.8 G Acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as disclosure requirements under the *transparency rules* or the *prospectus rules*.

[**Note:** article 10(2) of the *MiFID Delegated Directive*]

Target market and distribution strategy

- 3.3.9 R *Distributors* must determine the target market for the respective *financial instrument*, even if the target market was not defined by the *manufacturer*.
- [**Note:** article 10(1) of the *MiFID Delegated Directive*]
- 3.3.10 R *Distributors* must identify the target market and their *distribution* strategy using:
- (1) the information obtained from *manufacturers*; and
 - (2) information they have on their own *clients*.
- 3.3.11 G In identifying the target market and creating a *distribution* strategy, *distributors* should consider:
- (1) the nature of the *financial instruments* to be offered or recommended and how they fit with *end clients*' needs and risk appetite;
 - (2) the impact of charges on *end clients*;
 - (3) the financial strength of the *manufacturer*; and
 - (4) where information is available on the *manufacturer's* processes, how efficiently and reliably the *manufacturer* will deal with the *end client* at the point of sale or subsequently, such as when complaints arise, claims are made or the *financial instrument* reaches maturity.
- 3.3.12 G The target market identified by *distributors* for each *financial instrument* should be identified at a sufficiently granular level.
- 3.3.13 G Where a *distributor* is part of a distribution chain, the information referred to in *PROD 3.3.10R(2)* should include information on the intended *end client*.
- 3.3.14 R Where a *firm* acts both as a *manufacturer* and a *distributor*, only one target market assessment is required.

[**Note:** article 10(2) of the *MiFID Delegated Directive*]

- 3.3.15 R (1) *Distributors* must have in place adequate product governance arrangements to ensure that:
- (a) the *financial instruments* and *investment services* they intend to *distribute* are compatible with the needs, characteristics and objectives of the identified target market; and
 - (b) the intended *distribution* strategy is consistent with the identified target market.
- (2) *Distributors* must appropriately identify and assess the circumstances and needs of the *clients* they intend to focus on to ensure that their *clients'* interests are not compromised as a result of commercial or funding pressures.
- (3) *Distributors* must identify any groups of *end clients* for whose needs, characteristics and objectives the *financial instrument* or *investment service* is not compatible.

[**Note:** article 10(2) of the *MiFID Delegated Directive*]

- 3.3.16 R *Distributors* must periodically review their product governance arrangements under *PROD* 3.3.15R and must take appropriate actions where necessary to ensure they remain robust and fit for their purpose.

[**Note:** article 16(3) of *MiFID* and article 10(4) of the *MiFID Delegated Directive*]

- 3.3.17 G In the design of *investment services*, to help *clients* make an informed investment decision, *firms* should consider the support *clients* need before they reach the product selection part of the process.
- 3.3.18 R *Distributors* must have in place procedures and measures to ensure that when deciding the range of *financial instruments* and *investment services* to be *distributed*, and the target market, all applicable *rules* are complied with, including but not limited to:
- (1) disclosure (see *COBS* 4 and *COBS* 14.3A);
 - (2) suitability (see *COBS* 9A);
 - (3) appropriateness (see *COBS* 10A);
 - (4) inducements (see *COBS* 2.3A); and
 - (5) conflicts of interest (see *SYSC* 10.1).
- 3.3.19 G *Distributors* should take particular care to ensure compliance with *PROD* 3.3.18R when they intend to *distribute* new *financial instruments* or there

are variations to the *investment services* they provide.

[**Note:** article 10(3) of the *MiFID Delegated Directive*]

Oversight and training requirements

- 3.3.20 R The development and periodic review of product governance arrangements must be monitored by the *person* allocated the *compliance oversight function* of a *firm* in order to detect any risk of failure by the *distributor* to comply with applicable provisions of *PROD*.

[**Note:** article 10(6) of the *MiFID Delegated Directive*]

- 3.3.21 R The *management body* of a *distributor* must have effective control over the *firm's* product governance process to determine:
- (1) the range of *financial instruments* the *firm* offers or recommends; and
 - (2) the *investment services* provided to the respective target markets.

[**Note:** article 10(8) of the *MiFID Delegated Directive*]

- 3.3.22 R All relevant staff must possess the necessary expertise to understand:
- (1) the characteristics and risks of the *financial instruments* that the *firm* intends to *distribute*;
 - (2) the *investment services* provided by the *firm*; and
 - (3) the needs, characteristics and objectives of the identified target market.

[**Note:** article 10(7) of the *MiFID Delegated Directive*]

- 3.3.23 G *Firms* should have regard to SYSC 5.1, and in particular SYSC 5.1.5AB R, when considering whether their relevant staff have the necessary expertise.

Compliance reports

- 3.3.24 R Compliance reports to the *management body* must include information about the *financial instruments distributed* by the *firm* and the *investment services* provided.
- 3.3.25 R A *distributor* shall make the compliance reports available to *competent authorities* on request.

[**Note:** article 10(8) of the *MiFID Delegated Directive*]

Post-sale review

- 3.3.26 R *Distributors* must regularly review the *financial instruments* they *distribute* and the *investment services* they provide, taking into account any event that

could materially affect the potential risk to the identified target market.

- 3.3.27 R In carrying out the review in *PROD 3.3.26R*, *distributors* must assess at least:
- (1) whether the *financial instrument* or *investment service* remains consistent with the needs, characteristics and objectives of the identified target market; and
 - (2) whether the intended *distribution* strategy remains appropriate.
- 3.3.28 R If a *distributor* becomes aware that it has wrongly identified the target market for a specific *financial instrument* or *investment service*, or the *financial instrument* or *investment service* no longer meets the circumstances of the identified target market, it must take appropriate steps, including at least:
- (1) reconsidering the target market; and/or
 - (2) updating its product governance arrangements.
- 3.3.29 G A *distributor* may need to take action under *PROD 3.3.28R* in circumstances where the *financial instrument* becomes very illiquid or very volatile due to market changes.
- [**Note:** article 16(3) of *MiFID* and article 10(5) of the *MiFID Delegated Directive*]

Information sharing

- 3.3.30 R To support the reviews carried out by *manufacturers* under *PROD 3.2.19R* to *PROD 3.2.26R*, a *distributor* must provide to the *manufacturer* of each *financial instrument* it *distributes*:
- (1) information on sales; and
 - (2) where appropriate, information on the reviews carried out under *PROD 3.3.26R* to *PROD 3.3.28R*.
- 3.3.31 G (1) Information on sales should include information on any sales made outside the target market.
- (2) In complying with *PROD 3.3.30R* it is not necessary to report every sale to the *manufacturer*. *Distributors* should provide the data necessary for the *manufacturer* to review the *financial instrument* and check that it remains consistent with the needs, characteristics and objectives of the target market defined by the *manufacturer*. Relevant information could include:
- (a) summary information of the types of *clients*;
 - (b) a summary of complaints received; and

- (c) responses from *clients* to questions suggested by the *manufacturer* for the purposes of obtaining feedback from a *client* sample.
- (3) In determining when providing information on the reviews carried out under *PROD* 3.3.26R to *PROD* 3.3.28R is appropriate, a *distributor* should have regard to the requirements on the *manufacturer* in *PROD* 3.2. Information on the reviews should be shared if the *manufacturer* requests it.

[**Note:** article 10(9) of and recital 20 to the *MiFID Delegated Directive*]

Responsibilities in chains of distributors

- 3.3.32 R (1) A *firm* which *distributes financial instruments* or *investment services* to *end clients* is responsible for ensuring that the obligations in this chapter are met in respect of any *financial instrument* or *investment service* it *distributes* to an *end client*.
- (2) A *firm* which *distributes financial instruments* to *clients* which are not *end clients* must, in addition to complying with the rules in this chapter, consider if they are also undertaking a *manufacturing* role and, if they are, also apply *PROD* 3.2.
- 3.3.33 R A *distributor* which *distributes financial instruments* to other *distributors* must:
- (1) ensure that relevant product information is passed from the *manufacturer* to the final *distributor* in the chain; and
 - (2) if the *manufacturer* requires information on product sales in order to comply with its obligations under *PROD* 3.2, enable them to obtain it.

[**Note:** article 10(10) of the *MiFID Delegated Directive*]

Annex U

Amendments to the Perimeter Guidance manual (PERG)

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

1 Introduction to the Perimeter Guidance manual

...

1.5 What other guidance about the perimeter is available from the FCA?

1.5.1 G General *guidance* on the perimeter is also contained in various *FCA* documents (mainly fact sheets and frequently asked questions) that are available on the *FCA* website at www.fca.org.uk. These documents, and the URL on which they may be accessed, include:

...

(11) joint guidance by the *FSA* and the Office of Fair Trading titled “Payment protection products” (January 2013) which includes discussion whether debt freezes and debt waivers are *contracts of insurance* (~~www.fca.org.uk/your-fca/documents/finalised-guidance/fsa-fg132~~ <https://www.fca.org.uk/publication/finalised-guidance/fsa-fg13-02.pdf>); and

(12) the *FSA*’s views on whether members of the NHBC who provide insurance to buyers of properties in accordance with the Buildmark scheme carry out *insurance mediation*, contained in a letter to NHBC’s solicitors and put onto the *FSA*’s Freedom of Information Act register in December 2012 (~~www.fca.org.uk/your-fca/documents/fsa-foi2707-request-information~~ <https://www.fca.org.uk/publication/foi/fsa-foi2707-info.pdf>).

...

2 Authorisation and regulated activities

...

2.3 The business element

...

2.3.2 G There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things. They have exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177), ~~the Financial Services and Markets Act 2000 (Regulated~~

~~Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476), the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2005 (SI 2005/922), the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 (SI 2011/2304) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 as amended from time to time).~~ The result is that the business element differs depending on the activity in question. This in part reflects certain differences in the nature of the activities:

...

- (2) Except as stated in *PERG 2.3.2G(2A)* and *PERG 2.3.2G(3)*, the business element is not to be regarded as satisfied for any of the following regulated activities unless a person carries on the business of engaging in one or more of them:
- (a) regulated activities carried on in relation to *securities* or *contractually based investments*;
 - (b) ~~(or for those regulated activities~~ carried on in relation to ‘any property’);
 - (c) the regulated activities listed in *PERG 2.7.2-BG (Accepting deposits and other regulated activities applying to deposits)* so far as they relate to *structured deposits*;
 - (d) ~~unless a person carries on the business of engaging in one or more of the activities. This also applies to the regulated activities of advising on P2P agreements, advising on a home finance transaction and arranging a home finance transaction.~~

~~This is a narrower test than that of carrying on regulated activities by way of business (as required by section 22 of the Act), as it requires the regulated activities to represent the carrying on of a business in their own right.~~

This is a narrower test than that of carrying on regulated activities by way of business (as required by section 22 of the Act), as it requires the regulated activities to represent the carrying on of a business in their own right.

...

...

2.5 Investments and activities: general

...

- 2.5.4A G The UK has exercised part of the optional exemption in article 3 of *MiFID*. Further information about this exemption is contained in Q48 to 53 in *PERG*

13.5. ~~It is a requirement of article 3 MiFID that the activities of firms relying on the exemption are “regulated at national level”.~~ The investment services to which article 3 apply (namely reception and transmission of orders and investment advice in relation to either *transferable securities* or units in collective investment undertakings) correspond to *regulated activities* (see PERG 13 Annex 2 Tables 1 and 2).

2.5.5 G ... These relate to the exclusions concerned with:

...

(2A) issuing own securities (see PERG 2.8.4G(4));

...

(3A) arranging for the issue of your own securities PERG 2.8.6AG(11);

...

...

2.5.6 G ...

Wider definition of certain specified investments when carrying on some kinds of EU business

2.5.7 G Some *specified investments* are defined so that certain products only come within that *specified investment* when a *person* is providing services under certain *EU* legislation in relation to that product.

2.5.8 G When PERG 2.5.7G applies, the product is only treated as falling within the definition of the *specified investment* concerned if (in relation to that product):

(1) one of the following *persons*:

(a) a *MiFID investment firm*; or

(b) a *third country investment firm*; or

(c) a *CRD credit institution*; or

(d) a *credit institution* that would qualify to be a *CRD credit institution* if its registered or head office were in the *EEA*;

provides or performs *investment services and/or activities* on a professional basis; or

(2) a *UCITS investment firm* is providing certain *investment services and/or activities* under article 6.3 of the *UCITS Directive* (provision of services in addition to *UCITS* management); or

- (3) a market operator (or someone who would be a market operator if it was based in the EEA) is providing the investment services and/or activities of operating a multilateral trading facility or organised trading facility (these activities are described in Q24 and Q24A in PERG 13.3); or
- (4) an AIFM investment firm is providing services under article 6.4 of the AIFMD (provision of services in addition to AIF management).

2.5.9 G PERG 2.5.7G only applies to the following specified investments:

- (1) an emission allowance (see PERG 2.6.19DG for more details);
- (2) an option (see PERG 2.6.20G for more details);
- (3) a future (see PERG 2.6.22AG for more details);
- (4) a credit derivative treated as a contract for differences (see PERG 2.6.23G for more details); and
- (5) a binary or fixed outcomes derivative treated as a contract for differences (see PERG 2.6.24AG for more details, which also explains that in certain circumstances PERG 2.5.7G does not apply to this product).

2.5.10 G (1) When deciding whether a person is a MiFID investment firm or a third country investment firm for the purposes of PERG 2.5.8G(1), it is necessary to take into account the services that that person is providing in relation to the product concerned.

(2) For example, say that a UK person does business in an option product to which PERG 2.5.7G applies. When deciding whether that product is a regulated option, it is not necessary for that person already to be:

- (a) a MiFID investment firm; or
- (b) authorised under the Act;

because of its other activities.

(3) Therefore, when deciding whether the UK person in (2) is a MiFID investment firm and whether it needs to be authorised under the Act, it is necessary to take into account all the business it does, including business in that option product.

2.6 Specified investments: a broad outline

...

Deposits

...

2.6.4 G ...

- 2.6.4-A G (1) A structured deposit is a kind of deposit.
- (2) A structured deposit is a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:
- (a) an index or combination of indices; or
 - (b) a financial instrument or combination of financial instruments; or
 - (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
 - (d) a foreign exchange rate or combination of foreign exchange rates.
- (3) A variable rate deposit whose return is directly linked to an interest rate index such as Euribor or Libor is not a structured deposit under paragraph (2)(a).
- (4) (3) applies whether or not the interest is predetermined and whether it is fixed or variable.
- 2.6.4-B G The reason why there is a definition of a structured deposit is that there are a number of regulated activities that apply to structured deposits that do not apply to other kinds of deposit. See PERG 2.7.2-BG for a list.
- 2.6.4-C G Although the definition of a structured deposit specifically requires that the principal amount be fully repayable, that does not imply that this feature only applies to structured deposits. In the FCA's view, capital certainty is a feature of any kind of deposit.

...

Greenhouse gas ~~emissions~~ emission allowances

- 2.6.19D G (1) ~~This specified investment~~ There are two specified investments relating to the scheme for greenhouse gas emission allowance trading within the EU:
- (a) the first kind comprises ~~emissions~~ emission allowances that are auctioned as *financial instruments* or *two-day emissions spots* (together, *emissions auction products*); and
 - (b) the second kind is an emission allowance itself, subject to (2)).

- (2) An emission allowance is only a specified investment under (1)(b) if PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.
- (3) An emission allowance can also be the underlying for an option, future or contract for differences.
- 2.6.19E G ~~‡~~ The emissions auction product specified investment relates only to the regulated activity of bidding in emissions auctions (whereby a bid is received, transmitted and submitted on an auction platform) and captures the two forms of allowance products that may be auctioned under article 4(2) of the auction regulation: a two-day spot or a five-day future.
- 2.6.19F G ~~For the purposes of the RAO, this specified investment is not~~ See PERG 2.7.6DG for more about:
- (1) how the RAO deals with the overlap between emission allowances and emissions auction products; and
- (2) whether these products are a security, a contractually-based investment or a relevant investment.
- 2.6.19G G ~~This specified investment incorporates definitions from other EU directives or regulations which can be summarised as follows~~ Some other points about emission allowances are:
- (1) ~~Emissions~~ Emission allowance means an allowance as defined in article 3(a) of Directive 2003/87/EC which established the scheme for greenhouse gas ~~emissions~~ emission allowance trading within the EU. That article provides that an allowance is an allowance to emit one tonne of carbon dioxide equivalent during a specified period, only valid for the purpose of meeting the requirements of Directive 2003/87/EC and only transferable in accordance with the provisions of that directive (~~emissions~~ emission allowance).
- ...
- (3) ~~A financial instrument~~ is defined as any instrument listed in Section C of Annex I to MiFID. ~~Recital 14 of the auction regulation explains that a two-day spot is not a financial instrument whereas a five-day future is (see PERG 13.4, Q34). A five-day future is defined in article 3(4) of the auction regulation as an allowance auctioned as a financial instrument for delivery at an agreed date no later than the fifth trading day from the day of the auction.~~
- (4) The distinction between emission allowances that are auctioned as financial instruments and those auctioned as two-day spots is no longer relevant as all emissions auction products are financial instruments. When this part of the Regulated Activities Order was brought into force, a two-day emissions spot was not a financial instrument. Changes in EU legislation since then mean that it is one

now.

Options

- 2.6.20 G The *specified investment* category of *options* comprises:
- ...
- (2) options to acquire or dispose of other property and falling within paragraphs 5, 6, 7 or 10 of Section C of Annex 1 to MiFID (see article 83(2) of the *Regulated Activities Order* and *PERG 13, Q32 Q33A to Q34* for *guidance* about these instruments), but only where they are options ~~in relation to which a MiFID investment firm or a third-country investment firm provides or performs investment services and activities on a professional basis~~ PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies; and
- (3) options to acquire or dispose of an option to which (2) applies ~~– See~~ but only where PERG 2.5.7G applies (see article 83(1)(e) of the Regulated Activities Order).
- 2.6.20A G It follows therefore that options not falling within *PERG 2.6.20G(1)*, for example physically settled options on non-precious metals, such as copper options, will not be *options* unless they meet the conditions in *PERG 2.6.20G(2)*. Moreover, where the option in question is one to which *PERG 2.6.20G(2)* applies, it will be an *option* only in relation to the ~~investment services and activities, or ancillary services where relevant~~ services referred to in PERG 2.5.8G, provided by that *person*. The same applies in the case of options falling within *PERG 2.6.20G(3)*, for example an option on a physically settled copper option traded on a *regulated market*.

Futures

- ...
- 2.6.22A G As with *options*, there is an additional category of instruments which are *futures* only ~~when they are the object of investment services or activities provided or performed by certain persons in limited circumstances~~. These are contracts as described in *PERG 2.6.21G*:
- (1) ...
- (2) that:
- (a) fall within paragraph 4 of Section C of Annex 1 to MiFID and relate to currencies (see PERG 13, Q31A to Q31S for guidance about these derivatives); or
- (b) fall within paragraphs 5, 6, 7 or 10 of Section C of Annex 1 to MiFID (see *PERG 13, Q32 Q33A to Q34* for *guidance*

about these derivatives); and

- (3) ~~in relation to which a *MiFID investment firm* or a *third country investment firm* provides or performs *investment services and activities* on a professional basis *PERG 2.5.7G* (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.~~

See article 84(1A)-(1D) of the *Regulated Activities Order*.

- 2.6.22B G ~~The transposition of *MiFID* does not have the effect of turning spot or forward foreign exchange contracts into *financial instruments* where such instruments satisfy the commercial purpose test in article 84(2) of the *Regulated Activities Order*. In our view, very few instruments are likely to fall within *PERG 2.6.22AG* in practice, given that this category only applies in the case of instruments not falling within *PERG 2.6.22G*. An example of an instrument falling within *PERG 2.6.22AG* could be rights under a contract for a derivative which provides for physical delivery of a commodity at a future date and which is entered into on a multilateral trading facility. [deleted]~~

Contracts for differences

- 2.6.23 G The *specified investment* category of *contracts for differences* covers:
- ...
- (3) ~~other derivative contracts for the transfer of credit risk~~ (not within (1) or (2)) falling within paragraph 8 or 9 of Section C of Annex 1 to *MiFID*, ~~that is derivative instruments for the transfer of credit risk~~ (see *PERG 13, Q30 to Q31* for *guidance* about these instruments), but only where a *MiFID investment firm* or a *third country investment firm* provides or performs *investment services and activities* on a professional basis *PERG 2.5.7G* (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.

...

- 2.6.24 G ...

- 2.6.24A G (1) A binary or other fixed outcomes bet is also treated as *contract for differences*. This is defined as something that meets the following conditions:
- (a) it is a derivative contract of a binary or other fixed outcomes nature;
- (b) it is not covered by *PERG 2.6.23G*(1) or (2);
- (c) it is settled in cash;

- (d) it is a *financial instrument* that falls within paragraphs 4, 5, 6, 7 or 10 of Section C of Annex 1 to *MiFID* (see *PERG* 13, Q31A to Q34 for *guidance* about these instruments); and
- (e) one of the following requirements is met:
- (i) *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies; or
- (ii) a *person* is making arrangements with a view to transactions in investments in relation to it.
- (2) A product is binary (see *PERG* 2.6.24AG(1) (a)) only if the payout is all or nothing. That is, the overall result will be that one party will pay the other a fixed sum. It is a sort of fixed odds bet.
- (3) The main example of a binary product is a binary or digital option.
- (4) A simple example is a contract between X and Y under which:
- (a) at the start, X pays Y a fixed sum (equivalent to the stake in a bet);
- (b) if shares in ABC PLC close above £5.20 per share at close of trading five days later, Y pays X a fixed sum (a multiple of X's original stake), the result being that Y pays X a fixed sum in net terms;
- (c) if shares in ABC PLC close at or below £5.20 per share at close of trading five days later, X gets nothing, the result being that X pays Y a fixed sum.
- (5) A simple binary sporting bet is not a *contract for differences* as:
- (a) it is not covered by *MiFID* and so it does not meet the condition in *PERG* 2.6.24AG(1)(d); and
- (b) it does not come under any other part of the definition of a *contract for differences*.
- (6) A product that that has fixed outcomes but is not binary (see *PERG* 2.6.24AG(1)(a)):
- (a) is like a binary product in that there are fixed number of possible payouts and they are all known in advance; but
- (b) differs from a binary contract in that the number of possible payouts is three or more rather than just two.
- (7) A simple example of a contract in (6) (although it may not be

common in practice) is a contract between X and Y under which:

- (a) at the start, X pays Y a fixed sum (equivalent to the stake in a bet);
- (b) if shares in ABC PLC close above £5.20 per share at close of trading five days later and (c) does not apply, Y pays X a fixed sum (a multiple of X's original stake), the result being that Y pays X a fixed sum in net terms;
- (c) if shares in ABC PLC close above £5.20 per share at close of trading five days later and the market as a whole rises by more than ten percent, Y pays X a fixed sum that is:
 - (i) a multiple of X's original stake; but
 - (ii) a different (and usually smaller) multiple from the one in (b);

the result being that Y pays X a fixed sum in net terms;
- (d) if shares in ABC PLC close at or below £5.20 per share at close of trading five days later, X gets nothing, the result being that X pays Y a fixed sum.

- 2.6.24B G (1) Any derivative under MiFID will be an option, future or contract for differences where PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.
- (2) So for example the following contract between X and Y would be a contract for differences.
- (a) At the start, X pays Y a fixed sum (equivalent to a stake in a bet).
 - (b) If the ABC index closes above 6,500 when the contract expires, Y pays X a fixed sum being the stake and an additional pay out (determined on the opening of the contract), the result of the contract being that Y pays X a fixed sum.
 - (c) If the ABC index closes below 6,500 when the contract expires, X gets nothing (and pays Y the stake paid when X opened the contract), the result of the contract being that X pays Y a fixed sum.
 - (d) If the ABC index was trading at 6,500 when the contract was opened and closes at 6,500 when the contract expires, Y pays X a fixed sum (being a proportion of the amount paid by X to Y on opening of the contract), the result of the contract being

that X pays Y a fixed sum.

...

2.7 Activities: a broad outline

...

Accepting deposits and other regulated activities applying to deposits

2.7.2 G ...

2.7.2-A G In general, *accepting deposits* is the only regulated activity that applies to deposits, except for those regulated activities that can apply to property or assets that are not specified investments. However, *structured deposits* are an exception to this.

2.7.2-B G The following regulated activities apply to deposits that are structured deposits in addition to the regulated activity of accepting deposits:

- (1) *dealing in investments as agent;*
- (2) *arranging (bringing about) deals in investments;*
- (3) *making arrangements with a view to transactions in investments;*
- (4) *managing investments; and*
- (5) *advising on investments.*

2.7.2-C G The activities in PERG 2.7.2-BG may be carried out by the person accepting the structured deposit or another person. However the activities in PERG 2.7.2-BG(1) to (3) are unlikely to be relevant to the person accepting the structured deposit because:

- (1) the dealing activity in PERG 2.7.2-BG(1) only applies to an agent; and
- (2) the exclusion described in PERG 2.8.6AG(3) (arranging transactions to which the arranger is to be a party) may apply to the activities in PERG 2.7.2-BG(2) and (3).

...

Dealing in investments (as principal or agent)

...

2.7.6 G Both the activities of *dealing in investments as principal* and *dealing in investments as agent* are defined in terms of 'buying, selling, subscribing for or underwriting' certain investments. These investments are:

...

- (2) for *dealing in investments as agent, securities, structured deposits and relevant investments* (except rights under a *funeral plan contract*).

...

Bidding in ~~emissions~~ emission auctions

- 2.7.6B G The *RAO* and the *auction regulation* together generate three broad categories of *person* in relation to bidding for ~~emissions~~ emission allowances on an *auction platform*:
- (1) The first category consists of an *investment firm* to which *MiFID* applies, ~~and a *BCD CRD credit institution* and a *third country credit institution*~~ where ~~either the firm~~ is bidding on behalf of its *clients* ~~for *emissions auction products* or bidding~~ on its own account for *emissions auction products* ~~that are *financial instruments*~~. For these purposes a *third country credit institution* refers to a *credit institution* that would qualify to be a *CRD credit institution* if its registered or head office were in the *EEA*.
- (1A) ~~This~~ The first category also consists of a *person* that is exempt from *MiFID* under article 2(1) (i) (j) where it is bidding on behalf of a client of its main business or bidding on its own account (further information on the article 2(1) (i) (j) exemption from *MiFID* is in *PERG* 13.5, Q44).
- (1B) A *person* in this first category is entitled to bid on an *auction platform* but requires *permission* from the *FCA* for *bidding in emissions auctions* to do so.
- (2) The second category ~~consists of an *investment firm* to which *MiFID* applies and a *BCD credit institution* where either is bidding on its own account for *two day emissions spot*~~. This category also consists of operators or aircraft operators bidding on their own account as well as group entities or business groupings of those operators or public bodies or state-owned entities of Member States that control any of those operators (as set out in article 18 of the *auction regulation*). A *person* or entity in this category is entitled to bid on an *auction platform* but does not require *permission* from the *FCA* to do so as a result of an exclusion from the *regulated activity* of *bidding in emissions auctions* in article 24B of the *RAO*.
- (3) ...
- (4) Article 24B(2) of the *RAO* includes in the second category (see (2)) an *investment firm* to which *MiFID* applies, a *CRD credit institution* or a *third country credit institution* where it is bidding on its own account for *emissions auction products* that are not *financial*

instruments under MiFID. This part of the RAO no longer has effect as all emissions auction products are now financial instruments. When it was brought into force, a two-day emissions spot was not a financial instrument.

- 2.7.6C G A person may fall into both the first and the second category. For example, a person might be both exempt from MiFID under article 2(1)(~~i~~)(j) (within the first category) and be a group entity of an operator (within the second category). In this case, that person does not require permission for activities that cause that person to fall into the second category because those activities are excluded from the activity of *bidding in emissions auctions*.
- 2.7.6D G
- (1) As explained in PERG 2.6.19DG, an emission allowance and an emissions auction product are both specified investments. The Regulated Activities Order deals with this as follows.
 - (2) A person in the first category in PERG 2.7.6BG requires permission from the FCA for bidding in emissions auctions but does not require any other permission to do so.
 - (3) A person in the second category in PERG 2.7.6BG does not require any permission from the FCA for bidding.
 - (4) Article 24A(2) of the RAO is the main provision that deals with (2) and (3). It provides that bidding in emissions auctions does not form part of any other regulated activity and so, although in the FCA's view this activity broadly equates to the regulated activities of dealing in investments as principal, dealing in investments as agent, arranging (bringing about) deals in investments, or making arrangements with a view to transactions in investments, a person seeking to carry on this bidding activity will only require permission for bidding in emissions auctions to do so and will not require permission for any other regulated activities. Except for this exclusion, in the FCA's view, bidding in emissions auctions would broadly equate to the following regulated activities:
 - (a) dealing in investments as principal;
 - (b) dealing in investments as agent;
 - (c) arranging (bringing about) deals in investments; or
 - (d) making arrangements with a view to transactions in investments.
 - (5) An emission allowance is a security. This means that any person wishing to carry out any activity in relation to it will need to consider whether any of the regulated activities relating to securities apply (subject to (8)).
 - (6) A derivative on an emission allowance is potentially a contractually based investment and a relevant investment. Therefore any person

wishing to carry out any activity in relation to it will need to consider whether any of the *regulated activities* relating to *contractually based investments* and *relevant investments* apply (subject to (8)).

- (7) An *emission allowance* auctioned under the *auction regulation*, as well as being a *specified investment* in its own right (an *emissions auction product*) may also be included in the *emission allowance category of specified investment* (subject to (8)). It is unlikely to be a *contractually based investment* or a *relevant investment*.
- (8) However (as explained in (2) to (4)), for a *firm* that is bidding under the *auction regulation*:
- (a) the only *regulated activity* is *bidding in emissions auctions*;
and
- (b) the only *specified investment* is an *emissions auction product*.
- (9) (7) means that a *person* may need *permission* to carry out activities in relation to *emission allowances* that are auctioned under the *auction regulation* other than *bidding activities*, such as:
- (a) buying and selling them in the secondary market; or
- (b) advising a client about buying or selling them.
- (10) Where (9) applies, the *specified investment* involved will be an *emission allowance* or one of the *contractually based investments*. The *emissions auction product* category of *specified investment* is only relevant to the *regulated activity* of *bidding in emissions auctions*.
- (11) (9) applies to a *person* in (2) or (3) as well as anyone else wanting to carry out such activities.

Arranging deals in investments and arranging a home finance transaction

...

- 2.7.7A G There are ten arranging activities that are *regulated activities* under the *Regulated Activities Order*. These are:
- (1) *arranging (bringing about) deals in investments* which are *securities*, *relevant investments*, *structured deposits* or the *underwriting capacity of a Lloyd's syndicate* or *membership of a Lloyd's syndicate* (article 25(1));
- (2) *making arrangements with a view to transactions in investments* which are *securities*, *relevant investments*, *structured deposits* or the *underwriting capacity of a Lloyd's syndicate* or *membership of a Lloyd's syndicate* (article 25(2));

...

...

Operating a multilateral trading facility

2.7.7D G *Guidance on the MiFID investment service of operating a multilateral trading facility is given in PERG 13, Q24. ~~So far as~~ An activity that comes within the regulated activity of operating a multilateral trading facility is concerned, this does not comprise the activities come within the regulated activities of dealing in investments as agent, dealing in investments as principal, or arranging deals in investments. Where a firm carries on one or more of these activities in addition to operating a multilateral trading facility, these are separate regulated activities for which it requires permission.*

2.7.7DA G The definition of a multilateral trading facility covers:

- (1) a multilateral trading facility as defined by MiFID (see PERG 13, Q24) operated by an investment firm, a credit institution or a market operator; or
- (2) a facility which:
 - (a) is operated by an investment firm, a credit institution or a market operator that is set up outside the EEA; and
 - (b) would come within (1) if its operator was set up in the EEA.

Operating an organised trading facility

2.7.7DB G Guidance on the MiFID investment service of operating an organised trading facility is given in PERG 13, Q24A. An activity that comes within the regulated activity of operating an organised trading facility does not come within the regulated activities of dealing in investments as agent, dealing in investments as principal or arranging deals in investments.

2.7.7DC G The definition of an organised trading facility covers:

- (1) an organised trading facility as defined by MiFID (see PERG 13, Q24A) operated by an investment firm, a credit institution or a market operator; or
- (2) a facility which:
 - (a) is operated by an investment firm, a credit institution or a market operator that is set up outside the EEA; and
 - (b) would come within the MiFID definition if its operator was set up in the EEA.

- 2.7.7DD G (1) The regulated activity of operating an organised trading facility only covers a trading facility on which non-equity MiFID instruments are traded.
- (2) Subject to (3), a non-equity MiFID instrument means:
- (a) a debenture, an alternative debenture, a government and public security, a warrant, a certificate representing certain securities, a unit, an emission allowance, an option, a future or a contract for differences; or
- (b) rights to or interests in investments relating to anything in (a).
- (3) However, a product in (2) is only a non-equity MiFID investment if it also falls into one of the following categories:
- (a) a bond; or
- (b) a structured finance product; or
- (c) an emission allowance; or
- (d) an instrument falling within paragraphs 4 to 10 of Section C of Annex 1 of MiFID (these are described in PERG 13.4) if the instrument is a transferable security.

...

Managing investments

- 2.7.8 G The regulated activity of managing investments includes several elements.

...

- (3) Third, the property that is managed must consist of (or include) *securities, structured deposits or contractually based investments*. Alternatively, discretionary management will generally be caught if it is possible that the property could consist of or include such *securities or investments products*. This is the case even if there never has been any investment in *securities or contractually based investments* these products, as long as there have been representations that there would be.

...

Advising on investments

...

- 2.7.15 G The regulated activity of advising on investments (except P2P agreements) under article 53(1) of the Regulated Activities Order applies to advice on

securities, structured deposits or relevant investments. It does not, for example, include giving advice about deposits (except structured deposits), or about things that are not specified investments for the purposes of the Regulated Activities Order. ...

...

Agreeing

- 2.7.21 G Agreeing to carry on most *regulated activities* is itself a *regulated activity*. But this is not the case if the underlying activities to which the agreement relates are those of *accepting deposits, issuing electronic money, effecting or carrying out contracts of insurance, operating a multilateral trading facility, operating an organised trading facility, managing dormant account funds, the meeting of repayment claims, managing a UCITS, acting as ~~depository~~ trustee or depository of a UCITS, managing an AIF, acting as trustee or depository of an AIF, establishing, operating or winding up a collective investment scheme, establishing, operating or winding up a stakeholder pension scheme or establishing, operating or winding up a personal pension scheme*. A person will need to make sure that ~~he~~ it has appropriate *authorisation* at the stage of agreement and before ~~he~~ it actually carries on the underlying activity (such as the *dealing* or *arranging*).

...

2.8 Exclusions applicable to particular regulated activities

...

Dealing in investments as principal

...

- 2.8.4C G The exclusions referred to in *PERG 2.8.4G(1), (2), (4), (5) and (6)(b), (c) and (d)* will not be available to *persons* who, when carrying on the activity of *dealing in investments as principal*, are *MiFID investment firms* or *third country investment firms* (see *PERG 2.5.4G to PERG 2.5.5G* (Investment services and activities)).

...

Arranging deals in investments and arranging a home finance transaction

...

- 2.8.6B G The exclusions referred to in *PERG 2.8.6AG(4), PERG 2.8.6AG(11) and PERG 2.8.6AG(13)(b), (c), (d), (e) and (l)* will not be available to *persons* who, when carrying on an *arranging* activity, are *MiFID investment firms* or *third country investment firms* (see *PERG 2.5.4G to PERG 2.5.5G* (Investment services and activities)).

...

2.9 Regulated activities: exclusions applicable in certain circumstances

2.9.1 G The various exclusions outlined below deal with a range of different circumstances.

- (1) Each set of circumstances described in *PERG 2.9.3G* to *PERG 2.9.17G* has some application to several *regulated activities* relating to *securities*, *structured deposits*, *relevant investments* or *home finance transactions*. ...

...

...

Overseas persons

2.9.15 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

(3B) ...

(3C) *operating an organised trading facility*;

...

...

2.9.17B G (1) The exclusion for *overseas persons* described in *PERG 2.9.17G* does not apply to an *investment firm* or *credit institution* set up in a third country that has been found equivalent under article 46 or 47 of *MiFIR*, as described in more detail in the rest of this paragraph.

(2) Article 46 of *MiFIR* has a mechanism under which *ESMA* may register a *third country investment firm* or a third country *credit institution* without a *branch* in the *EEA*. Registration allows the *third country investment firm* or third country *credit institution* to provide certain services to certain customers within the *EEA* without the need for further authorisation by an *EEA State*.

(3) (2) only applies where the European Commission has made a formal assessment that the legal and supervisory arrangements of that third country ensure that *investment firms* and *credit institutions* authorised in that third country comply with legally binding prudential and conduct of business requirements which have equivalent effect to *MiFID*, *MiFIR* and *CRD*.

(4) Under article 47 of *MiFIR* an *investment firm* or *credit institution*

that:

- (a) has a *branch* in an *EEA State* and is authorised in that *EEA State*; and
- (b) is set up in a third country that is subject to an equivalence assessment in (3);

may provide certain services to certain clients in other *EEA States* without the need for further authorisation.

- (5) The exclusion for *overseas persons* described in *PERG 2.9.17G* does not apply to *investment services or activities* provided by an *investment firm or credit institution* in (1) if:
 - (a) it is registered as described in (2); or
 - (b) its branch is authorised in an *EEA State* other than the *United Kingdom* as described by (4); or
 - (c) it provides the *investment services or activities* at the initiative of certain *EEA-based* clients.
- (6) However, (5) only applies from three years after the equivalence decision in (3). For the first three years following the equivalence decision, the exclusion for *overseas persons* described in *PERG 2.9.17G* continues to apply in the normal way.
- (7) The purpose of the three year period is to implement article 54 of *MiFIR* (transitional provisions) under which the national regimes of *EEA States* continue to apply for three years after the equivalence decision in (3).
- (8) There are currently no special provisions in the *Act* or related legislation such as the *Regulated Activities Order* dealing expressly and specifically with the treatment of *third country investment firms* and *third country credit institutions* under the *general prohibition* after the overseas persons exclusion is switched off at the end of the three year period in (6).

...

Insolvency practitioners

2.9.25 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

(5) ...

(5A) *operating an organised trading facility*;

...

2 Annex 2 Regulated activities and the permission regime

...

2 Table

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
Designated investment business [see notes 1A, 1B and 1C to Table 1]	
(d) <i>dealing in investments as principal</i> (article 14) [see note 2 to Table 1]	...
(e) <i>dealing in investments as agent</i> (article 21) [see notes 1B and 2 to Table 1] [<u>also see Section of Table 1 headed ‘Activities relating to structured deposits’</u>]	...
(f) <i>arranging (bringing about) deals in investments</i> (article 25(1)) [see note 1B to Table 1] [also see Sections of Table 1 headed ‘The Lloyd’s market’ and ‘Regulated mortgage activity’ and ‘Activities relating to structured deposits’]	...
(g) <i>making arrangements with a view to transactions in investments</i> (article 25(2)) [see note 1B to Table 1] [also see Sections of Table 1 headed ‘The Lloyd’s market’ and ‘Regulated mortgage activity’ and ‘Activities relating to structured deposits’]	...
(ga) operating a <i>multilateral trading facility</i> (article 25D) [see note 2A]	...
(gb) operating an <i>organised trading facility</i> (article 25DA) [see note 2A]	certain kinds of <i>securities or contractually based investments</i> which are <i>financial instruments</i> . PERG 2.7.7DDG lists the

	<u>securities and contractually based investments covered.</u>
(h) <i>managing investments</i> (article 37) [see note 3 to Table 1] [also see <u>Section of Table 1 headed ‘Activities relating to structured deposits’</u>]	
...	...
(j) <i>advising on investments (except P2P agreements)</i> (article 53(1)) [see note 1B to Table 1] [also see Section <u>Sections of Table 1 headed ‘Regulated mortgage activity’ and ‘Activities relating to structured deposits’</u>]	
...	
(zaf) <i>providing credit references</i> (article 89B)	...
<u>Activities relating to structured deposits</u>	
(zag) <i>dealing in investments as agent</i> (article 21) (zah) <i>arranging (bringing about) deals in investments</i> (article 25(1)) (zai) <i>making arrangements with a view to transactions in investments</i> (article 25(2)) (zaj) <i>managing investments</i> (article 37) [see note 3 to Table 1] (zak) <i>advising on investments (except P2P agreements)</i> (article 53(1))	<u>structured deposits</u>

3 Table

Notes to Table 1
<p>Note 1:</p> <p>In addition to the <i>regulated activities</i> listed in Table 1, article 64 of the <i>Regulated Activities Order</i> specifies that <i>agreeing to carry on a regulated activity</i> is itself a <i>regulated activity</i> in certain cases. This applies in relation to all the <i>regulated activities</i> listed in Table 1 apart from:</p> <p style="text-align: center;">...</p>

operating a multilateral trading facility (article 25D)

operating an organised trading facility (article 25DA)

...

Note 3:

The *regulated activities* of *managing investments* (article 37) and *safeguarding and administering investments* (article 40) may apply in relation to any assets, in particular circumstances, if the assets being managed or safeguarded and administered include, (or may include), any *security*, ~~or~~ *contractually based investment* or (in the case of *managing investments*) *structured deposit*.

...

4 Table

Table 1A: PRA-only regulated Activities [See notes 1 and 2 to Table 1A]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
Accepting deposits	
(a) <i>accepting deposits</i> (article 5)	<i>deposit</i> (article 74) <u>See note (3)</u>
...	

5 Table

Notes to Table 1A
...
<u>Note 3:</u>
<u><i>Accepting deposits</i> is not the only <i>regulated activity</i> relating to <i>deposits</i>. For a <i>deposit</i> that is a <i>structured deposit</i>, certain other <i>regulated activities</i> apply. These are listed in Table 1.</u>

...

7 Table

Table 3: Securities, contractually based investments and relevant investments
[see notes 1 and 2 to Table 3]

Security (article 3(1))	Contractually based investment (article 3(1))	Relevant investments (article 3(1))
<p>...</p> <p><i>personal pension scheme</i> (article 82(2));</p> <p><u><i>emission allowance</i></u> (article 82B)</p> <p>...</p>	<p>...</p> <p><i>contract for differences</i> (article 85)</p> <p>For the purposes of the <i>permission</i> regime, <i>contract for differences</i> is subdivided into:</p> <ul style="list-style-type: none"> ● <i>contract for differences</i> (excluding a <i>spread bet</i>, a <u><i>binary bet</i></u> and a <i>rolling spot forex contract</i>); ● <i>spread bet</i>; ● <i>rolling spot forex contract</i>; <u>and</u> ● <u><i>binary bet</i></u>. <p>...</p>	<p>...</p>

...

7 Periodical publications, news services and broadcasts: applications for certification

...

7.3 Does the activity require authorisation?

- 7.3.1 G Under article 53(1) of the *Regulated Activities Order* (Advising on investments), advising a *person* is a specified kind of activity if:
- (1) the advice is given to the *person* in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a

potential investor; and

- (2) is advice on the merits of his doing any of the following (whether as *principal* or agent):
- (a) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security, structured deposit* or a *relevant investment*; or
 - (b) exercising any right conferred by such an *investment* to *buy, sell*, subscribe for or underwrite such an *investment*.

...

Carrying on the regulated activity by way of business

- 7.3.3 G Under section 22 of the *Act* (Regulated activities), for an activity to be a regulated activity it must be carried on ‘by way of business’. There is power in the *Act* for the Treasury to change the meaning of the business test by including or excluding certain things. It has exercised this power (through the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177) (the Business Order), ~~This has been as amended from time to time by article 18 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2003 (SI 2003/1476), by article 28 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2006 (SI 2006/2383) and article 27 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) as explained in PERG 7.3.3AG.~~

...

- 7.3.7 G ... Also, the *general prohibition* will not be contravened if the exclusion for *overseas persons* in article 72 of the *Regulated Activities Order* (Overseas persons) applies. That exclusion applies in relation to the giving of advice on *securities, structured deposits* or *relevant investments* by an *overseas person* as a result of a ‘legitimate approach’ (defined in article 72(7)). ...

...

8 Financial promotion and related activities

...

8.13 Exemptions applying to financial promotions concerning deposits and certain contracts of insurance

...

- 8.13.1 G The exemptions in Part V of the *Financial Promotion Order* concern *financial promotions* relating to *deposits* and *contracts of insurance* ~~other than life policies~~. The exemptions may be combined with exemptions in Part

IV and Part VI (see *PERG* 8.11.3G (Types of exemption under the Financial Promotion Order). The exemptions in Part V do not apply to *life policies* or *structured deposits*.

...

8.21 Company statements, announcements and briefings

...

Article 67: Promotions required or permitted by market rules

- 8.21.13 G Article 67 exempts any *financial promotion* other than an *unsolicited real time financial promotion* which relates to *shares, debentures, alternative debentures, government and public securities, warrants or certificates representing certain securities* which are permitted to be traded or dealt in on a relevant market. A relevant market for the purposes of article 67 is one which meets the criteria in Part I of, or is specified in or established under the rules of an exchange specified in ~~Parts II or Part III of~~, schedule 3 to the *Financial Promotion Order*. This includes *recognised investment exchanges* and ~~EEA regulated markets that are exempt persons under article 36 of the Exemption Order, together with various other overseas markets (including OFEX (UK))~~. The *financial promotion* must, however, be required or permitted to be *communicated* by the rules of the market or by a body which either regulates the market or regulates offers or issues of *investments* to be traded on the market.

...

Article 68: Promotions in connection with admission to certain EEA markets

- 8.21.16 G Article 68 applies where the *financial promotion* relates to *securities* which have not yet been admitted to trading but for which application has been or is to be made. It exempts a *non-real time* or a *solicited real-time financial promotion* which a relevant *EEA* market requires to be *communicated* before admission to trading can be granted. A relevant *EEA* market for this purpose is a market with its head office in an *EEA State* and which meets the conditions in Part I of ~~, or is specified in or established under the rules of an exchange specified in Part II of~~, Schedule 3 to the *Financial Promotion Order*. Article 68 also requires that the *financial promotion* be one:

...

...

8.24 Advising on investments

- 8.24.1 G Under article 53(1) of the *Regulated Activities Order*, *advising on investments (except P2P agreements)* covers advice which:
- (1) is given to a *person* in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential

investor; and

- (2) is advice on the merits of his (whether as principal or agent) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security, structured deposit* or a *relevant investment* or exercising any right conferred by such an *investment* to *buy, sell*, subscribe for or underwrite such an *investment*.

8.24.2 G The effect of advice being given in the circumstances referred to in *PERG* 8.24.1G is that:

- (1) it must relate to an *investment* which is a *security, structured deposit* or a *relevant investment*;

...

...

8.25 Advice must relate to an investment which is a security or contractually based investment

8.25.1 G For the purposes of article 53(1) of the *Regulated Activities Order*, a *security* or *relevant investment* is any one of the following:

...

- (7) ...

(7A) *emission allowances*;

..

8.25.2 G Article 53(1) does not apply to advice given on any of the following:

- (1) *deposit* or other bank or *building society* accounts (but note that ~~that providing basic advice on a stakeholder product including stakeholder deposit accounts is a separate regulated activity under article 52A of the *Regulated Activities Order* – see the guidance in *PERG* 2.7.14AG (Providing basic advice on stakeholder products) the exceptions and points in *PERG* 8.25.3G);~~

...

8.25.3 G (1) There are some circumstances in which giving advice about a *deposit* is a *regulated activity*.

- (2) *Providing basic advice on a stakeholder product* is a separate *regulated activity* under article 52A of the *Regulated Activities Order*. A *stakeholder product* includes a stakeholder deposit account. See the *guidance* in *PERG* 2.7.14AG (Providing basic advice on stakeholder products) for more about this.

(3) Article 53(1) does apply to advice on structured deposits.

...

8.32 Arranging deals in investments

8.32.1 G Under article 25 of the *Regulated Activities Order*, arranging deals in investments covers:

(1) making ~~arrangements~~ arrangements for another *person* (whether as principal or agent) to *buy, sell*, subscribe for or underwrite a particular *investment* which is:

(a) a *security* or a structured deposit; or

...

...

...

8.36 Illustrative tables

...

8.36.3 Table Controlled activities

...	
3.	Dealing in securities, <u>structured deposits</u> and contractually based investments
...	
4C.	...
<u>4D.</u>	<u>Operating an organised trading facility</u>
...	

8.36.4 Table Controlled investments

...	
12.	...
<u>12A.</u>	<u>Emission allowances</u>
...	

...

10 Guidance on activities related to pension schemes

...

10.4A The application of EU Directives

Q41A. Are pension scheme trustees and administration service providers likely to be subject to authorisation under the Markets in Financial Instruments Directive or subject to the Directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms?

This is possible, but in many instances it is likely that pension scheme trustees and service providers will either not be providing an investment service for the purposes of, or otherwise be exempt under article 2.1 of, of the *Markets in Financial Instruments Directive*. The following table expands on this in broad terms.

As for the *CRD*, this will only apply to persons who are *MiFID investment firms* or *CRD credit institutions*.

Detailed guidance on the scope of ~~MiFID~~ MiFID and the *CRD* and *EU CRR* is in *PERG 13*.

Activity	Potential MiFID investment activity or service	Potential application of MiFID or of a MiFID article 2.1 exemption?
Dealing in scheme assets as trustee	Execution of orders on behalf of clients	<p>MiFID will not apply provided the trustees are wither not acting by way of business or otherwise are not holding themselves out as persons who provide a dealing service to third parties. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis.</p> <p>In any event, the trustee should be exempt under article 2.1(h) (i) as manager or depositary (or both) of a pension fund</p>
...		
Pension scheme service provider: a. dealing in scheme assets as agent for the trustees	a. Execution of orders on behalf of clients	<p>MiFID <u>MiFID</u> will potentially apply where the investments are MiFID <u>MiFID</u> financial instruments (such as shares, debt securities or units)</p> <p>However, many pension schemes will</p>

<p>b. arranging deals in scheme assets as agent for the trustees</p> <p>c. arranging for persons to join the scheme or to switch or dispose of, or to acquire further, rights under the scheme</p>	<p>b. Receiving and transmitting orders</p> <p>c. None - the rights are not MiFID financial instruments and neither are any rights to or interests in financial instruments that the scheme member may acquire under the scheme</p>	<p>be employee participation schemes, the administration of which is exempt under article 2.1(e) <u>(f)</u></p> <p>Where the service provider is providing services exclusively for the benefit of a corporate trustee who is a member of its group, the exemption in article 2.1(b) should apply. And article 2.1(f) <u>(g)</u> will provide for the exclusions in 2.1(b) and 2.1(e) <u>(f)</u> to be combined where the service provider is both administering an employee participation scheme and providing services to a trustee who is a group member</p> <p>Where the activity is receiving and transmitting orders and the service provider is authorised, the optional intermediaries exemption in article 3 of MiFID may apply</p> <p>If the service provider is acting as the operator of a stakeholder or personal pension scheme (for example, as the scheme administrator), he should be exempt under article 2.1(h) <u>(i)</u> as manager of a pension fund</p>
<p>Managing the assets of the scheme</p>	<p>Investment management</p>	<p>MiFID will not apply to trustees provided they are either not acting by way of business or otherwise are not holding themselves out as, or are additionally remunerated for, providing investment management services. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis</p> <p>In any event, trustees should be exempt under article 2.1(h) <u>(i)</u> as manager or depositary (or both) of a pension fund</p> <p>If a service provider is acting as the operator of a stakeholder or personal pension scheme, he should also be exempt under article 2.1(h) <u>(i)</u> as manager of a pension fund</p> <p>But a service provider who is merely managing the assets of a pension fund without being the manager or</p>

		<p>depository of the scheme will not be exempt under article 2.1(h) (i). The manager and depository are those persons charged with responsibility for managing the fund or safeguarding its assets and not persons to whom such functions may be delegated or outsourced</p>
...		
<p>a. Pension scheme trustee advising fellow trustees or members or prospective members</p> <p>b. Pension scheme service provider advising trustees or members or prospective members</p>	Investment advice	<p>MiFID will potentially apply where the advice concerns MiFID financial instruments (such as shares, debt securities or units) and so may apply to advice given to the trustees about scheme assets. However, beneficial interests in financial instruments held under the trusts of a pension scheme will not themselves be financial instruments under MiFID. And rights under a personal pension or stakeholder pension scheme are also not financial instruments. So, advice given to scheme members or prospective members should not be investment advice under MiFID</p> <p>MiFID will not apply to trustees who are advising their fellow trustees for the purposes of the trust provided they are not additionally remunerated for providing investment advisory services</p> <p>Also, trustees will be exempt under article 2.1(h) (i) in respect of anything they do in the capacity of manager or depository of a pension fund (including advising their fellow trustees)</p> <p>If a service provider is acting as the operator of a stakeholder or personal pension scheme, he should also be exempt under article 2.1(h) (i) as manager of a pension fund if he gives advice to the trustees</p> <p>Where the service provider is providing advice to a corporate trustee who is a member of its group, the exemption in article 2.1(b) may apply (and may be combined with the exemption for</p>

		administration of an employee participation scheme under article 2.1(f) (g) where relevant)
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...

13 Guidance on the scope of MiFID and CRD IV

13.1 Introduction

~~Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘The application of the definitions in Sections C6 and C7 of Annex I of Directive 2004/39/EC (MiFID)’. See https://www.esma.europa.eu/system/files/2015-05-06_final_guidelines_c6_and_7.pdf.~~

The purpose of this chapter is to help UK firms consider:

- whether they fall within the scope of the Markets in Financial Instruments Directive ~~2004/39/EC~~ 2014/65/EU (‘MiFID’) and therefore are subject to its requirements;

...

- If so, which category of investment firm they are for the purposes of the transposition of the recast CAD or *CRD* and the *EU CRR*.

This chapter is mostly aimed at questions that are relevant to someone who wants to know whether they need to be authorised under the Act. This means that this chapter does not cover those types of persons for whom MiFID or MIFIR requirements are applied outside the authorisation regime under the Act, such as:

- a data reporting service provider;
- those subject to position limit requirements in derivatives markets;
- those subject to an obligation to trade in derivatives on a regulated market, OTF or MTF;
- persons with a proprietary interest in benchmarks who are obliged to provide access to certain information; or
- central counterparties subject to the requirements about non-discriminatory access for financial instruments.

Background

MiFID replaces the Markets in Financial Instruments Directive 2004/39/EC (MiFID 1), which in turn replaced the Investment Services Directive (ISD). ~~It expands the kinds of business which must be regulated in the UK to include, in particular, activities relating to a wider range of commodity and other non-financial derivatives. As a result of MiFID, the categories of firm which can~~

~~exercise passporting rights and the categories of business for which the passport is available are wider than under the ISD. In particular, whereas investment advice was a non-core service under ISD, it is an investment service in its own right under MiFID and so can be provided on a cross-border basis as a standalone business.~~

MiFID is complemented by regulation (EU) No. 600/2014 on markets in financial instruments ('MiFIR'). MiFID is and MiFIR are supplemented by "Level 2 measures"; Commission Regulation (EC) No 1287/2006 (*MiFID Regulation*) and Commission Directive 2006/73/EC (*MiFID Implementing Directive*). The most relevant for the purposes of this chapter are Commission Delegated Regulation (EU) 2017/565 (the *MiFID Org Regulation*) and Commission Delegated Regulation (EU) 2017/592 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business). These implementing measures amplify and supplement certain of the concepts and requirements specified in MiFID and MiFIR.

...

We have also included guidance in the form of flow charts to help firms decide whether MiFID and the *CRD* and the *EU CRR* (which allow the recast CAD to apply to certain firms) apply to them as well as permission maps indicating which regulated activities and *specified investments* correspond to MiFID investment services, activities and MiFID financial instruments (see *PERG 13 Annex 1*, *PERG 13 Annex 2* ; and *PERG 13 Annex 3*, ~~PERG 13 Annex 4~~).

...

13.2 General

Q1. Why does it matter whether or not we fall within the scope of MiFID?

Depending on whether or not you fall within the scope of MiFID, you may be subject to:

- domestic legislation implementing MiFID (for example, FCA rules);
- directly applicable legislation made by the European Commission (~~the *MiFID Regulation* and *MiFIR*, *EU CRR* and *EU* regulations made under them or under MiFID~~); and
- domestic legislation implementing the *CRD* (see *PERG 13.6*).

...

Q3. How much can we rely on these Q and As?

The answers given in these Q and As represent the FCA's views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of MiFID and the *CRD* and the *EU CRR* affect the regulatory position of any particular person will depend on his individual circumstances. If

you have doubts about your position after reading these Q and As, you may wish to seek legal advice. The Q and As are not a substitute for reading the relevant provisions in MiFID, the *CRD* and the *EU CRR* (and the recast *CAD* for certain firms), the MiFID implementing measures and The Treasury's implementing legislation, ~~including the statutory instruments listed in Annex 4 ('Principal Statutory Instruments relating to MiFID scope issues')~~.

~~Moreover, although MiFID and the *CRD* and the *EU CRR* set out most of the key provisions and definitions relating to scope, some provisions may be~~ are ~~subject to further legislation by the European Commission. In addition to FCA guidance, MiFID's scope provisions may also be the subject of guidance or~~ and ~~communications by the European Commission or~~ the ~~European Securities and Markets Authority ('ESMA'). Similarly, the *CRD* and the *EU CRR* provisions may be the subject of technical standards and guidance or communications by the European Commission or~~ and ~~the~~ the ~~European Banking Authority ('EBA').~~

...

Q5. We are a credit institution. How does MiFID apply to us?

If you are an EEA credit institution, article ~~4.2~~ 1.3 MiFID provides that selected MiFID provisions apply to you, including organisational and conduct of business requirements, when you are providing investment services to your clients or performing investment activities. In our view, MiFID will apply when you are providing ancillary services in conjunction with investment services. Where you provide ancillary services on a standalone basis, MiFID will not apply in relation to those services. Article ~~4.2~~ 1.3 MiFID is reflected in paragraph (2) of the *Handbook* definition of "MiFID investment firm".

In addition, article 1.4 MiFID provides that various MiFID provisions apply when selling or advising clients about structured deposits (see Q34B).

...

Q7. We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?

...

Where you are a firm with more than one business, you can still be an investment firm. ~~We expect that the vast majority of firms which were subject to the requirements of the ISD are subject to MiFID requirements where they continue to provide the same investment services. We also expect some firms that were not subject to the ISD (for example, certain commodity dealers) to be investment firms for the purposes of MiFID and subject to MiFID-based requirements. What amounts to a "professional basis" depends on the individual circumstances and in our view relevant factors will include the existence or otherwise of a commercial element and the scale of the relevant activity.~~

Q8. We do not provide investment services to others but we do buy and sell financial instruments (for example, shares and derivatives) on a regular

basis. Are we an investment firm for the purposes of MiFID?

Yes, if you are trading in MiFID financial instruments for your own account as a regular occupation or business on a “professional basis”. You can be an investment firm even if you are not providing investment services to others; this is a change from the position under the ISD, arising from the fact that you are also an investment firm under MiFID where you perform investment activities on a professional basis.

Even if you are an investment firm you may still be able to rely on one or more exemptions in article 2 MiFID, in which case MiFID will not apply (see *PERG* 13.5 and in particular article 2.1(d) (see Q40 and to Q41)), and 2.1(i)(j) (see Q44 and to Q45) and 2.1(k) (see Q46).

...

Q11. How will we know whether we are a tied agent (article 4.1(25)(29))?

A tied agent under MiFID is a similar concept to an *appointed representative* under the *Act*. A tied agent does not require authorisation for the purposes of MiFID, just as an *appointed representative* does not require authorisation under the *Act*. In our view, you will only be a tied agent if your principal is an investment firm (including a credit institution) to which MiFID applies. So, if you act for a principal that is subject to an exemption in either article 2 or 3 of MiFID (as implemented by The Treasury—see Q48 and Q49), you are not a tied agent for the purposes of MiFID although you may be an *appointed representative* for domestic purposes. You will still not require authorisation under MiFID, either because you are not performing investment services and activities or, if you are, because you fall within an exemption in article 2 or 3 of MiFID.

MiFID says that firms exempt under article 3 should be subject to requirements which are at least analogous to the MiFID regime for tied agents of investment firms. This has been implemented in the UK through the *appointed representative* regime. If you are an *appointed representative* of a principal who is exempt under article 3 you will also be exempt under MiFID. Q48 to Q53 deal with the article 3 exemption.

Assuming your principal is an investment firm to which MiFID applies, if you are registered as an *appointed representative* on the *Financial Services Register* and carry on the activities of *arranging (bringing about) deals in investments* or *advising on investments*, in either case in relation to MiFID financial instruments, you are likely to be a tied agent for the purposes of article 4.1(25)(29).

...

13.3 Investment Services and Activities**Introduction****Q12. Where do we find a list of MiFID services and activities?**

In Section A of Annex 1 to MiFID. There are ~~eight~~ nine investment services and activities in Section A (A1 to ~~A8~~ A9), ~~four of which are further defined in article~~ Article 4 MiFID. Those activities that are further defined are defines some of them in more detail:

- ...
- portfolio management (article 4.1(9)(8) MiFID).

...

A further provision relating to investment advice is contained in article ~~52~~ of the *MiFID implementing Directive 9* of the *MiFID Org Regulation*.

As explained in PERG 13.1, this chapter only covers the MiFID activities dealt with through the authorisation regime under the Act. The other activities covered by MiFID and MiFIR are not dealt with in section A of Annex 1.

Q12A. We carry out the activity of bidding in emissions auctions. Is this a MiFID service or activity? [deleted]

~~Article 6(5) of the *auction regulation* deems as an *investment service or activity* the reception, transmission and submission of a bid for a *financial instrument* (the ‘five-day future’ auction product – see *PERG 2.6.19GG(3)*) on an *auction platform* by an *investment firm* to which *MiFID* applies or a *CRD credit institution*. It does not specify which *investment service or activity*. In the *FCA’s* view, it is likely to be the reception and transmission of orders in relation to one or more *financial instruments*, *execution of orders on behalf of clients* or *dealing on own account*.~~

~~As a result of some of *bidding in emissions auctions* being *MiFID business*, the *regulated activity* of *bidding in emissions auctions* is divided for the purposes of the *Handbook*, and the different requirements that apply, into two parts: *MiFID business bidding* and *auction regulation bidding*.~~

Reception and transmission

Q13. When might we be receiving and transmitting orders in relation to one or more financial instruments? (A1 and recital ~~20~~ 44) ?

...

The extended meaning of the service only applies if the firm brings together two or more investors, ~~and a~~ A person issuing new securities, including a collective investment undertaking, should not be considered to be an ‘investor’ for ~~this~~ the purpose of this extended meaning. ~~This limitation does not apply though to~~ However, an issuer may be an investor for the purpose of the general definition of the service. Accordingly whilst an arrangement whereby a person, on behalf of a client, receives and transmits an order to an issuer will, in our view, amount to reception and transmission, one in which it simply brings together an issuer with a potential source of funding for investment in a company, will not.

...

~~Where you are receiving, transmitting and submitting bids on an *auction platform* in relation to *financial instruments* on behalf of your clients, you may be receiving and transmitting orders in relation to one or more *financial instruments*.~~

...

Executing orders

Q15. When might we be executing orders on behalf of clients? (A2, article 4.1(5) and recital ~~21~~ 45) ?

...

~~Where you bid on behalf of your *client* on an *auction platform* for a *financial instrument*, you may be *executing orders on behalf of clients*. This activity includes the issue of their own *financial instruments* by an *investment firm* or a credit institution.~~

Q15A. Is every issue of financial instruments a MiFID investment service?

No. Although the answer to Q15 says that executing client orders includes issuing your own *financial instruments*, not every issue of *financial instruments* amounts to the MiFID investment service of execution of orders on behalf of clients. This is explained in more detail in the rest of this answer.

One difficult question is whether the extension of the executing orders service only applies to firms that are already *investment firms* because of other services and activities they provide or whether this part of the definition is also relevant to someone who is deciding whether they are an *investment firm* in the first place.

In the FCA's view, this part of the definition is not limited to someone that is already an *investment firm* because of its other activities and services. This is because the risks at which recital 45 of MiFID says this part of the definition is aimed apply whether or not the issuer is already an investment firm for another reason. For example, there is no reason why a *firm* that issues its own complicated securities to the retail market should not need authorisation if a *firm* that distributes ones issued by another *firm* requires authorisation.

On the other hand, it cannot be the case that raising capital by issuing its own capital causes an ordinary commercial company to become an *investment firm*. The reasons why this should not be the case include the following:

- If you do not issue *financial instruments* on a professional basis and do not otherwise execute orders on behalf of clients, you will generally not need permission or authorisation to do this. See Q8 for more information.
- The investor may not be your *client*. For example, an ordinary commercial company issuing debt securities to financial investors is unlikely to be providing a service; it is more likely to be receiving one.

- Recital 45 of MiFID confirms that the definition is intended to catch issuers when distributing their own *financial instruments*. Thus if you get another investment firm or credit institution to distribute your *financial instruments*, you will not be executing client orders.

Dealing on own account

Q16. What is dealing on own account? (A3 and, article 4.1(6) and recital 24) ?

Dealing on own account is trading against proprietary capital resulting in the conclusion of transactions in one or more MiFID financial instruments. ~~In most cases, if you were a firm who was dealing for own account under the ISD, the FCA would expect you to be dealing on own account for the purposes of MiFID if you continue to perform the same activities.~~

...

If a firm executes client orders by standing between clients on a matched principal basis (back-to-back trading), it is both dealing on own account and executing orders on behalf of clients. In our view, where you are a A firm which is still dealing on own account under MiFID if it meets all of the conditions of article 29(2) of CRD (see Q61) or article 5.2 of the recast CAD, as applicable under the CRD and the EU CRR to certain firms (see Q58A), you will not be dealing on own account. However, a firm which meets all the conditions of these articles of CRD or the recast CAD will not be considered as dealing on own account when determining which category of firm it is for the purposes of the FCA's base own funds requirements (see PERG 13.6).

~~Where you bid for your own account on an auction platform for a financial instrument, you may be dealing on own account.~~

Portfolio management

Q17. What is portfolio management under MiFID? (A4 and article 4.1(9 8)) ?

...

Investment advice

Q18. What is investment advice under MiFID? (A5 and article 4.1(4)) ?

...

Q19. What is a 'personal recommendation' for the purposes of MiFID (article 52 of the MiFID implementing Directive) (article 9 of the MiFID Org Regulation)?

A personal recommendation is ~~one given to a person~~ a recommendation that meets the following conditions:

- it is given to a person in his capacity as an investor, or potential investor, or as agent for either ~~which is~~; and
- it:
 - is presented as suitable for him or based on a consideration of his personal circumstances; and
 - constitutes a recommendation to him to do one or more of the following:
 - buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument; or
 - exercise, or not to exercise, any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

...

Q20. Can you give us some other practical examples of what are not personal recommendations under MiFID?

A recommendation is not a personal recommendation if it is issued exclusively ~~through distribution channels or~~ to the public (article 52 9 of the *MiFID implementing Directive MiFID Org Regulation*) and a 'distribution channel' is ~~one through which information is, or is likely to become, publicly available because a large number of people have access to it.~~ Advice about financial instruments in a newspaper, journal, magazine, publication, internet communication addressed to the public in general or in a radio or television broadcast should not amount to a personal recommendation for the purposes of MiFID (recital 79 to the MiFID implementing Directive). However, use of the internet does not automatically mean that a communication is not a personal recommendation on the grounds that it is made to the public. Therefore, for instance, while advice through a generally accessible website is unlikely to be a personal recommendation, an email communication provided to a specific person, or to several persons, may amount to investment advice.

...

If you provide an investment research service to your clients or otherwise provide recommendations intended for ~~distribution channels or~~ the public generally, this is not MiFID investment advice (A5) although it may be an ancillary service (B5) for the purposes of MiFID and may also amount to the regulated activity of *advising on investments* for which you are likely to require *authorisation*.

Q21. Is generic advice investment advice for the purposes of MiFID (recitals 79 and 81 *MiFID implementing Directive* 15 to 17 to the MiFID Org Regulation)?

...

If you are an investment firm to which MiFID applies, however, the generic advice that you provide may be subject to MiFID-based requirements. For example, if you recommend to a client that it should invest in equities rather than bonds and this advice is not in fact suitable, you are likely, depending on the circumstances of the case, to contravene MiFID requirements to:

- act honestly, fairly and professionally in accordance with the best interests of your clients; and
- provide information to clients that is fair, clear and not misleading.

Acts carried out by an investment firm that are preparatory to the provision of a MiFID investment service or activity are an integral part of that service or activity. This would include the provision of generic advice. Therefore if a person provides generic advice to a client or a potential client prior to or in the course of the provision of investment advice or any other MiFID investment service or activity, that generic advice is part of that MiFID investment service or activity.

Providing a general recommendation about a transaction in a financial instrument or a type of financial instrument is an ancillary service within Section B(5) of Annex I of MiFID.

Underwriting and firm commitment placing

Q22. What is underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis? (A6) ?

...

Placing without a firm commitment

Q23. When might placing of financial instruments without a firm commitment basis arise (A7)?

...

Operating a multilateral trading facility

Q24. What is a multilateral trading facility? (A8, article 4.1(15) 22) and recital 6 7 of MiFIR ?

~~The concept of a multilateral trading facility (MTF) draws on standards, issued by CESR (now known as ESMA), on which the FSA's previous alternative trading system regime was based. It includes~~ A multilateral trading facility involves a multilateral trading systems system (for example, a trading platforms platform) operated either by an investment firms firm or by a market operators operator which bring brings together multiple buyers and sellers of financial instruments (for more on multilateral systems, see the answer to Q24B).

~~As was the case with the alternative trading systems regime, in our view a~~ A multilateral trading facility does not include bilateral systems where an investment

firm enters into every trade on own account (as opposed to acting as a riskless counterparty interposed between the buyer and the seller).

For there to be an MTF, the buying and selling of MiFID financial instruments in these systems must be governed by non-discretionary rules in a way that results in contracts. As the rules must be non-discretionary, once orders and quotes are received within the system an MTF operator must have no discretion in determining how they interact. The MTF operator instead must establish rules governing how the system operates and the characteristics of the quotes and orders (for example, their price and time of receipt in the system) that determine the resulting trades. An MTF may be contrasted with an OTF (see Q24A for OTFs) in this regard, because the operator of an OTF is required to carry out order execution on a discretionary basis.

~~In our view, a firm can be an MTF operator whether or not it performs any other MiFID investment service or activity listed in A1 to A7.~~

Operating an organised trading facility

Q24A. What is an organised trading facility (A9, article 4.1(23) and recitals 8 and 9 of MiFIR)?

An OTF is a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in certain products are able to interact in the system in a way that results in a contract (for more on multilateral systems, see the answer to Q24B).

Only bonds, *structured finance products*, emission allowances and derivatives may be traded. Equity instruments may not be traded on an OTF.

Order execution must be carried out on an OTF on a discretionary basis. By contrast with the operation of an MTF or regulated market, the operator of the OTF must exercise discretion in either of, or both:

- placing/retracting client orders; or
- matching client orders.

In exercising its discretion, the operator must comply with the requirement under article 18 of MiFID to establish objective criteria for the efficient execution of orders, and must also comply with the best execution requirements under article 27 of MiFID.

Multilateral system

Q24B. Where can I find more information about what a multilateral system is (article 4.1(19))?

There is some *guidance* on multilateral systems in MAR 5AA.1.2G.

...

13.4 **Financial Instruments instruments**

Introduction

Q27. Where do we find a list of MiFID financial instruments?

In Section C of Annex 1 to MiFID. There are ~~ten~~ eleven categories of financial instruments in Section C (C1 to ~~C10~~ C11). Transferable securities (C1) and money market instruments (C2) are defined in article 4. ~~Further provisions relating to certain derivatives under C7 and C10~~ Some financial instruments are contained further defined in articles 38 and 39 of the MiFID Regulation the MiFID Org Regulation.

Transferable securities

Q28. What are transferable securities? (C1 and article 4.1(~~18~~)(44))?

...

Money market instruments

Q28A. What are money market instruments (C2 and article 4.1(17) of MiFID and article 11 of the MiFID Org Regulation)?

This means those classes of instruments which are normally dealt in on the money market. Examples include treasury bills, certificates of deposit and commercial paper. A money market instrument does not include an instrument of payment.

An instrument is only a money market instrument if it also meets the following conditions:

- it has a value that can be determined at any time;
- it does not fall into sections C4 to C10 of Annex 1 to MiFID (derivatives);
and
- it has a maturity at issuance of 397 days or less.

Collective investment undertakings

Q29. What are units in collective investment undertakings (C3)?

This category of *financial instrument* includes *units* in regulated and unregulated *collective investment schemes* and ~~units~~ units or *shares* in an *AIF* (whether or not the *AIF* is also a *collective investment scheme*). In our view, in accordance with article 1.2(a) and 2.1(o) of the *Prospectus Directive*, ~~units~~ units or *shares* in an *AIF* include shares in closed-ended corporate schemes, such as shares in investment trust companies, and so are also ~~units~~ units in collective investment undertakings for this purpose (as well as being transferable securities). There is guidance on what an AIF is in chapter 16 of PERG (Scope of the Alternative Investment Fund Managers Directive).

Derivatives: general**Q30. Which types of financial derivative fall within MiFID scope (C4, C8 and C9)?**

The scope of financial following derivatives fall under MiFID is wider than under the ISD and includes the following:

- derivative instruments relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or measures, that may be settled physically or in cash (C4), emission allowances or certain other underlyings (see Q31A to Q31S);
- commodity derivatives (see Q32 to Q33C);
- derivative instruments for the transfer of credit risk (C8) (see Q31); and
- financial contracts for differences (C9); (these are included in paragraph 9 of Section C of Annex 1 to MiFID); and
- derivatives on miscellaneous underlyings (see Q34).

The scope of C4, C8 and C9 these derivatives does not extend to spot transactions, transactions which are not derivatives (such as forwards entered into for commercial purposes) and sports spread bets. In our view, neither C4 nor C9 comprise forward foreign exchange instruments unless they are caught by the scope of the Regulated Activities Order (see *PERG 2.6.22BG*). A non-deliverable currency forward which is not a “future” for the purposes of the Regulated Activities Order because it is made for commercial purposes will likewise fall outside the scope of MiFID.

Credit derivatives**Q31. What are derivative instruments for the transfer of credit risk (C8)?**

...

General financial and emission derivatives (C4): General**Q31A. Which types of financial derivative fall within this heading?**

The C4 category of financial instruments covers:

- options;
- futures;
- swaps;
- forward rate agreements; and
- any other derivative contracts;

relating to:

- securities;
- currencies;
- interest rates or yields;
- emission allowances; or
- other derivatives instruments, financial indices or financial measures.

A derivative contract is covered whether it is settled physically or in cash.

General financial and emission derivatives (C4): Treatment of foreign exchange contracts

Q31B. Is every foreign exchange contract caught by MiFID (article 10 of the MiFID Org Regulation)?

No. There are two exclusions:

- There is an exclusion for spot contracts (see the answer to Q31C).
- There is an exclusion for a foreign exchange transaction connected to a payment transaction (see the answer to Q31G).

Technically these exclusions relate to the other “any other derivative contracts” type of C4 derivative contract listed in the answer to Q31A. However in the FCA’s view no contract that has the benefit of one of these exclusions could be a C4 future either.

These exclusions do not apply to an option or a swap on a currency, regardless of the duration of the swap or option and regardless of whether it is traded on a trading venue or not (recital 13 to the MiFID Org Regulation).

Q31C. What is the exclusion for foreign exchange spot contracts mentioned in Q31B?

A contract for the exchange of one currency against another currency is excluded if under its terms delivery is scheduled to be made within a specified number of trading days. The number of trading days depends on the type of contract. For these purposes, there are three types of contract.

The first type of contract is one for the exchange of one major currency against another major currency. The contract is exempt if under its terms delivery is scheduled to be made within two trading days.

The second type of contract is one for the exchange of a non-major currency against either another non-major currency or against a major currency. The contract is excluded if under its terms delivery is scheduled to be made within the

longer of:

- two trading days; and
- the period generally accepted in the market for that currency pair as the standard delivery period.

The third type of contract is one used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking. The contract is excluded if under its terms delivery is scheduled to be made within whichever is the shorter of the following:

- the period generally accepted in the market for the settlement of that security or unit as the standard delivery period; or
- five trading days.

An example of this third category is as follows. Say that X buys a share in Country P for delivery in four days' time (the standard settlement time in Country P for share purchases). X wishes to pay for the shares (and for associated taxes and costs) in local currency. The exclusion applies if X enters into the contract for the purchase of the local currency four or fewer days before the share settlement date.

If a foreign exchange contract falls into the third category (contract for the purpose of purchase of securities) it may also fall into one of the other two categories. As a result there are potentially two maximum delivery periods. Where this is the case, the longer of the two delivery periods applies for the purpose of deciding whether the exclusion applies.

If there is an understanding between the parties to the contract that delivery of the currency is to be postponed beyond the date specified in contract, it is the longer period that is used to calculate the delivery period.

Physical settlement does not require the use of paper money. It can include electronic settlement.

This exclusion only applies if there is a direct and unconditional exchange of the currencies being bought and sold (recital (13) to the *MiFID Org Regulation*). However a contract may still benefit from the exclusion if the exchange of the currencies involves converting them through a third currency.

See the answer to Q31E for what major and non-major currency means and see the answer to Q31F for what a trading day means.

Q31D. How are contracts for multiple exchanges of currency treated under the exclusion for foreign exchange spot contracts mentioned in Q31C?

The exclusion can cover a single contract with multiple exchanges of currencies. In such a contract, each exchange of a currency should be treated separately for the purpose of the exclusion (recital 13 to the *MiFID Org Regulation*).

Q31E. What are the major currencies referred to in the answer to Q31C?

The major currencies for these purposes are the US dollar, euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu.

All other currencies are non-major currencies for these purposes.

Q31F. What does a trading day mean in the answer to Q31C?

A day is a trading day if it is a day of normal trading in the jurisdiction of both the currencies that are exchanged.

If either of the following conditions is met:

- the exchange of the currencies involves converting them through a third currency for the purposes of liquidity; or
- the standard delivery period for the exchange of the currencies references the jurisdiction of a third currency;

a day is a trading day if it is a day of normal trading in the jurisdiction of both the currencies that are exchanged and also in the jurisdiction of that third currency.

Q31G. What is the second exclusion for foreign exchange contracts mentioned in Q31B?

A contract is excluded if:

- it is a means of payment (see the answer to Q31H for what this means);
- it must be settled physically (although non-physical settlement is permissible by reason of a default or other termination event);
- at least one of the parties is not a financial counterparty as defined in article 2(8) of EMIR;
- it is entered into in order to facilitate payment for identifiable goods, services or direct investment; and
- it is not traded on a trading venue.

The table in the answer to Q31M gives some examples of what is and is not covered by the exclusion.

Q31H. What do identifiable and means of payment as referred to in the answer to Q31G mean?

The most straightforward example (Example (1) of what this means is a contract where one of the parties to the contract:

- sells currency to the other party which that other party will use to pay for specific goods or services or to make a direct investment; or
- buys currency from the other party which the first party will use to achieve certainty about the level of payments that it is going to receive:
 - for specific goods or services that it is selling; or
 - by way of a direct investment.

See Example (10) in Q31M (Can you give me some more examples of how the means of payment exclusion referred to in the answer to Q31G works?) for an example of the second type of foreign exchange contract in Example (1) (contract to achieve certainty about the level of payments).

The table in the answer to Q31M gives some more examples of what identifiable goods and services means.

The *MiFID Org Regulation* says that the foreign exchange contract must be a means of payment. Therefore the exclusion requires that not only should the currency contract facilitate payment for identifiable goods, services or direct investment but that it should also be a means of payment. This combined requirement does not mean that there has to be a three-party arrangement between the buyer and seller of goods or services and the foreign exchange supplier. So, for example, if a UK company (A) is buying goods from an exporter in Germany (B) and is paying in euro and A buys the euro forward from a bank (C), there is no need for C to issue some sort of instrument to B (Example (2)).

Instead this combined requirement means that the currency contract that is to be excluded should facilitate the payment in the way described in Example (1) at the start of this answer or that there should be an equivalent close connection between the currency contract and the payment transaction.

Even though there is no requirement for a formal instrument of payment, the exclusion can cover such arrangements. So in Example (2) in this answer, the exclusion may apply to an arrangement that involves bank C issuing a euro letter of credit at the request of A for the benefit of B.

Q31I. What do goods, services and direct investment mean in the answer to Q31G?

The reference to goods and services should be interpreted widely. It can cover, for example, intellectual property (such as computer software and patents) and land.

However, in the FCA's view MiFID investments are only covered by the exclusion if they constitute a direct investment.

In the FCA's view, making a direct investment means making a capital investment in an enterprise to obtain a lasting interest in that enterprise. A lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise, and an investor's significant influence on the

management of the enterprise.

The requirement for the investment to be direct does not prevent the investor acquiring an investment in a wholly-owned subsidiary of a holding company by making the investment in the holding company. However this requirement does mean that the investor should acquire its investment from the enterprise or holding company itself rather than by acquiring a stake through the secondary market.

A foreign exchange contract connected to the purchase of a MiFID investment may still be covered by the exclusion for spot contracts if the payment instrument exclusion does not apply. The spot exclusion makes particular provision for purchases of transferable securities and units in a collective investment undertaking (see the answer to Q31C). The result is that the means of payment exclusion does not undermine the specific provisions of the spot contract exclusion dealing with such transactions.

Q31J. How is an agent treated under the means of payment exclusion referred to in the answer to Q31G?

This question is about a foreign exchange contract carried out through agents where:

- at least one of the principals is a non-financial counterparty (see the answer to Q31G for what a financial counterparty means);
- both the agents are financial counterparties; and
- the contract would otherwise meet the exclusion conditions.

If the agents contract with each other on a principal-to-principal basis with back-to-back contracts with their respective clients, the exclusion is not available for the contract between the two agents. It may be available for the contracts between the agent and its client.

If the arrangement is made in such a way that there is a single contract, to which the two principals are party and which is entered into on their behalf by the agents, the exclusion is available.

Q31K. How do I know whether the conditions for the means of payment exclusion described in the answer to Q31G are met?

A financial counterparty (A) selling currency to a client may want to know whether the client (B) is going to use the foreign currency in a way that meets the exclusion conditions. This may be relevant to whether MiFID conduct of business obligations apply.

A non-financial counterparty (A) may sell currency to another non-financial counterparty (B) in circumstances where the currency that A buys is not being used in a way that qualifies for the exclusion. A may therefore want to rely on B using the currency that B purchases in a way that would qualify.

In each example, the application of the exclusion depends on the use to which the other party is going to put the currency.

In these examples A may rely on B's assurances about the purpose of the currency purchase as long as it has no reason to doubt what B says. Such an assurance could be given in several ways:

- Option 1 A may ask B to explain to A what the purpose of the transaction is, leaving it to A to work out whether the exclusion applies.
- Option 2 B may tell A that the exclusion applies to the transaction in question (for instance by way of a representation in the forward contract). A should only rely on such an assurance if satisfied that B is sufficiently expert to understand what the exclusion means.
- Option 3 B may give A an assurance or representation that applies to all foreign exchange transactions that may take place between them from time to time (which might be included in a master agreement governing all forward currency contracts between them). In this case:
- o Option 2 (B should have sufficient expertise) applies.
 - o In addition, A should be satisfied that B has procedures in place for B to consider whether the exclusion applies in particular cases. This may include for example a procedure under which B:
 - should tell A that a particular proposed transaction does not qualify for the exclusion; or
 - is obliged not to ask A to enter into a contract under that master agreement that will be outside the exclusion.

Where B is an ordinary individual consumer or a small business, A may not be able to rely on B's judgement about whether the exclusion applies. In that case A should decide whether the exclusion applies based on questions A asks B (Option 1).

Q31L. Can a flexible forward come within the means of payment exclusion described in the answer to Q31G?

A forward contract may have a flexible delivery date. For example a forward contract may:

- say that delivery can take place at any point in a two-week period rather than on a fixed date; or
- have an expiry date by which delivery has to be taken but part, or parts, of the delivery can take place before that date.

A flexible delivery date within a defined and reasonably short window can still

benefit from the exclusion. If the delivery period is very long, it is doubtful whether the requirement for the contract to facilitate payment for identifiable goods, services or direct investment (see the answer to Q31G) can be met.

These examples provide for delivery of the full amount by the end of the delivery period. There might also be a contract under which the purchaser may choose not to take delivery of part. An example of this kind of foreign exchange contract is as follows:

A UK importer of goods buys from a German seller and has to pay in euro. The importer may not know exactly how much it wants to import during the next quarter but may want to fix its foreign exchange risk in advance. The foreign exchange contract allows the importer to take delivery of no more than it needs to pay the exporter. Any balance not needed to pay for imports is cancelled and is not available to the importer.

In the FCA’s view, if the contract meets the conditions of the exclusion (and in particular the need for there to be identifiable goods or services) the exclusion potentially applies.

The requirement for there to be identifiable goods or services means that the maximum amount that can be drawn down under the flexible forward contract should be a reasonable estimate of what is payable under an identified potential payment transaction or transactions. The table in the answer to Q31M gives examples of what a reasonable estimate means.

An argument against the availability of the means of payment exclusion is that a flexible forward contract is an option and that the exclusion is not available for an option. However in the FCA’s view, the approach in the answer to Q31B applies. That is, a flexible forward contract that meets all the conditions of the exclusion is not a traditional option but rather a hybrid contract that is in the “any other derivative” contract category listed in the answer to Q31A (Types of C4 derivative contracts), even in the example in which the unused balance is cancelled.

Another argument against the availability of the exclusion for a flexible forward under which the unused balance is cancelled is that it does not meet the requirement for the contract to be settled physically. In the FCA’s view this argument is not correct because this requirement is aimed at preventing net cash settlement and does not deal with the cancellation of the contract resulting in there being no need for any kind of settlement.

Q31M. Can you give me some more examples of how the means of payment exclusion referred to in the answer to Q31G works?

<u>Examples of how the means of payment exclusion works</u>	
<u>Example</u>	<u>Explanation</u>
<u>(1) A customer wants to hedge its balance sheet because it has a euro exposure but</u>	<u>The exclusion is not available as the foreign exchange contract is not entered into in order</u>

<p><u>reports financially in sterling.</u></p>	<p><u>to facilitate payment for identifiable goods or services.</u></p> <p><u>If, as is likely to be the case, the foreign exchange contract is a swap or a non-deliverable forward, that is another reason for the exclusion not being available as the exclusion does not apply to this sort of contract (see the answers to Q31B and Q31R).</u></p>
<p><u>(2) A UK customer (X) of a UK payment institution (Y) has a sterling account with a bank (P) in the United Kingdom and a separate euro bank account with another bank (Q) in the Eurozone. X wishes to pay its supplier in euro in 3 months. X enters into a forward contract with Y and requests that the euro be sent to its euro account with Q rather than directly to the supplier. The sterling that X pays under the foreign exchange contract comes from its account with P. Q makes the payment to the supplier for X.</u></p>	<p><u>The exclusion is potentially available as the foreign exchange transaction facilitates payment for identifiable goods, even though Y does not itself pay the suppliers.</u></p> <p><u>The exclusion can cover an arrangement in which the firm selling the foreign currency is not the firm that makes the payment on behalf of the customer buying the identifiable goods.</u></p>
<p><u>(3) A UK importer has bought €100,000 worth of goods. The supplier has not yet issued an invoice and the sum is not yet due from the importer. However the importer knows the price. It buys the euro forward.</u></p>	<p><u>The issue here is whether the forward exchange contract relates to identifiable goods as referred to in the answer to Q31G (What is the second exclusion for foreign exchange contracts mentioned in Q31B?).</u></p> <p><u>The exclusion is potentially available. There is no need for the invoice to have been issued or the sum yet to be due.</u></p>
<p><u>(4) A UK importer of goods has ordered a specific quantity of an identified type of goods from the supplier. The price will be payable in euro but the euro price has not yet been fixed. The UK importer makes an estimate of the euro price and buys the euro forward.</u></p>	<p><u>The issue here is whether the forward exchange contract relates to identifiable goods as referred to in the answer to Q31G (What is the second exclusion for foreign exchange contracts mentioned in Q31B?).</u></p> <p><u>The exclusion is potentially available.</u></p> <p><u>There is no need for the amount to be paid under the foreign exchange contract to match precisely the amount of the payment that it is facilitating. An estimate is permissible. The goods are specifically identifiable by purchase order.</u></p>
<p><u>(5) A UK importer knows that it wants to purchase €100,000 worth of goods from an identified Eurozone supplier in the next quarter but it has not yet entered into a</u></p>	<p><u>The issue here is whether the forward exchange contract relates to identifiable goods as referred to in the answer to Q31G (What is the second exclusion for foreign</u></p>

<p><u>formal contract with the supplier. It buys the euro forward.</u></p>	<p><u>exchange contracts mentioned in Q31B?).</u></p> <p><u>The exclusion is potentially available. There is no need for the contract for the supply of goods to have been entered into at the time of the currency purchase.</u></p> <p><u>The goods are specifically identifiable by type, price and supplier and by the purpose for which the importer is buying them.</u></p>
<p><u>(6) A UK importer knows that it wants to purchase €100,000 worth of goods from a Eurozone company in the next year, but does not know from which specific supplier it is going to purchase them. It knows which goods it wishes to buy. It buys the euro forward.</u></p>	<p><u>The issue here is whether the forward exchange contract relates to identifiable goods as referred to in the answer to Q31G (What is the second exclusion for foreign exchange contracts mentioned in Q31B?).</u></p> <p><u>The exclusion is potentially available.</u></p> <p><u>The goods are specifically identifiable by type and price and by the purpose for which the importer is buying them.</u></p>
<p><u>(7) A UK importer of goods wishes to buy currency in order to allow it to pay for goods in the next quarter. It does not know precisely how many of the goods it will want or what their exact price will be. However it has a sufficiently good idea of the amount of goods to make it unlikely that its estimate will be seriously wrong. It knows this because it has an established practice of buying these sorts of goods.</u></p>	<p><u>The issue here is whether the forward exchange contract relates to identifiable goods as referred to in the answer to Q31G (What is the second exclusion for foreign exchange contracts mentioned in Q31B?).</u></p> <p><u>The exclusion is potentially available.</u></p> <p><u>The exclusion may be available even though the precise details of the goods to be bought are not known yet.</u></p> <p><u>The goods are identifiable by reference to an established practice and need.</u></p>
<p><u>(8) A firm wishes to import goods for a project and needs foreign exchange to pay for them. It does not know precisely how many of the goods it will buy or what their exact specification or price will be. However it knows broadly what goods it needs. In this example it knows all this because the goods are needed for a specific purpose in a specific project.</u></p>	<p><u>The issue here is whether the forward exchange contract relates to identifiable goods as referred to in the answer to Q31G (What is the second exclusion for foreign exchange contracts mentioned in Q31B?).</u></p> <p><u>The exclusion is potentially available.</u></p> <p><u>The exclusion may be available even though the precise details of the goods to be bought are not known yet.</u></p> <p><u>The goods are identifiable by reference to an established project and a particular purpose within that project.</u></p>
<p><u>(9) A customer wishes to undertake a sterling/euro conversion to purchase</u></p>	<p><u>The exclusion is potentially available. See the answer to Q31L (Can a flexible forward</u></p>

<p><u>€100,000 in three months. This amount is to cover 20 individual payments of €5,000 which will be drawn down at different times.</u></p> <p><u>This type of contract benefits the customer who obtains a better rate by setting up one contract for a larger value than could be obtained on 20 individual low value contracts.</u></p>	<p><u>come within the means of payment exclusion described in the answer to Q31G?).</u></p>
<p><u>(10) An exporter (A) sells goods to a French importer for payment on delivery in euros. A, before the due date for payment for the goods, sells the euro for the equivalent amount in sterling. The foreign exchange contract is made at the applicable forward rate on the date of the currency contract. Settlement of the currency contract is due on the same day as payment for the goods. A is thereby protected against adverse movements in sterling against the euro.</u></p>	<p><u>The exclusion is potentially available. Recital 10 to the <i>MiFID Org Regulation</i> says that a contract to achieve certainty about the level of payments for identified goods is covered by the exclusion.</u></p>
<p><u>(11) A UK importer (A) has bought €100,000 worth of goods from several suppliers. A has a number of purchase contracts with each supplier and each supplier has issued a number of invoices. The due dates for payment on each invoice are quite close together and so A buys €100,000 forward from one provider in a single contract.</u></p>	<p><u>The exclusion is potentially available. There is no need for there to be a single currency contract for each contract under which payment arises. Nor do the payment dates under the purchase contracts have to match exactly the settlement dates under the forward contract.</u></p>
<p><u>(12) A UK importer (A) has bought €100,000 worth of goods. A buys €100,000 forward from several currency providers.</u></p>	<p><u>The exclusion is potentially available. There is no need for A to use a single currency provider.</u></p>
<p><u>(13) A UK importer (A) has bought €100,000 worth of goods from several suppliers. A has a number of purchase contracts with each supplier and each supplier has issued a number of invoices. The due dates for some of the invoices are quite close together and so A buys €50,000 forward from one provider in a single contract to meet these payment obligations. The result is that €50,000 is allocated between a number of import contacts in differing amounts and none of the import contracts are covered in full.</u></p> <p><u>A decides to meet the other €50,000 from its own resources.</u></p>	<p><u>The exclusion is potentially available. The exclusion may apply even where the excluded currency contract is applied to a number of different payment obligations under a number of import contracts.</u></p> <p><u>The exclusion is available even if A relies on its own resources for part of the payment transaction.</u></p>
<p><u>(14) A UK importer (A) has bought €40,000</u></p>	<p><u>The exclusion is potentially available. There</u></p>

<p>worth of goods from one supplier and €60,000 from another. The suppliers have issued invoices but payment is not yet due from A. A buys €40,000 forward to meet the payment on the first and decides to meet the €60,000 due under the other contract from its own resources.</p>	<p>is no requirement that A should cover every contract for goods to which the exclusion might apply.</p>
<p>(15) A UK importer (A) has bought €100,000 worth of goods. The supplier has issued an invoice but the sum is not yet due from A. A buys €200,000 forward. A will use other €100,000 for purposes that do not meet the exclusion conditions.</p>	<p>The exclusion is not available where A uses part of the currency it buys for purposes that do not meet the conditions of the exclusion. The contract should not be treated as partly excluded and partly as a C4 currency derivative.</p> <p>If however A enters into two foreign exchange contracts, each for €100,000, the exclusion may apply to one of them. Also see example (16).</p>
<p>(16) A UK importer (A) has bought €100,000 worth of goods. The supplier has issued an invoice but the sum is not yet due from the importer. A buys the €100,000 forward. Later A buys another €100,000 forward.</p>	<p>The exclusion is not available for the second contract. The first contract should be taken into account when deciding whether A may rely on the exclusion for second contract.</p> <p>See the answer to Q31N (How do the examples in the table in the answer to Q31M apply to an exporter or importer with a large portfolio of contracts?) for an example of where the exclusion can apply in similar circumstances.</p>
<p>(17) A UK importer (A) has bought €100,000 worth of goods. The supplier has issued an invoice but the sum is not yet due A. A decides to meet the payment out of its own resources. Later A changes its mind and buys the €100,000 forward.</p>	<p>The exclusion is potentially available. The currency contract and the contract generating the payment obligation do not need to be entered into at the same time.</p>
<p>(18) A UK importer (A) has bought €100,000 worth of goods. The supplier has issued an invoice but the sum is not yet due from A. A buys the US dollar equivalent of €100,000 forward.</p>	<p>The exclusion will not generally be available because the currency contract is not a means of payment facilitating the payment due from A to the supplier. This is because the payment is due in euro and so the dollar contract is not sufficiently connected to the payment transaction.</p>
<p>(19) A farmer's farm payment under the EU basic payment scheme will be €10,000 and will be paid in sterling. The payment will be made in three months' time. In order to fix the sterling amount they will receive, the</p>	<p>The issue here is whether the forward exchange contract relates to identifiable goods and services as referred to in the answer to Q31G (What is the second exclusion for foreign exchange contracts</p>

<p><u>farmer wishes to book a forward with a currency provider to sell €10,000 and buy sterling in three months' time.</u></p>	<p><u>mentioned in Q31B?).</u></p> <p><u>The exclusion may not be available. This is because the payment may not be linked to any specific goods or services being sold or bought by the farmer.</u></p> <p><u>However it is possible that the farmer is going to use the payments under the scheme to purchase goods or stock for their farming business. If there is an identifiable payment transaction in accordance with the examples in this table the exclusion will potentially be available.</u></p> <p><u>If the exclusion is not available it is unlikely that the farmer will be carrying on MiFID business for the reasons described in the answer to Q7 (We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?).</u></p>
<p><u>(20) An overseas student is given a grant by their home country in their local currency to study at a UK university, payable in six months' time. As the fees are payable in sterling, the student wishes to book a forward with a currency provider to sell their home state currency and buy sterling in six months' time. They wish to enter into the forward contract to guarantee the amount of sterling they will receive.</u></p>	<p><u>The issue here is whether the forward exchange contract relates to identifiable goods and services as referred to in the answer to Q31G (What is the second exclusion for foreign exchange contracts mentioned in Q31B?).</u></p> <p><u>The exclusion may be available because the grant helps the student to pay for the UK university's fees.</u></p> <p><u>The exclusion is still available if some of the grant is to meet living costs and the student has not yet decided what exactly they will need to buy (see the answer to Q31Q (holiday spending money) for more on this).</u></p>
<p><u>(21) A hedge fund manager has investors in the UK and a fund which is made up of euro denominated securities. The value of the fund to the investor will fluctuate due to the market value of the securities but it will also go up or down in accordance with the euro/sterling exchange rate. The fund manager seeks to hedge this risk by purchasing a forward contract to sell euro and buy sterling for three months in the future. The purpose of the trade is to ensure the investors will not be subject to currency volatility affecting the value of their</u></p>	<p><u>The exclusion is not available because the currency transaction is not linked to any payment for specific goods, services or direct investment.</u></p>

<p><u>investment.</u></p>	
<p><u>(22) A UK importer (A) wishes to buy some machinery from a Eurozone seller in three months for €500,000. A enters into a three-month forward for the purchase of €500,000 using sterling. However, the machinery purchase is delayed and A asks to extend the forward contract. This may involve A paying more money for the euro depending on the exchange rate at the date of the contract extension.</u></p>	<p><u>The fact that the currency forward is later amended by mutual consent to match the changed payment date for the machinery does not prevent the exclusion from applying as long as the amended version meets the exclusion conditions in the light of the changed circumstances.</u></p> <p><u>If the foreign exchange provider refuses to amend the contract the exclusion is not lost as long as the exclusion conditions were met at the time the foreign exchange contract was entered into.</u></p>
<p><u>(23) A UK importer (A) wishes to buy some machinery from a Eurozone seller in three months for €500,000. A enters into a three-month forward for the purchase of €500,000 using sterling.</u></p> <p><u>The machinery purchase falls through but A wants to extend the contract length as they have identified replacement machinery with a similar price.</u></p>	<p><u>The answer to (22) applies. As explained in the answer to (7), the exclusion may be available for the proposed new machinery contract even though the precise details are not yet known.</u></p>
<p><u>(24) A UK importer (A) wishes to buy some machinery from a Eurozone seller in three months for €500,000. A enters into a three-month forward for the purchase of €500,000 using sterling. However, the machinery purchase is delayed and the specifications are changed. The currency contract therefore no longer facilitates payment under the machinery contract. A decides to close out the existing currency contract. A also enters into a new forward contract with another currency provider that matches the revised machinery contract.</u></p>	<p><u>The exclusion is potentially available for the close out contract and also for the new currency contract.</u></p> <p><u>If A decides to meet the payment due under the revised machinery contract out of its own resources, the exclusion is still potentially available for the close out contract.</u></p>
<p><u>(25) A customer is due to receive an inheritance in euro and is advised of the amount but, owing to the need to complete probate, the funds will not be released for a number of months. The customer wishes to ensure that there is no depreciation in value of the inheritance in sterling terms and enters into a euro-sterling forward.</u></p>	<p><u>The exclusion is not available because the foreign exchange contract is not linked to any specific goods, services or direct investment.</u></p>
<p><u>(26) A UK parent company wishes to inject capital in euro into a European subsidiary in</u></p>	<p><u>The exclusion is potentially available as the foreign exchange contract is made to</u></p>

<u>four months' time and enters into a forward contract to purchase the euro.</u>	<u>facilitate a direct investment in the subsidiary.</u>
<u>(27) A customer asks a UK payment institution to make a payment to a family member living abroad. The payment is to be made in the currency of the country where the family member lives. The customer buys the foreign currency on a forward basis.</u>	<u>The exclusion is not necessarily available. The exclusion is only available if the family member is going to use the currency for a purpose that comes within the exclusion.</u>
<u>(28) A UK firm (A) has employees abroad. A pays them in local currency. A buys forward the currency with which it will pay its employees.</u>	<u>The exclusion potentially applies.</u>

Q31N. How do the examples in the table in the answer to Q31M apply to an exporter or importer with a large portfolio of contracts?

This question deals with the fact that the examples in the table in the answer to Q31M have relatively simple facts, where the purchaser of the foreign currency only has one or a few payment obligations. In many cases a seller or buyer of goods will have frequent payment transactions for which it needs foreign exchange and it may not wish to meet this need by having a separate currency contract for each import or export contract.

The exclusion can still apply in these cases. This is because, as the examples in the table in the answer to Q31M illustrate, there is some flexibility in the amount and timing of currency contracts, the ability to estimate currency needs, the ability to close out currency contracts and the use of different currency providers.

However the requirements of the exclusion still apply, including the need to show that the currency contract is a means of payment that is entered into in order to facilitate payment for identifiable goods, services or direct investment. This means that it will be necessary to look at all the importer or exporter's incoming and outgoing payments and currency resources each time the importer or exporter enters into a new currency contract to see whether the exclusion is available for that new currency contract.

Say:

- a UK importer (A) has bought €100,000 worth of goods under a contract with a Eurozone supplier (Contract P);
- the supplier has issued an invoice but the sum is not yet due from A;
- A buys the €100,000 forward; and
- later A buys another €100,000 forward.

When A enters into the second currency contract, changes to Contract P or to A's

payment profile may mean that:

- the new currency contract will better facilitate the payment obligation under Contract P and the first currency contract will facilitate another identified payment obligation; or
- the first contract no longer facilitates the payment under Contract P and A needs the new currency contract to allow it to make the payments due under Contract P.

When deciding whether the exclusion applies to the second currency contract entered into by A there is no need to treat the first currency contract as tied to the payment under Contract P just because the payment due under Contract P justified the application of the exclusion when A entered into the first currency contract. Instead it is necessary to look again at all A's incoming and outgoing payments and currency resources at the time A enters into the second currency contract (including both currency contracts).

Q31O. I am a payment services provider under the Payment Services Regulations. How do the spot contract and means of payment exclusions referred to in the answers to Q31C and Q31G apply to me?

(See PERG 15 (Guidance on the scope of the Payment Services Regulations 2009) for the Payment Services Regulations)

This answer only relates to a payment service provider authorised under the *Payment Services Regulations*. It does not cover, for example, banks that are subject to the conduct of business requirements of those Regulations.

The *Payment Services Regulations* allow you to provide foreign exchange services that are closely related and ancillary to your payment services. That right does not allow you to provide foreign exchange derivative services that would otherwise require authorisation under MiFID. You therefore need to consider the availability of MiFID exclusions for your foreign exchange business.

The most common sort of foreign exchange contract you are likely to carry out is where you execute a payment for your customer that involves a currency conversion. For example, you may make a payment for your customer in euros from the customer's sterling payment account to a payee's payment account. The foreign exchange part of this transaction is separate from the payment part of the transaction (see Q12 in PERG 15.2 (We provide electronic foreign exchange services to our customers/clients. Will this be subject to the PSD regulations?)).

The foreign exchange part of this example may involve a MiFID C4 derivative if it has a forward element. However in practice it is likely that such foreign exchange transactions will fall outside MiFID because the spot exclusion applies.

The following are examples of how the delivery period should be calculated for the MiFID spot exclusion. They are all based on a payment being made in one currency funded from a payment account in another currency.

- If your customer asks for the payment to be made immediately, the delivery period starts on the date of request.
- If your customer asks for the payment to be made some time after the request and the foreign exchange conversion is to be carried out at the spot rate on the transfer date, the delivery period starts on that transfer date.
- If your customer asks for the payment to be made some time after the request and the foreign exchange conversion rate is fixed on the date the customer gives you your instructions, the delivery period starts on that instruction date.
- The date on which the payment is received by the payee's payment services provider should normally be treated as the delivery date.
- If you debit your customer's payment account after receipt by the payee's payment services provider and the foreign exchange conversion rate is fixed on the debit date, the availability of the exclusion is based on the gap between the debit date and the payment to the payee's payment services provider.

If your customer wants to make a foreign currency transfer some time in the future and buys the foreign currency from you in advance at the spot rate and immediately credits it to a payment account with you, the spot exclusion should apply.

If the delivery period is too long for the spot contract exclusion to apply, the means of payment exclusion is potentially available because you are not a financial counterparty for the purposes of that exclusion.

However, the means of payment exclusion only applies if the payment by your customer meets the requirements about identifiable goods, services or direct investments described in the answer to Q31G.

Q31P. Can a non-deliverable forward come within the exclusion for spot foreign exchange contracts in the answer to Q31C or the means of payment exclusion in the answer to Q31G?

No.

A non-deliverable forward is a cash-settled foreign exchange contract relating to a thinly traded or non-convertible foreign currency against a freely traded currency. The first currency may be non-convertible for example because of exchange controls or restrictions on currency dealing. On the contracted settlement date, the profit or loss is adjusted between the two counterparties based on the difference between the contracted rate for the non-deliverable currency and the prevailing spot rate. The price for the convertible currency may be expressed in terms of a second convertible currency.

As settlement is for the difference between an exchange rate agreed before delivery and the actual spot rate at maturity, a non-deliverable forward is not a

spot contract, regardless of the settlement period (recital (12) of the *MiFID Org Regulation*), and the means of payment exclusion is also not available. See the answer to Q31R about why settlement for a difference does not come within either exclusion.

Q31Q. How is holiday spending money treated under the spot contract and means of payment exclusions referred to in the answers to Q31C and Q31G?

One way of buying holiday currency is for the holidaymaker to order currency to be collected, for example, a week after the order, to be paid for at the currency seller's spot rate on the day of collection. This contract is not a MiFID investment either because it does not fall into the category C4 type of derivative in the first place or because the spot contract exclusion described in the answer to Q31C applies.

Another way of buying holiday money is for the holidaymaker to order currency to be collected, for example, a week after the order, to be paid for at the currency seller's spot rate on the day the currency is ordered. This type of contract is potentially within the C4 type of derivative. However the means of payment exclusion is potentially available. The holiday can be treated as identifiable goods or services even though the holidaymaker may not know what restaurant they are going to eat at or what tourist attractions they are going to visit.

In either case the seller of the holiday money may agree to buy back any unused currency at a price fixed at the same time as the rate at which the holidaymaker is to buy the currency is fixed and linked to the original rate. Such an arrangement may also benefit from the means of payment exclusion. This is because the promise to buy back the currency is so closely connected to the original purchase that it can be seen as being an integral part of the same transaction.

These answers are relevant to whether the currency seller requires authorisation under MiFID. The holidaymaker will of course not require authorisation because a holiday-maker buying holiday money is not acting on a professional basis in the way described in the answer to Q7.

Q31R. How does netting affect the exclusions for foreign exchange contracts in the answers to Q31C and Q31G?

A foreign exchange contract may involve a valuation of the currencies being bought and sold for the purposes of settlement and a single payment being made.

The spot contract exclusion described in the answer to Q31C requires there to be exchange and delivery. The means of payment exclusion described in the answer to Q31G requires there to be physical settlement delivery. Therefore neither exclusion applies to a contract involving this type of netting. An instrument that provides for a single payment like this is more like a swap, which is outside the scope of the exclusions.

The fact that a foreign exchange contract provides for early termination and netting on default does not mean that the exclusions cannot apply. Similarly, the existence of force majeure provisions dealing with bona fide inability to settle

physically does not prevent a contract from benefiting from the exclusions.

The parties to a foreign exchange contract may also have entered into other foreign exchange or financial contracts with each other. The result may be that the parties exchange multiple cash flows during a given day. In order to reduce operational and settlement risks they may agree to net those cash flows into one payment for each currency (payment netting). For example the parties may each have to make and receive multiple payments in sterling, euro and US dollars on the same day. The result of payment netting is that there will only be three payments to be made on that day, one in each of the three currencies. This sort of payment netting is compatible with the exclusions.

Q31S. I enter into my foreign exchange contracts on a trading venue. What exclusions or exemption can I rely on?

The spot contract exclusion described in the answer to Q31C may be available.

The means of payment exclusion described in the answer to Q31G will not be available.

If neither exclusion is available, and the contract is a C4 derivative, you may find the own account exemption described in the answer to Q40 helpful. Although that exemption is usually unavailable to those who have direct electronic access to a trading venue, this is not the case where the contract is for hedging purposes.

Commodity derivatives

Q32. Which types of commodity derivative fall within MiFID scope?

Broadly speaking, the following commodity derivatives fall within the scope of MiFID:

- ...
- ~~cash-settled commodity derivatives (including physically settled derivatives that provide for settlement in cash at the option of one of the parties other than in the event of default or termination as explained in more detail in Q33A) (C5);~~
- ~~physically settled commodity derivatives traded on a *regulated market* or MTF certain markets or facilities (as explained in more detail in Q33B) (C6); and~~
- ~~other commodity derivatives capable of physical settlement and not for commercial purpose, that is standardised contracts subject to clearing house or margin arrangements so long as they fall into one of the following categories purposes (as explained in more detail in Q33C) (C7):~~
 - ~~instruments traded on a non-EEA trading facility that performs an analogous function to a *regulated market* or MTF;~~

- ~~instruments expressly stated to be traded on or subject to the rules of a *regulated market*, MTF or a non-EEA trading facility that performs an analogous function; or~~
- ~~back-to-back contracts with clients or counterparties equivalent to contracts traded on a *regulated market*, MTF or such a non-EEA trading facility.~~

The definition of commodity derivative in MiFIR also includes derivatives falling into paragraph C10 of Section A of Annex 1 to MiFID (see the answer to Q34 for this type of derivative).

Q33. What is a commodity for the purposes of MiFID?

“Commodity” means any goods of a fungible nature that ~~is~~ are capable of being delivered, including metals and their ores and alloys, agricultural products and energy such as electricity (article ~~2.4~~ 2.6 of the ~~*MiFID Regulation*~~ *MiFID Org Regulation*). The fact that energy products, such as gas or electricity, may be “delivered” by way of a notification to an energy network (such as notifications under the Network Code or the Balancing and Settlement Code) does not prevent them being “capable of being delivered” for these purposes. If a good is freely replaceable by another of a similar nature or kind for the purposes of the relevant contract (or is normally regarded as such in the market), the two goods will be fungible in nature for these purposes. Gold bars are a classic example of fungible goods. In our view, the concept of commodity does not include services or other items that are not goods, such as currencies or rights in real estate, or that are entirely intangible (~~recital 26 of the *MiFID Regulation*~~).

Q33A. Can you tell me more about category C5 commodity derivatives?

This type of commodity derivative is one that must be settled in cash or one that provides for settlement in cash at the option of one of the parties. A derivative that only allows a party to opt for cash in the event of default or termination is not included.

Q33B. Can you tell me more about category C6 commodity derivatives?

This type of commodity derivative is one that:

- can be physically settled; and
- is traded on a regulated market, an MTF or an OTF.

The category C6 type of commodity derivative excludes a wholesale energy product traded on an OTF that must be physically settled. The *MiFID Org Regulation* defines physical settlement in more detail.

Article 6 of the *MiFID Org Regulation* has special definitions for what types of oil, coal and wholesale energy products are included in the C6 category of commodity derivative.

A contract that can be physically settled but which is not traded on a regulated market, MTF or OTF might still fall within the C5 or C7 category of commodity derivative even though it falls outside category C6.

Q33C. Can you tell me more about category C7 commodity derivatives (recital 5 to, and article 7 of, the MiFID Org Regulation)?

This type of commodity derivative is one that meets all the following conditions:

- It can be physically settled.
- It is not a C6 commodity derivative.
- It is not a spot contract. A spot contract means one under the terms of which delivery is scheduled to be made within the longer of the following periods:
 - two trading days; or
 - the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

For these purposes a contract is not a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the spot period described earlier in this answer.

- It meets one of the following criteria:
 - it is traded on a non-EEA trading venue that performs a similar function to a regulated market, an MTF or an OTF (an “equivalent third country trading venue”); or
 - it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF, an OTF or an equivalent third country trading venue; or
 - it is equivalent to a contract traded on a regulated market, MTF, OTF or equivalent third country trading venue. Equivalence is judged by reference to the price, the lot, the delivery date and other contractual terms such as quality of the commodity or place of delivery.
- It is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

Certain contracts entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network are excluded from the C7 category of commodity derivative.

Miscellaneous derivatives (C10)**Q34. Are there any other derivatives subject to MiFID regulation? What types of derivatives fall into the C10 category?**

There is a miscellaneous category of derivatives in C10, which is supplemented by articles ~~38~~ 7 and ~~39~~ 8 of the ~~MiFID Regulation~~ MiFID Org Regulation. These relate to:

...

- ~~emissions allowances;~~

...

- any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred; ~~or~~
- an index or measure related to the price or volume of transactions in any asset, right, service or obligation; or
- an index or measure based on actuarial statistics.

C10 derivatives must also meet at least one of the following criteria:

- ...

- the contract is traded in a *regulated market*, ~~or~~ an MTF, an OTF or a non-EEA trading venue that performs a similar function; or
- the contract is ~~standardised, subject to clearing house or margin arrangements and falls into one or more of the categories described under the fourth bullet point in Q32 above~~ meets the following criteria in the answer to Q33C:

- o it is not a spot contract;
- o it meets the requirements about trading on (or being stated to be traded on), being subject to the rules of or being equivalent to contracts traded on, certain trading venues;
- o standardisation; and
- o it does not fall within the exclusion about transmission grids, energy balancing mechanisms or pipeline networks.

All these criteria are explained in more detail in the answer to Q33C.

~~In relation to emissions auction products, recital 14 together with the definitions of 'two day spot' and 'five day future' in article 3(3) and 3(4) of the auction regulation, indicate that a 'five day future' (one of two forms of auction product permitted under the auction regulation) falls within this category of derivative.~~

A contract of insurance or reinsurance is not a C10 commodity derivative (recital 6 to the *MiFID Org Regulation*). Neither is a contract falling under one of the other paragraphs of section C of Annex 1 to MiFID.

Emission allowances

Q34A. How are emission allowances treated?

They are covered in the following ways:

- Article 6(5) of the *auction regulation* deems as an investment service or activity the reception, transmission and submission of a bid for a financial instrument on an *auction platform* by an investment firm to which MiFID applies or a *CRD credit institution*.
- The *auction regulation* regulates bids for allowances in the form of two-day spot contracts or five-day futures.
- The *auction regulation* allows the following to bid:
 - aircraft operators and others referred to in (5) below;
 - investment firms and credit institutions; and
 - a person exempt under article 2(1)(j) of MiFID (see Q44 to Q45 for more on this exemption).
- An *emission allowance* is itself a financial instrument (C11).
- An option, future, swap, forward rate agreement or any other derivative contract relating to *emission allowances* is included as a C4 derivative.

It is not always clear how all this overlapping legislation fits together but in the FCA's view, it works like this:

- (1) An *emission allowance* auctioned as a five-day future or a two-day spot contract is regulated under the *auction regulation*.
- (2) The five-day future auction product is a financial instrument and is regulated under MiFID. It is included under C4 and C11.
- (3) The two-day spot contract product is also a financial instrument. It is included under C11. It is therefore also regulated under MiFID.
- (4) In the FCA's view an *emission allowance* (including when auctioned under the *auction regulation*) will not come within C1.
- (5) The *auction regulation* provides certain exemptions for aircraft operators and operators of plant and other installations. These exemptions continue to apply whether or not a MiFID exemption is available, but only for bidding activities covered by the *auction regulation*.

- (6) Thus for example, article 18 of the *auction regulation* allows business groupings of operators in (5) to submit bids. The MiFID exemption in (12) below may not cover all such persons but they are still entitled to submit bids under the *auction regulation* without obtaining MiFID authorisation.
- (7) The mere fact of being exempt under MiFID does not allow someone to bid under the *auction regulation*. The *auction regulation* regulates who can and cannot bid.
- (8) The *auction regulation* covers the reception, transmission and submission of a bid. This corresponds to the MiFID activities of the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients and dealing on own account.
- (9) Therefore the *auction regulation* activities of receiving, transmitting and submitting a bid are all also covered by MiFID, whether the *emission allowance* is auctioned as a five-day future or a two-day spot contract. However, a person exempt under (5) is not subject to MiFID when bidding (subject to (10)).
- (10) If a person who is allowed to bid under the *auction regulation* is authorised under MiFID (because for example it wants to carry out other activities for which it needs MiFID authorisation), MiFID will apply to its bidding activities.
- (11) The MiFID activities that apply to a product covered by the *auction regulation* are not limited to the bidding activities listed in paragraph (8) of this list. All the MiFID investment services and activities apply to emission allowances auctioned as a financial instrument. Therefore, for example, giving personal recommendations about bids for *emission allowances* is covered by MiFID. Anyone wishing to carry out such activities will need to be authorised as a MiFID firm, unless some other exemption is available.
- (12) Article 2.1(e) of MiFID exempts an operator with compliance obligations under Directive 2003/87/EC (Emissions Trading Scheme) from MiFID.
- (a) The exemption covers some of the same ground as the exemption in the *auction regulation* described in (5) to (7) above. However this overlap neither extends nor narrows the effect of the *auction regulation* exemption.
- (b) The article 2.1(e) exemption also covers activities not covered by the *auction regulation*. So, for example, the article 2.1(e) exemption covers buying and selling the underlying *emission allowance* or the five-day future or two-day spot auction product in the secondary market.
- (c) See the answer to Q35A for more details about the conditions of the exemption.

Structured deposits**Q34B. How are structured deposits covered?**

Article 1.4 of MiFID applies certain provisions of MiFID to an investment firm or credit institution that sells or advises on *structured deposits*.

A *structured deposit* is not a financial instrument. This means, for example, that a firm does not become a *MiFID firm* by advising on or selling them.

13.5 Exemptions from MiFID**Introduction****Q35. Where do we find a list of MiFID exemptions?**

...

Q35A. Can you give me a complete list of exemptions?

<u>Description of exemption</u>	<u>MiFID reference</u>	<u>Guidance in this chapter</u>
<u>Insurers</u>	<u>article 2.1(a)</u>	<u>Q36</u>
<u>Intra-group services</u>	<u>article 2.1(b)</u>	<u>Q37 and Q38</u>
<u>Services complementary to other professional activities</u>	<u>article 2.1(c)</u>	<u>Q39</u>
<u>Own account dealing (except in commodities or emission allowances)</u>	<u>article 2.1(d)</u>	<u>Q40 to Q40C</u>
<u>An operator with compliance obligations under Directive 2003/87/EC (Emissions Trading Scheme) who, when dealing in emission allowances, does not:</u> <ul style="list-style-type: none"> ● <u>execute client orders; or</u> ● <u>provide any investment services or perform any investment activities other than dealing on own account; or</u> 	<u>article 2.1(e)</u>	<u>Q34A</u>

<ul style="list-style-type: none"> ● <u>apply a high-frequency algorithmic trading technique.</u> 		
<u>Employee share schemes and pension schemes</u>	<u>article 2.1(f) and (g)</u>	<u>Q42</u>
<p><u>The following public financial institutions:</u></p> <ul style="list-style-type: none"> ● <u>members of the European System of Central Banks;</u> ● <u>other national bodies performing similar functions in the EU;</u> ● <u>other public bodies charged with or intervening in the management of the public debt in the EU; or</u> ● <u>international financial institutions established by two or more EU Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems.</u> 	<u>article 2.1(h)</u>	<u>None</u>
<u>Collective investment undertakings and pension funds</u>	<u>article 2.1(i)</u>	<u>Q43</u>
<u>Activities relating to commodity derivatives or emission allowances</u>	<u>article 2.1(j)</u>	<u>Q44 to Q45</u>
<p><u>Persons providing investment advice in the course of providing another professional activity not covered by MiFID</u></p> <p><u>This only applies if the provision of such advice is not specifically remunerated.</u></p>	<u>article 2.1(k)</u>	<u>None</u>

<u>Transmission system operators as defined in article 2(4) of Directive 2009/72/EC or article 2(4) of Directive 2009/73/EC (Directives about common rules for the internal markets in electricity and natural gas). This exemption is subject to various detailed conditions</u>	<u>article 2.1(n)</u>	<u>None</u>
<u>Central securities depositories when providing services explicitly listed in Sections A and B of EU Regulation 909/2014 (Securities settlement and central securities depositories regulation)</u>	<u>article 2.1(o)</u>	<u>None</u>
<u>Optional article 3 exemption</u>	<u>article 3</u>	<u>Q48 to Q53</u>
<u>Exemptions relevant to Italy, Denmark and Finland</u>	<u>articles 2.1(l) and (m)</u>	<u>None</u>

Insurance

Q36. We are an insurer. Does MiFID apply to us?

...

Intra-group activities

Q37. We are a non-financial services group company providing investment services to other companies in the same group. Are we exempt under the group exemption in article 2.1(b)?

Yes, if you provide these services exclusively for your parent company, your subsidiaries and those of your parent company. ~~This means that providing investment services for the benefit of group companies must be the only investment service that you undertake.~~ The exemption is narrower than the corresponding exclusion in article 69 of the Regulated Activities Order (groups and joint enterprises) insofar, for example, as it does not apply to investment services supplied to a joint venture participant (see *PERG 2.9.10G*).

Q38. We also buy and sell financial instruments for ourselves. Are we still able to use the group exemption?

~~Yes. The group exemption applies to investment services and not investment activities. So, as As long as your own account dealing does not involve you providing an investment service (to which MiFID applies) to non-group entities, you can still rely on the group exemption in respect of the services you provide solely to other group companies.~~

So far as your own account dealing is concerned, you may be able to rely upon the exemption in ~~article 2.1(i)~~ 2.1(d) (see Q39) or 2.1(j) (see Q44 ~~and to~~ Q45) if you meet the relevant conditions. The ability to combine reliance on article 2.1(b) and ~~article~~ articles 2.1(i) 2.1(d) or 2.1(j) could be relevant to companies performing group treasury functions.

The answer to Q46 (Is it possible to combine article 2 exemptions?) explains why it is possible to combine exemptions.

Incidental services as part of a professional activity

Q39. We provide investment services as a complement to our main professional activity. Are we exempt (article 2.1(c) of MiFID and article 4 of the MiFID Org Regulation)?

Yes, you will be exempt under article 2.1(c) MiFID if:

- ~~you provide these services in an incidental manner~~ in the course of your professional activity; ~~;~~
- a close and factual connection exists between your professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to your main professional activity;
- the provision of investment services to the clients of your main professional activity does not aim to provide a systematic source of income to you;
- you do not market or otherwise promote your ability to provide investment services, except where these are disclosed to clients as being accessory to your main professional activity; and
- ~~that your professional activity is regulated by legal or regulatory provisions or a code of ethics that do not exclude the provision of investment services. The meaning of ‘incidental’ is potentially subject to further Commission legislation pursuant to article 2.3 MiFID.~~

This exemption is relevant, for example, to firms belonging to *designated professional bodies*, such as accountants, actuaries and solicitors, to whom Part XX of the *Act* applies. It could also apply to *authorised professional firms* which provide investment services in an incidental manner in the course of their professional activity. In our view, the criteria set out in *PROF* 2.1.14G in relation to section 327(4) of the *Act* are also relevant to considering whether a firm can rely on ~~the this MiFID exemption in article 2.1(c) of MiFID, as they were in relation to the corresponding ISD exemption~~ (see further guidance in *PROF* 2.1.16G).

...

Own account

Q40. We regularly buy and sell financial instruments ourselves but never as a service to third parties. Are there any exemptions which might apply to us?

Yes, you could fall within the article 2.1(d) MiFID exemption but not if you:

- are a market maker (please see Q41 below); or
- deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them. A system for these purposes might include a trading platform, website or other mechanism that functions on the basis of a set of rules. are a member of, or a participant in, a regulated market or an MTF (except that non-financial entities can be members or participants as described in the answer to Q40A);
- have direct electronic access to a regulated market, an MTF or an OTF (except that non-financial entities can have such access, as described in the answer to Q40A);
- apply a high-frequency *algorithmic trading* technique (see Q41A); or
- deal on own account when executing client orders.

~~You cannot rely, however, on the article 2.1(d) MiFID exemption if you provide any investment services or activities other than dealing on own account. If buying and selling MiFID financial instruments is not your main business, or, as the case may be, the main business of your group, you might though wish to consider further the exemption in article 2.1(i) MiFID (see Q44 and Q45).~~

This exemption does not apply to dealing on own account in commodity derivatives, emission allowances or derivatives thereof (the exemption discussed in the answer to Q44 (Activities in relation to commodity derivatives) is relevant instead).

MiFID says that persons exempt under the commodities exemption described in the answer to Q44 are not required to meet the conditions laid down in the own account exemption described in this answer in order to be exempt. In the FCA's view that does not mean that you can do business of the type covered by the article 2.1(d) exemption without meeting the exemption conditions described in this answer just because you qualify for the commodities exemption. Recital 22 to MiFID confirms that the two exemptions apply cumulatively. Another reason for this conclusion is that articles 2.1(d) and (j) apply to different asset classes and there does not seem to be any reason apparent from MiFID why exemption under article 2.1(j) should be relevant to the asset classes in article 2.1(d).

See the answer to Q46 for more information about combining this exemption with other exemptions, particularly the exemption for commodity derivatives business.

Q40A. When can a non-financial entity have direct electronic access to or be a participant in a trading venue without losing the benefit of the own account exemption described in the answer to Q40?

The article 2.1(d) exemption can still be available if you are a member of, or a participant in, a regulated market or an MTF or you have direct electronic access to a regulated market, an MTF or an OTF, as long as:

- you are a non-financial entity; and
- your transactions are objectively measurable as reducing risks directly relating to your commercial or treasury financing activity, or the commercial or treasury financing activity of your group.

Q40B. What does direct reduction of risk mean in the answer to Q40A?

The second condition described in the answer to Q40A (objectively measurable reduction of risks) is designed to allow a non-financial business to hedge without losing the exemption. The following points are relevant to whether hedging meets this second condition:

- The exception covers hedging for commercial activities as well as treasury activities. It can therefore cover risks to a change in value of your group's assets, services, inputs, products, commodities or liabilities.
- Hedging may cover potential indirect impacts on your business as well as direct ones.
- A transaction may qualify as risk-reducing taken on its own or in combination with other hedging transactions.
- A transaction may be treated as risk-reducing even though it is not a perfect hedge. Thus for example your group may use proxy hedging through a closely correlated instrument to cover an exposure, such as an instrument with a different but very close underlying in terms of economic behaviour.
- If your group uses portfolio or macro hedging, it may not be able to establish a one-to-one link between a specific hedging transaction and a specific risk directly related to the commercial and treasury financing activities being hedged. The risks related to the commercial and treasury financing activities may be complex. For example, the risks may cover several geographic markets, products, time horizons or entities. Nevertheless, macro or portfolio hedging used to hedge a risk in relation to your group's overall risks may be treated as risk-reducing.
- Positions do not qualify as risk-reducing solely on the grounds that they form part of a risk-reducing portfolio on an overall basis. In such cases your group's risk management systems should prevent such transactions from being categorised as risk-reducing.
- A risk may evolve over time and, in order to adapt to the evolution of the risk, a hedging transaction initially executed for reducing risk may have to be offset through the use of additional hedging transactions. As a result, hedging of a risk may be achieved by a combination of hedging

transactions and offsetting transactions that close out earlier hedging transactions that have become unrelated to the risk.

- If a transaction originally qualifies as risk-reducing it does not stop being treated as risk-reducing just because the risk it hedges has since evolved.
- A transaction may be treated as risk-reducing if it qualifies as a hedging contract pursuant to International Financial Reporting Standards adopted in accordance with article 3 of Regulation (EC) No 1606/2002 of the European Parliament and Council.

Q40C. What does non-financial entity mean in the answer to Q40A?

In the FCA’s view, non-financial entity means the same thing as it does in *MiFID RTS 21*.

Q41. What is a market maker?

A market maker is “a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against ~~his~~ that person’s proprietary capital at prices defined by ~~him~~ that person” (article 4.1(8 7) MiFID). ~~This is likely to be the case if you are recognised or registered as a market maker on an investment exchange. However, in~~ In our view anyone who satisfies the definition will be a market maker for the purposes of MiFID, even if they ~~are not under an obligation to make quotes, for example retail service providers who make a market in shares traded on the Stock Exchange Electronic Trading Service (‘SETS’) but without doing so as registered market makers under the rules of the London Stock Exchange~~ have not entered into the agreement with the regulated market required by article 48(2) of MiFID (Systems resilience, circuit breaker and electronic trading).

Q41A. What is a high-frequency algorithmic trading technique?

This question is included here because it is relevant to the own account exemption described in the answer to Q40 and to the commodities exemption described in the answer to Q44.

A high-frequency *algorithmic trading* technique is a type of *algorithmic trading* technique.

Article 4.1(40) of MiFID defines a high-frequency *algorithmic trading* technique as an *algorithmic trading* technique characterised by:

- infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry:
 - co-location;
 - proximity hosting; or
 - high-speed direct electronic access;

- system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and
- high message intraday rates which constitute orders, quotes or cancellations.

Employee share and company pension schemes

Q42. Is there an exemption, ~~as there was under the ISD~~, relating to employee share schemes and company pension schemes?

Yes, there is an exemption in article 2(1)(~~e~~)(f) MiFID for persons providing investment services consisting exclusively in the administration of employee-participation schemes, for example employee share schemes and company pension schemes. In our view, whilst administration for these purposes could extend to services comprising reception and transmission or execution of orders on behalf of clients or placing, it would not include *personal recommendations* in relation to, or managing, the assets of employee share schemes or company pension schemes.

This exemption can also be combined with the “group exemption” in article 2.1(b) of MiFID, by virtue of article 2.1(e) (g) of MiFID. ~~In our view, it may also be combined with the exemption in article 2.1(i) MiFID if a firm is dealing on own account in financial instruments as an ancillary activity to its main business, or, as the case may be, the main business of its group. See the answer to Q46 for more about combining exemptions.~~

Collective investment undertakings

Q43. Are we right in thinking that MiFID does not apply to collective investment undertakings and their operators?

... To the extent that it also provides investment services or performs investment activities in a different capacity, for example, if it provides investment advice to, or manages the assets of, an individual third party, these services and activities fall outside the scope of ~~the article 2.1(h)~~ this exemption.

...

Exemption for commodity derivatives business

Q44. Who can rely on the exemption in article 2.1(~~h~~) (j)?

You may be able to rely on the exemption if:

- you deal on own account in ~~MiFID financial instruments~~ commodity derivatives or emission allowances or derivatives thereof; or
- provide other investment services in commodity derivatives or ~~€10 derivative contracts~~ emission allowances or derivatives thereof to clients or suppliers of your main business (or if you are part of a group, the group’s main business); or

- both.

This exemption can include someone dealing on own account as a market maker.

If you deal on own account when executing client orders you can only meet the exemption condition if the client is a client or supplier of your group's main business.

The article 2.1(j) exemption does not apply to you if you apply a high frequency algorithmic trading technique.

~~However, the~~ The exemption will only apply if what you do is ancillary to your main business (see Q45 for more about this).

~~and that~~ The exemption is not available if your group's main business is any of the following (see the answer to Q44A for what main business means in this context):

- ~~neither~~ the provision of investment services ~~nor~~ ; or
- the provision of banking services; or
- acting as a market maker in relation to commodity derivatives. ~~If you are part of a group, what you do must be ancillary to the main business of your group whose main business is neither the provision of investment services nor banking services.~~

~~In our view, a firm which is part of a group whose main business is not investment or banking services and which provides, for example, as a stand alone business, investment services in commodity derivatives or C10 contracts for its own clients (who are not clients of the group's main business), is likely to fall outside the scope of the article 2.1(i) exemption.~~

Q44A. How do I know whether my main business is investment, banking or commodities?

~~When considering what is a firm's or group's 'main business' for the purpose of the requirement described in the answer to Q44 that your main business should not be investment services, banking services or commodity derivatives market making, in our view various factors are likely to be relevant including turnover, profit, capital employed, numbers of employees and time spent by employees. These factors should then be considered in the round in deciding whether any one operation or business line amounts to a firm's or your group's main business. In our view, a similar approach can be applied when determining a firm's 'main business' for the purposes of article 2.1(k) (see Q46).~~

The determination of your main business as described in this answer is not directly related to the test for deciding whether your commodities business is ancillary to your main business (the ancillary test is referred to in the answer to Q45). This is because the ancillary test compares the size of your commodities business with the rest of your business but does not specify how to identify what

your main business is within your non-commodities business.

Q44B. Are there any formalities for using the commodities exemption?

It is a condition of the commodities exemption described in the answer to Q44 that you:

- should notify annually the relevant competent authority that you make use of this exemption; and
- upon request, report to the competent authority the basis on which you consider that the requirement for the commodities business to be ancillary is met.

If you are a UK firm, the FCA is the relevant competent authority for these purposes.

If you carry out some occasional commodity derivatives activities you may not need to rely on this exemption. See the answer to Q7 (We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?) for more on this.

Q44C. Can the commodities exemption be combined with other exemptions?

Yes.

There is no requirement that someone relying on this exemption must not carry on an activity covered by one of the other exemptions. In particular, this exemption can be combined with the exemption for own account transactions described in the answer to Q40 (see recital 22 to MiFID). For more on combining exemptions, please see the answer to Q46.

Q45. What is an ancillary activity for these the purposes of the commodities exemption?

The You can find the meaning of ‘ancillary’ for the purposes of the commodities exemption described in the answer to Q44 is potentially subject to further European Commission legislation pursuant to article 2.3 MiFID. For an activity to be ‘ancillary’ for these purposes, in our view, it must at least be both directly related and subordinate to the main business of the group. Where, for example, a commodity producer buys or sells commodity derivatives for the purposes of limiting an identifiable risk of its main business, for instance in circumstances where the risk management exclusion in article 19 of the Regulated Activities Order would apply, in our view this would qualify as ancillary for the purposes of this exemption. On the other hand, where a commodity producer deals on own account for speculative purposes, it is unlikely that this would be ancillary to the main business in the case of article 2.1(i) MiFID. This activity may fall, however, within the article 2.1(k) MiFID exemption (see Q46) in Commission Delegated Regulation (EU) 2017/592 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business).

This answer does not give a full summary as the definition is too detailed for PERG. Instead this answer summarises the broad approach.

There are two tests. The exemption only applies if you meet both tests. Both are based on commodities trading activities in the EEA.

The first test looks at the size of trading activities of members of your group in various asset classes. For each class, this is calculated by comparing their trading activities in that class with the overall trading activity in the EEA for that class.

The asset classes are made up of emission allowances and various types of commodity derivatives. The emission allowances asset class includes emission allowances to which the exemption for emission allowances in article 2.1(e) (see the table in the answer to Q35A) applies and any bidding under the *auction regulation*.

For this test to be met, the trading level of persons within your group needs to be below the maximum amount for each asset class. There is a different maximum amount for each class.

Certain privileged transactions are excluded from the calculation:

- intra-group transactions that serve group-wide liquidity or risk management purposes;
- transactions in derivatives that reduce risks directly relating to commercial activity or treasury financing activity in accordance with criteria set out in Commission Delegated Regulation (EU) 2017/592 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business);
- transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a *trading venue*, where such obligations are required by:
 - regulatory authorities in accordance with EEA law;
 - national laws, regulations and administrative provisions; or
 - those *trading venues*; and
- transactions executed by a group member authorised under MiFID or the CRD.

The second test has two calculation methods. If the result of either calculation is that you fall below the specified threshold, you meet the second test.

- One method is based on the size of group trading activities in commodity derivatives and emission allowances.
- The second measure compares the estimated capital employed for carrying out commodity derivative and emission allowance activities with group

capital.

Q46. Our main business is producing commodities and we buy and sell commodity derivatives. We are a member of a non-financial services group. Are we exempt from MiFID? Is it possible to combine article 2 exemptions?

Yes. You will be exempt under article 2.1(k) MiFID because you are a person:

- whose main business consists of dealing on own account in commodities and/or commodity derivatives, and
- who is not part of a group whose main business is the provision of other investment services or banking services.

The question of what is your main business for the purposes of the first bullet point above is determined on an entity basis and not on a group basis (which is different from the approach taken in article 2.1(i) MiFID). You should also note that the article 2.1(k) MiFID exemption refers to commodities and/or commodity derivatives but not C10 derivatives.

Recital 22 of the *MiFID Regulation* indicates that the exemptions in article 2.1(i) and (k) MiFID could be expected to exclude significant numbers of commercial producers and consumers of energy and other commodities, including energy suppliers and commodity merchants.

Various other answers to questions in this section deal with certain detailed combinations of exemptions:

- Q42 deals with employee share schemes and company pension schemes.
- It is possible to combine the exemption for own account dealing in article 2.1(d) and the exemption for commodity derivatives in article 2.1(j). The answer to Q40 deals with the treatment of the commodity derivatives business of a firm relying on article 2.1(d). The answer to Q44C deals with the treatment of business within article 2.1(d) for a firm relying on the commodity derivatives exemption in article 2.1(j).

In certain cases a firm will not need to combine exemptions. For example an insurer relying on the exemption described in the answer to Q36 (We are an insurer. Does MiFID apply to us?) does not need to rely on any other exemption.

The answer to this question (Q46) is about whether there is a more general principle that article 2 exemptions can be combined.

There is an argument that the drafting of some of the exemptions does not allow this approach. For example, the group exemption (see the answer to Q37) says that the exemption is available to persons providing investment services exclusively for their fellow group members. However in the FCA's view it is generally possible to combine article 2 exemptions. Recital 22 to MiFID says that exemptions apply cumulatively and that the ability to combine the exemptions in articles 2.1(d) (own account dealing) and 2.1(j) (commodity derivatives) is just an example of this principle. This is consistent with the point that there is no reason

apparent from MiFID why combining exemptions should not be allowed.

Where an exemption is only available if the person only carries on a limited range of investment services or activities (as is the case for example with the group exemption) it can be argued that this restriction does not cover a service or activity which is covered by another exemption. This is on the basis that an exempt activity is not an investment service or activity for these purposes. The European Commission's Q&A's dealing with MiFID 1 take this approach.

Treating an exempt activity as not being a MiFID investment service or activity in this way only applies for the purpose of article 2 of MiFID, meaning that it is only relevant for deciding whether a person is a MiFID investment firm.

Q46A. Is it possible to combine the article 2 and article 3 exemptions?

The FCA does not believe that it is generally possible to combine the exemptions in article 2 with the exemption in article 3. However in the FCA's view, a firm that relies on the article 2(1)(i) exemption (see Q43) can combine this with article 3 in relation to business falling outside the article 2(1)(i) exemption.

If however you are subject to the UCITS Directive or the AIFMD you may be restricted in your ability to carry out all the activities within the article 3 exemption.

Locals

Q47. We traded on an investment exchange as a local firm and were exempt from the ~~ISD~~ MiFID 1. Are we exempt under MiFID?

Yes. If you fell within the exemption in article 2.2(j) ISD for local firms and continue to perform the same services and activities, you should generally fall within the exemption in article 2.1(1) MiFID. If you provide *personal recommendations* in relation to MiFID financial instruments, however, you will not be able to rely upon the exemption in article 2.1(1) MiFID. The exemption for locals in MiFID 1 no longer applies. It is unlikely that the own account exemption in article 2.1(d) will be available as that exemption does not apply to members of, or participants in, a regulated market (see Q40).

The article 3 exemption

Q48. Article 3 is an optional exemption. Will the exemption apply to UK firms?

Yes, in part. ~~the optional~~ The exemption in articles 3.1(a) to (c) has been exercised by The Treasury. The answers to Q49 to Q53 explain the exemption in more detail.

Articles 3.1(d) and (e) of MiFID provide additional optional exemptions, but they have not been implemented in the UK.

Q49. Which firms might fall within this exemption?

The exemption applies to persons who meet all the following conditions:

- they do not hold clients' funds or securities and do not, for that reason, at any time, place themselves in debit with their clients;
- ...
- they transmit orders only to one or more of the following:
 - ...
 - branches of third country investment firms or credit institutions ~~complying~~ which are subject to, and comply with, prudential rules considered by the FCA *appropriate regulator* to be at least as stringent as those laid down in MiFID, ~~or~~ the *CRD* ~~and~~ or the *EU CRR*;
 - ...
- ...

Q53. What is the practical effect of exercising the optional exemption for those firms falling within its scope?

You are not a firm to which MiFID applies and so are not a *MiFID investment firm* for the purposes of the Handbook. As such you are not subject to the requirements of the *CRD* as transposed in the Handbook and the *EU CRR* and cannot exercise passporting rights.

Article 3.2 of MiFID applies certain MiFID requirements to firms making use of the article 3 exemption. These are implemented in the *Handbook* and the *Act*.

...

13.6 CRD IV

...

Q55. Are we subject to the CRD and the EU CRR?

...

Despite being subject to the requirements of MiFID, broadly speaking, if you are one of the following investment firms, *CRD* and the *EU CRR* will only apply to you in a limited way:

...

- a firm that:
 - ...
 - is not authorised to provide the following ~~investment~~ investment

services: (a) to deal in any *financial instruments* for its own account; (b) to underwrite issues of *financial instruments* on a firm commitment basis; (c) to place *financial instruments* without a firm commitment basis; ~~and~~ (d) to operate a multilateral trading facility; and (e) to operate an organised trading facility;

...

...

There is also a special an exemption under the *EU CRR* for locals that do not fall within the exemption for local firms under MiFID (see Q47). However, we do not think that UK regulated firms that were subject to the regulatory regime for locals prior to MiFID implementation are likely to fall within the exemption under the *EU CRR*. This is because they are likely to fall within article 2.1(1) MiFID local firms.

...

Q58. How do we know whether we are an exempt CAD firm and what does this mean in practice?

...

If you are an *exempt CAD firm* which has opted into MiFID legislation (see Q52), you will need to consider whether you are subject to the audit requirements of companies legislation (see Part VII of the Companies Act 1985 and Part 16 of the Companies Act 2006). You can benefit from the auditing exemption for small companies in companies legislation if you fulfil the conditions of regulation 4C(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments Regulations) 2007. In other words, if you continue to meet the conditions of the article 3 *MiFID* exemption (notwithstanding that you are an *exempt CAD firm*), you can benefit from the auditing exemption for small companies, as provided for in companies legislation. For further details, see The Markets in Financial Instruments Directive (Consequential Amendments) Regulations 2007 (SI 2007/2932). The same regulations also contain a transitional regime which has the effect of exempting *exempt CAD firms* from statutory audit requirements in relation to a financial year beginning before 1 November 2007 and ending on or after that date, where the *exempt CAD firm* was not an *ISD investment firm*.

Q58A. How do we know whether we are a BIPRU firm and what does that mean in practice?

This category may be relevant to you if you have permission to execute orders on behalf of clients and/or carry out portfolio management in relation to MiFID financial instruments. In summary, a *BIPRU firm*:

...

- is not authorised to provide the investment investment services of dealing in any *financial instruments* for its own account, underwriting issues of *financial instruments* on a firm commitment basis, placing financial

~~instruments~~ financial instruments without a firm commitment basis ~~and~~,
operating a multilateral trading facility or operating an organised trading facility;

...

Q64. Are we a limited licence firm?

A *limited licence firm* is one that is not authorised to:

...

- underwrite and/or place financial instruments on a firm commitment basis (see Q22).

For the purpose of the definition of a *limited licence firm*, a firm does not deal on own account when executing client orders by matching them on a matched principal basis (back-to-back trading) if its activities are consistent with the conditions of article 29(2) of CRD (see Q61) or article 5.2 of the recast CAD (see Q58A).

...

Generally, you cannot be a *limited licence firm* if you are an *IFPRU 730K firm*. However, you may be a *limited licence firm* if you operate a multilateral trading facility or an organised trading facility (and therefore are an *IFPRU 730K firm*) and do not have a *dealing in investments as principal* permission enabling you to deal on own account or to underwrite or place financial instruments on a firm commitment basis. Therefore if you deal on own account under article 20(3) of MiFID (Specific requirements for OTFs) you will not be a *limited licence firm*.

...

...

Delete PERG 13.7 in its entirety. The deleted text is not shown.

13.7 The territorial application of MiFID [deleted]

Q67. ~~What is the territorial application of MiFID?~~ [deleted]

Q68. ~~What is the ‘prudential regulation’ and ‘conduct of business regulation’ in this context?~~ [deleted]

Q69. ~~What does this mean for my firm?~~ [deleted]

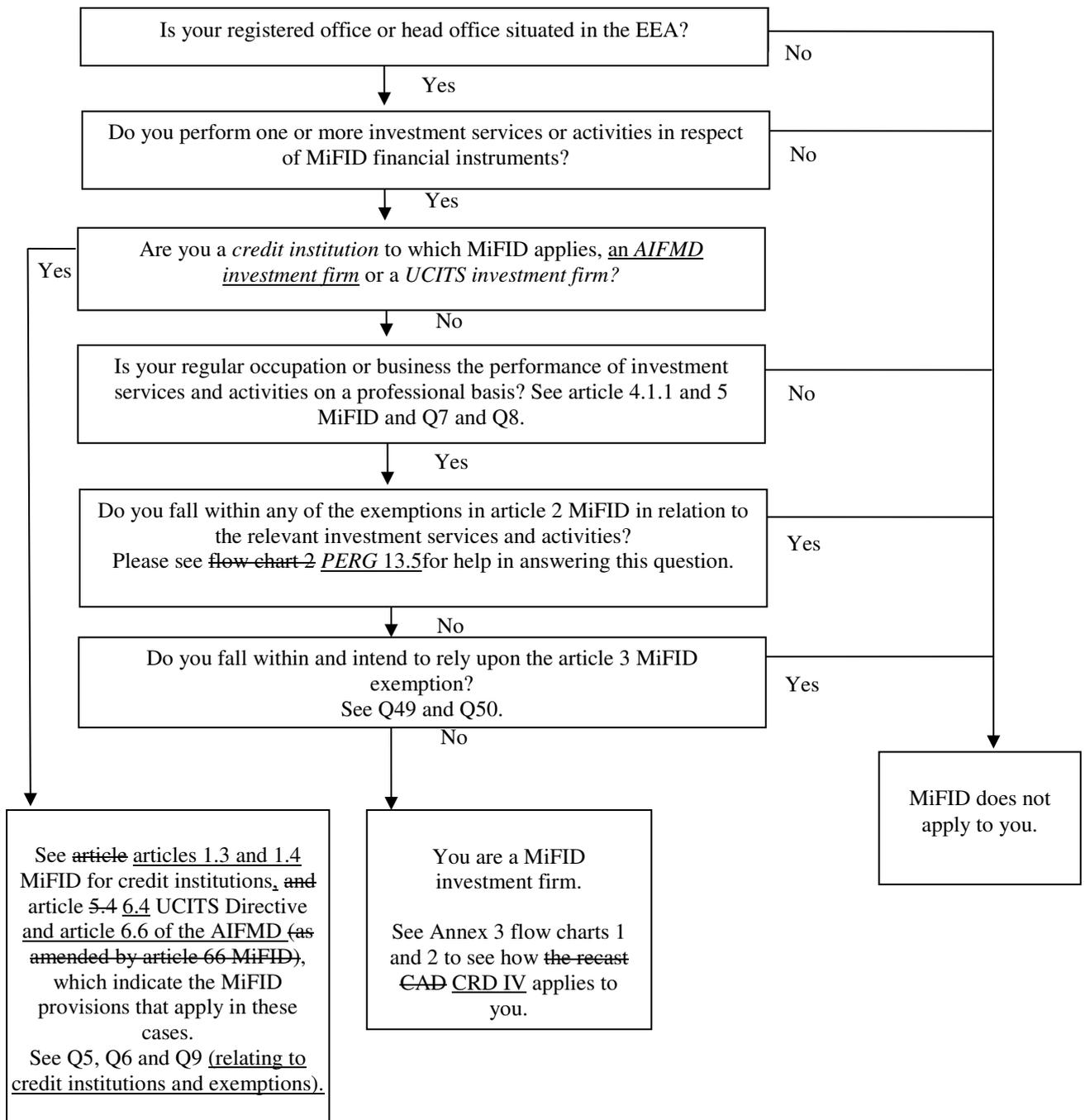
Q70. ~~How are the high level standards, like the Principles, affected by MiFID?~~ [deleted]

Q71. ~~What is the position in relation to record keeping in branches?~~ [deleted]

Q72. ~~Will a branch need to report to the competent authority of the Member State where it is located?~~ [deleted]

13 Annex 1G Annex 1

Flow chart 1 – Does MiFID apply to us?



Flow chart 2 (Am I exempt under article 2 MiFID?) is deleted. The deleted chart is not shown.

13 Annex 2 Table 1 - MiFID Investment services and activities and the Part 4A permission regime

MiFID Investment Services and Activities	Part 4A permission	Comments
A1- Reception and transmission of orders in relation to one or more financial instruments	...	<p>This was an ISD service.</p> <p>...</p> <p>See Q12A, Q13, and Q14 <u>and Q34A</u> for further guidance.</p>
A2- Execution of orders on behalf of clients	...	<p>This was an ISD service.</p> <p>...</p> <p>See Q12A, and Q15, Q15A <u>and 34A</u> for further guidance.</p>
A3- Dealing on own account	...	<p>Dealing on own account falls within the ISD, but only where a service is provided. Under MiFID, dealing on own account is caught even if no service is provided. Where a firm is dealing on own account, it needs permission to carry on the activity of dealing in investments as principal.</p> <p>See Q12A <u>and Q16</u> <u>and 34A</u> for further guidance.</p>
A4- Portfolio management	...	<p>This was an ISD service.</p> <p>...</p> <p>See Q6, <u>Q6A</u>, Q17 and Q43 for further guidance.</p>
A5- Investment advice	...	<p>This was an ISD non-core service.</p> <p>...</p> <p>See Q18 and Q19 <u>to Q21</u> for further guidance.</p>

A6- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	...	<p>This corresponds broadly to the service of underwriting and/or placing described in Section A4 of the Annex to ISD.</p> <p>...</p>
A7- Placing of financial instruments without a firm commitment basis		<p>This corresponds in part to the service in Section A4 of the Annex to ISD outlined in the commentary to A6.</p> <p>...</p>
A8- Operation of Multilateral Trading Facilities	Operating a multilateral trading facility (article 25D RAO)	<p>This service replaces the ATS operators regime.</p> <p>Firms performing this service will need permission to carry on the regulated activity of operating a multilateral trading facility. Broadly speaking, any authorised person who operated an alternative trading system prior to 1 November 2007 was automatically granted permission to operate a multilateral trading facility, unless it notified the FSA to the contrary by 1 October 2007.</p> <p>...</p>
<u>A9- Operation of organised trading facilities</u>	<u>Operating an organised trading facility (article 25DA RAO)</u>	<p><u>Firms performing this service will need permission to carry on the regulated activity of operating an organised trading facility.</u></p> <p><u>Firms will not require permission to carry on any other regulated activities if all they do is operate an organised trading facility. If they carry on additional regulated activities, they should ensure that their permission properly reflects this.</u></p> <p><u>See Q24A for further guidance.</u></p>
<p>Note: The activity of <i>bidding in emissions auctions</i> can form part of A1, A2 or A3. In terms of the <i>permission</i> regime, <i>bidding in emissions auctions</i> does not form part of any other <i>regulated activity</i> (see <i>PERG 2.7.7CG</i>) and so a <i>firm</i> must have a separate <i>permission</i> to undertake that activity.</p>		

Table 2 - MiFID financial instruments and the Part 4A permission regime

MiFID financial instrument	Part 4A permission category	Commentary
C1- Transferable securities	<p>...</p> <p>contract for differences (excluding a spread bet and a rolling spot forex contract and a binary bet)</p> <p>spread bet</p>	<p>Transferable securities are securities negotiable on the capital market excluding instruments of payment and include:</p> <p>(a) shares in companies;</p> <p>(b) bonds;</p> <p>(c) depositary receipts;</p> <p>(d) warrants; and</p> <p>(e) miscellaneous securitised derivatives.</p> <p>Transferable securities comprise various categories of derivatives in the permission regime: for example, options (excluding commodity options and options on commodity futures); futures (excluding commodity futures and rolling spot forex contracts); contracts for differences (excluding spread bets and rolling spot forex contracts).</p> <p>The permission investment categories above <u>in column 2 (Part 4A permission category)</u>, however, are wider than the MiFID definition of transferable securities, as they comprise both securitised and non-securitised instruments. <u>A An instrument is not a transferable security under MIFID if it is not negotiable on the capital market. Therefore an investment listed in column (2) will not always be a transferable security.</u></p>

		<p>Firms with permissions containing these <u>any of the Part 4A permission</u> investment categories <u>in column (2)</u> will fall outside the article 3 MiFID exemption as transposed in domestic legislation, where they provide investment services in relation to financial instruments which are non-securitised investments (for example, OTC derivatives concluded by a confirmation under an ISDA master agreement).</p> <p><u>It is possible in theory that options, futures and contracts for differences under the RAO that are not mentioned in column (2) could be a MiFID transferable security. However column (2) includes the main RAO derivatives that the FCA thinks may in practice be transferable securities.</u></p> <p>...</p>
C2- Money market instruments	...	<p>The definition in article 4.1(19) MiFID refers to <u>Money market instruments are classes of instruments normally dealt in on the money markets.</u></p> <p><u>For further guidance on money market instruments see Q28A.</u></p>
...		
C4- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, <u>emission allowances</u> or other derivatives instruments, financial indices or financial measures which may be settled physically	<p>...</p> <p>contract for differences (excluding a spread bet and a rolling spot forex contract <u>and a binary bet</u>)</p> <p>spread bet</p> <p><u>binary bet</u></p>	<p>C4 includes the financial instruments in sections B3-6 of the Annex to the ISD and in our view derivatives relating to commodity derivatives, for example options on commodity futures.</p> <p>For further guidance, see <u>Q30 and Q32 Q31A to Q31S.</u></p> <p>...</p>

or in cash		
C5- Options, futures, swaps, forward rate agreements forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event)	... contract for differences (excluding a spread bet and a rolling spot forex contract <u>and a binary bet</u>) <u>binary bet</u>	... For further guidance see <u>Q32</u> and Q33 <u>Q33A</u> .
C6- Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF <u>or an OTF</u>	... contract for differences (excluding a spread bet and a rolling spot forex contract <u>and a binary bet</u>) <u>binary bet</u>	... For further guidance see <u>Q32</u> and Q33 <u>Q33B</u> .
C7- Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being . <u>This category does not include spot contracts or contracts that meet certain conditions that are designed to exclude contracts for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether,</u>	... contract for differences (excluding a spread bet and a rolling spot forex contract <u>and a binary bet</u>) <u>binary bet</u>	C7 is supplemented by Level 2 measures (see article 38 of the MiFID Regulation). For further guidance see <u>Q32</u> and Q33 <u>Q33C</u> .

inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls		
C8- Derivative instruments for the transfer of credit risk	<p>...</p> <p>contract for differences (excluding a spread bet and a rolling spot forex contract <u>and a binary bet</u>)</p> <p>...</p>	<p>...</p>
C9- Financial contracts for differences	<p>contract for differences (excluding a spread bet and a rolling spot forex contract <u>and a binary bet</u>)</p> <p>...</p>	<p>...</p>
C10- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics <u>various specified underlyings</u> that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to	<p>...</p> <p>contract for differences (excluding a spread bet and a rolling spot forex contract <u>and a binary bet</u>)</p> <p>spread bet</p> <p>emissions auction product</p> <p><u>binary bet</u></p>	<p>C10 is supplemented by Level 2 measures (see articles 38 and 39 of the MiFID Regulation) and comprises miscellaneous derivatives.</p> <p>For further guidance see Q34.</p>

<p>assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls <u>This category does not include contracts that meet certain conditions designed to exclude non-financial derivative instruments.</u></p>		
<p><u>C11- Emission allowances</u></p>	<p><u>Emission allowances</u></p>	<p><u>See Q34A</u></p>
<p>Note:</p> <p>In our view, the categories of financial instrument in C1 to C10 <u>C11</u> are not mutually exclusive, so a financial instrument may fall within more than one category. For example, an interest in an investment trust company falls within C1 and C3.</p>		

...

Delete PERG 13 Annex 4 (Principal Statutory Instruments relating to MiFID scope issues) in its entirety. The deleted text is not shown.

13 **Principal Statutory Instruments relating to MiFID scope issues [deleted]**
Annex 4

