

Consultation Paper **CP24/24****

The MiFID Organisational Regulation

November 2024

How to respond

We are asking for comments on this Consultation Paper (CP) by **28 February 2025**.

This CP also contains a discussion in Chapter 4. We are asking for comments back on discussion Chapter 4 by **28 March 2025**.

You can send them to us using the form on our [website](#).

Or in writing to:

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Advice Policy
Financial Conduct
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London E20 1JN

Or by email to:
cp24-24@fca.org.uk



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Disclaimer

When we make rules, we are required to publish:

- a list of the names of respondents who made representations where those respondents consented to the publication of their names,
- an account of the representations we receive, and
- an account of how we have responded to the representations.

In your response, please indicate:

- if you consent to the publication of your name. If you are replying from an organisation, we will assume that the respondent is the organisation and will publish that name, unless you indicate that you are responding in an individual capacity (in which case, we will publish your name),
- if you wish your response to be treated as confidential. We will have regard to this indication, but may not be able to maintain confidentiality where we are subject to a legal duty to publish or disclose the information in question.

We may be required to publish or disclose information, including confidential information, such as your name and the contents of your response if required to do so by law, for example under the Freedom of Information Act 2000, or in the discharge of our functions. Please note that we will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Irrespective of whether you indicate that your response should be treated as confidential, we are obliged to publish an account of all the representations we receive when we make the rules.

Further information on about the FCA's use of personal data can be found on the FCA website at: www.fca.org.uk/privacy.

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Chapter 1

Summary

Why we are consulting

- 1.1** We are consulting on proposals to transfer the firm facing requirements of the MiFID Org Reg (Commission Delegated Regulation (EU) 2017/565) into FCA handbook rules. We want to provide continuity to firms and therefore the overall approach we are proposing in this consultation is to retain the current substance of the requirements.
- 1.2** This CP follows Treasury's [policy paper](#) on its next steps for reforming the UK's MiFID framework, published as part of announcements made around the Mansion House speech.

What we are consulting on

- 1.3** The MiFID Org Reg contains firm-facing conduct rules and systems and controls rules to ensure market integrity and investor protection. The UK version of the MiFID Org Reg applies directly to UK MiFID investment firms.
- 1.4** In 2018, when implementing MiFID II, we replicated parts of the MiFID Org Reg into the FCA Handbook for certain sourcebooks so that firms could see all the relevant MiFID requirements relating to a particular topic in one place.
- 1.5** We also extended some of the MiFID requirements to firms conducting non-MiFID business. We extended them to 'optional exemption firms' (Article 3 firms) so they are subject to very similar conduct and system requirements, and we also extended some limited provisions to other non-MiFID firms.
- 1.6** This paper sets out our proposals for replacing the firm-facing requirements in the MiFID Org Reg with Handbook rules, when the Treasury commences the repeal of the MiFID Org Reg. Provisions we are not replacing in regulatory rules will either be restated or repealed by Treasury, to coincide with our Handbook rules coming into force. The Treasury will publish a draft Statutory Instrument to propose these changes.
- 1.7** In this consultation we propose to retain the current substance of the requirements, giving firms continuity.
- 1.8** However, we are interested in views about reform, either now or in the future, to make the rules better suited to the range of UK authorised firms and clients they provide services to. This includes in circumstances where the Consumer Duty does not apply. So Chapter 4 is a Discussion Chapter that discusses how we could rationalise or improve MiFID II derived conduct and organisational rules, including for Article 3 firms. We also discuss whether and how the client categorisation rules could work more effectively.

- 1.9** The Prudential Regulation Authority (PRA) will consult separately on replacing relevant firm-facing provisions in the MiFID Org Reg in PRA rules. We will liaise closely with them on this.
- 1.10** We propose some consequential amendments and minor changes to reflect our Handbook drafting style, as well as to simplify the requirements and provide greater clarity.

Who this applies to

- 1.11** The proposals in this CP affect a wide range of firms that the FCA authorise, regulate and recognise, as well as certain persons not requiring authorisation but who are subject to obligations under MiFID II, particularly. Some firms are also authorised and regulated by the PRA:
- MiFID investment firms including credit institutions and collective portfolio management investment firms
 - MiFID optional exemption 'Article 3' firms
 - Third country firms
 - Undertakings for Collective Investment in Transferable Securities (UCITS) managers
 - Residual Collective Investment Scheme (CIS) operators and small authorised UK Alternative Investment Fund Managers (AIFMs)
 - Occupational Pension Scheme (OPS) firms
 - Recognised investment exchanges (RIEs)
- 1.12** In Chapter 4, we are seeking views on how we can simplify and rationalise the requirements in the future. As well as the stakeholders listed above, we are also interested in hearing from groups that represent the interests of consumer groups, to the extent that they have not already provided feedback on these topics to the Consumer Duty Call for Input.

Outcomes we are seeking

- 1.13** We want to maintain the current requirements for firms while we restate these regulatory requirements from legislation into our rules, making them consistent with our Handbook style. Our aim is to provide continuity and clarity, simplifying requirements where possible, without changing their scope or application.

Measuring success

- 1.14** We will measure success in the short term by a lack of market disruption and limited burden on firms from implementing our final rules.

- 1.15** The FCA's Rule Review Framework states that, while we will generally monitor key metrics of new rules, we may decide not to monitor such metrics where the new rule relates to a minor policy or rule change with minimal impact. Because the rules being proposed here are expected to have a minimal impact and not change the regulatory requirements already in place, we don't propose to put metrics in place, but we will monitor any feedback or comments we receive once the rules are in place.

Next steps

- 1.16** We seek feedback on our proposals on the consultation questions set out in Chapter 3 by 28 February 2025 and by 28 March 2025 for the discussion questions raised in Chapter 4. Please respond by completing the form on our website or by sending a response to cp24-24@fca.org.uk. We will consider the feedback we receive and plan to publish a policy statement subject to finalising our rules. This will be in line with the Government's timetable to repeal the legislation.

Chapter 2

The wider context

What we are aiming to achieve

- 2.1** The MiFID Org Reg provides detailed requirements for firms and contains key conduct and systems and controls obligations for investment firms, (eg, retail platforms, portfolio managers, wholesale brokers). The regulation is broad in scope, covering various requirements including: client categorisation, disclosure, suitability, reporting to clients, best execution, inducements, research, conflicts of interest, business continuity, outsourcing, control procedures and security mechanisms, risk, compliance and internal audit functions, remuneration policies and telephone taping. It also applies to a broad range of firms.
- 2.2** We intend to restate the existing firm-facing requirements from the MiFID Org Reg in our Handbook as rules and guidance with no or minimum changes. We are not proposing any new requirements on firms as part of these changes, nor do we propose removing any existing requirements in this CP. Provisions we are not replacing in regulatory rules will either be restated or repealed by Treasury, when our Handbook rules are ready to come into force. Treasury will publish a draft Statutory Instrument to propose these changes.
- 2.3** Restating the MiFID Org Reg requirements into the FCA Handbook will enable us to refine our approach across investment firms over the longer-term.
- 2.4** In line with the intent stated in our [Call for Input \(CFI\) on a Review of FCA requirements following the introduction of the Consumer Duty](#), we anticipate further harmonisation and rationalisation of our requirements (including those relating to investment business) over time, delivering a more agile and coherent framework. We will seek to do this in a way that is tailored to, and facilitates participation in, UK markets. This could include for example:
- streamlining the requirements that apply to firms conducting similar activities
 - adapting rules to new regimes or risks
 - simplifying and removing the duplication of rules due to multiple EU directives being implemented, particularly for the core conduct rules, systems and controls requirements, conflicts of interest management and outsourcing.
- 2.5** We seek views on future changes in Chapter 4.
- 2.6** Chapter 4 also outlines current implications of a firm being Article 3 exempt. While we are not consulting on changes to the regime for Article 3 firms, we seek early feedback on how we might improve the regulatory framework for these firms.

Consultation with Panels

- 2.7** Section 1RB FSMA requires the FCA to set out information about any engagement with the statutory panels of the FCA, the PRA or the Payment Services Regulator (PSR). We have provided the Practitioner Panel with an overview of our proposals.
- 2.8** We have discussed our proposals to restate the firm facing MiFID Org Reg provisions into our rules with the PRA, and the Financial Ombudsman Service (Financial Ombudsman). We will continue to liaise with them as we finalise the policy position and rules.

Cost Benefit Analysis

- 2.9** We have not published a Cost Benefit Analysis (CBA) for the proposed changes. Our objective is to maintain existing regulatory standards rather than introduce new requirements. Under section 138L(3) of FSMA we are not required to publish a CBA if, in making the appropriate comparison, we consider either there will be no increase in costs or the increase in costs will be of minimal significance. Annex 2 provides further details.

Derivation and Changes Table

- 2.10** The Derivation and Changes Table in Annex 4 sets out detail on the restatement of individual provisions of the MiFID Org Reg into our Handbook. The Table briefly describes each provision, what we propose for each provision and where the relevant requirement may be found in the draft rules.

How it links to our objectives

Our Strategic aims

- 2.11** This publication supports our commitment to prepare financial services for the future as set out in Our Strategy 2022 to 2025. This work will allow us to tailor our rules to better suit UK markets, while maintaining market integrity, consumer protection and enhancing market confidence. This aligns with the aims set out in [Preparing for the future of Consumer Investments](#) by ensuring a market where consumers can invest with confidence, understand the risks they are taking and the regulatory protections they have.

Consumer protection

- 2.12** Our proposals will ensure that consumers continue to benefit from the same levels of protection that currently apply to the provision of investment services.

Secondary International Competitiveness and Growth Objective

- 2.13** We consider these proposals are proportionate and compatible with the FCA's secondary international competitiveness and growth (SICGO) objective, as they simplify and clarify existing obligations.
- 2.14** Once the firm facing requirements are restated into our Handbook, we will consider making appropriate changes to our rules through our usual rule making process. In doing so we will act to advance our primary objectives and the SICGO.
- 2.15** Many of our firms operate globally and, in future work, we will take into account the need for international interoperability. This means considering how our rules align with global standards to ensure consistency where appropriate and minimise the regulatory burden for firms that operate across multiple jurisdictions.

Other relevant initiatives

- 2.16** Work on the MiFID Org Reg takes place at the same time as a number of other reforms relevant to investment firms. This section highlights relevant initiatives that are likely to interact with the revocation of the MiFID Org Reg. We will work closely with relevant stakeholders to ensure a coherent approach.

Review of FCA requirements following the introduction of the Consumer Duty

- 2.17** In July 2024, the FCA launched a CFI on its review of FCA requirements under the Consumer Duty. Through the CFI we sought views on whether, where and how we can refine our retail conduct rules by relying on the Consumer Duty, while ensuring continued support and consumer protection. We particularly want to address potential areas of complexity, duplication, or over-prescription, which create regulatory costs with limited or no consumer benefit. We also want to ensure our rules are flexible to allow for future innovations. Although the CFI is primarily concerned with retail conduct rules and guidance, views were also invited on the FCA's wider rules and guidance. We will bring the feedback and insight we get from the CFI together with the insight we get from this consultation to identify and then prioritise areas of the MiFID derived rules that could be further simplified while continuing to secure an appropriate degree of protection for consumers.

The Advice Guidance Boundary Review (AGBR)

- 2.18** In December 2022, the FCA and the Government announced a joint review to examine the regulatory boundary between financial advice and other forms of support. The review is considering how the regulatory framework might better facilitate industry development and provision of better support for consumers when making financial decisions. This is known as the Advice Guidance Boundary Review. In December 2023 we published, with Treasury, Discussion Paper DP23/5 setting out early-stage proposals for potential solutions to improve customer outcomes. Following analysis of feedback, we have announced, as part of the Chancellor's Mansion House speech, our next steps in advancing this work. The MiFID Org Reg sets out key requirements relating to the provision of investment advice and consideration of these requirements will be relevant

should AGBR lead to changes to the way we define existing forms of guidance and advice.

Disclosure Framework– Consumer Composite Investments (CCI)

- 2.19** The FCA is consulting on a new disclosure framework for certain retail investment products to replace PRIIPS. We want retail investors to get the information they need to make informed, effective decisions to pursue their financial goals. Articles 50 and 51 of the MiFID Org Reg also relate to disclosure to investors of information about costs and charges. We intend to propose changes to aspects of cost disclosure requirements as part of our consultation on the replacement disclosure regime. Our proposals in this consultation paper do not therefore include proposals relating to the requirements in these Articles, save to preserve them pending completion of our work on the replacement retail disclosure regime.

Revising the definition of Systematic Internalisers (SIs)

- 2.20** In CP23/32, we consulted on our intention to shift from a quantitative to a qualitative regime for determining which firms are Systematic Internalisers (SIs). Completing this shift requires changes to our Handbook, as outlined in Chapter 9 of CP23/32, and the repeal of Articles 12 to 17 of the MiFID Org Reg, which set quantitative thresholds for SI determination across different asset classes. The changes to the SI definition in UK MiFIR, as included in FSMA 2023 (but not yet commenced), provide the foundation for the UK to adopt this qualitative approach to SI determination.
- 2.21** Under the Financial Services and Markets Act 2023 (Commencement No.8) Regulations 2024, the new legislative definition of an SI will take effect on 1 December 2025. In the Policy Statement PS24/14 we made supporting rules and guidance that will also take effect on 1 December 2025. The transitional regime in Article 16ZA of the MiFID Org Reg sets out what happens if data is not available from regulators to enable firms to undertake calculations to determine whether they are an SI. This transitional regime expires at the end of this year. As set out in PS24/14, we do not propose to publish data on the overall size of the market before the new definition of an SI comes into force on 1 December 2025. In that period, we also said we will not expect firms to undertake calculations to determine their SI status. Firms will continue to be able to opt into the SI regime.

Environmental, social and governance considerations

- 2.22** We have considered the environmental, social and governance implications of our proposals and our duty under ss. 1B(5) and 3B(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under s. 5 of the Environment Act 2021. We do not consider that the proposals are relevant to contributing to those targets. We will keep this issue under review during the course of the consultation period and when making final rules.

Equality and diversity considerations

- 2.23** Section 149 of the Equality Act 2010 (EA 2010) requires the FCA to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. We are also required to give thought to the potential impact of new proposals on relevant groups.
- 2.24** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 2.25** Overall, as our intention is to maintain the regulatory requirements which currently apply to firms once the relevant parts of assimilated law are repealed, we do not consider that the proposals materially impact any of the groups with protected characteristics under the EA 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period and when making the final rules.
- 2.26** In the meantime, we welcome your input to this consultation on what, if any, material impact there may be on different groups of consumers and how our proposals may otherwise impact on equality and diversity considerations.

Chapter 3

Restating the MiFID Org Regulation in our rules

- 3.1** In this Chapter we outline our proposals to restate the firm-facing obligations from the MiFID Org Reg into our handbook with no policy changes. We also set out our general approach for the sourcebooks and non-Handbook guidance, including how we intend to approach terminology used. In Chapter 4 we ask for feedback on how, in the future, we could rationalise and simplify the provisions in our Handbook that stem from MiFID. In Annex 4 we have provided a derivation table outlining where we propose to put each of the firm-facing obligations into our Handbook.
- 3.2** Overall, we intend to maintain the current scope of application of our rules MiFID firms and non-MiFID business. This includes maintaining the current application of the provisions of the MiFID Org Reg to third country firms and Article 3 firms as well as to certain non-MiFID services and investments.
- 3.3** We set out specific changes made to each sourcebook and the rationale behind these changes. The sourcebooks and non-Handbook guidance manuals include:
- The Conduct of Business sourcebook (COBS)
 - The Senior Management Arrangements, Systems and Controls sourcebook (SYSC)
 - The Market Conduct sourcebook (MAR)
 - The Recognised Investment Exchanges sourcebook (REC)
 - The Dispute Resolution sourcebook (DISP)
- 3.4** In the table below we have provided a high-level summary of the derivations table in Annex 4, broadly outlining where we propose to transfer each of the firm-facing obligations in the MiFID Org Reg into our handbook.

Handbook Location

MiFID Org Reg Article

Provisions proposed to be restated in the Handbook

These are broadly firm-facing requirements. Our general approach to drafting (with some limited exceptions, as explained in Annex 4) has been to restate the relevant requirement in the Handbook with changes to reflect Handbook drafting style and to simplify or clarify drafting where possible. We have not proposed policy changes. Where possible, we have relied on existing Handbook provisions, such as in the Glossary, to effect the transfer of relevant provisions of the MiFID Org Reg.

The application provisions in Articles A1 and 1 of the MiFID Org Reg are given effect through the application provisions of relevant Handbook sourcebooks.

Glossary	Articles 2, 3, 16a, 28, 36(1), 77 and 78(3)
SYSC	Articles 21-25, 27, 30-35, 72, 76 and Annex I
COBS	Articles 29, 36-61, 63-71, 73-75, Annex I, Annex II and Annex IV

Handbook Location	MiFID Org Reg Article
MAR	Articles 78-80 and Annex III
MAR and REC	Articles 81(1) and 82
DISP	Article 26, Annex I
Provisions not proposed to be restated in the Handbook	
These are generally provisions which do not impose requirements on firms (not 'firm-facing' requirements). These provisions are either already incorporated in UK law (such as the Regulated Activities Order) or will be otherwise restated by Treasury or simply repealed.	
	Articles 4 to 11 (relate to the perimeter and are already accommodated in the RAO)
	Articles 12-16ZA, 17, 81(2)
	Articles 83-91 (not restated as part of this exercise)

Our general approach

- 3.5** The origin of the MiFID Org Reg as a directly applicable EU regulation meant that in relation to the persons subject to its scope and application provisions applied, the regulation could only be replicated in our Handbook with the abbreviation 'EU' at the start of the provision (becoming a 'UK' abbreviation after the EU withdrawal implementation period). This denoted that the MiFID Org Reg provisions were copied out legislative material from the EU, rather than FCA-made rules. This copy-out was done for ease of reference for MiFID firms and to enable us to apply the requirements to non-MiFID investment business and non-MiFID firms as rules, where appropriate (see 1.4). We applied the content of the regulation and suitably adapted it to certain non-MiFID firms and non-MiFID business using application provisions in individual sourcebooks (e.g. SYSC 1 Annex 1 and individual chapters of COBS).
- 3.6** Our approach to Handbook terminology is to enable the restatement of the requirements in the MiFID Org Reg as FCA Handbook rules, using and adapting existing Handbook Glossary definitions, where possible, and creating new definitions, where necessary. We set out our proposals in more detail below.
- 3.7** We intend to make amendments to Handbook Glossary terms where necessary for the purpose of incorporating provisions of the MiFID Org Reg in the Handbook. We also propose consequential cross-referencing changes to other materials, in which we propose to update references to MiFID Org Reg Articles or Handbook rules, as a result of the restatement of the firm-facing obligations, including:
- Client Assets sourcebook (CASS)
 - Decision Procedure and Penalties Manual (DEPP)
 - Disclosure Guidance and Transparency Rules sourcebook (DTR)
 - General Provisions (GEN)
 - Professional Firms sourcebook (PROF)
 - Supervision Manual (SUP)
 - The MiFID 2 Onshoring Guide (M2G)
 - Training and Competence sourcebook (TC)

- 3.8** Any amendments to the Perimeter Guidance Manual (PERG) are dependent on HMT's Statutory Instrument, therefore any potential changes to PERG will be addressed separately and will be consulted on in a quarterly CP in due course.
- 3.9** We propose that in the first instance we maintain a distinction between rules applicable to MiFID-scope investment business and other non-MiFID business (though in practice these rules are very similar). In time, we expect a comprehensive review of these distinctions to form part of a wider package of changes to provide for easier navigation and interpretation of our Handbook for users and to more closely calibrate regulatory requirements to the risks they are designed to mitigate. This will be subject to future consultations (see Chapter 4).
- 3.10** However, where possible and where it would not result in a change to the substance of requirements, we are using this restatement of provisions into the Handbook as an opportunity to clarify the drafting of requirements and align them with equivalent Handbook provisions.

Recitals

- 3.11** For recitals that have previously been replicated in our Handbook either partially or in full, we propose to maintain them as guidance, marked by the abbreviation 'G' and to remove from them references to the MiFID Org Reg and other parts of assimilated law. We are not proposing to preserve any other recitals.

Question 1: Do you agree with our approach to restating obligations from the MiFID Org Reg into our Handbook?

[agree] [neutral] [disagree]

Please explain your answer

Question 2: Do you agree with our approach to maintain recitals as guidance, and remove references to the MiFID Org Reg where we have replicated the recital in full previously?

[agree] [neutral] [disagree]

Please explain your answer

Senior Management Arrangements, Systems and Controls sourcebook

- 3.12** The MiFID Org Reg sets out the organisational requirements that apply to MiFID investment firms regarding:
- Compliance (Article 22)

- Risk management (Article 23)
- Internal audit (Article 24)
- Responsibility of senior management (Article 25)
- Outsourcing (Article 30-32)
- General organisational requirements (Article 21)
- Conflicts of interest; (Articles 33-35) and
- Remuneration of policies and practices (Article 27)

3.13 Many of these obligations are already contained in our Handbook in SYSC Chapters, 4 to 10, 10A and 19F.

3.14 When restating assimilated law into our Handbook, our intention is to use this opportunity to deliver a more agile and coherent framework. This means reviewing rules and where appropriate, removing any unnecessary complexity. We have sought to do this through this consultation where such an amendment creates no change to obligations or regulatory burden. Where more complex changes are required, including in SYSC, we will consider harmonising and rationalising the requirements over the longer-term.

3.15 In line with our general approach to restate the firm facing requirements in the MiFID Org Reg from legislation into Handbook rules we propose to incorporate Articles 21-25, 27, 30-35, 72 and 76 from the MiFID Org Reg into the relevant Chapters in SYSC as rules either by:

- Creating a new SYSC rule where the wording of the provision of the MiFID Org Reg was different;
- Adjusting the existing SYSC rule where the text corresponds to the wording in the provision of the MiFID Org Reg; or
- Making the necessary adaptations to Handbook terminology following the list of equivalent terms in the table in SYSC 1 Annex 1 2.8AR(2) and maintaining the longstanding concept of common platform firm.

3.16 In addition, with the application provisions in SYSC 1 Annex 1, we have incorporated these SYSC rules into the application tables in SYSC 1 Annex 1:

- 'A' (Application of the common platform requirements in SYSC 4 to SYSC 10); and
- 'B' (Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms).
- Deleted table 'C' (Application of the requirements in Articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Reg to MiFID optional exemption firms and third country firms) given that these provisions are now incorporated in the body of the relevant SYSC chapters.

3.17 The overall aim is to preserve the effect of the current framework with no policy changes as regards content or scope.

Conflicts of interest

- 3.18** Articles 33-35 of the MiFID Org Reg sets out the detailed rules relating to the management of conflicts of interest for MiFID firms.
- 3.19** Very similar rules to the regulation's requirements already exist in SYSC 10 rules because FCA extended the MiFID conflicts of interest requirements to all firms at the time of MiFID II transposition. We have therefore restated Articles 33-35 of the MiFID Org Reg in the Handbook by making amendments to the existing SYSC 10 rules, to apply them to common platform and Article 3 firms.
- 3.20** In amending the SYSC 10 rules, we have, for the time being, maintained some technical differences between the current SYSC rules, derived from different EU regimes, and the MiFID Org Reg provisions. For example, SYSC 10.1.4R(5) requires firms to consider inducements in the form of monies, goods or services. This language is derived from the UCITS. Article 33(e) of the MiFID Org Reg reflects more recent MiFID II language and requires firms to consider inducements in the form of monetary or non-monetary benefits or services.
- 3.21** In practice, read with the inducement rules applicable to all firms, we do not think this difference in wording represents a difference in obligations for different firms. However, for the avoidance of doubt we have maintained the technical distinction by drafting in SYSC 10.1.4R(6) for now.
- 3.22** In Chapter 4, we discuss and request stakeholders feedback on opportunities for simplification and rationalisation of FCA rules derived from various EU legislation in the future FCA rules.
- 3.23** The existing SYSC 10 rules have been adapted over time to implement conflicts of interest rules from a number of EU Directives, including MiFID, UCITS, Alternative Fund Managers Directive (AIFMD) and the Insurance Distribution Directive (IDD). Small technical differences in the drafting of each directive has led to substantial duplication and drafting complexity over time. We believe restating Articles 33-35 of the MiFID Org Reg within existing SYSC rules, making limited drafting changes to maintain the existing obligations for all firms, is preferable to restating Articles 33-35 into new rules which substantially duplicate existing rules.
- 3.24** Further alignment could substantially simplify these core rules for all firms. This would particularly benefit firms subject to conflicts rules from different regimes, such as asset managers and Article 3 firms. We discuss this further in Chapter 4.
- 3.25** We have also taken the opportunity to make some clarifications and corrections which we do not believe represent any change in policy.
- SYSC 10.1.6AAR requires a firm to ensure its management body receives written reports on conflicts management at least annually. This rule was originally created to extend the application of Article 35 of the MiFID Org Reg to non-MiFID firms. It was adapted to implement a similar IDD implementing requirement. Both of these EU regulations require reporting to senior management, defined in the FCA

glossary consistently with both MiFID and IDD. Accordingly, we have amended SYSC 10.1.6AAR to reflect this consistent approach.

- SYSC 1 Annex 1 tables A and B summarise the application of SYSC 10 rules to different types of firms. Table A, column A is amended to reflect that SYSC 10.1.8R, which transposes MiFID Article 23 relating to disclosure of conflicts, applies to common platform firms in relation to all business, rather than only insurance distribution activities.
- Table B is amended to reflect the application of SYSC 10.1.6AAR, SYSC 10.1.9AR and SYSC 10.1.11AA to Article 3 firms and of SYSC 10.1.6AAR and SYSC 10.1.11AAR as guidance to third country firms in relation to all their business, rather than only to insurance distribution activities.

3.26 As these corrections seek to reflect the policy position arrived at, following consultation and cost benefit analysis, we do not consider these corrections to be a policy change.

Question 3: Do you agree with our proposed changes to SYSC?

[agree] [neutral] [disagree]

Please explain your answer

Conduct of Business sourcebook

3.27 The MiFID Org Reg sets out conduct of business requirements relating to:

- Personal transactions (Article 29)
- Investment research (Articles 36, 37)
- Underwriting/placing (Article 38)
- Information to clients (Articles 44 to 51)
- Suitability and appropriateness (Articles 54 to 58)
- Reporting obligations (Articles 59 to 62)
- Best execution (Articles 64 to 66)
- Client order handling (Articles 67 to 70)
- Record keeping (Articles 73 – 75, Annex IV)

3.28 We have made limited changes to COBS.

3.29 COBS 1 has been amended to simplify and clarify the application of COBS for different types of firms including Temporary Permission (TP) and Gibraltar firms and in relation to different types of business. In drafting these changes, we have sought to make it easier for firms to navigate the application of COBS without changing the application of the sourcebook itself. The application of COBS to TP and Gibraltar firms is now dealt with in COBS 1 Annex 2. Consequently, we have deleted a number of provisions throughout COBS which deal with the application of this sourcebook to these firms after IP completion day and consolidated the relevant provisions in COBS 1.

3.30 COBS 6.1ZA.5R(5) has been amended to use the wider term 'appointed representative' alongside 'tied agent' because Article 3 firms do not appoint 'tied agents'. We think

this inclusion is uncontentious because COBS 6.1.4R and 6.1ZA.7AR require firms conducting non-MiFID business to make disclosures on appointed representatives and when the equivalent rule in MiFID I was transposed, the term appointed representative was used.

3.31 The requirements in Article 46 of the MiFID Org Reg were initially copied directly into different COBS chapters. This meant that they did not align with the usual structure and style of the Handbook. Instead of incorporating them following our usual approach to drafting, we copied out the EU text. Additionally, some requirements, like those about costs and charges in paragraphs (2A) and (2B), are only relevant in the context of COBS 6.1ZA, so we have now removed them from other sections where they aren't needed.

3.32 COBS 16A.3.5 UK (copying out Article 61 of the MiFID Org Reg) is no longer required and has been deleted as the application of COBS to eligible counterparty business (ECPs) is dealt with in COBS 1 Annex 1. Article 61 of the MiFID Org Reg originally provided that '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.' This provision referred more specifically to reporting obligations and was amended by SI 2021/774. That amendment was reflected in the Handbook and dis-applies various Articles of the MiFID Org Reg to services provided to ECPs. As we address the application of COBS to ECPs in COBS Annex 1, this provision is no longer required.

3.33 We propose that the record-keeping requirements which are currently contained in Annex I of the MiFID Org Reg be replaced with individual rules within sections of COBS. We propose that these provisions cross-refer to the more general record-keeping requirements in SYSC. The location of these is summarised in the proposed changes to Schedule 1 to COBS.

3.34 Our proposed changes to COBS involve Articles 50 and 51 of the MiFID Org Reg being restated into the Handbook without amendment. We propose to consult on requirements relating to the disclosure of costs and charges (including with respect to the requirements in Articles 50 and 51) as part of our consultation on the new retail disclosure regime that will replace the assimilated PRIIPs Regulation and UCITS disclosure requirements.

Question 4: Do you agree with our proposed changes to COBS?

[agree] [neutral] [disagree]

Please explain your answer

Market Conduct Sourcebook

- 3.35** We have made changes to the Handbook in relation to market conduct rules.
- 3.36** Articles 77 to 79 of the MiFID Org Reg set out aspects of the regime for Small and Medium sized growth markets. Including setting out who qualifies as a Small and Medium-sized Enterprises (SME), the registration of an SME growth market and the deregistration of an SME growth market. We are copying out the substance of these Articles in new provisions in MAR 5.10.
- 3.37** Article 80 of the MiFID Org Reg sets out the considerations a regulator or trading venue must take into account in considering whether a decision to suspend or remove from trading a financial instrument would likely cause significant damage to investors' interests or the orderly functioning of the market. This has been copied into MAR 5.6A in respect of Multilateral Trading Facilities (MTFs) and MAR 5A.9 in respect of Organised Trading Facilities (OTFs). The corresponding provisions relating to the regulator need to remain in legislation.
- 3.38** Article 81 of the MiFID Org Reg and Section A of Annex III elaborate on the obligation on trading venues to inform the FCA of significant infringements of their rules, disorderly trading conditions or systems disruptions and set out what signals might indicate that the threshold for notification has been met. We have replicated the reporting requirement in new provisions in MAR 5.6.1 for MTFs and MAR 5A.8.1 for OTFs and the signals in a proposed new annex, MAR 1 Annex III.
- 3.39** Article 82 and Section B of Annex III of the MiFID Org Reg elaborate on the obligation on trading venues to inform the FCA of possible instances of market abuse and set out what signals might indicate market abuse. We have replicated these reporting requirements in the Handbook, in MAR 5A.6.1 for MTFs and in MAR 5A.8.1 for OTFs and the signals in a proposed new annex, in MAR 1 Annex III. These signals are separate to the market manipulation and insider dealing activities and indicators in the UK Market Abuse Regulation which trading venue operators and firms' are required to identify and report to the FCA in Suspicious Transaction and Order Reports. When the repeal of the UK Market Abuse Regulation is commenced by HMT, consideration could be given to consolidating these indicators of possible market abuse behaviours.

Question 5: Do you agree with our proposed changes to MAR?

[agree] [neutral] [disagree]

Please explain your answer

Recognised Investment Exchange (RIE) and Recognised Clearing House (REC) sourcebook

- 3.40** The revisions to REC deal with the same issues as the changes to MAR. There is slightly revised wording in REC 2.16A in respect of recognised investment exchanges running SME growth markets to reflect the fact that following FSMA 2023 we have a general rulemaking power in respect of RIEs. REC 2.6.6A inserts provisions relating to when the suspension or removal from trading of financial instruments would be likely to cause significant damage to investors' interests or the orderly functioning of the market. REC 3.25 inserts provisions relating to notifying the FCA of significant infringements of their rules, disorderly trading conditions or systems disruptions.
- 3.41** We also propose deleting provisions of the delegated regulation of MiFID that were copied out in REC 2.6,10,11,15 & 16. Since the implementation of MiFID II in 2018 these provisions have no longer been in force.

Question 6: Do you agree with our proposed changes to REC?

[agree] [neutral] [disagree]

Please explain your answer

Dispute Resolution: Complaints sourcebook (DISP)

- 3.42** We propose amending DISP 1.1A which currently sets out requirements for dealing with complaints, this falls within the scope of Article 26 of the MiFID Org Reg. Similar amendments are proposed to DISP 2.3. Alongside other Glossary definition amendments we propose amending the Glossary definition of a MiFID complaint by replacing the reference to it being a complaint to which Article 26 of the MiFID Org Reg applies, with the current wording in DISP 1.1A.3G which sets out the scope of Article 26. This approach should maintain the same scope as the current MiFID complaints regime.
- 3.43** The Financial Ombudsman Service (Financial Ombudsman) operates two jurisdictions – the compulsory jurisdiction and the voluntary jurisdiction. The voluntary jurisdiction largely mirrors the rules made in the compulsory jurisdiction and the Glossary definitions used in those rules. Where the FCA is proposing to amend the Glossary definitions used in compulsory jurisdiction rules that are already mirrored in the voluntary jurisdiction the Financial Ombudsman intends to mirror those proposed changes proposed changes (set out above at 3.44) in the voluntary jurisdiction.

- 3.44** The Financial Ombudsman has the power, with the consent of the FCA, to make certain types of compulsory jurisdiction rules known as "scheme rules". The Ombudsman Service is proposing to adopt the FCA's proposed changes to the Glossary definitions into its scheme rules where those glossary terms are used in the Financial Ombudsman's scheme rules.
- 3.45** This section of the consultation relating to the voluntary jurisdiction rules and scheme rules is issued jointly by FCA and the Financial Ombudsman.

Question 7: Do you agree with our proposed changes to DISP?

[agree] [neutral] [disagree]

Please explain your answer

Question 8: Do you agree with the Financial Ombudsman's proposal to mirror the FCA's proposed changes to DISP into its voluntary jurisdiction?

[agree] [neutral] [disagree]

Please explain your answer

Question 9: Do you agree with the Financial Ombudsman's proposal to adopt the FCA's proposed changes to the Glossary into its scheme rules where those Glossary definitions are used in the Financial Ombudsman scheme rules?

[agree] [neutral] [disagree]

Please explain your answer

Derivation and changes table

- 3.46** The Derivation and Changes Table in Annex 4 indicates the proposed location of each firm-facing obligation once restated in our Handbook.
- 3.47** In respect of Annex I of the MiFID Org Reg (record-keeping), we have taken account of the typographical cross-referencing errors which were corrected in the EU version of the MiFID Org Reg after Implementation Period Completion Date (IPCD). These errors were corrected by Commission Delegated Regulation (EU) 2021/1254 of 21 April 2021 which was not assimilated into UK law as it came into force after IPCD. In the Derivations and Changes Table at Annex 4, we have used the correct cross-references from the above EU regulation, notwithstanding that this differs from the UK version of the MiFID Org Reg.

Question 10: Are there any inconsistencies in the derivations table that might affect your compliance or understanding of the changes?

Yes

No

Please explain your answer

Question 11: Do you agree with our proposed approach to the future of each provision of the MiFID Org Reg as outlined in the derivations table in Annex 4?

[agree] [neutral] [disagree]

Please explain your answer

Question 12: Are there any provisions not currently proposed for restatement in the Handbook that you think should be included?

Yes [please specify which provision]

No

Please explain your answer

Other considerations:

Question 13: Do any of our proposed changes amount to a change in the scope or application of a provision?

Yes [please specify which provision]

No

Please explain your answer

Rights of action

3.48 Under section 138D of FSMA, persons may be able to bring an action for damages where an authorised person breaches FCA rules unless this right has been disapplied. We are proposing that our approach to the application of section 138D rights broadly follows the existing way in which the relevant sourcebooks address those rights. This means, for example, that the right of action provided for by section 138D would generally apply to breaches of MiFID Org Reg requirements which are restated in COBS but not to those which are restated into SYSC.

Question 14: Are the provisions in the legal instrument clearly aligned with the policy objectives outlined in this consultation paper? Please highlight any areas requiring clarification.

Yes

No

Please explain your answer

Question 15: Do you agree with our decision not to include a CBA in this consultation paper?

[agree] [neutral] [disagree]

Please explain your answer

Cost Benefit Analysis

3.49 Under section 138L(3) of FSMA we are not required to publish a CBA if, in making the appropriate comparison, we consider either there will be no increase in costs or the increase in costs will be of minimal significance. Annex 2 provides further details.

Question 16: Do you agree with our proposed approach to the application of rights of action under section 138D of FSMA?

[agree] [neutral] [disagree]

Please explain your answer

Question 17: Please provide any other feedback on this Consultation Paper

Chapter 4

Future amendments to EU Derived Organisational and Conduct rules

- 4.1** Many of our conduct and organisational rules are derived from EU Directives and their implementing measures. A number of EU directives, such as UCITS Directive, AIFMD, IDD, MiFID and the Capital Requirements Directive (CRD), included common operating standards for firms, such as requirements to maintain adequate policies, procedures and control functions and responsibilities of management bodies ('organisational rules'). They also included broadly similar standards on how firms conduct their activity with clients, such as conflicts of interest rules and information to be provided to clients.
- 4.2** Where possible, and supported in consultation responses, the FCA sought at the time of transposing each EU directive to apply a common standard to firms conducting similar activities. For example, the common platform requirements in SYSC were devised to ensure a single set of organisational requirements would apply to firms subject to both MiFID and the CRD, rather than applying similar but slightly different requirements from these directives on the same business functions.
- 4.3** Over time this became increasingly challenging. The law-making process for each directive was independent of the others and each of them has been amended at different times. In more recent directives, including MiFID II, IDD and AIFMD, many of the detailed implementing measures were in the form of regulations (since transposed into directly applicable assimilated law). In these cases, the FCA had no scope to make minor amendments to maintain a common standard across the files.
- 4.4** This resulted in largely duplicative rules across our Handbook with small differences in technical detail, and complex application rules needed to modify directly applicable obligations to apply to non-MIFID business.
- 4.5** We think there is scope to simplify and amend the provisions in our Handbook that stem from MiFID. We particularly want feedback on areas of complexity, confusion or over prescription which create regulatory cost with limited or no client benefit in addition to duplication where firms carry on business subject to multiple regimes. With our secondary international competitiveness and growth objective in mind, we also want to include appropriate flexibility in our rules to be responsive to future changes and innovation, as well as interoperability with global operating models.
- 4.6** Potential areas in which we could rationalise or improve the rules for the benefits of firms and markets, without negatively impacting client protection may include:
- Reducing the complexity and length of the Handbook by rationalising largely duplicative conduct and organisational rules derived from various EU directives (mostly in COBS and SYSC) and removing the distinctions in rules between types of firms if there is no substantive difference in obligations.

- Replacing ineffective distinctions between different types of firms by tailoring or calibrating rules to better suit different sectors, or to better enable technological development and innovation.
- Introducing flexibility on how firms can meet existing obligations, taking a more outcomes-based approach where this may allow firms to better meet the needs of clients – including retail and wholesale.
- Considering whether certain rules do not meet their intended objective, either because they have never been effective (either generally or when applied in particular context) or because they have become redundant due to market or technological development.
- Rationalising the body of level 3 and other materials firms may rely on to interpret our rules.

4.7 We asked similar questions about Handbook simplification in our CFI on the Consumer Duty, focussing on where our retail conduct rules and guidance which overlap with the Consumer Duty could be simplified. Though we also asked for views on our wider Handbook as part of that publication, it did not focus on wholesale business. We think there is an opportunity for firms to share a more detailed overview of action we might take, for more specific feedback than we have received through the CFI.

4.8 We will be reviewing the feedback from the Consumer Duty CFI alongside feedback to this paper. We have also previously asked questions about areas for simplification in DP23/2: Updating and improving the UK regime for asset management. We are awaiting action from the Government on the restatement of AIFMD and UCITS before any changes can be taken forward. We are keen to build on the feedback that we received that there may be benefit in standardising certain requirements across the different files, over the longer term. However, consideration would need to be given to the costs of doing so.

4.9 We will only make changes where there is clear benefit in doing so, having due regard to our statutory objectives, and subject to any necessary consultation and CBA. In doing so, we will balance the advantages of simplicity against the potential for additional differentiation to better target the harm the rules are intended to address.

4.10 We are also mindful of the benefits of being consistent with international standards and will take account of rules in other jurisdictions, so that firms can continue to operate efficiently on a global basis.

4.11 We want to understand what impact any such potential improvements might have on stakeholders. We will need to consider the interaction between the different files and will need to carefully consider how we sequence this work. We will use the feedback we get from this CP to help shape our approach to rule-making under the new regulatory framework and help us decide what we should prioritise.

Question 18: Are there any specific rules that are challenging to navigate or apply to any particular type of firm or activities? Do any of our rules (or related level 3 or other FCA materials) impose operational costs or other disadvantages that are

disproportionate to the client protection they provide? If so, please state which rules and why.

Question 19: Do any MiFID derived conduct or organisational rules create challenges in their interaction with other FCA rules or international standards?

Question 20: What are the likely benefits of any rationalisation or improvements you would propose, for example reduced compliance costs or improved competition?

Immediate opportunity for rationalisation

4.12 In this section, we explain further the opportunity to reduce the complexity and length of our Handbook that we have identified.

SYSC 10 Conflicts of Interest rules

- 4.13** One example where we see scope for simplification are the conflicts of interest rules.
- 4.14** MiFID, UCITS directive, AIFMD, IDD all included rules on conflicts of interest which were substantially very similar. As a result, SYSC 10 includes a number of conflicts rules which are very similar but apply only to a specified activity. For example, SYSC 10.1.8R, SYSC 10.1.9AR, SYSC 10.1.21R, SYSC 10.1.26R and SYSC 10.1A.6R all detail conflict disclosure requirements that apply to different activities that firms conduct.
- 4.15** Firms doing mixed business may be subject to two or more different SYSC conflict disclosure rules in relation to their different activities, even though the standard in each is substantially the same. A firm must disclose in line with SYSC 10.1A.6R in relation to insurance-based investment products, but in line with SYSC 10.1.8R and SYSC 10.1.9AR in relation to distribution of MiFID financial instruments, for example.
- 4.16** It is necessary to read SYSC 10 in conjunction with SYSC 1 Annex 1, which modifies certain SYSC provisions. It also provides a road map for different types of firms setting out how the SYSC 10 rules apply to them in relation to different aspects of their activity.
- 4.17** In Chapter 3 we explained that we propose to restate the conflict of interest obligations in Articles 33–35 of the MiFID Org Reg into existing SYSC 10 provisions by making minor drafting changes which do not change the effect of the provisions.
- 4.18** To fully rationalise SYSC 10 we will carefully consider where rules need to continue to differentiate between different activities and whether small differences in language practically give rise to substantive impacts for firms.
- 4.19** For example, SYSC 10.1.11R (transposed from UCITS Directive) requires a firm to specify in its conflicts policy procedures and measures to 'manage' conflicts. The MiFID Org Reg (proposed to be restated into SYSC 10.1.11R) requires the policy to specify procedures

and measures to 'prevent or manage' conflicts. AIFMD Implementing Regulation requires procedures to 'prevent manage and monitor' conflicts to be specified, and SYSC 10.1A.4R (transposing IDD) requires the policy to specify procedures to 'manage and prevent conflicts from damaging the interests of the client'. We do not believe the technical differences in the conflict's rules are substantive, given the application of SYSC 10.1.3R requiring all firms to take all appropriate steps to prevent or manage conflicts.

4.20 We will consider consulting on rationalising and simplifying SYSC 10 so that it is easier for firms to understand the standards that apply.

Question 21: Do you agree that it would benefit firms to rationalise SYSC 10?

Question 22: What differences between conflicts rules for different types of activity do you think need to be maintained in a rationalised SYSC 10?

Best execution and personal account dealing

4.21 Other examples of rules which could be rationalised, without substantively changing the obligations, include best execution rules in COBS 11.2, COBS11.2A and COBS 11.2B. Rationalising these sections could allow us to more clearly distinguish between the obligations of different types of firms in the execution chain.

4.22 Similarly, COBS 11.7 and COBS 11.7A apply substantially the same rules to personal account dealing in relation to MiFID business and non-MiFID business.

Question 23: Do you agree that it would be beneficial to rationalise these requirements?

More complex opportunities for rationalisation

4.23 We have identified a number of areas where we think changes to the requirements are merited, but such changes would be more complex and would also have a more material impact on firms. We would welcome views on whether any of these should be actioned.

Information and disclosure requirements

4.24 Provision of information which enables clients to make the right decisions is essential. Many COBS chapters require information to be provided to clients at different stages of their investment journey. For example, COBS 2 requires disclosures to be made both in relation to certain products (eg risk warnings) and services (eg costs and charges) before services are provided, as well as some ongoing disclosure requirements eg in relation to inducements. COBS 6 specifies a wide range of disclosure and information requirements relating to, among other things, general information about the firm, information about the basis on which advice is given. COBS 14 specifies information

to be provided to clients in relation to investments offered to the client, including risk warnings, and COBS 16 and 16A specify requirements about reporting to clients in relation to transactions and client assets held on behalf of the client.

- 4.25** Later this year we will be consulting on a new retail disclosure regime. The new framework will replace the PRIIPs Regulation and the UCITS disclosure requirements, with a more flexible approach. Products formerly under the PRIIPs and UCITS regimes, including overseas funds in the Overseas Funds Regime (OFR), will be subject to the rules in the new regime. Any changes to the MiFID requirements would need to be considered in conjunction with changes relating to product disclosures.
- 4.26** More broadly, rationalising our information and disclosure rules might have long-term benefits for firms and consumers. It might improve competition by simplifying the compliance burden for new firms entering the market or accommodating future financial product innovations. It may also make it easier for us to supervise firms' compliance with these requirements more efficiently. However, reviewing and rationalising these rules will be complex and will require careful consideration and may incur costs for firms. We therefore propose to consider how we might do this over the longer term. Feedback from this discussion will help us to consider which information and disclosure requirements we should prioritise to review.

Question 24: Do you have any specific suggestions for which disclosure requirements could be rationalised? This does not include CCIs.

[If yes, please explain your answer, including which disclosure requirements should be prioritised for review, and why.]

Client categorisation

- 4.27** The client categorisation regime facilitates calibration of client protections to different types of clients with varying levels of financial knowledge, experience and risk tolerance. Under the regime, clients can be categorised as retail, professional or (for certain types of activity) eligible counterparty (ECP) based on fixed criteria (per se categorisation). The regime also allows flexibility for clients to opt up or down to an alternative category where they consider that their 'per se' category does not reflect their capabilities to properly assess the risks of the financial markets in which they participate.
- 4.28** Client categorisation is used to calibrate protections such as suitability and appropriateness tests for certain services, best execution, a range of disclosure obligations and access to certain redress mechanisms. Significant additional consumer protection measures have been introduced in recent years for clients categorised as retail, including the Consumer Duty and restrictions in relation to certain higher risk products such as leverage limits for Contracts for Difference (CFDs). Many regulatory protections do not apply in relation to professional clients and ECPs which are considered capable to assess the risks that they are taking and which avoids unnecessary friction and costs for wholesale business.

Why we are seeking feedback

- 4.29** The principle that clients should be categorised into different categories is well established, and aids good functioning of the market. It allows, for example, for more streamlined requirements for wholesale market participants. However, if not calibrated appropriately, categorisations can create challenges.
- 4.30** Most of the thresholds and criteria for determining the category of a client were established over 17 years ago. In that time, there have been significant economic, social and technological changes. It is appropriate for us to consider whether the boundaries for each of the client categories are where they should be and whether client protection rules are calibrated correctly for each category.
- 4.31** We are aware that client categorisation is a core process in firms' operations, established and maintained at great cost. Any changes to this regime will only be made if there is clear benefit in doing so, and subject to consultation and cost benefit analysis.
- 4.32** We are also aware of responses to the Consumer Duty Call for Input and from responses to DP 23/2 Updating and improving the UK regime for asset management that some firms think these rules should be amended.

Per se Professional and ECP

- 4.33** There is substantial overlap between the per se professional and per se ECP categories. As the calibration of protections afforded to each category is based on the types of entities in the per se category, we want to consider whether the current boundaries are best placed to facilitate appropriate calibration of rules to these wholesale client categories.
- 4.34** In particular we want to consider whether entities that act on behalf of underlying clients should be treated as per se ECPs. In practice we understand such entities tend to request to opt down to professional status to ensure they meet their obligations in relation to their own clients. Removing such entities from the per se ECP list would mean they would be categorised as professional by default, rather than having to request to opt down.
- 4.35** MiFID II narrowed the difference in treatment of retail and professional clients and ECPs. Ensuring the thresholds for each category are right may enable us to reserve certain protections for professional clients. This could clearly distinguish the ECP category as one that minimises friction in dealing between the most sophisticated entities that expect or require little protection.

Question 25: Do firms that act on behalf of clients tend to request to opt down to professional status? Should such firms be removed from the list of entities that can be treated as per se ECP? Would this help clearer calibration of client protection rules?

Question 26: Could the per se categories be simplified in other ways, eg, replacing different types of authorised firm listed separately with 'authorised person'? Or harmonising the differences in certain thresholds within the wholesale categories which differ for MiFID and non-MiFID business?

Elective categorisation

- 4.36** We would like to consider how well the process for allowing clients to elect to be categorised differently than their per se category is working. In particular:
- i.** Does the process allow sufficient flexibility for clients to switch category when appropriate?
 - ii.** Are the current rules and guidance sufficiently clear to discourage firms inappropriately opting clients up to avoid consumer protections from which these clients should benefit?
 - iii.** Whether the use of elective professional categorisation in relation to financial promotion rules remains appropriate in all circumstances?
- 4.37** The bar for opting a retail client up to be treated as a professional is high. We believe it should be, given the extent of protections the client will waive if their request to opt up is accepted. Through our supervision we have observed some poor practices in recent years where firms are not conducting adequate assessments of clients' expertise, experience and knowledge when opting them up to professional client status. Some firms ask poor quality questions of clients, accept weak answers and keep insufficient records to support their assessment. Of particular concern are those firms whose processes appear to be designed to encourage clients to opt up to avoid higher consumer protections, such as leverage limits on CFDs.
- 4.38** Whilst we observe some poor practice, we recognise there are positive reasons for opting clients up. We recognise that the pace and creativity of innovation in UK financial services creates new opportunity for businesses and consumers to participate in capital markets. The FCA has a statutory objective to secure an appropriate degree of protection for consumers but in considering what degree of protection may be appropriate, we must have regard to (amongst other things) the general principle that consumers should take responsibility for their decisions. For investors who can understand and accept levels of risk, our rules should not act as a barrier to their ability to act in their interests and pursue their financial objectives.

Current opt up rules

- 4.39** COBS 3.5.3R(1) requires that a firm may only accept a retail client's request to opt up to professional status if it has undertaken an adequate assessment of the client's expertise, experience and knowledge (the "qualitative test"). COBS 3.5.5G provides that the fitness test firms apply to their own managers and directors is an example of what an adequate assessment may look like.
- 4.40** Firms carrying out MiFID business, or mixed business, must also meet the 'quantitative test'. This requires the firm to ensure the client satisfies two out of the three criteria specified in COBS 3.5.3R(2) or, where the client is a local public authority or municipality, the quantitative criteria specified in COBS 3.5.3BR or COBS 3.5.3ER, as relevant.
- 4.41** COBS 3.5.6R specifies further that a firm must take all reasonable steps to ensure that a client requesting to opt up satisfies the qualitative test, and in the case of MiFID or mixed business, the quantitative test, before accepting the client's request. COBS 3.8.2R(2) requires firms to keep records of sufficient information to support their decision to categorise a client as professional by election.
- 4.42** As we explain above, COBS 3.5 set a high bar for opting up a retail client to elective professional status. When determining whether to treat a retail client as an elective professional, a firm must undertake a robust assessment of the client's expertise, experience, and knowledge. This assessment should provide reasonable assurance that the client is capable of making their own investment decisions and understanding the associated risks. It is not enough for firms simply to 'tick the box'. The same standard applies whether a firm is opting clients up on an occasional basis or because it has taken the commercial decision not to deal with retail clients. The poor practices we have identified are products of firms not maintaining adequate processes. Further, until a client is opted up, they remain a retail client by default and therefore benefit from the protections afforded by the Consumer Duty.

Possible alternative approaches

- 4.43** We welcome feedback on a range of possible alternatives to add flexibility to the opt up process and remove barriers to investment for very experienced investors, while further discouraging poor practices. Options may include, but not be limited to:
- i.** Updating and / or adding alternative quantitative test criteria. This could include:
 - adding product specific criteria or alternative indicators of a client's expertise, knowledge and experience.
 - adjusting the asset threshold
 - ii.** Aligning the rules for MiFID business with the current standard for non-MiFID business (which does not specify particular quantitative criteria that must be met in all cases). This standard requires firms to exercise judgement in applying the outcomes based qualitative test. This could give firms the flexibility to design, document and implement assessment policies and procedures appropriate to the range of services they provide and clients they provide those services to. This approach could additionally include:

- additional Handbook guidance on factors firms should consider in making their assessment of the client
 - making a minimum investment portfolio threshold a prerequisite to opting up.
- iii. Strengthening the process for ensuring consumers understand the implications of requesting to opt up, including with respect to the regulatory protections they would forego. This could include:
- outcomes based rules or Handbook guidance on client engagement and / or education similar to the requirements of the Consumer Duty customer understanding objective
 - introduction of a cooling off period to ensure a client has adequate time to assess the implications of their request to opt up
 - periodic confirmation that the client wants to continue to be treated as a professional in relation to the relevant products and services, providing them opportunity to opt back in for retail protections. In particular where changes have been made to the protections for retail clients since they opted out, for example following the introduction of the Consumer Duty. Noting the existing COBS 3.5.9R requirement that if a firm becomes aware that a client no longer fulfils the initial conditions that made it eligible for categorisation as an elective professional, the firm must take appropriate action.

Question 27: How important is it to your clients to have the ability to opt up to professional client status? What are the benefits to clients of opting up eg is there a cost saving from lower fees and /or better pricing?

Question 28: Do you think we should change our rules in relation to opting clients up to professional status? If yes, would you support any of the approaches suggested above, or a combination of these? Are there any alternative approaches you would suggest?

Question 29: Where possible, please quantify the effect changes would have. For example, estimate the additional potential investment in UK capital markets from certain client groups as a result of any proposed change in the opt up rules.

Interaction of client categorisation with the financial promotion rules

- 4.44** The client categorisation regime interacts with the financial promotion regime. The financial promotion regime for example, incorporates exemptions, including by reference to recipients' sophistication or net worth. However, many of the financial promotion rules are also disapplied in relation to promotions made to non-retail clients.
- 4.45** 'Client' in this context is broader than its usual meaning. In relation to the financial promotion rules a 'client' includes anyone to whom a financial promotion is or is likely to be communicated by the firm or where the firm has approved the promotion, even if the

firm will not provide any service in connection with regulated activities to that person (COBS 3.2.1R(3)).

- 4.46** A firm is not required to formally notify a person of their categorisation for the purposes of COBS 3.3 where that person is only being treated as a 'client' for the purposes of the financial promotion rules. That is, a person to whom they do not provide a service involving designated investment business. For example, when a firm communicates or approves a financial promotion relating to qualifying cryptoassets, in relation to which there are currently no regulated activities, or when communicating with a corporate finance / venture capital contact. Note that firms may be required to 'categorise' a client other than under COBS 3 depending on the product they are promoting. For example, direct offer financial promotions of restricted mass market investments to retail clients are subject to client categorisation requirements set out in COBS 4.12A.21R.
- 4.47** However, financial promotion rules differentiate between promotions to retail and non-retail investors. In applying these requirements, firms must have regard to the client categories in COBS 3 for the purposes of establishing the status of the person or persons to whom they are intending to communicate (or who are likely to receive promotions which they are approving).
- 4.48** Among the rules which do not apply to non-retail promotions are the fair, clear and not misleading rule and various substantive rules relating to the form, content and presentation (eg in relation to risk warnings) of promotions. That being said, while the fair, clear and not misleading rule may not apply to a non-retail communication in its capacity as a financial promotion, it may still apply in so far as the communication is one in relation to designated investment business (COBS 4.2.2G(2)).
- 4.49** In recent years, the FCA has also imposed marketing restrictions which limit the extent to which firms can promote certain high-risk investments to retail clients. For example, speculative illiquid securities (such as speculative mini-bonds) cannot be marketed to a retail client unless an exemption is applicable, eg, the investor is certified as a high-net worth or a sophisticated investor.
- 4.50** We think it continues to be appropriate that certain financial promotion rules do not apply in relation to per se professional and ECP 'clients'. However, we welcome feedback on whether firms accept requests from 'clients' to elect to be opted up to professional status for the purpose of exempting them from certain financial promotion rules.

Question 30: In what circumstances do clients opt up to be treated as elective professionals for the purpose of exemption from certain financial promotion rules only?

Corporate finance contacts

- 4.51** The corporate finance contacts regime is a long-standing regulatory regime which broadly enables firms advising corporates on capital raising to treat potential investors as mere contacts rather than clients for the purpose of COBS and MiFID based obligations (including MiFID Org Reg rules). The purpose of the regime is to ensure potential investors understand that the corporate finance firm is acting in the interests

of the corporate, and not providing services to the potential investor with the associated implications regarding regulatory protections.

- 4.52** Under the regime the corporate finance firm nevertheless remains subject to the financial promotion rules when communicating financial promotions, or approving promotions for communication, to potential investors. COBS 3.2.2G explains that a corporate finance contact is a 'client' of the firm for this purpose, and the firm must comply with the financial promotion rules accordingly.
- 4.53** To comply with the financial promotion rules in COBS 4, a firm must consider whether the recipient of a financial promotion will be a retail or non-retail 'client'. As a result, firms undertaking corporate finance business may need to consider the categorisation of their corporate finance contacts for the purpose of applying the financial promotion rules.
- 4.54** An essential element of the corporate finance contact regime is that the firm must not give any indication to the contact (the potential investor) that they are treated as a client and must not behave in a way which might reasonably be expected to lead the contact to believe they are being treated as a client.
- 4.55** If a firm is treating a contact as an elective professional when applying the financial promotion rules, it must apply the requirements in COBS 3.5.3R which apply to non-MiFID business. This requires that the 'client' must first request in writing to be treated as a professional. The firm must then adequately assess that the client's expertise, experience, and knowledge is such that they are capable of making their own investment decisions and understanding the risks involved in the anticipated investment, warn the client of the protections they will lose, and obtain the client's written statement that they are aware of the consequences of losing those protections.
- 4.56** Therefore, the process of opting a contact up to elective professional status could carry a risk of a contact believing they are being treated as a true client.
- 4.57** COBS 3.8 requirements to document processes for the assessment of a client's category, and to keep records sufficient to support such assessment, are not applicable in relation to corporate finance contacts. However, a firm must comply with general governance and record keeping requirements, including SYSC 4 and SYSC 9. Under these rules, firms are required to meet equivalent standards in relation to all of their activities, including when treating contacts as elective professionals for the purpose of the financial promotion rules.

Question 31: To what extent do firms treat corporate finance contacts as elective professional clients for the purpose of complying with the financial promotion rules?

Question 32: How do firms navigate the process of opting up while ensuring that contacts are not under the impression that they are receiving a service in the relation to a designated investments (and related protections) from the firm?

Venture capital contacts

- 4.58** A similar regime to the corporate finance contact regime exists for venture capital contacts. The primary requirement of the venture capital contacts regime is that the venture capital firm must not give any indication to the contact that they are treated as a client. We welcome feedback from stakeholders on any circumstances in which the venture capital contacts regime is used.

Question 33: To the extent you rely on the venture capital contacts regime, please provide answers to the questions we have asked for corporate finance contacts.

Long term changes

- 4.59** In addition to the technical changes identified above, there are also some more strategic changes to the rulebook that could be made over the long term.
- 4.60** MiFID currently sets standards for a range of business models. Often the same requirements apply to vastly different businesses. For example, suitability rules capture a broad range of advice activities. In future, it may be useful to differentiate in our requirements according to the business models we see. As part of our work on AGR, we are exploring ways to ensure more support is provided to retail investors but we may not seek to make equivalent changes to advice that is delivered to professional clients.
- 4.61** Equally, some very similar business activities are regulated to different standards when requirements stem from different directives. Multi-asset funds for example provide investors with a diversified pooled investment in a very similar way to a model portfolio service (MPS), yet funds and MPS' are regulated differently. The rules for multi-asset funds stem from the UCITS Directive whereas the rules for firms providing non-utilised model portfolios stem from MiFID.
- 4.62** In the longer term, we may seek to set requirements for firms depending on the risks of harm presented by their business model, rather than a legacy MiFID/non-MiFID distinction business. Whilst we have no immediate plans to do so, we are interested in views.

Question 34: Are there any areas where you think sector specific changes are needed? If yes, please explain your answer.

Article 3 MiFID Optional Exemption Firms

- 4.63** Article 3 of MiFID permitted countries to have a differentiated regime for certain firms, provided they did not undertake cross border business. We refer to firms subject to this alternative regime as Article 3 firms.

- 4.64** Clearly, whether or not a firm conducts cross border business is a meaningless differentiation of firms post UK exit from the EU.
- 4.65** Around 5,300 firms are authorised as Article 3 firms. These are predominantly personal investment firms but also include corporate finance and venture capital firms. These firms play a critical role in the UK economy, whether helping consumers realise their financial goals or sourcing capital for businesses.
- 4.66** FSMA 2023 revoked various assimilated law, including Part 2 of the MiFI Regulations imposing restrictions on activities of Article 3 firms, subject to commencement. Alongside the Treasury we are considering the policy options arising of the new domestic framework and what this might mean for future regulation of Article 3 firms. This may include considering the activities they are permitted to carry out in the absence of a single market framework, and connected legislative and Handbook amendments
- 4.67** Any changes would be sequenced with the introduction of our replacement rules to ensure there is no unintended impact to the authorisation status of relevant firms.
- 4.68** At this point we are not proposing any changes to MiFID derived rules applicable to Article 3 firms. However, as part of our request for feedback on how we can rationalise or improve our rules (as discussed earlier in this chapter), we particularly welcome feedback from Article 3 firms. To help facilitate Article 3 firms' consideration of the current framework, we describe below the background to Article 3 and the implications of being an Article 3 firm in relation to MiFID derived rules.
- 4.69** This section of the Discussion Chapter describes the background to Article 3 and the implications of being an Article 3 firm in relation to MiFID derived rules. This detail is provided to help firms consider how well the current framework and rules work for Article 3 firms, and whether improvements could be made. In particular, to reduce complexity or to ensure that Article 3 firms have flexible requirements that are proportionate to the potential for harm that could arise from their activities. As set out in 4.8-4.11 we will use feedback from firms to help shape our approach to rule-making under the new regulatory framework and help determine prioritisation.
- 4.70** Article 3 authorisation has a range of other implications beyond application of MiFID derived rules. For example, Article 3 firms are subject to different prudential treatment than MiFID investment firms. In CP23/24 Capital deduction for Redress: personal investment firms (published in November 2023), we discussed broader improvements to the prudential regime for personal investment firms (many of which are Article 3 firms) to meet our operational objectives. Any proposed improvements to the prudential regime will be subject to future consultation.

Background to Article 3 optional exemption

- 4.71** MiFID established the conditions under which authorised investment firms could provide specified services throughout the Union, either on a cross-border basis from their home state, or by establishing branches in other EU member states.
- 4.72** To ensure consistent standards and a level playing field, MiFID harmonised (and strengthened) the authorisation and operating requirements for investment firms. To avoid unwarranted burden on firms that conducted limited activity and did not intend to offer services outside their own country, Article 3 of MiFID allowed Member States the option to exempt such firms from certain EU legislation, subject to certain conditions.
- 4.73** In taking up the MiFID Article 3 optional exemption, the UK added an option for firms eligible for the Article 3 regime to opt-in to full MiFID investment firm authorisation.
- 4.74** Adopting Article 3 allowed the FCA to exclude Article 3 firms from the definition of 'MiFID Investment Firm' and therefore from the scope of the CRD and other EU prudential regulation. This was important because at the time EU prudential regulation implemented Basel for banks and was not fully tailored to reflect the nature of (non-bank) firms that carried out investment business. However, this is no longer the case and there is now a separate prudential regime designed for firms that do investment business.
- 4.75** The UK approach also allowed firms to opt-in to get the benefits of a MiFID investment firm i.e. permission to conduct a wider range of services and passporting to provide services throughout the EU. Opting in however required firms to comply with EU derived prudential rules, which FCA was unable to tailor to the risk profile of these firms. Again, this is now no longer the case as FCA is free to tailor the separate prudential regime it has designed for firms doing MiFID investment business (subject to any obligations under Part 9C of FSMA).

Article 3 conditions

- 4.76** The Article 3 option was subject to conditions that the member states taking it up would:
- Impose certain restrictions on the activity Article 3 firms could conduct ('activity restrictions'), and
 - Ensure these firms are subject to domestic requirements that are 'at least analogous' to requirements specified in Article 3(2)(a) to (c) of MiFID II ('analogous requirements').

Activity restrictions

- 4.77** The Article 3 activity restrictions, and the ability to apply for authorisation subject to these restrictions, were given effect in Part 2 of the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (MiFI Regs).
- 4.78** Regulation 6 of the MiFI Regs restricts Article 3 firms from:
- Providing MiFID services other than advising and arranging type services, and in relation to transferable securities and units in collective investment undertakings only
 - Transmitting orders other than to MiFID firms, UK banks, branches of similarly regulated third country firms, UK authorised collective investment undertakings or UK or European Economic Area (EEA) listed investment companies (eg investment trust companies)
 - Holding client funds or assets or placing themselves in debit with their clients

Analogous requirements

- 4.79** The FCA used its rule making powers to meet the condition that Article 3 firms be subject to at least analogous authorisation, conduct and operating conditions as those in MiFID. The list of analogous requirements is, in reality, a fairly comprehensive list of the MiFID requirements that would be applicable to MiFID firms conducting the limited services Article 3 firms are permitted to provide, but not the whole list.
- 4.80** FCA interpreted 'at least analogous' to mean that the domestic requirements applied to Article 3 firms must achieve the same effect as, and be substantially similar, to each of the analogous requirements and their corresponding implementing measures. The FCA did however consider it had discretion to apply a degree of flexibility in how certain of the analogous requirements were applied if needed as set out in CP16/19.
- 4.81** The effect of the analogous requirements condition is that there are very few distinctions between the conduct and organisational requirements MiFID firms are subject to and those that Article 3 firms are subject to.
- 4.82** For illustration, the following is a summary of where the rules derived from MiFID differ in application to Article 3 firms. Greater differences in the treatment of Article 3 firms exist in other areas of FCA rules, in particular in relation to prudential treatment and authorisations. We plan to engage with firms in more detail on these topics in due course in separate consultations.

Differences in application of MiFID derived rules for Article 3 firms

Telephone taping

SYSC 10A.1.9 allows Article 3 firms that provide services solely, or mainly, to retail clients to meet the MiFID telephone taping requirements by retaining a written note. This difference is an example of where FCA used its discretion in how Article 3 firms can meet the MiFID requirement. Discretion was given because Article 3 personal investment firms tend to be small and the cost of installing telephone taping technology was considered disproportionate for such firms. We do not propose to change this approach.

Client categorisation

COBS 3.5.3R (2) requires MiFID firms to include specified quantitative criteria when conducting an assessment of whether retail clients (other than local authorities) can be opted up to elective professional categorisation. This rule is not extended to non-MiFID firms, including Article 3 firms. Article 3 and other non-MiFID firms are subject to the qualitative test requiring them to undertake an assessment of the client's expertise, experience and knowledge which is adequate to give them a reasonable assurance that the client is capable of making their own investment decisions.

COBS 3.5.2R sets out the fixed list of entity types that can be categorised as a per se professional client. The conditions a large undertaking must meet to be treated as per se professional by non MiFID firms, including Article 3 firms, are different to the conditions a large undertaking must meet when dealing with MiFID firms.

COBS 3.6.4R sets some additional conditions which non-MiFID firms, including Article 3 firms, must meet before accepting a client's request to opt up to eligible counterparty.

Each of these rules are examples of rules in relation to which the UK was not required to apply at least analogous requirements. The FCA was therefore not obliged to extend them to Article 3 firms and took the view that the risk benefit analysis did not justify doing so.

We discuss in more detail in paragraph 4.27 above whether the client categorisation rules are an example of rules which could benefit from review, to ensure they work as well as they should for all types of firms and clients.

Record keeping

COBS 11.5A relates to record keeping for transactions and orders. Article 3 firms conducting corporate finance business are excluded from the scope of this rule because they generally only take orders in shares of private companies. This is an example of where the FCA used its discretion to exclude a specific subgroup of Article 3 firms from the scope of a particular rule, even though the rule was on the

list of analogous requirements, because that subgroup of firms do not conduct the type of activity to which the rule relates.

Knowledge and competence

SYSC 5.1.5AAR and SYSC 5.1.5ABR, relating to knowledge and competence requirements, do not apply to Article 3 firms. This is an example of where FCA used discretion to determine that existing domestic rules, in this case the FCA's Senior Managers and Certification Regime (SMCR) competent employees rules and the detailed professionalism requirements applicable for certain retail activities, impose an analogous standard to the MiFID requirement.

Communications with ECPs

COBS 4.2.1R requires MiFID firms to communicate with ECPs in a way that is fair, clear and not misleading. This rule is not extended to Article 3 firms. This is another example of where FCA used discretion to determine that existing FCA requirements, in this case FCA Principle 7, impose an analogous requirement.

Systems and Controls rules

Certain systems and controls rules derived from MiFID, which were not on the list of analogous requirements, are applied to Article 3 firms as guidance rather than rules. This is an example of where FCA has applied proportionality given the majority of Article 3 firms are smaller businesses.

4.83 As illustrated above, there is limited practical difference in the application of MiFID II derived rules for Article 3 firms. However, the need to distinguish Article 3 authorised firms has resulted in drafting complexity in the Handbook. In future we propose to remove distinctions in our rules for MiFID and non-MiFID firms if there is no material difference in the obligations.

Question 35: To the extent not already raised in your response to the Consumer Duty CFI, are there any MiFID derived rules, that we should consider tailoring differently for Article 3 firms? Are there any improvements we could make to our Handbook to make it easier for Article 3 firms to navigate?

Question 36: In the event of future reform, would you plan to take advantage of any removal of the activity restrictions to offer more services to your clients? What, if any, proportionality would need to be added to any current rules relating to these additional activities to better tailor them to the risks presented by your business?

Annex 1

Questions in this paper

Question 1: Do you agree with our approach to restating obligations from the MiFID Org Reg into our Handbook?
[Agree, neutral, disagree]

Please explain your answer

Question 2: Do you agree with our approach to maintain recitals as guidance, and remove references to the MiFID Org Reg where we have replicated the recital in full previously?
[Agree, neutral, disagree]

Please explain your answer

Question 3: Do you agree with our proposed changes to SYSC?
[Agree, neutral, disagree]

Please explain your answer

Question 4: Do you agree with our proposed changes to COBS?
[Agree, neutral, disagree]

Please explain your answer

Question 5: Do you agree with our proposed changes to MAR?
[Agree, neutral, disagree]

Please explain your answer

Question 6: Do you agree with our proposed changes to REC?
[Agree, neutral, disagree]

Please explain your answer

Question 7: Do you agree with our proposals to change DISP?
[Agree, neutral, disagree]

Please explain your answer

Question 8: Do you agree with the Financial Ombudsman's proposal to mirror the FCA's proposed changes to DISP into its voluntary jurisdiction?
[Agree, neutral, disagree]

Please explain your answer

Question 9: Do you agree with the Financial Ombudsman's proposal to adopt the FCA's proposed changes to the Glossary into its scheme rules where those Glossary definitions are used in the FOS scheme rules?

[Agree, neutral disagree]

Please explain your answer

Question 10: Are there any inconsistencies in the derivations table that might affect your compliance or understanding of the changes? Yes/No

Please explain your answer

Question 11: Do you agree with our proposed approach to the future of each provision of the MiFID Org Reg as outlined in the derivations table in Annex 4?

[agree, neutral, disagree]

Please explain your answer

Question 12: Are there any provisions not currently proposed for restatement in the Handbook that you think should be included? [Yes,no, if yes please specify which provision]

Please explain your answer

Question 13: Do any of our proposed changes amount to a change in the scope or application of a provision?

[Yes,no, if yes please specify which provision]

Question 14: Are the provisions in the legal instrument clearly aligned with the policy objectives outlined in this consultation paper? Please highlight any areas requiring clarification. Yes/No

Please explain your answer

Question 15: Do you agree with our decision not to include a CBA in this consultation paper? [agree, neutral, disagree]

Please explain your answer

Question 16: Do you agree with our proposed approach to the application of rights of action under section 138D of FSMA? [Agree, neutral, disagree]

Please explain your answer

Question 17: Please provide any other feedback on this Consultation Paper

- Question 18:** Are there any specific rules that are challenging to navigate or apply to any particular type of firm or activities? Do any of our rules (or related level 3 or other FCA materials) impose operational costs or other disadvantages that are disproportionate to the client protection they provide?
- If so, please state which rules and why
- Question 19:** Do any MiFID derived conduct or organisational rules create challenges in their interaction with other FCA rules or international standards?
- Question 20:** What are the likely benefits of any rationalisation or improvements you would propose, for example reduced compliance costs or improved competition?
- Question 21:** Do you agree that it would benefit firms to rationalise SYSC 10?
- Question 22:** What differences between conflicts rules for different types of activity do you think need to be maintained in a rationalised SYSC 10?
- Question 23:** Do you agree that it would be beneficial to rationalise these requirements?
- Question 24:** Do you have any specific suggestions for which disclosure requirements could be rationalised? This does not include CCIs. [If yes, please explain your answer, including which disclosure requirements should be prioritised for review, and why.]
- Question 25:** Do firms that act on behalf of clients tend to request to opt down to professional status? Should such firms be removed from the list of entities that can be treated as per se ECP? Would this help clearer calibration of client protection rules?
- Question 26:** Could the per se categories be simplified in other ways, eg, replacing different types of authorised firm listed separately with 'authorised person'? Or harmonising the differences in certain thresholds within the wholesale categories which differ for MiFID and non-MiFID business?
- Question 27:** How important is it to your clients to have the ability to opt up to professional client status? What are the benefits to clients of opting up eg is there a cost saving from lower fees and /or better pricing?

- Question 28:** Do you think we should change our rules in relation to opting clients up to professional status? If yes, would you support any of the approaches suggested above, or a combination of these? Are there any alternative approaches you would suggest?
- Question 29:** Where possible, please quantify the effect changes would have. For example, estimate the additional potential investment in UK capital markets from certain client groups as a result of any proposed change in the opt up rules.
- Question 30:** In what circumstances do clients opt up to be treated as elective professionals for the purpose of exemption from certain financial promotion rules only?
- Question 31:** To what extent do firms treat corporate finance contacts as elective professional clients for the purpose of complying with the financial promotion rules?
- Question 32:** How do firms navigate the process of opting up while ensuring that contacts are not under the impression that they are receiving a service in the relation to a designated investments (and related protections) from the firm?
- Question 33:** To the extent you rely on the venture capital contacts regime, please provide answers to the questions we have asked for corporate finance contacts.
- Question 34:** Are there any areas where you think sector specific changes are needed? If yes, please explain your answer.
- Question 35:** To the extent not already raised in your response to the Consumer Duty CFI, are there any MiFID derived rules, that we should consider tailoring differently for Article 3 firms? Are there any improvements we could make to our Handbook to make it easier for Article 3 firms to navigate?
- Question 36:** In the event of future reform, would you plan to take advantage of any removal of the activity restrictions to offer more services to your clients? What, if any, proportionality would need to be added to any current rules relating to these additional activities to better tailor them to the risks presented by your business?

Annex 2

Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a CBA of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'. However, under section 138L(3) we are not required to publish a CBA if, in making the appropriate comparison, we consider either there will be no increase in costs or the increase in costs will be of minimal significance.
2. The rules we are proposing are intended to replicate the relevant requirements in the MiFID Org Reg once these have been repealed. As these rules maintain existing requirements which already apply to firms, we do not consider there will be any increase in ongoing compliance costs above those which exist currently. Firms may incur some one-off costs in familiarising themselves with the proposed changes but given our stated approach of replicating existing requirements, we consider these costs will be of minimal significance and are proportionate to the outcome we are looking to achieve.

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under FSMA.
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules (a) is compatible with its general duty, under section 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, (b) so far as reasonably possible, advances the secondary international competitiveness and growth objective, under section 1B(4A) FSMA, and (c) complies with its general duty under section 1B(5)(a) FSMA to have regard to the regulatory principles in section 3B FSMA. The FCA is also required by section 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under section 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

- 7.** The proposals set out in this consultation are primarily intended to maintain the consistency of the regulatory framework with no policy changes in terms of content and/or scope. Although no substantive policy changes are proposed, replacing the repealed firm facing obligations in assimilated law will advance the FCA's objectives or securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system. Our proposals are also relevant to the FCA's commitment to strengthen the UK's position in global wholesale markets.
- 8.** To ensure the MiFID Org Reg rules address potential harms to consumers, and the ability of certain firms to meet redress liabilities as they arise such as personal investment firms, over the long term we will want to adapt the obligations to better suit the activities and risks of different business models.
- 9.** Such reforms require careful balance and coordination across other policy and areas of assimilated law. At this stage, we propose to focus on simply restating the firm facing obligations into our rules without policy changes, as a crucial first phase. This will then enable us to conduct longer term work in a second phase, which will focus on harmonising, simplifying and rationalising the requirements.
- 10.** We consider these proposals are compatible with the FCA's secondary international competitiveness and growth objective (SICGO). The proposals do not introduce new requirements on firms, nor remove existing requirements. Together with our proposals for future rationalisation, and seeking early stakeholder input, this provides continuity of the regulatory regime applying to firms which are subject to the requirements, whether directly under the MiFID Org Reg, or through our rules, that will maintain a proportionate regulatory regime and ensure stability. The proposed consequential amendments and drafting style edits will ensure clarity and consistency with the wider Handbook.
- 11.** The development of the policy content set out in this CP was started and completed before 15 November, before HMT issued a new set of recommendations about aspects of the Government's policy to which the FCA should have regard in a remit letter under section 1JA FSMA 2000. In developing our proposals, the FCA has regard to the new remit letter, and our initial view is that the intended effects of the proposals are in line with the new recommendations. The recommendations include promoting growth and international competitiveness in the financial services sector and improving the regulatory experience for firms while maintaining consumer protection and financial stability. Restating the assimilated MiFID Org Reg provisions into the FCA Handbook and consulting on our intentions for the future regime will allow us to tailor our rules to better suit the UK market and promote the growth and competitiveness of the financial services sector going forward. Our discussion chapter on opportunities for simplification and rationalisation of FCA rules derived from various EU legislation, provides a first step in seeking to improve the regulatory framework for firms. However, we will consider these matters further and continue to have regard to the new remit letter when finalising and making the rules.

- 12.** We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they maintain existing regulatory requirements which are currently in assimilated law and which are being repealed and, thereafter, enable us to make changes to those rules in the future to ensure that the rules applying to investment business are effectively calibrated by reference to our objectives.
- 13.** In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in section 3B FSMA. Not all of these regulatory principles are relevant to the proposals. We cover the most relevant of the principles below.

The need to use our resources in the most efficient and economic way

- 14.** Having all these requirements (along with other MiFID derived requirements from assimilated law) in the FCA Handbook will give us the ability to refine our approach across the full range of investments firms, enabling a longer-term vision which will include addressing any emerging priorities.

The principle that a burden or restriction should be proportionate to the benefits

- 15.** We seek to restate the directly applicable MiFID Org Reg requirements into Handbook rules, in a way that maintains the status quo for firms, and neither increases nor decreases the burden on them.

The principle that we should exercise of our functions as transparently as possible

- 16.** We will continue to engage with stakeholders throughout the consultation process, before making any rules.
- 17.** In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by section 1B(5)(b) FSMA). As our short-term outcome is no change to the status quo, we do not expect any financial crime impact.

Expected effect on mutual societies

- 18.** The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies, as there is intended to be minimal or no policy changes.

Compatibility with the duty to promote effective competition in the interests of consumers

19. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. Our proposals seek to maintain the existing regime.

LRRA

20. We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that they are:
- transparent
 - accountable
 - proportionate
 - consistent and
 - targeted only at cases in which action is needed
21. We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider the proposals are proportionate to the potential harm to consumers or risks to our statutory objectives identified.

Materiality

22. This section explains why we consider that the proposed changes to our rules and guidance in SYSC 19G (MiFIDPRU Remuneration Code) and MiFIDPRU 7 (Governance and risk management) made under Part 9C of FSMA are not material under section 143I of FSMA. This statement does not apply to those rules that have been made under our general FSMA rule-making powers.
23. In our opinion, the proposed changes to our existing Part 9C rules identified in the preceding paragraph are not material under sections:
- 143G(1) of FSMA – because we consider that they do not affect standards set by an international body
 - 143I(3) and (5) of FSMA – because they do not affect relevant equivalence decisions
24. More generally, we do not consider that they materially change any risks to consumers, the market or the UK financial system arising from FCA investment firms.
25. Our proposed changes consist of replacing cross-references to the MiFID Org Regulation in SYSC 19G and MiFIDPRU 7 with the corresponding proposed new provisions in SYSC. In our opinion, the proposed changes are consequential in nature and we do not consider that they will impose substantive new obligations on firms or parent entities and therefore we do not expect them to increase the operational burden.

- 26.** When we made the original rules in PS 21/17, we considered the application of our duties under Part 9C of FSMA at that time and explained how we considered that our rules discharged those duties. We consider that the minor amendments to SYSC 19G and MiFIDPRU 7 proposed in this CP would not materially change our approach to monitoring and supervising the relevant underlying risks.

Annex 4

Derivation and Changes Table

1. The origin of the MiFID Org Reg as a directly applicable EU regulation meant that, for the firms and services or activities it covered, where the regulation was replicated in our Handbook this was with the abbreviation 'EU' at the start of the provision (becoming a 'UK' abbreviation after the EU withdrawal implementation period). These abbreviations will be removed and requirements in these provisions reproduced in Handbook rules underpinned by Glossary definitions and application provisions sitting within an existing Handbook structure (which also applies corresponding requirements to firms besides MiFID investment firms, in accordance with Handbook drafting style (HDS)).
2. Provisions that we are not replacing in regulatory rules will either be restated or repealed by Treasury, at the time where our Handbook rules are ready to come into force. Treasury will publish a draft Statutory Instrument to propose these changes.
3. There may be further consequential changes to references in our Handbook based on the Treasury SI. For example, updating Glossary definitions in our Handbook. These changes will not amount to a policy change.

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Article A1	Application		
Art A1	Not restated	Application	The application of each provision deriving from the MiFID Org Reg is reflected in the application sections for each of the relevant sourcebooks where they are proposed to be incorporated. Glossary definitions including "MiFID investment firm", "common platform firm" and "UK RIE" further enable the replacing of MiFID Org Reg provisions in corresponding Handbook provisions

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Article 1	Subject-matter and scope		
Art 1(1)	Not restated	Subject-matter and scope: management companies	The application of each provision deriving from the MiFID Org Reg is reflected in the application sections for each of the relevant sourcebooks where they are proposed to be incorporated. Glossary definitions including "MiFID investment firm", which incorporates a collective portfolio management investment firm further enable the replacing of MiFID Org Reg provisions in corresponding Handbook provisions
Art 1(1A)	Not restated	Subject-matter and scope: management companies	See commentary for Article 1(1)
Art 1(2)	Not restated	Subject-matter and scope: management companies	See commentary for Article 1(1)
Art 1(3)	Not restated	Firms with temporary permissions	Not restated as the concept of 'relevant firm' is already subsumed within the existing Glossary definition of "TP firm"
Art 1(4)	Not restated	Firms with temporary permissions	No longer applicable
Art 1(5)	GEN 2.2.26R(3) and (4), SYSC 1 Annex 1, DISP 1.1.3R(-1), COBS 1 Annex 2	Firms with temporary permissions	Reflected in the application of the relevant FCA sourcebooks where the provisions are incorporated and the Glossary terms used within these, with no policy change or change in scope
Art 1(6)	Not restated	Firms with temporary permissions	Not restated as the concept of 'relevant firm' is already subsumed within the existing Glossary definition of "TP firm"
Article 2	Definitions		
Art 2(1)	Existing definition of 'relevant person' in Glossary	Definition of relevant person	No restatement into FCA Handbook necessary as this is an existing definition. No drafting changes except removal of the note

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 2(2)	Existing definition of 'financial analyst' in Glossary	Definition of financial analyst	No restatement into FCA Handbook necessary as this is an existing definition. No drafting changes except removal of the note
Art 2(3)	Existing definition of 'outsourcing' in Glossary	Definition of outsourcing	No restatement into FCA Handbook necessary as this is an existing definition. No drafting changes except removal of the note
Art 2(3a)	Already within the existing definition of "personal transaction" in the Glossary of definitions	Definition of person with whom a relevant person had a family relationship	No restatement into FCA Handbook necessary as this is already subsumed within the Glossary definition of 'personal transaction'. It is not used in any MiFID Org Reg or in any other Glossary definitions so does not need to be a free-standing definition. No drafting changes except removal of the reference to MiFID Org Reg
Art 2(4)	Existing definition of 'securities financing transaction' in Glossary	securities financing transaction	No restatement into FCA Handbook necessary as this is an existing definition. Only drafting changes are to replace references to assimilated law with references to UK legislation and to apply the relevant part of the definition to the relevant parts of the Handbook
Art 2(5)	Existing definition of 'remuneration' in Glossary	remuneration	No restatement into FCA Handbook necessary as this is an existing definition. No drafting changes except to apply the relevant part of the definition to the relevant parts of the Handbook
...
Art 2(7)	Existing definition of 'portfolio management' in Glossary	portfolio management	No restatement into FCA Handbook necessary as this is already an existing definition
Art 2(8)	Existing definition of 'retail client' in Glossary	retail client	No restatement into FCA Handbook necessary as this is already an existing definition
Art 2(9)	Existing definition of 'limit order' in Glossary	limit order	No restatement into FCA Handbook necessary as this is already an existing definition

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 2(10)	Existing definition of 'management company' in Glossary	management company	No restatement into FCA Handbook necessary as this is already an existing definition
Art 2(11)	Existing definition of 'tied agent' in Glossary	tied agent	No restatement into FCA Handbook necessary as this is already an existing definition
Art 2(12)	Existing definition of 'group' in Glossary	group	No restatement into FCA Handbook necessary as this is already an existing definition
Art 2(13)	Existing definition of 'durable medium' in Glossary	durable medium	No restatement into FCA Handbook necessary as this is already an existing definition
Art 2(14)	Not restated	References to FCA sourcebooks	No longer needed so not restated
Art 2(15)	Not restated	References to PRA sourcebooks	Not needed for FCA purposes so not restated into FCA Handbook
Art 2(16)	New definition of 'UK law on markets in financial instruments' in Glossary	UK law on markets in financial instruments	Restated into Glossary of definitions with references to assimilated law replaced by references to UK legislation
Art 2(16A)	New definition of 'Directive 2013/36/EU UK law' in Glossary	Directive 2013/36/EU UK law	Restated into Glossary of definitions
Art 2(16B)	New definition of 'Part 9C rules' in Glossary	Part 9C rules	Restated into to Glossary of definitions
Art 2(16C)	Already within the existing definition of "UK CRR" in the Glossary	CRR rules	No restatement into FCA Handbook necessary as this is already subsumed within the existing definition 'UK CRR'. It is not used in any MiFID Org Reg or in any other Glossary definitions so does not need to be a free-standing definition
Art 2(17)	No longer needed	Meaning of expressions used to be the same as in MiFIR, MiFI Regs and Data Reporting Service Provider Regs (DRSP)	Not needed as terms used in provisions are given the relevant meanings through the FCA Glossary

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Article 3	Conditions applying to the provision of information		
Art 3(1)	Existing definition of 'durable medium' in Glossary	durable medium	No restatement into FCA Handbook necessary as this is already an existing definition. Drafting changes are to reflect the version of the definition as it currently appears in the MiFID Org Regulation
Art 3(1)(a)	Existing definition of 'durable medium' in Glossary	durable medium	No restatement into FCA Handbook necessary as this is already an existing definition. Drafting changes are to reflect the version of the definition as it currently appears in the MiFID Org Regulation
Art 3(1)(b)	Existing definition of 'durable medium' in Glossary	durable medium	No restatement into FCA Handbook necessary as this is already an existing definition. Drafting changes are to reflect the version of the definition as it currently appears in the MiFID Org Regulation
Art 3(1A)	Existing definition of 'durable medium' in Glossary	durable medium	No restatement into FCA Handbook necessary as this is already an existing definition. Drafting changes are to reflect the version of the definition as it currently appears in the MiFID Org Regulation
Art 3(1B)	Existing definition of 'durable medium' in Glossary	durable medium	No restatement into FCA Handbook necessary as this is already an existing definition. Drafting changes are to reflect the version of the definition as it currently appears in the MiFID Org Regulation
Art 3(2)	Existing definition of 'website conditions' in Glossary	website conditions	No restatement into FCA Handbook necessary as this is already an existing definition. Minor drafting changes only
Art 3(2)(a)	Existing definition of 'website conditions' in Glossary	website conditions	No restatement into FCA Handbook necessary as this is already an existing definition. Minor drafting changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 3(2)(b)	Existing definition of 'website conditions' in Glossary	website conditions	No restatement into FCA Handbook necessary as this is already an existing definition. Minor drafting changes only
Art 3(2)(c)	Existing definition of 'website conditions' in Glossary	website conditions	No restatement into FCA Handbook necessary as this is already an existing definition. Minor drafting changes only
Art 3(2)(d)	Existing definition of 'website conditions' in Glossary	website conditions	No restatement into FCA Handbook necessary as this is already an existing definition. Minor drafting changes only
Art 3(2)(e)	Existing definition of 'website conditions' in Glossary	website conditions	No restatement into FCA Handbook necessary as this is already an existing definition. Minor drafting changes only
Art 3(3)	Existing definition of 'website conditions' in Glossary	website conditions	No restatement into FCA Handbook necessary as this is already an existing definition. Minor drafting changes only
Article 4	Provision of investment service in an incidental manner		
Art 4	Not restated into FCA Handbook	Provision of investment service in an incidental manner	This relates to the FCA perimeter. It is already in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO") so does not need to be restated
Article 5	Wholesale energy products that must be physically settled		
Art 5	Not restated into FCA Handbook	Wholesale energy products that must be physically settled	This relates to the FCA perimeter. It is already in the RAO so does not need to be restated

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Article 6	Energy derivative contracts relating to oil and coal and wholesale energy products		
Art 6	Not restated into FCA Handbook	Energy derivative contracts relating to oil and coal and wholesale energy products	This relates to the FCA perimeter. It is already in the RAO so does not need to be restated
Article 7	Other derivative financial instruments		
Art 7	Not restated into FCA Handbook	Other derivative financial instruments	This relates to the FCA perimeter. It is already in the RAO so does not need to be restated
Article 8	Derivatives under paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order		
Art 8	Not restated into FCA Handbook	Derivatives under paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order	This relates to the FCA perimeter. It is already in the RAO so does not need to be restated
Article 9	Investment advice		
Art 9	Not restated into FCA Handbook	Investment advice	This relates to the FCA perimeter. It is already in the RAO so does not need to be restated
Article 10	Characteristics of other derivative contracts relating to currencies		
Art 10	Not restated into FCA Handbook	Characteristics of other derivative contracts relating to currencies	This relates to the FCA perimeter. It is already in the RAO so does not need to be restated
Article 11	Money-market instruments		
Art 11	Not restated into FCA Handbook	Money-market instruments	This relates to the FCA perimeter. It is already in the RAO so does not need to be restated

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Article 12	Systematic internalisers for shares, depositary receipts, ETFs, certificates and other similar financial instruments		
Art 12	Not restated into FCA Handbook		Assimilated law to be revoked without restatement
Article 13	Systematic internalisers for bonds		
Art 13	Not restated into FCA Handbook		Assimilated law to be revoked without restatement
Article 14	Systematic internalisers for structured finance products		
Art 14	Not restated into FCA Handbook		Assimilated law to be revoked without restatement
Article 15	Systematic internalisers for derivatives		
Art 15	Not restated into FCA Handbook		Assimilated law to be revoked without restatement
Article 16	Systematic internalisers for emission allowances		
Art 16	Not restated into FCA Handbook		Assimilated law to be revoked without restatement
Article 16ZA	Transitional period: data for calculations		
Art 16ZA	Not restated into FCA Handbook		Assimilated law to be revoked without restatement
Article 16a	Participation in matching arrangements		

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 16a	Amendment to existing definition within the Glossary of definitions	Meaning of "dealing on own account"	Amendment to existing definition of "dealing on own account" in the Glossary to incorporate the meaning given in Art 16a. No drafting changes made
Article 17	Relevant assessment periods		
Art 17	Not restated into FCA Handbook		Assimilated law to be revoked without restatement
...	...		
Article 21	General organisational requirements		
Art 21(1)(a)	SYSC 4.1.1-AR(a)	Requirements on decision-making procedures and organisational structure	Restated into FCA Handbook with HSD changes only
Art 21(1)(b)	SYSC 5.1.12R	Requirements on awareness of procedures	Restated into FCA Handbook with HSD changes only
Art 21(1)(c)	SYSC 4.1.1-AR(b)	Requirements on internal control mechanisms	Restated into FCA Handbook with HSD changes only
Art 21(1)(d)	SYSC 5.1.1R	Competent employees rule	Restated into FCA Handbook with HSD changes only
Art 21(1)(e)	SYSC 4.1.1-AR(c)	Requirements on internal reporting	Restated into FCA Handbook with HSD changes only
Art 21(1)(f)	SYSC 4.1.1-AR(d)	Requirements on orderly records	Restated into FCA Handbook with HSD changes only
Art 21(1)(g)	SYSC 5.1.6R	Requirements on the segregation of functions	Restated into FCA Handbook with HSD changes only
Art 21(1) last paragraph	SYSC 4.1.1-AR and 5.1.13R	Proportionality on the application of requirements	Restated into FCA Handbook with HSD changes only.
Art 21(2)	SYSC 4.1.1-AR(2)	Requirements on the the security, integrity and confidentiality of information	Restated into FCA Handbook with HSD changes only.

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 21(3)	SYSC 4.1.1-AR(3)	Requirements on business continuity	Restated into FCA Handbook with HSD changes only.
Art 21(4)	SYSC 4.1.1-AR(4)	Requirements on accounting policies	Restated into FCA Handbook with HSD changes only.
Art 21(5)	SYSC 4.1.1-AR(5) and 5.1.14R	Requirements to regular monitoring the adequacy of their systems and control mechanisms	Restated into FCA Handbook with HSD changes only.
Article 22	Compliance		
Art 22(1)	SYSC 6.1.2-AR	Requirements to establish and maintain compliance procedures	Restated into FCA Handbook with HSD changes only
Art 22(2)	SYSC 6.1.3-AR	Requirements establish and maintain a permanent and effective compliance function	Restated into FCA Handbook with HSD changes only
Art 22(2)(a)	SYSC 6.1.3-AR		Restated into FCA Handbook with HSD changes only
Art 22(2)(b)	SYSC 6.1.3-AR		Restated into FCA Handbook with HSD changes only
Art 22(2)(c)	SYSC 6.1.3-AR		Restated into FCA Handbook with HSD changes only
Art 22(2)(d)	SYSC 6.1.3-AR		Restated into FCA Handbook with HSD changes only
Art 22(2) last paragraph	SYSC 6.1.3-AR		Restated into FCA Handbook with HSD changes only
Art 22(3)	SYSC 6.1.4-AAR	Requirements to discharge the responsibilities of the compliance function	Restated into FCA Handbook with HSD changes only
Art 22(3)(a)	SYSC 6.1.4-AAR		Restated into FCA Handbook with HSD changes only
Art 22(3)(b)	SYSC 6.1.4-AAR		Restated into FCA Handbook with HSD changes only
Art 22(3)(c)	SYSC 6.1.4-AAR		Restated into FCA Handbook with HSD changes only
Art 23(3)(d)	SYSC 6.1.4-AAR		Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 23(3)(e)	SYSC 6.1.4-AAR		Restated into FCA Handbook with HSD changes only
Art 23(4)	SYSC 6.1.5AR	Proportionality on the application of requirements	Restated into FCA Handbook with HSD changes only
Article 23	Risk management		
Art 23(1)(a)	SYSC 7.1.2-AR	Requirements to establish, implement and maintain adequate risk management policies	Restated into FCA Handbook with HSD changes only
Art 23(1)(b)	SYSC 7.1.3R	Requirements to adopt effective arrangements, processes and mechanisms to manage the firms' risks	Restated into FCA Handbook with HSD changes only
Art 23(1)(c)	SYSC 7.1.5R	Requirements to monitor the adequacy and effectiveness of the investment firm's risk management policies and procedures	Restated into FCA Handbook with HSD changes only
Art 23(2) first paragraph	SYSC 7.1.6R	Requirements to establish and maintain a risk management function	Restated into FCA Handbook with HSD changes only
Art 23(2)(a)	SYSC 7.1.6R(1)		Restated into FCA Handbook with HSD changes only
Art 23(2)(b)	SYSC 7.1.6R(2)		Restated into FCA Handbook with HSD changes only
Art 23(2) second paragraph	SYSC 7.1.7R	Further requirements on risk management	Restated into FCA Handbook with HSD changes only
Article 24	Internal Audit		
Art 24	SYSC 6.2.1R	Requirement to establish and maintain an internal audit function	Restated into FCA Handbook with HSD changes only
Article 25	Responsibility of Senior Management		

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 25(1) first paragraph	SYSC 4.3.2-AR(1)	Requirements on the responsibility of senior management	Restated into FCA Handbook with HSD changes only
Art 25(1) second paragraph	SYSC 4.3.2-AR(2)	Requirements on the allocation of functions	Restated into FCA Handbook with HSD changes only
Art 25(2)	SYSC 4.3.2-AR(3)	Requirements on internal reporting	Restated into FCA Handbook with HSD changes only
Art 25(3)	SYSC 4.3.2-AR(3)	Further requirements on internal reporting	Restated into FCA Handbook with HSD changes only
Art 25(4)	Glossary definition of 'supervisory function'	supervisory function	No restatement into FCA Handbook necessary as this is already an existing definition.
Article 26	Complaints handling		
Art 26(1)	DISP 1.1A 12, 13 & 37	Requirements on establishing and maintaining a complaints handling policy	Restated into FCA Handbook with no change
Art 26(2)	DISP 1.1A 10 & 16	Requirements on publishing a complaints handling policy	Restated in FCA Handbook with no change
Art 26(3)	DISP 1.1A.17	Requirements on establishing a complaints management function	Restated into FCA Handbook with no change
Art 26(4)	DISP 1.1A 24/29	Requirements to communicate with clients clearly when handling a complaint	Restated into FCA Handbook with no change
Art 26(5)	DISP 1.1A 25/30	Requirements on informing consumers with complaints about their options	Restated into FCA Handbook with HSD changes only
Art 26(6)	DISP 1.1A.38	Requirements on providing information to relevant authorities about complaints and complaints handling	Restated into FCA Handbook with no change

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 26(7)	DISP 1.1A.18	Requirements on a firm to analyse their complaints and complaints handling data	Restated into FCA Handbook with no change
Article 27	Remuneration policies and practices		
Art 27(1)	SYSC 19F.1.4AR	Requirements to define and implement remuneration policies and practices under appropriate internal procedures	Restated into FCA Handbook with no change
Art 27(2)	SYSC 19F.1.4AR	Requirements to ensure that their remuneration policies and practices apply to all relevant persons	Restated into FCA Handbook with no change
Art 27(3)	SYSC 19F.1.4AR	Requirement of senior management to approve the remuneration policy	Restated into FCA Handbook with no change
Art 27(4)	SYSC 19F.1.4AR	Further requirements on remuneration and similar incentives	Restated into FCA Handbook with no change
Article 28	Scope of personal transactions		
Art 28	Amendment to existing definition in the Glossary of definitions	Definition of personal transaction	Restated into FCA Glossary by amendment to existing definition of "personal transaction". Drafting change made to ensure the correct scope of the definition applies to the relevant FCA rules.
Article 29	Personal transactions		
Art 29(1)	COBS 11.7A.5R(1)	Arrangements in relation to personal transactions	Restated into FCA Handbook with HSD changes only
Art 29(2)	COBS 11.7A.5R(2)	Arrangements in relation to personal transactions	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 29(3)	COBS 11.7A.5R(3)	Arrangements in relation to personal transactions	Restated into FCA Handbook with HSD changes only
Art 29(4)	COBS 11.7A.5R(4)	Arrangements in relation to personal transactions	Restated into FCA Handbook with HSD changes only
Art 29(5)	COBS 11.7A.5R(5) and (5A)	Arrangements in relation to personal transactions	Restated into FCA Handbook with HSD changes only
Art 29(6)	COBS 11.7A.2R(3)	Application	Restated into FCA Handbook with HSD changes only
Article 30	Scope of critical importance operational functions		
Art 30(1)	SYSC 8.1.4AR	Scope of critical importance operational functions	Restated into FCA Handbook with HSD changes only
Art 30(2)(a)	SYSC 8.1.5R(1)	Functions not considered as critical or important	Restated into FCA Handbook with HSD changes only
Art 30(2)(b)	SYSC 8.1.5R(2)		Restated into FCA Handbook with HSD changes only
Article 31	Outsourcing of critical or important operational functions		
Art 31(1)	SYSC 8.1.6-AR	Requirements and conditions to outsource critical or important functions	Restated into FCA Handbook with HSD changes only
Art 31(2) first paragraph [and second paragraph]	SYSC 8.1.7R and SYSC 8.1.8R	Requirements to 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	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 31(2)(a)	SYSC 8.1.8R(1)	Conditions for the outsourcing to a service provider of critical or important operational functions	Restated into FCA Handbook with HSD changes only
Art 31(2)(b)	SYSC 8.1.8R(2)		Restated into FCA Handbook with HSD changes only
Art 31(2)(c)	SYSC 8.1.8R(3)		Restated into FCA Handbook with HSD changes only
Art 31(2)(d)	SYSC 8.1.8R(4)		Restated into FCA Handbook with HSD changes only
Art 31(2)(e)	SYSC 8.1.8R(5)		Restated into FCA Handbook with HSD changes only
Art 31(2)(f)	SYSC 8.1.8R(6)		Restated into FCA Handbook with HSD changes only
Art 31(2)(g)	SYSC 8.1.8R(7)		Restated into FCA Handbook with HSD changes only
Art 31(2)(h)	SYSC 8.1.8R(8)		Restated into FCA Handbook with HSD changes only
Art 31(2)(i)	SYSC 8.1.8R(9)		Restated into FCA Handbook with HSD changes only
Art 31(2)(j)	SYSC 8.1.8R(10)		Restated into FCA Handbook with HSD changes only
Art 31(2)(k)	SYSC 8.1.8R(11)		Restated into FCA Handbook with HSD changes only
Art 31(2)(l)	SYSC 8.1.8R(12)		Restated into FCA Handbook with HSD changes only
Art 31(3)	SYSC 8.1.9R	Requirements on the content of the service agreement	Restated into FCA Handbook with HSD changes only
Art 31(4)	SYSC 8.1.10R	Requirements where the investment firm and the service provider are members of the same group	Restated into FCA Handbook with HSD changes only
Art 31(5)	SYSC 8.1.11-CR	Requirements on the availability of information for supervisory purposes	Restated into FCA Handbook with HSD changes only
Article 32	Service providers located in third countries		

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 32(1)(a)	SYSC 8.1.11-BR(1)	Requirements on service providers located in third countries	Restated into FCA Handbook with HSD changes only
Art 32(1)(b)	SYSC 8.1.11-BR(2)		Restated into FCA Handbook with HSD changes only
Art 32 (2)(a)	SYSC 8.1.11-AG(1)		Restated into FCA Handbook with HSD changes only
Art 32(2)(b)	SYSC 8.1.11-AG(1)		Restated into FCA Handbook with HSD changes only
Art 32(2)(c)	SYSC 8.1.11-AG(1)		Restated into FCA Handbook with HSD changes only
Art 32 (2)(d)	SYSC 8.1.11-AG(1)		Restated into FCA Handbook with HSD changes only
Art 32 (3)	SYSC 8.1.11-AG(2)		Restated into FCA Handbook with HSD changes only
Article 33	Conflicts of interest potentially detrimental to a client		
Art 33	SYSC 10.1.4R	Requirements on the identification of types of conflicts	Restated into FCA Handbook with HSD changes only
Article 34	Conflicts of interest policy		
Art 34(1)	SYSC 10.1.10R	Requirement to establish, implement and maintain an effective conflicts of interest policy	Restated into FCA Handbook with HSD changes only
Art 34(2)(3)	SYSC 10.1.11R	Requirements on the content of the conflicts of interest policy	Restated into FCA Handbook with HSD changes only
Art 34(4)	SYSC 10.1.8R and 10.1.9AR	Requirements to prevent or manage conflicts of interest	Restated into FCA Handbook with HSD changes only
Art 34(5)	SYSC 10.1.11AAR	Requirements on the review of the conflicts of interest policy	Restated into FCA Handbook with HSD changes only
Article 35	Record of service or activities giving rise to detrimental conflict of interest		

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 35	SYSC 10.1.6R and 10.1.6AAR	Requirements on record of conflicts	Restated into FCA Handbook with HSD changes only
Article 36	Investment research and marketing communications		
Art 36(1)	Existing definition in Glossary of definitions	Definition of investment research	Amendment made to existing definition of "investment research" to replace the cross-reference to the article with the full definition from the article.
Art 36(2)	COBS 12.2.18R(1)	Obligations in relation to non-independent research	Restated into FCA Handbook with HSD changes only
Article 37	Additional organisational requirements in relation to investment research or marketing communication		
Art 37(1)	COBS 12.2.19R(1) & COBS 12.2.18AR	Conflict of interest obligations in relation to investment research and non-independent research	Restated into FCA Handbook with HSD changes only
Art 37(2)	COBS 12.2.21R	Arrangements in relation to investment research	Restated into FCA Handbook with HSD changes only
Art 37(3)	COBS 12.2.19R(2)	Exemption from Art 37(1)	Restated into FCA Handbook with HSD changes only
Article 38	Additional general requirements in relation to underwriting or placing		
Art 38 (1)	COBS 11A.1.2R	Requirements to provide specific information to issuer clients	Restated into FCA Handbook with HSD changes only
Art 38 (2)	COBS 11A.1.3R(1)	Requirement to identify underwriting and placing operations	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 38 (3)	COBS 11A.1.3R(2)	Requirement to ensure that adequate controls are in place to manage conflicts of interest	Restated into FCA Handbook with HSD changes only
Article 39	Additional requirements in relation to pricing of offerings in relation to issuance of financial instruments		
Art 39(1)	COBS 11A.1.4R	Requirement for systems and controls to manage conflicts of interest	Restated into FCA Handbook with HSD changes only
Art 39(2)	COBS 11A.1.5R	Further requirements concerning the provision of information	Restated into FCA Handbook with HSD changes only
Article 40	Additional requirements in relation to placing		
Art 40(1)	COBS 11A.1.6R(1)	Arrangements in relation to placing	Restated into FCA Handbook with HSD changes only
Art 40(2)	COBS 11A.1.6R(2)	Arrangements in relation to conflicts of interest	Restated into FCA Handbook with HSD changes only
Art 40(3)	COBS 11A.1.6R(3)	Third party payments or benefits	Restated into FCA Handbook with HSD changes only
Art 40(4)	COBS 11A.1.6R(4)	Requirement for allocation policy	Restated into FCA Handbook with HSD changes only
Art 40(5)	COBS 11A.1.6R(5)	Requirement in relation to allocation	Restated into FCA Handbook with HSD changes only
Article 41	Additional requirements in relation to advice, distribution and self-placement		
Art 41(1)	COBS 11A.1.7R(1)	Arrangements for prevention of conflicts	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 41(2)	COBS 11A.1.7R(2)	Arrangements for prevention of conflicts	Restated into FCA Handbook with HSD changes only
Art 41(3)	COBS 11A.1.7R(3)	Disclosure of conflicts	Restated into FCA Handbook with HSD changes only
Art 41(4)	COBS 11A.1.7R(4)	Additional disclosure requirements	Restated into FCA Handbook with HSD changes only
Article 42	Additional requirements in relation to lending or provision of credit in the context of underwriting or placement		
Art 42(1)	COBS 11A.1.8R(1)	Arrangements for prevention of conflicts	Restated into FCA Handbook with HSD changes only
Art 42(2)	COBS 11A.1.8R(2)	Disclosure of conflicts	Restated into FCA Handbook with HSD changes only
Art 42(3)	COBS 11A.1.8R(3)	Sharing of information	Restated into FCA Handbook with HSD changes only
Article 43	Record keeping in relation to underwriting or placing		
Art 43	COBS 11A.1.19R	Record keeping	Restated into FCA Handbook with HSD changes only
Article 44	Fair, clear and not misleading information requirement		
Art 44(1)	COBS 4.5A.3 R (1)	General requirements	Restated into FCA Handbook with HSD changes only
Art 44(2)(a)	COBS 4.5A.3 R (2)	General requirements	Restated into FCA Handbook with HSD changes only
Art 44(2)(b)	COBS 4.5A.3 R (2)	General requirements	Restated into FCA Handbook with HSD changes only
Art 44(2)(c)	COBS 4.5A.3 R (2)	General requirements	Restated into FCA Handbook with HSD changes only
Art 44(2)(d)	COBS 4.5A.3 R (2)	General requirements	Restated into FCA Handbook with HSD changes only
Art 44(2)(e)	COBS 4.5A.3 R (2)	General requirements	Restated into FCA Handbook with HSD changes only
Art 44(2)(f)	COBS 4.5A.3 R (2)	General requirements	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 44(2)(g)	COBS 4.5A.3 R (2)	General requirements	Restated into FCA Handbook with HSD changes only
Art 44(3)(a)	COBS 4.5A.7 R	Comparative information	Restated into FCA Handbook with HSD changes only
Art 44(3)(b)	COBS 4.5A.7 R	Comparative information	Restated into FCA Handbook with HSD changes only
Art 44(3)(c)	COBS 4.5A.7 R	Comparative information	Restated into FCA Handbook with HSD changes only
Art 44(4)(a)	COBS 4.5A.10 R (1)	Past performance	Restated into FCA Handbook with HSD changes only
Art 44(4)(b)	COBS 4.5A.10 R (2)	Past performance	Restated into FCA Handbook with HSD changes only
Art 44(4)(c)	COBS 4.5A.10 R (3)	Past performance	Restated into FCA Handbook with HSD changes only
Art 44(4)(d)	COBS 4.5A.10 R (4)	Past performance	Restated into FCA Handbook with HSD changes only
Art 44(4)(e)	COBS 4.5A.10 R (5)	Past performance	Restated into FCA Handbook with HSD changes only
Art 44(4)(f)	COBS 4.5A.10 R (6)	Past performance	Restated into FCA Handbook with HSD changes only
Art 44(5)(a)	COBS 4.5A.12 R(2)	Simulated past performance	Restated into FCA Handbook with HSD changes only
Art 44(5)(b)	COBS 4.5A.12 R(3)	Simulated past performance	Restated into FCA Handbook with HSD changes only
Art 44(5)(c)	COBS 4.5A.12 R(4)	Simulated past performance	Restated into FCA Handbook with HSD changes only
Art 44(6)(a)	COBS 4.5A.14 R (1)	Future performance	Restated into FCA Handbook with HSD changes only
Art 44(6)(b)	COBS 4.5A.14 R (2)	Future performance	Restated into FCA Handbook with HSD changes only
Art 44(6)(c)	COBS 4.5A.14 R (3)	Future performance	Restated into FCA Handbook with HSD changes only
Art 44(6)(d)	COBS 4.5A.14 R (4)	Future performance	Restated into FCA Handbook with HSD changes only
Art 44(6)(e)	COBS 4.5A.14 R (5)	Future performance	Restated into FCA Handbook with HSD changes only
Art 44(7)	COBS 4.5A.8 R	Referring to tax	Restated into FCA Handbook with HSD changes only
Art 44(8)	COBS 4.5A.16 R	Information that uses the name of the FCA	Restated into FCA Handbook with HSD changes only
Article 45	Information concerning client categorisation		

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 45(1)	COBS 3.3.1A R (1)	General notifications	Restated into FCA Handbook with HSD changes only
Art 45(2)	COBS 3.3.1A R (2)	General notifications	Restated into FCA Handbook with HSD changes only
Art 45(3)(a)	COBS 3.7.3A R (1)	Providing clients with a higher level of protection	Restated into FCA Handbook with HSD changes only
Art 45(3)(b)	COBS 3.7.3A R (2)	Providing clients with a higher level of protection	Restated into FCA Handbook with HSD changes only
Article 46	General requirements for information to clients		
Art 46(1)(a)	COBS 8A.1.5 R (1)	General requirements for information to clients	Restated into FCA Handbook with HSD changes only
Art 46(1)(b)	COBS 8A.1.5 R (1)	General requirements for information to clients	Restated into FCA Handbook with HSD changes only
Art 46(2)	COBS 6.1ZA.17 R (1) and COBS 14.3A.7 R	Timing of disclosure: Mi-FID business, General requirements for information to clients and Timing of disclosure	Restated into FCA Handbook with HSD changes only
Art 46(2A)(a)	COBS 6.1ZA.17 R (2)	Timing of disclosure: Mi-FID business, General requirement for information to clients and Timing of disclosure.	Restated into FCA Handbook with HSD changes only
Art 46(2A)(b)	COBS 6.1ZA.17 R (2)	Timing of disclosure: Mi-FID business, General requirement for information to clients and Timing of disclosure.	Restated into FCA Handbook with HSD changes only
Art 46(2B)(a)	COBS 6.1ZA.17 R (3)	Timing of disclosure: Mi-FID business, General requirement for information to clients and Timing of disclosure.	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 46(2B)(b)	COBS 6.1ZA.17 R (3)	Timing of disclosure: Mi-FID business, General requirement for information to clients and Timing of disclosure.	Restated into FCA Handbook with HSD changes only
Art 46(3)	COBS 6.1ZA.19 R, COBS 8A.1.7 R and COBS 14.3A 9 R	Medium of disclosure: MiFID business, General requirement for information to clients and Medium of disclosure.	Restated into FCA Handbook with HSD changes only
Art 46(4)	COBS 6.1ZA.20 R, COBS 14.3A 10 R	Keeping the client up to date: MiFID business, Keeping the client up-to-date	Restated into FCA Handbook with HSD changes only
Art 46(5)	COBS 4.5A.9 R	Consistent financial pro-motions	Restated into FCA Handbook with HSD changes only
Art 46(6)(a)	COBS 4.7.-1A R	Direct offer financial promotions relating to MiFID, equivalent third country or optional ex-emption business	Restated into FCA Handbook with HSD changes only
Art 46(6)(b)	COBS 4.7.-1A R	Direct offer financial promotions relating to MiFID, equivalent third country or optional ex-emption business	Restated into FCA Handbook with HSD changes only
Article 47	Information about the investment firm and its services for clients and potential clients		
Art 47(1)(a)	COBS 6.1ZA.5 R (1)	Information about a firm and its services: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(1)(b)	COBS 6.1ZA.5 R (2)	Information about a firm and its services: MiFID business	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 47(1)(c)	COBS 6.1ZA.5 R (3)	Information about a firm and its services: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(1)(d)	COBS 6.1ZA.5 R (4)	Information about a firm and its services: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(1)(e)	COBS 6.1ZA.5 R (5)	Information about a firm and its services: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(1)(f)	COBS 6.1ZA.5 R (6)	Information about a firm and its services: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(1)(g)	COBS 6.1ZA.5 R (7)	Information about a firm and its services: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(1)(h)	COBS 6.1ZA.5 R (8)	Information about a firm and its services: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(1)(i)	COBS 6.1ZA.5 R (8) (b)	Information about a firm and its services: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(2)	COBS 6.1ZA.8 R (1)	Information about a firm's portfolio management service: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(3)(a)	COBS 6.1ZA.8 R (2)	Information about a firm's portfolio management service: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(3)(b)	COBS 6.1ZA.8 R (2)	Information about a firm's portfolio management service: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(3)(c)	COBS 6.1ZA.8 R (2)	Information about a firm's portfolio management service: MiFID business	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 47(3)(d)	COBS 6.1ZA.8 R (2)	Information about a firm's portfolio management service: MiFID business	Restated into FCA Handbook with HSD changes only
Art 47(3)(e)	COBS 6.1ZA.8 R (2)	Information about a firm's portfolio management service: MiFID business	Restated into FCA Handbook with HSD changes only
Article 48	Information about financial instruments		
Art 48(1)	COBS 14.3A.5 R (1) and (2)	Providing a description of the nature and risks of financial instruments	Restated into FCA Handbook with HSD changes only
Art 48(2)(a)	COBS 14.3A.5 R (3) (a) and (aa)	Providing a description of the nature and risks of financial instruments	Restated into FCA Handbook with HSD changes only
Art 48(2)(b)	COBS 14.3A.5 R (3) (b)	Providing a description of the nature and risks of financial instruments	Restated into FCA Handbook with HSD changes only
Art 48(2)(c)	COBS 14.3A.5 R (3) (c)	Providing a description of the nature and risks of financial instruments	Restated into FCA Handbook with HSD changes only
Art 48(2)(d)	COBS 14.3A.5 R (3) (d)	Providing a description of the nature and risks of financial instruments	Restated into FCA Handbook with HSD changes only
Art 48(2)(e)	COBS 14.3A.5 R (3) (e)	Providing a description of the nature and risks of financial instruments	Restated into FCA Handbook with HSD changes only
Art 48(3)	COBS 14.3A.5A R	Providing a description of the nature and risks of financial instruments	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 48(4)	COBS 14.3A.5B R	Providing a description of the nature and risks of financial instruments	Restated into FCA Handbook with HSD changes only
Art 48(5)	COBS 14.3A.5C R	Providing a description of the nature and risks of financial instruments	Restated into FCA Handbook with HSD changes only
Article 49	Information concerning safeguarding of client financial instruments or client funds		
Art 49(1)	COBS 6.1ZA.9 R (1)	Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business	Restated into FCA Handbook with no changes
Art 49(2)	COBS 6.1ZA.9 R (1) (a)	Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business	Restated into FCA Handbook with no changes
Art 49(3)	COBS 6.1ZA.9 R (1) (b)	Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business	Restated into FCA Handbook with no changes
Art 49(4)	COBS 6.1ZA.9 R (1) (c)	Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business	Restated into FCA Handbook with no changes
Art 49(5)	COBS 6.1ZA.9 R (1) (d)	Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business	Restated into FCA Handbook with no changes

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 49(6)	COBS 6.1ZA.9 R (2)	Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business	Restated into FCA Handbook with no changes
Art 49(7)	COBS 6.1ZA.9 R (3)	Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business	Restated into FCA Handbook with no changes
Article 50	Information on costs and associated charges		Restated into FCA Handbook with no changes
Art 50(1)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(1A)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(2)(a)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(2)(b)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(3)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(4)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(5)(a)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(5)(b)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(6)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 50(7)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(8)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(9)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(10)(a)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(10)(b)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Art 50(10)(c)	COBS 6.1ZA.14 R	Costs and associated charges disclosure: MiFID	Restated into FCA Handbook with no changes
Article 51	Information provided		
Art 51	COBS 14.3A.11 R	Information provided in relation to units in collective investment undertakings or PRIIPs	Restated into FCA Handbook with no changes
Article 52	Information about investment advice		
Art 52(1)	COBS 6.2B.32 R and COBS 6.2B.35 R	Requirements for firms providing both independent and restricted advice and Disclosing the nature of advice provided.	Restated into FCA Handbook with HSD changes only
Art 52(2)	COBS 6.2B.36 R (1)(a)	Disclosing the nature of advice provided	Restated into FCA Handbook with HSD changes only
Art 52(3)	COBS 6.2B.36 R (1)(b) and (2)	Disclosing the nature of advice provided	Restated into FCA Handbook with HSD changes only
Art 52(4)	COBS 6.2B.36 R (2)	Disclosing the nature of advice provided	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 52(5)(a)	COBS 9A.3.8 R (2)(a)	Periodic assessments: MiFID business	Restated into FCA Handbook with HSD changes only
Art 52(5)(b)	COBS 9A.3.8 R (2)(b)	Periodic assessments: MiFID business	Restated into FCA Handbook with HSD changes only
Art 52(5)(c)	COBS 9A.3.8 R (2)(c)	Periodic assessments: MiFID business	Restated into FCA Handbook with HSD changes only
Article 53	Investment advice on an independent basis		
Art 53(1)(a)	COBS 6.2B.18 R (2)	Sufficient range	Restated into FCA Handbook with HSD changes only
Art 53(1)(b)	COBS 6.2B.18 R (2)	Sufficient range	Restated into FCA Handbook with HSD changes only
Art 53(1)(c)	COBS 6.2B.18 R (2)	Sufficient range	Restated into FCA Handbook with HSD changes only
Art 53(1)(d)	COBS 6.2B.18 R (3)	Sufficient range	Restated into FCA Handbook with HSD changes only
Art 53(2)(a)	COBS 6.2B.15 R (1)	Requirements for firms providing focused independent advice	Restated into FCA Handbook with HSD changes only
Art 53(2)(b)	COBS 6.2B.15 R (2)	Requirements for firms providing focused independent advice	Restated into FCA Handbook with HSD changes only
Art 53(2)(c)	COBS 6.2B.15 R (3)	Requirements for firms providing focused independent advice	Restated into FCA Handbook with HSD changes only
Art 53(3)(a)	COBS 6.2B.29 R (1)	Requirements for firms providing both independent and restricted advice	Restated into FCA Handbook with HSD changes only
Art 53(3)(b)	COBS 6.2B.29 R (2)	Requirements for firms providing both independent and restricted advice	Restated into FCA Handbook with HSD changes only
Art 53(3)(c)	COBS 6.2B.29 R (3)	Requirements for firms providing both independent and restricted advice	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Article 54	Assessment of suitability and suitability report		
Art 54(1)	COBS 9A.2.23 R and COBS 9A.3.1 R	Automated or semi-automated systems: MiFID business and Explaining the reasons for assessing suitability: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(2)(a)	COBS 9A.2.4 R	Assessing the extent of the information required: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(2)(b)	COBS 9A.2.4 R	Assessing the extent of the information required: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(2)(c)	COBS 9A.2.4 R	Assessing the extent of the information required: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(3)	COBS 9A.2.5 R	Professional clients: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(4)	COBS 9A.2.7 R	Obtaining information about a client's financial situation: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(5)	COBS 9A.2.8 R	Obtaining information about a client's investment objectives: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(6)	COBS 9A.2.15 R	Identifying the subject of a suitability assessment: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(7)(a)	COBS 9A.2.9 R (2)	Reliability of information: MiFID business	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 54(7)(b)	COBS 9A.2.9 R (2)	Reliability of information: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(7)(c)	COBS 9A.2.9 R (2)	Reliability of information: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(7)(d)	COBS 9A.2.9 R (2)	Reliability of information: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(8)	COBS 9A.2.13 R	Insufficient information: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(9)	COBS 9A.2.19 R	Adequate policies and procedures: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(10)	COBS 9A.2.20 R	Unsuitability: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(11)	COBS 9A.2.18 R	Switching: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(12)	COBS 9A.3.3 R	Providing a suitability report: MiFID business	Restated into FCA Handbook with HSD changes only
Art 54(13)	COBS 9A.3.9 R	Periodic assessments: MiFID business	Restated into FCA Handbook with HSD changes only
Article 55	Provisions common to the assessment of suitability or appropriateness		
Art 55(1)(a)	COBS 9A.2.6 R (1) and COBS 10A.2.4 R (1)(a)	Obtaining information about knowledge and experience: MiFID business	Restated into FCA Handbook with HSD changes only
Art 55(1)(b)	COBS 9A.2.6 R (2) and COBS 10A.2.4 R (1)(b)	Obtaining information about knowledge and experience: MiFID business	Restated into FCA Handbook with HSD changes only
Art 55(1)(c)	COBS 9A.2.6 R (3) and COBS 10A.2.4 R (1)(c)	Obtaining information about knowledge and experience: MiFID business	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 55(2)	COBS 9A.2.11 R and COBS 10A.2.5 R	Discouraging the provision of information: MiFID business	Restated into FCA Handbook with HSD changes only
Art 55(3)	COBS 9A.2.12 R and COBS 10A.2.6 R	Reliance on information: MiFID business	Restated into FCA Handbook with HSD changes only
Article 56	Assessment of appropriateness and related record-keeping obligations		
Art 56(1)	COBS 10A.2.3 R	Assessing a client's knowledge and experience: MiFID business	Restated into FCA Handbook with HSD changes only
Art 56(2)(a)	COBS 10A.7.2 R (2)	Record keeping: MiFID business	Restated into FCA Handbook with HSD changes only
Art 56(2)(b)	COBS 10A.7.2 R (2)	Record keeping: MiFID business	Restated into FCA Handbook with HSD changes only
Art 56(2)(c)	COBS 10A.7.2 R (2)	Record keeping: MiFID business	Restated into FCA Handbook with HSD changes only
Article 57	Provision of services in non-complex instruments		
Art 57(a)	COBS 10A.4.2 R (1)	Other non-complex financial instruments	Restated into FCA Handbook with HSD changes only
Art 57(b)	COBS 10A.4.2 R (2)	Other non-complex financial instruments	Restated into FCA Handbook with HSD changes only
Art 57(c)	COBS 10A.4.2 R (3)	Other non-complex financial instruments	Restated into FCA Handbook with HSD changes only
Art 57(d)	COBS 10A.4.2 R (4)	Other non-complex financial instruments	Restated into FCA Handbook with HSD changes only
Art 57(e)	COBS 10A.4.2 R (5)	Other non-complex financial instruments	Restated into FCA Handbook with HSD changes only
Art 57(f)	COBS 10A.4.2 R (6)	Other non-complex financial instruments	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Article 58	Retail and professional client agreements		
Art 58(a)	COBS 8A.1.4 R (4)	Providing a client agreement: retail and professional clients	Restated into FCA Handbook with HSD changes only
Art 58(b)	COBS 8A.1.4 R (4)	Providing a client agreement: retail and professional clients	Restated into FCA Handbook with HSD changes only
Art 58(c)	COBS 8A.1.4 R (4)	Providing a client agreement: retail and professional clients	Restated into FCA Handbook with HSD changes only
Article 59	Reporting obligations in respect of execution of orders other than for portfolio management		
Art 59(a)	COBS 16A.3.1 R (1)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(b)	COBS 16A.3.1 R (1)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(2)	COBS 16A.3.1 R (1)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(3)	COBS 16A.3.1 R (5)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(a)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 59(4)(b)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(c)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(d)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(e)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(f)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(g)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(h)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(i)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(j)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 59(4)(k)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(l)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(m)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(n)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(o)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(4)(p)	COBS 16A.3.1 R (6)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Art 59(5)	COBS 16A.3.1 R (8)	Execution of orders other than when undertaking portfolio management	Restated into FCA Handbook with HSD changes only
Article 60	Reporting obligations in respect of portfolio management		
Art 60(1)	COBS 16A.4.1 R (1)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(2)(a)	COBS 16A.4.1 R (2)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 60(2)(b)	COBS 16A.4.1 R (2)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(2)(c)	COBS 16A.4.1 R (2)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(2)(d)	COBS 16A.4.1 R (2)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(2)(e)	COBS 16A.4.1 R (2)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(2)(f)	COBS 16A.4.1 R (2)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(2)(g)	COBS 16A.4.1 R (2)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(2)(h)	COBS 16A.4.1 R (2)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(3)(a)	COBS 16A.4.1 R (3)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(3)(b)	COBS 16A.4.1 R (3)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(3)(c)	COBS 16A.4.1 R (3)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Art 60(4)	COBS 16A.4.1 R (4)	Provision by a firm and contents: MiFID business	Restated into FCA Handbook with HSD changes only
Article 61	Reporting obligations in respect of eligible counterparties		
Art 61	COBS 1 Annex 1, 1.1 R	Execution of orders other than when undertaking portfolio management	Incorporated in the table of application to eligible counterparty business in COBS 1 Annex 1

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Article 62	Additional reporting obligations for portfolio management or contingent liability transactions		
Art 62	Repealed by Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022/1297 reg.2(4) (January 18, 2023)		
Article 63	Statements of client financial instruments or client funds		
Art 63(1)	COBS 16A.5.1 R (1) and (2)	Statements of client financial instruments or client funds	Restated into FCA Handbook with HSD changes only
Art 63(2)(a)	COBS 16A.5.1 R (3)	Statements of client financial instruments or client funds	Restated into FCA Handbook with HSD changes only
Art 63(2)(b)	COBS 16A.5.1 R (3)	Statements of client financial instruments or client funds	Restated into FCA Handbook with HSD changes only
Art 63(2)(c)	COBS 16A.5.1 R (3)	Statements of client financial instruments or client funds	Restated into FCA Handbook with HSD changes only
Art 63(2)(d)	COBS 16A.5.1 R (3)	Statements of client financial instruments or client funds	Restated into FCA Handbook with HSD changes only
Art 63(2)(e)	COBS 16A.5.1 R (3)	Statements of client financial instruments or client funds	Restated into FCA Handbook with HSD changes only
Art 63(2)(f)	COBS 16A.5.1 R (3)	Statements of client financial instruments or client funds	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 63(3)	COBS 16A.5.1 R (5)	Statements of client financial instruments or client funds	Restated into FCA Handbook with HSD changes only
Article 64	Best execution criteria		
Art 64(1)	COBS 11.2A.8R(1)	Best execution criteria	Restated into FCA Handbook with HSD changes only
Art 64(2)	COBS 11.2A.8R(2)	Specific instructions	Restated into FCA Handbook with HSD changes only
Art 64(3)	COBS 11.2A.8R(3)	Commissions	Restated into FCA Handbook with HSD changes only
Art 64(4)	COBS 11.2A.8R(4)	OTC products	Restated into FCA Handbook with HSD changes only
Article 65	Duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client		
Art 65(1)	COBS 11.2A.34R(1)	Duty of portfolio managers to act in the client's best interest	Restated into FCA Handbook with HSD changes only
Art 65(2)	COBS 11.2A.34R(2)	Duty of receivers and transmitters to act in the client's best interest	Restated into FCA Handbook with HSD changes only
Art 65(3)	COBS 11.2A.34R(3)	Requirements for acting in client's best interest	Restated into FCA Handbook with HSD changes only
Art 65(4)	COBS 11.2A.34R(4)	Obtaining best possible result for client	Restated into FCA Handbook with HSD changes only
Art 65(5)	COBS 11.2A.34R(5)	Order execution policy	Restated into FCA Handbook with HSD changes only
Art 65(6)	COBS 11.2A.34R(6)	Information on order execution policy	Restated into FCA Handbook with HSD changes only
Art 65(7)	COBS 11.2A.34R(7)	Monitoring the effectiveness of order execution policy; material change	Restated into FCA Handbook with HSD changes only; definition of 'material change' moved into Glossary as a new Glossary term

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 65(8)	COBS 11.2A.1R(5)	Exception to application of the provision	Restated into FCA Handbook with HSD changes only
Article 66	Execution policy		
Art 66(1)	COBS 11.2A.25R(1)	Order execution policy requirements	Restated into FCA Handbook with HSD changes only
Art 66(2)	COBS 11.2A.25R(2)	Information to depend on class of financial instrument	Restated into FCA Handbook with HSD changes only
Art 66(3)	COBS 11.2A.25R(3)	Information to be provided to clients	Restated into FCA Handbook with HSD changes only
Art 66(4)	COBS 11.2A.25R(4)	Information on fees	Restated into FCA Handbook with HSD changes only
Art 66(5)	COBS 11.2A.25R(5)	Information on execution venues	Restated into FCA Handbook with HSD changes only
Art 66(6)	COBS 11.2A.25R(6)	Information on third party payments	Restated into FCA Handbook with HSD changes only
Art 66(7)	COBS 11.2A.25R(7)	Information on benefits received by the firm	Restated into FCA Handbook with HSD changes only
Art 66(8)	COBS 11.2A.25R(8)	Client requests for information	Restated into FCA Handbook with HSD changes only
Art 66(9)	COBS 11.2A.25R(9)	Information for retail clients	Restated into FCA Handbook with HSD changes only
Article 67	General principles		
Art 67(1)	COBS 11.3.2AR(1)	Carrying out client orders	Restated into FCA Handbook with HSD changes only
Art 67(2)	COBS 11.3.4AR	Settlement of executed orders	Restated into FCA Handbook with HSD changes only
Art 67(3)	COBS 11.3.5AR	Use of information relating to pending client orders	Restated into FCA Handbook with HSD changes only
Article 68	Aggregation and allocation of orders		
Art 68(1)	COBS 11.3.7AR	Aggregation and allocation of orders	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 68(2)	COBS 11.3.8AR	Partial execution of aggregated client orders	Restated into FCA Handbook with HSD changes only
Article 69	Aggregation and allocation of transactions for own account		
Art 69(1)	COBS 11.3.9AR	Aggregation and allocation of transactions for own account	Restated into FCA Handbook with HSD changes only
Art 69(2)	COBS 11.3.10AR	Partial execution of aggregated order	Restated into FCA Handbook with HSD changes only
Art 69(3)	COBS 11.3.11AR	Procedures designed to prevent reallocation	Restated into FCA Handbook with HSD changes only
Article 70	Prompt, fair and expeditious execution of client orders and publication of unexecuted client limit orders for shares traded on a trading venue		
Art 70(1)	COBS 11.4.3AR(1)	Obligation to make unexecuted client limit orders public	Restated into FCA Handbook with HSD changes only
Art 70(2)	COBS 11.4.3AR(2)	Regulated markets and MTFs to be prioritised	Restated into FCA Handbook with HSD changes only
Article 71	Eligible counterparties		
Art 71(1)	COBS 3.6.4A R	Per se professional clients	Existing COBS rule
Art 71(2)	COBS 3.7.3B R (1)	Providing clients with a higher level of protection	Restated into FCA Handbook with HSD changes only
Art 71(3)	COBS 3.7.3B R (2)	Providing clients with a higher level of protection	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 71(4)	COBS 3.7.3B R (3)	Providing clients with a higher level of protection	Restated into FCA Handbook with HSD changes only
Art 71(5)(a)	COBS 3.6.4B R (1)	Eligible counterparties	Restated into FCA Handbook with HSD changes only
Art 71(5)(b)	COBS 3.6.4B R (2)	Eligible counterparties	Restated into FCA Handbook with HSD changes only
Article 72	Retention of records		
Art 72(1)(a)	SYSC 9.1.2-AR(1)	Requirements and conditions on the retention of records	Restated into FCA Handbook with HSD changes only
Art 72(1)(b)	SYSC 9.1.2-AR(2)		Restated into FCA Handbook with HSD changes only
Art 72(1)(c)	SYSC 9.1.2-AR(3)		Restated into FCA Handbook with HSD changes only
Art 72(1)(d)	SYSC 9.1.2-AR(4)		Restated into FCA Handbook with HSD changes only
Art 72(1)(e)	SYSC 9.1.2-AR(5)		Restated into FCA Handbook with HSD changes only
Art 72(2)	SYSC 9.1.1BR(1)	Requirements on minimum records	Restated into FCA Handbook with HSD changes only
Art 72(3)	SYSC 9.1.1BR(2)	Further requirements on records of policies and procedures	Restated into FCA Handbook with HSD changes only
Article 73	Record keeping of rights and obligations of the investment firm and client		
Art 73	COBS 8A.1.10R	Record keeping: client agreements	Restated into FCA Handbook with HSD changes only
Article 74	Record keeping of client orders and decision to deal		
Art 74	COBS 11.5A.2R	Recording initial orders received from clients	Restated into FCA Handbook with HSD changes only
Article 75	Record keeping of transactions and order processing		

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 75	COBS 11.5A.3 R	Record keeping in relation to transactions and order processing	Restated into FCA Handbook with HSD changes only
Article 76	Recording of telephone conversations or electronic communications		
Art 76(1) to (7)	SYSC 10A.1.15R	Obligations for telephone and electronic communications	Restated into FCA Handbook with HSD changes only
Art 76(8)	SYSC 10A.1.12AR	Requirements on notifications to clients	Restated into FCA Handbook with HSD changes only
Art 76(9) to (11)	SYSC 10A.1.16R	Requirements on record-keeping	Restated into FCA Handbook with HSD changes only
Article 77	Qualification as an SME		
Art 77(1)(a)	Glossary – SME definition	Deeming provisions for SMEs with shares traded for less than 3 years	Restated into FCA Handbook with HSD changes only
Art 77(1)(b)	Glossary – SME definition	Deeming provisions for SMEs with shares traded for less than 3 years	Restated into FCA Handbook with HSD changes only
Art 77(1)(c)	Glossary – SME definition	Deeming provisions for SMEs with shares traded for less than 3 years	Restated into FCA Handbook with HSD changes only
Art 77(2)	Glossary – SME definition	Deeming provision for SME with no equity instruments traded on a venue	Restated into FCA Handbook with HSD changes only
Article 78	Registration as an SME growth market		
Art 78(1)	MAR 5.10.2AR(1) and (2)	Registration as an SME growth market	Language amended to clarify this is a firm facing obligation
Art 78(2)(a)	MAR 5.10.2AR(3)(a)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 78(2)(b)	MAR 5.10.2AR(3)(b)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only
Art 78(2)(c)	MAR 5.10.2AR(3)(c)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only
Art 78(2)(d)	MAR 5.10.2AR(3)(d)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only
Art 78(2)(e)	MAR 5.10.2AR(3)(e)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only
Art 78(2)(f)	MAR 5.10.2AR(3)(f)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only
Art 78(2)(g)	MAR 5.10.2AR(3)(g)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only
Art 78(2)(h)	MAR 5.10.2AR(3)(h)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only
Art 78(2)(i)	MAR 5.10.2AR(3)(i)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only
Art 78(2)(j)	MAR 5.10.2AR(3)(j)	Registration as an SME growth market	Restated into FCA Handbook with HSD changes only
Art 78(3)	Glossary – UK prospectus regime definition	Definition of UK law implementing Directive 2003/71/EC	Deleted and introduced a new definition of UK prospectus regime
Article 79	Deregistration as an SME Growth market		
Art 79(1)	MAR 5.10.2CR(1)	Deregistration as an SME growth market	Restated with HSD changes only
Art 79(2)	MAR 5.10.2CR(2)	Deregistration as an SME growth market	Restated with HSD changes only
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MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Article 81	Circumstances where significant infringements of the rules of a trading venue or disorderly trading conditions or system disruptions in relation to a financial instrument may be assumed		
Art 81(1)	MAR 5.6.1R (4) MAR 5A.8.1R (4) REC 3.25.2R (1)	Obligation to consider the factors in MAR 1 Annex 3(1) when assessing the requirement to inform the FCA of significant infringements of the rules of the trading venue, disorderly trading conditions or systems disruptions	Restated into FCA Handbook with HSD changes only
Art 81(2)	Not restated	Clarification on the circumstances in which information under A.81(1) would be required	Not restated into FCA Handbook as not needed
Article 82	Circumstances where a conduct indicating behaviour that is prohibited under Regulation (EU) No 596/2014 may be assumed		
Art 82(1)	MAR 5.6.1R (5) MAR 5A.8.1R (5) REC 3.25.3R (1)	Obligation to consider the factors in MAR 1 Annex 3(2) when assessing whether the requirement to inform the FCA of conduct that may indicate a breach of the Market Abuse Regulation applies	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 82(2)	MAR 5.6.1AR (1) MAR 5A.8.1AR (1) REC 3.25.3(2)	Obligation to consider additional factors for trading venues where financial instruments or related financial instruments are traded	Restated into FCA Handbook with HSD changes only
Art 82(3)	MAR 5.6.1AR (3) MAR 5A.8.1AR (3) REC 3.25.3(4)	Obligations to take into account front running behaviours	Restated into FCA Handbook with HSD changes only
Article 83	Position reporting		
Art 83	Not restated as part of this exercise. See FCA CP CP23/27: Reforming the commodity derivatives regulatory framework	Position reporting	Not restated as part of this exercise. See FCA CP CP23/27: Reforming the commodity derivatives regulatory framework
Article 84	Obligation to provide market data on a reasonable commercial basis		
Art 84	Not restated as part of this exercise. See FCA CP23/33: Consultation on payments to data providers and DRSP forms including Policy Statement for the framework for UK consolidated tape (CP23/15)	Obligation to provide market data on a reasonable commercial basis	Not restated as part of this exercise. Issues relating to Articles 84-89 were considered in the making of the Data Reporting Services Forms (Amendment) Instrument 2024 [See FCA CP23/33: Consultation on payments to data providers and DRSP forms including Policy Statement for the framework for UK consolidated tape (CP23/15)]. Article 84 was revoked as of 5 April 2024 pursuant to regulation 4(d) (i) SI 2023/1382 rhttps://www.legislation.gov.uk/uksi/2023/1382/contents/made
Article 85	Provision of market data on the basis of cost		

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 85	Not restated as part of this exercise. See FCA CP23/33: Consultation on payments to data providers and DRSP forms including Policy Statement for the framework for UK consolidated tape (CP23/15)	Provision of market data on the basis of cost	See commentary for Article 84
Article 86	Obligation to provide market data on a non-discriminatory basis		
Art 86	Not restated as part of this exercise. See FCA CP23/33: Consultation on payments to data providers and DRSP forms including Policy Statement for the framework for UK consolidated tape (CP23/15)	Obligation to provide market data on a non-discriminatory basis	See commentary for Article 84
Article 87	Per user fees		
Art 87	Not restated as part of this exercise. See FCA CP23/33: Consultation on payments to data providers and DRSP forms including Policy Statement for the framework for UK consolidated tape (CP23/15)	Per user fees	See commentary for Article 84
Article 88	Unbundling and disaggregating market data		

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Art 88	Not restated as part of this exercise. See FCA CP23/33: Consultation on payments to data providers and DRSP forms including Policy Statement for the framework for UK consolidated tape (CP23/15)	Unbundling and disaggregating market data	See commentary for Article 84
Article 89	Transparency obligation		
Art 89	Not restated as part of this exercise. See FCA CP23/33: Consultation on payments to data providers and DRSP forms including Policy Statement for the framework for UK consolidated tape (CP23/15)	Transparency obligation	See commentary for Article 84
Article 90	Determination of the substantial importance of the operations of a trading venue in a host Member State		
Art 90	Not restated as previously revoked	Determination of the substantial importance of the operations of a trading venue in a host Member State	Not restated as previously revoked
Article 91	Entry into force and application		
Art 91	Not restated as not needed	Entry into force and application	Not restated as not needed
Annex I	Record-keeping		

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Annex I Client assessment – information to clients	COBS 2.2A.7 R, COBS 3.8.2 R, COBS 4.11A.3 R, COBS 6.1ZA.25 R, COBS 6.2B.40B R, COBS 8A.1.9 R, COBS 9A.4.2A R and COBS 14.3A.13 R	Content as provided for under Article 24(4) of MiFID and Articles 44 to 51 of the MiFID Org Regulation	Combination of existing COBS rules and new rules
Annex I Client assessment – client agreements	COBS 8A.1.9 R and 8A.1.10R	Records as provided for under Article 25(5) of MiFID and Article 58 of the MiFID Org Reg	Combination of existing COBS rule and new rule
Annex I Client assessment – Assessment of suitability and appropriateness	COBS 9A.4.2A R, COBS 10A.7.2 R	Content as provided for under Article 25(2) and (3) of MiFID and Articles 54. 55 and 56 of the MiFID Org Reg	Combination of existing COBS rule and new rule
Annex I Order handling – Client-order handling – aggregated transactions	COBS 11.3.15R	Records as provided for under Articles 67 to 70 of the MiFID Org Reg	Restated into FCA Handbook as new rule, in same location as the rules replicating Articles 67-70 of MiFID Org Reg
Annex I Order handling – Aggregation and allocation of transactions for own account	COBS 11.3.15R	Records as provided for under Article 69 of the MiFID Org Reg	Restated into FCA Handbook as new rule, in same location as the rule replicating Article 69 of MiFID Org Reg
Annex I Client Orders and transactions – record keeping of client orders or decisions to deal	COBS 11.5A.2R	Records as provided for under Article 74 of the MiFID Org Reg.	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Annex I Client Orders and transactions – record keeping of transactions and order processing	COBS 11.5A.3R	Records as provided for under Article 75 of the MiFID Org Reg	Restated into FCA Handbook with HSD changes only
Annex I Reporting to clients – obligation in respect of services provided to clients	COBS 16A.2.4R	Contents as provided for under Articles 59 to 63 of the MiFID Org Reg	Restated into FCA Handbook as a new rule, in same location as the rules replicating Articles 59, 60 and 63 of MiFID Org Reg
Annex I Safeguarding of client assets – client financial instruments held by an investment firm	CASS 6.2.1R, Article 2(1)(a): CASS 6.2.2R Article 2(1)(b): CASS 6.6.3R Article 2(1)(c): CASS 6.6.34R Article 2(4): CASS 6.3.6AR Article 2(5): CASS 10.1.7R	Records as provided for under Article 16(8) of MiFID and under Article 2 of Commission Delegated Directive (EU) 2017/593	Existing rules in FCA Handbook
Annex I Safeguarding of client assets – client funds held by an investment firm	CASS 7.12.1R, Article 2(1)(a): CASS 7.15.2R Article 2(1)(b): CASS 7.15.3R Article 2(1)(c): CASS 7.15.20R Article 2(5): CASS 10.1.7R	Records as provided for under Article 16(9) of MiFID and under Article 2 of Delegated Directive (EU) 2017/593	Existing rule in FCA Handbook
Annex I Safeguarding of client assets – use of client financial instruments	CASS 6.4.3R	Records provided for under Article 5 of Delegated Directive (EU) 2017/593	Existing rule in FCA Handbook

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Annex I Communications with clients – information about costs and associated charges	COBS 6.1ZA.25R	Contents as provided for under Article 50 of MiFID Org Reg	Restated into FCA Handbook as a new rule, in same location as the rules replicating Article 50 of MiFID Org Reg
Annex I Communications with clients – information about the investment firm and its services, financial instruments and safe-guarding of client assets	COBS 6.1ZA.25R and COBS 14.3A.13R	Content as provided for under Articles 47, 48 and 49 of MiFID Org Reg	Restated into FCA Handbook as new rules, in same locations as the rules replicating Articles 47, 48 and 49 of MiFID Org Reg
Annex I Communications with clients – information to clients	COBS 4.11A.3R	Records of communication – see Article 46 of MiFID Org Reg	Restated into FCA Handbook as a new rule
Annex I Communications with clients – marketing communications (except in oral form)	COBS 4.11A.3R	Each marketing communication issued by the investment firm (except in oral form) as provided under Articles 44 and 46 of MiFID Org Reg	Restated into FCA Handbook as a new rule

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Annex I Communications with clients – investment advice to retail clients	COBS 9A.4.2AR	(i) The fact, time and date that investment advice was rendered and (ii) the financial instrument that was recommended (iii) the suitability report provided to the client – see Article 54 of the MiFID Org Reg	Restated into FCA Handbook as a new rule, in same location as the rules replicating Article 54 of MiFID Org Reg
Annex I Communications with clients – investment research	COBS 12.2.25R	Each item of research issued by the investment firm in a durable medium – see Articles 36 and 37 MiFID Org Reg	Restated into FCA Handbook as new rule, in same location as the rules replicating Articles 36 and 37 of MiFID Org Reg
Annex I Organisational requirements – the firm’s business and internal organisation	SYSC 9.1.1BR(1)	Records as provided for under Article 21(1)(f) of MiFID Org Reg	Restated into FCA Handbook as new rule
Annex I Organisational requirements – compliance reports	SYSC 9.1.1BR(1)	Each compliance report to management body - see Article 22(2) (c) and Article 25(2) of MiFID Org Reg	Restated into FCA Handbook as new rule
Annex I Organisational requirements – conflicts of interest record	SYSC 9.1.1BR(1)	Records as provided for under Article 35 of MiFID Org Reg	Restated into FCA Handbook as new rule
Annex I Organisational requirements – inducements	COBS 2.3A.35R	The information disclosed to clients under Article 24(9) of MiFID. Also see Article 11, 12 and 13 of Delegated Directive (EU) 2017/593	Restated into FCA Handbook as new rule

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Annex I Organisational requirements – risk management reports	SYSC 9.1.1BR(1)	Each risk management report to senior management. See Article 23(1)(b) and Article 25(2) of MiFID Org Reg	Restated into FCA Handbook as new rule
Annex I Organisational requirements – internal audit reports	SYSC 9.1.1BR(1)	Each internal audit report to senior management – see Article 24 and Article 25(2) of MiFID Org Reg	Restated into FCA Handbook as new rule
Annex I Organisational requirements – complaints- handling records	DISP 1.1A.37R	Each complaint and the complaint handling measures taken to address the complaint – see Article 26 of MiFID Org Reg	Obligation restated to FCA Handbook through amendment to existing rule
Annex I Organisational requirements – records of personal records	COBS 11.7A.5R(5)(c) and SYSC 9.1.1BR(1)	Records as provided for under Article 29(5)(c) of MiFID Org Reg	Restated into FCA Handbook as new rule, in same location as the rule replicating Article 29(5)(c) MiFID Org Reg
Annex II	Costs and charges		
Table 1	COBS 6 Annex 7 R	Identified costs that should form part of the costs to be disclosed to the clients	Restated into FCA Handbook with HSD changes only
Table 2	COBS 6 Annex 7 R	Identified costs that should form part of the costs to be disclosed to the clients	Restated into FCA Handbook with HSD changes only

MiFID ORG Regulation Article	Handbook Reference	Subject matter	Handbook style drafting or other comment
Annex III	Requirement for operators of trading venues to immediately inform their national competent authority		
Annex III	MAR 1 Annex III	Requirement for operators of trading venues to immediately inform their national competent authority	Restated into FCA Handbook with HSD changes only
Annex IV	[No title]		
Annex IV section 1	COBS 11.5A.4R	Minimum details to be recorded in relation to client orders and decisions to deal	Restated into FCA Handbook with HSD changes only
Annex IV section 2	COBS 11.5A.5R	Minimum details to be recorded in relation to transactions and order processing	Restated into FCA Handbook with HSD changes only

Annex 5

Abbreviations in this document

Abbreviation	Description
AGBR	Advice Guidance Boundary Review
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
CASS	Client Assets Sourcebook
CBA	Cost Benefit Analysis
CCI	Consumer Composite Investments
CFD	Contracts for Difference
CFI	Call for Input
CIS	Collective Investment Scheme
COBS	Conduct of Business sourcebook
CP	Consultation Paper
CRD	Capital Requirements Directive
CRR	UK Capital Requirements Regulation
DEPP	Decision Procedure and Penalties Manual
DISP	The Dispute Resolution sourcebook
DP	Discussion Paper

Abbreviation	Description
DTR	Disclosure Guidance and Transparency Rules sourcebook
EA	Equality Act
ECP	Eligible Counterparty
EEA	European Economic Area
ESG	Environmental, Social and Governance
EU	European Union
FCA	Financial Conduct Authority
FOS	Financial Ombudsman Service
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act
GEN	General Provisions sourcebook
HDS	Handbook Drafting Style
IDD	Insurance Distribution Directive
IPCD	Implementation Period Completion Date
LRRRA	Legislative and Regulatory Reform Act
M2G	The MiFID 2 Onshoring Guide
MAR	Market Abuse Conduct Sourcebook
MiFID	Markets in Financial Instruments Directive
MiFI Regs	Markets in Financial Instruments Regulations

Abbreviation	Description
MiFIDPRU	Markets in Financial Instruments Directive (Prudential)
MTF	Multilateral Trading Facilities
OFR	Overseas Funds Regime
OPS	Occupational Pension Scheme
OTF	Organised Trading Facilities
PERG	Perimeter Guidance
PRA	Prudential Regulation Authority
PRIIPs	Packaged Retail and Insurance-based investment products Regulation
PROF	Professional Firms Sourcebook
PS	Policy Statement
RAO	Regulated Activities Order
REC	Recognised Clearing House Sourcebook
RIE	Investment Exchanges Sourcebook
SI	Systematic Internalisers
SICGO	Secondary International Competitiveness and Growth Objective
SMCR	Senior Managers and Certification Regime
SME growth markets	Small and Medium-sized Enterprise growth markets
SRF	Smarter Regulatory Framework
SUP	Supervision Manual

Abbreviation	Description
SYSC	Systems & Controls Sourcebook
TC	Training and Competence Sourcebook
TP	Temporary Permission
UCITS	Undertakings for Collective Investment in Transferable Securities Implementing Directive
UK	United Kingdom

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Appendix 1

Draft Handbook text

**MARKETS IN FINANCIAL INSTRUMENTS (SMARTER REGULATORY
FRAMEWORK) INSTRUMENT 202X**

Powers exercised by the Financial Conduct Authority:

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137R (Financial promotion rules);
 - (c) section 137T (General supplementary powers);
 - (d) section 138D (Actions for damages);
 - (e) section 139A (Power of the FCA to give guidance);
 - (f) section 143C (Duty to make rules applying to FCA investment firms);
 - (g) section 143D (Duty to make rules applying to parent undertakings);
 - (h) section 143E (Powers to make rules applying to parent undertakings);
 - (i) section 226 (Compulsory jurisdiction); and
 - (j) section 300H (Rules relating to investment exchanges and data reporting service providers);
 - (2) regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001(SI 2001/995); and
 - (3) 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 listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.
- C. The FCA approves the Voluntary Jurisdiction rules and guidance to be made and amended, the standard terms for Voluntary Jurisdiction participants to be fixed and varied and the scheme rules made and amended by the Financial Ombudsman Service Limited under this instrument.

Powers exercised by the Financial Ombudsman Service Limited

- D. The Financial Ombudsman Service Limited:
- (1) makes and amends the rules and guidance for the Voluntary Jurisdiction; and
 - (2) fixes and varies the standard terms for Voluntary Jurisdiction participants,
- to incorporate the changes to the Glossary of definitions as set out in Annex A to this instrument; and

(3) makes and amends the scheme rules,

in order to incorporate the changes to the Glossary of definitions as set out in Annex A to this instrument,

in the exercise of the following powers and related provisions in the Act:

- (a) section 227 (Voluntary Jurisdiction);
- (b) paragraph 8 (Information, advice and guidance) of Schedule 17;
- (c) paragraph 14 (The scheme operator's rules) of Schedule 17;
- (d) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
- (e) paragraph 20 (Voluntary Jurisdiction rules: procedure) of Schedule 17.

E. The making and amendment of the rules and guidance, the fixing and varying of the standard terms and the making and amendment of scheme rules by the Financial Ombudsman Service Limited, as set out at Paragraph C above, is subject to the consent and approval of the Financial Conduct Authority.

Commencement

F. This instrument comes into force on [date].

Interpretation

G. In this instrument, any reference to any provision of assimilated direct legislation is a reference to it as it forms part of assimilated law.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Training and Competence sourcebook (TC)	Annex C
General Provisions sourcebook (GEN)	Annex D
Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)	Annex E
Conduct of Business sourcebook (COBS)	Annex F
Client Assets sourcebook (CASS)	Annex G
Market Conduct sourcebook (MAR)	Annex H
Supervision manual (SUP)	Annex I
Decision Procedure and Penalties manual (DEPP)	Annex J
Dispute Resolution: Complaints sourcebook (DISP)	Annex K
Professional Firms sourcebook (PROF)	Annex L
Recognised Investment Exchanges sourcebook (REC)	Annex M
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex N

Amendment to material outside the Handbook

- I. The MiFID 2 Onshoring Guide (M2G) is amended in accordance with Annex O to this instrument.

Notes

- J. In the Annexes to this instrument, the notes (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- K. This instrument may be cited as the Markets in Financial Instruments (Smarter Regulatory Framework) Instrument 202X.

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

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

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

<i>DGSD</i>	Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast).
<i>Directive 2013/36/EU UK law</i>	means the law of the <i>UK</i> , or any part of it, which was relied on by the <i>UK</i> immediately before <i>IP completion day</i> , to implement Directive 2013/36/EU and its implementing measures: (a) as it has effect on 1 January 2022, in the case of rules made by the <i>PRA</i> under the <i>Act</i> ; and (b) as amended from time to time, in all other cases.
<i>EU 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>Gibraltar-based investment firm</i>	A <i>Gibraltar-based firm</i> which would be a <i>MiFID investment firm</i> if it had its head office or registered office in the <i>United Kingdom</i>
<i>material change</i>	(in <i>COBS 11</i>) 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.
<i>MiFID best execution obligation</i>	(in <i>COBS 11</i>) the obligation of a <i>firm</i> under <i>COBS 11.2A.2R</i> , <i>COBS 11.2A.9R</i> , <i>COBS 11.2A.12R</i> and <i>COBS 11.2A.15R</i> .
<i>Part 9C rules</i>	has the meaning given in section 143F(1) of the <i>Act</i> .
<i>UK law on market abuse</i>	(1) assimilated law relating to the <i>Market Abuse Regulation</i> including: (a) the requirements in the <i>Act</i> related to the <i>Market Abuse Regulation</i> including the <i>market abuse regime</i> ; (b) the <i>Market Abuse Regulation</i> ;

- (c) the *Market Abuse Regulation* regulatory technical standards and implementing technical standards;
 - (d) the Criminal Justice Act 1993;
 - (e) the Financial Services Act 2012; and
 - (f) *FCA rules* relating to the *Market Abuse Regulation*;
- (2) *FCA rules* substituting the *Market Abuse Regulation*; and
 - (3) *FCA rules* substituting assimilated law in (1)(b) and (c).

*UK law on
markets in
financial
instruments*

- (1) assimilated law relating to *MiFID* including:
 - (a) requirements imposed by or under the *Act*;
 - (b) *MiFIR*;
 - (c) *MiFIR Delegated Regulation*;
 - (d) *MiFID* regulatory technical standards and implementing technical standards;
 - (e) *MiFIR* regulatory technical standards and implementing technical standards;
 - (f) *MiFI Regulations*;
 - (g) *FCA rules* relating to *MiFID*; and
 - (h) *PRA rules* relating to *MiFID*.
- (2) *FCA rules* and *PRA rules* substituting the *UK* version of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 which was part of *UK* law by virtue of the *EUWA* as at [date of revocation of *MiFID* Org Reg].
- (3) *FCA rules* substituting assimilated law in (1)(b) to (f).

*UK
prospectus
regime*

UK law corresponding to and implementing the *EU Prospectus Regulation* including:

- (1) the *Prospectus Regulation*;
- (2) the *Prospectus RTS Regulation*;
- (3) the *PR Regulation*;
- (4) Part VI of the *Act*; and

- (5) *rules* in the Prospectus Regulations Rules Instrument 2019 (FCA 2019/80) (and successor provisions).

Amend the following definitions as shown.

algorithmic trading ...

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

client money ...

- (2A) (in *MIFIDPRU*, *FEES*, *CASS 6*, *CASS 7*, *CASS 7A* and *CASS 10* and, in so far as it relates to matters covered by *CASS 6*, *CASS 7*, *COBS* and *IPRU(INV)*) subject to the *client money rules*, *money* of any currency:

- (a) that a *firm* receives or holds for, or on behalf of, a *client* in the course of, or in connection with, its *MiFID business* and (in relation to *COBS* only, if the context requires) its *equivalent business of a third country investment firm*; or

...

...

commodity ...

[Note: article 2(6) of the *MiFID Org Regulation*]

common platform organisational requirements

- (1) *SYSC 4 to SYSC 9; and*
(2) ~~those articles of the *MiFID Org Regulation* as applied in accordance with *SYSC 1 Annex 1 2.8AR(1)*, *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*. [deleted]~~

common platform record-keeping requirements

- (in relation to *common platform firms*) the following:
(1) *SYSC 9; and*
(2) ~~those articles of the *MiFID Org Regulation* as applied in accordance with *SYSC 1 Annex 1 2.8AR(1)*, *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*. [deleted]~~

common platform requirements

- (1) *SYSC 4 to SYSC 10; and*
(2) ~~those articles of the *MiFID Org Regulation* as applied in accordance with *SYSC 1 Annex 1 2.8AR(1)*, *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. [deleted]~~
- competent employees rule*
- (a) for an *insurer*, a *managing agent* and the *Society*, SYSC 3.1.6R; and
 - (b) ~~for a *common platform firm*, 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; [deleted]~~
 - (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 [deleted]~~
 - (c) for every other *firm*, SYSC 5.1.1R (where it applies).
- compliance requirements for SMCR firms*
- any of the following requirements:
- ...
 - (c) ~~article 22 of the *MiFID Org Regulation (Compliance)*~~ SYSC 6.1.2-AR, SYSC 6.1.3-AR, SYSC 6.1.4-AAR and SYSC 6.1.5AR;
 - (d) ~~article 22 of the *MiFID Org Regulation*~~ SYSC 6.1.2-AR, SYSC 6.1.3-AR, SYSC 6.1.4-AAR and SYSC 6.1.5AR (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
 - ...
- dealing on own account*
- trading against proprietary capital resulting in the conclusion of transactions in one or more *financial instruments*, except where the *firm* participates in matching arrangements entered into with entities outside its own group with the objective or consequence of carrying out de facto riskless back-to-back transactions in a *financial instrument* outside a *trading venue*.
- ...
- derivative*
- (1) ...
 - (2) (in *REC*, *MAR 5*, ~~and~~ *MAR 5A* and *COBS 12*) those *financial instruments* defined in article 2(1)(24)(c) of *MiFIR* or referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the *Regulated Activities Order*.
 - ...
- durable medium*
- (1) Any instrument:
 - (a) which is either:
 - (i) paper; or

~~(b)~~ (ii) ~~any an~~ instrument which enables the recipient to store information addressed personally to the recipient in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored; and

(b) in relation to which any applicable conditions in (2) to (4) are satisfied (read, as applicable, by reference to (5)).

(2) In relation to ~~the equivalent business of a third country investment firm, MiFID optional exemption business or collective portfolio management~~, if the relevant rule ~~derives from the MiFID Org Regulation or is a rule which implemented the UCITS Directive, the UCITS implementing Directive or the UCITS implementing Directive No 2~~ the instrument used must be:

(i) appropriate to the context in which the business is to be carried on; and

(ii) specifically chosen by the recipient when offered the choice between that instrument and paper.

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

~~(iii) the requirements in (i) and (ii) above only apply in relation to retail clients or potential retail clients;~~

~~(iv) where the client or potential client is a retail client, or potential retail client, who has requested to receive the information on paper, that information must be provided on paper and free of charge; and~~

~~(v) firms must provide all information required to be provided in a durable medium by the relevant rule to clients or potential clients in electronic format, except where the client or potential client is a retail client, or potential retail client.~~

(3) In relation to rules in SYSC and COBS insofar as they apply to MiFID, equivalent third country or optional exemption business:

(a) if the recipient is a retail client:

(i) they must be informed of the right to receive the information on paper instead of in electronic format; and

(ii) if the retail client requests to receive the information on paper, the information must be provided on paper and free of charge; and

(b) in any other case, the information must be provided in electronic format.

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

~~(vi)~~ the instrument used must be appropriate in the context of the
(a) business conducted between the *insurance distributor* and
(for *ICOBS*) the *customer* or (for *COBS*) the *client*; and

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

(5) For the purposes of this definition, the provision of information by means of electronic communications ~~shall be treated as~~ is to be considered appropriate to the context in which the business between the *firm* and the *client* is, or is to be, carried on if there is evidence that the *client* has regular access to the internet. The provision by the *client* of an e-mail address for the purposes of the carrying on of that business is sufficient.

[Note: article 2(f) of, and Recital 20 to, the *Distance Marketing Directive*, articles 2(1)(18), 23(4) and 23(6) of the *IDD*, article 4(1)(62) of *MiFID* ~~and article 3(1), (1A) and (1B) of the *MiFID Org Regulation*~~, articles 75(2) and 81(1) of the *UCITS Directive*, article 20(3) of the *UCITS implementing Directive* and article 7 of the *UCITS implementing Directive No 2*]

[*Editor's note*: The changes proposed to the definition of 'durable medium' follow those consulted on in Quarterly Consultation Paper No. 44 (CP24/11).]

EEA UCITS management company ~~a management company~~ an undertaking established in the EEA, the regular business of which is the management of EEA UCITS schemes.

financial analyst ...

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

financial instrument (1) (other than in (2) and (3)) those instruments specified in Part 1 of Schedule 2 to the *Regulated Activities Order*, that is:

...

(da (in relation to derivative contracts relating to a currency) has the
) meaning in ~~article 10 of the *MiFID Org Regulation*~~ Article 10 (Characteristics of other derivative contracts relating to currencies') of Part 2 of Schedule 2 to the *Regulated Activities Order*, (in summary):

...

...

(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*, a *UK MTF* or a *UK OTF*, except for wholesale energy products (having regard to ~~article 6 of the MiFID Org Regulation~~ Article 6 (Energy derivative contracts relating to oil and coal and wholesale energy products) of Part 2 of Schedule 2 to the *Regulated Activities Order*) traded on a *UK OTF* that must be physically settled where the conditions of ~~article 5 of the MiFID Org Regulation~~ Article 5 (Wholesale energy products that must be physically settled) of Part 2 of Schedule 2 to the *Regulated Activities Order* 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 or wholesale energy products traded on an *EU OTF* that must be physically settled, having regard to ~~article 7(4) of the MiFID Org Regulation~~ paragraph 4 of Article 7 (Other derivative financial instruments) of Part 2 of Schedule 2 to the *Regulated Activities Order*;

(ii) which have the characteristics of other derivative financial instruments having regard to ~~article 7(1) of the MiFID Org Regulation~~ paragraph 1 of Article 7 of Part 2 of Schedule 2 to the *Regulated Activities Order*; and

(iii) not being spot contracts having regard to ~~articles 7(1) and (2) of the MiFID Org Regulation~~ paragraphs 1 and 2 of Article 7 of Part 2 of Schedule 2 to the *Regulated Activities Order*;

...

(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~~ Article 8 (Derivatives under paragraph 10 of Part 1 of Schedule 2) of Part 2 of Schedule 2 to the *Regulated Activities Order* applies;

where the conditions in ~~articles 7(3) and (4) of the *MiFID Org Regulation*~~ paragraphs 3 and 4 of Article 7 of Schedule 2 to the *Regulated Activities Order* are met;

[Note: article 44(1)(15) and section C of Annex I to *MiFID* and ~~articles 7 and 8 of the *MiFID Org Regulation*~~]

...

*internal
audit
requirements
for SMCR
firms*

any of the following requirements:

...

(c) ~~article 24 of the *MiFID Org Regulation* (Internal audit)~~ SYSC 6.2.1R;

(d) ~~article 24 of the *MiFID Org Regulation* (Internal audit)~~ SYSC 6.2.1R
(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

...

*investment
research*

~~has the meaning in article 36(1) of the *MiFID Org Regulation*.~~

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 a *firm* to a *client*, it would not constitute the provision of a *personal recommendation*.

[Note: article 36(1) of the *MiFID Org Regulation*]

*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 is a~~ complaint about:
- (A) the provision of *investment services or ancillary services* to a *client* by an *investment firm*;
 - (B) the provision of one or more *investment services* to a *client* by a *CRD credit institution*;
 - (C) 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*;
 - (D) the activities permitted by the *UK provisions* which implemented article 6(3) of the *UCITS Directive* when carried on by a *collective portfolio management investment firm*; and
 - (E) the activities permitted by the *UK provisions* which implemented Article 6(4) of the *AIFMD* when carried on by a *collective portfolio management investment firm*; 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 the *UK provisions* which implemented 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*]

non-independent research an *investment recommendation* that ~~a does not meet the conditions set out in article 36(1) of the *MiFID Org Regulation*~~ does not constitute *investment research*.

~~[Note: article 36(1) of the *MiFID Org Regulation*]~~

outsourcing ...

~~[Note: article 2(3) of the *MiFID Org Regulation* and article 13(28) of the *Solvency II Directive*]~~

periodic statement a report which a *firm* is required to provide to a *client* pursuant to:
...

- (b) ~~article 60(1) of the *MiFID Org Regulation* COBS 16A.4.1R where the firm is carrying on *MiFID business*; *MiFID, equivalent third country or optional exemption business*.~~
- (c) ~~GEN 2.2.22AR and COBS 16A.4.1UK where the firm is carrying on the *equivalent business of a third country investment firm*; [deleted]~~
- (d) ~~COBS 16A.1.2R and COBS 16A.4.1UK where the firm is carrying on *MiFID optional exemption business*. [deleted]~~

[Note: see COBS 16A.4.1UK where article 60(1) of the *MiFID Org Regulation* is reproduced]

*personal
recommend
a-tion*

...

[Note: article 2(1)(15) of the *IDD*, ~~article 9 of the *MiFID Org Regulation*~~ and article 53(1C) and 53(1D) of the *Regulated Activities Order*]

...

*personal
transaction*

a trade in a *designated investment*, or in COBS 11.7A only, 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:

...

[Note: article 16(2) of *MiFID* and ~~article 28 of the *MiFID Org Regulation*~~]

*regulatory
system*

- (1) 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 provisions of a *onshored regulation* such as those contained in the ~~*MiFID Org Regulation* and the *UK CRR*~~.

...

*relevant
person*

...

[Note: ~~article 2(1) of the *MiFID Org Regulation*~~ and article 3(3) of the *UCITS implementing Directive*]

remuneration

- (1) (except where (2), (3) or (4) apply) any form of remuneration, including salaries, *discretionary pension benefits* and benefits of any kind.

[Note: article 92(2) of *CRD*]

- (2) (in relation to ~~those articles of the *MiFID Org Regulation*~~ the *common platform requirements* 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.1.1R; SYSC 19F.1.3R, ~~and SYSC 19F.1.4R and SYSC 19F.1.4AR~~) 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~~]

...

*retail market
business* ...

(3) ...

[~~Note: paragraphs (ii) to (iv) derive from article 57 of the MiFID Org Regulation~~]

...

*risk control
requirements
for SMCR
firms* any of the following requirements:
...

(d) ~~article 23 of the MiFID Org Regulation (Risk management)~~ SYSC 7.1.2-AR, SYSC 7.1.3R, SYSC 7.1.5R, SYSC 7.1.6R and SYSC 7.1.7R;

(e) ~~article 23(2) of the MiFID Org Regulation~~ SYSC 7.1.6R and SYSC 7.1.7R (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

...

*securities
financing
transaction* (1) (in COBS, other than in relation to MiFID, equivalent third country or optional exemption business) an instance of stock lending or stock borrowing or the lending or borrowing of other *financial instruments*, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction.

(1A) (in COBS (in relation to MiFID, equivalent third country or optional exemption business), COLL, DEPP, EG, FEES and FUND) a transaction defined in article 3(11) of the *Securities Financing Transactions Regulation* as follows:

(a) a repurchase transaction, as defined in article 3(9) of that regulation;

- (b) securities or commodities lending and securities or commodities borrowing as defined in article 3(7) of that regulation;
- (c) a buy-sell back transaction or sell-buy back transaction as defined in article 3(8) of that regulation; and
- (d) a margin lending transaction as defined in article 3(10) of that regulation.

...

*senior
management*

...

- (2) (in *SYSC* (except *SYSC* 4.3.2-AR, *SYSC* 4.3A, *SYSC* 7.1.6R, *SYSC* 8.1.6-AR, *SYSC* 9.1.1BR, *SYSC* 10.1.6AAR, *SYSC* 19F and paragraph (1) of the definition of *supervisory function*) and in accordance with article 4(1)(10) of the *UK CRR*) 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* 4.3.2-AR, *SYSC* 4.3A, *SYSC* 7.1.6R, *SYSC* 8.1.6-AR, *SYSC* 9.1.1BR, *SYSC* 10.1.6AAR, *SYSC* 19F, paragraph (1) of the definition of *supervisory function* and *COBS* 2.3B) 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.

[Note: article 4.1(37) of *MiFID*]

...

*small and
medium-sized
enterprise or
SME*

- (1) (in *MAR* 5):
 - (a) companies that had an average market capitalisation of less than €200,000,000 based on end-year quotes for the previous ~~three~~ 3 calendar years-;
 - (b) an issuer whose shares have been admitted to trading for less than 3 years where its market capitalisation is below €200,000,000 based on any of the following:

- (i) the last closing share price of the first year of trading, if its shares have been admitted to trading for less than 1 year;
 - (ii) the last closing share price of the first share of trading, if its shares have been admitted to trading for more than 1 year but less than 2 years;
 - (iii) the average of the last closing share prices of the first 2 years of trading, if its shares have been admitted to trading for more than 2 years but less than 3 years.
- (c) an issuer that has no equity instrument traded on any trading venue if the nominal value of its debt issuances over the previous calendar year, on all trading venues across the United Kingdom, does not exceed €50,000,000.

...

*suitability
report*

a report which a *firm* must provide to its *client* 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:

...

- (b) ~~article 54(12) of the MiFID Org Regulation~~ COBS 9A.3.3R where the *firm* is carrying on ~~MiFID business~~ MiFID, equivalent third country or optional exemption business;
- (c) ~~GEN 2.2.22AR and COBS 9A.3.3UK~~ where the *firm* is carrying on ~~the equivalent business of a third country investment firm;~~ [deleted]
- (d) ~~COBS 9A.1.2R and COBS 9A.3.3UK~~ where the *firm* is carrying on ~~MiFID optional exemption business;~~ or [deleted]

...

*supervisory
function*

- (1) any function within a *common platform firm* that is responsible for the supervision of its ~~senior personnel~~ senior management.

...

*third party
prospectus*

...

~~[Note: recital 73 to the MiFID Org Regulation]~~

*website
conditions*

the following conditions:

...

- (2) the *client* must specifically consent to the provision of that information in that form (in respect of the provision of information to a client in relation to MiFID, equivalent third country or optional exemption business pursuant to rules in COBS 4.5A.9R, COBS 6.1ZA, COBS 8A, COBS 11.2A.25R or COBS 14.3A, only in the case of if the client is a retail client if the relevant rule derives from the MiFID Org Regulation);

...

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

Delete the following definitions. The text is not shown struck through.

MiFID Org Regulation the *UK* version of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing *MiFID* 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, which is part of *UK* law by virtue of the *EUWA*.

MiFID Org Regulation firm a *firm* to which the *MiFID Org Regulation* is directly applicable.

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 otherwise stated.

1 Application and purpose

...

1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)		
	Who?		
...			
2.7A	G	...	
<u>2.7B</u>	<u>R</u>	(1)	<u>Subject to SYSC 1 Annex 1 2.17R, the common platform requirements do not apply to a Gibraltar-based investment firm.</u>
		(2)	<u>A Gibraltar-based investment firm, when carrying on what would otherwise be MiFID business, must comply with the:</u>
		(a)	<u>common platforms requirements on financial crime; and</u>
		(b)	<u>common platform record-keeping requirements in accordance with SYSC 1 Annex 1 2.17R.</u>
...			
	What?		
...			

2.8A	R	(1)	<p>Subject to (2), (3) and (5), in SYSC 1 Annex 1 2.8R, articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i> (including any relevant definitions in the <i>Glossary</i>, <i>MiFIR</i> and the <i>MiFID Org Regulation</i>) apply 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) to a <i>firm's</i> carrying on of the business set out in SYSC 1 Annex 1 2.8R which is not <i>MiFID business</i> or a <i>structured deposits regulated activity</i>. [deleted]</p>																			
		(1A)	<p>Subject to (2), (3) and (6), articles 33 to 35 of the <i>MiFID Org Regulation</i> (including any relevant definitions in the <i>Glossary</i>, <i>MiFIR</i> and the <i>MiFID Org Regulation</i>) apply 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) to a <i>firm's</i> carrying on of the business set out in SYSC 10.1.1R which is not <i>MiFID business</i> or a <i>structured deposits regulated activity</i>. [deleted]</p>																			
		(2)	<p>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:</p> <table border="1" data-bbox="513 1160 1461 2004"> <thead> <tr> <th data-bbox="513 1160 588 1249"></th> <th data-bbox="588 1160 687 1249">(1)</th> <th data-bbox="687 1160 895 1249">(2)</th> </tr> </thead> <tbody> <tr> <td data-bbox="513 1249 588 1413"></td> <td data-bbox="588 1249 687 1413">“ancillary services”</td> <td data-bbox="687 1249 895 1413"><i>ancillary services</i> or <i>ancillary activities</i> associated with the <i>firm's</i> regulated activities</td> </tr> <tr> <td data-bbox="513 1413 588 1576"></td> <td data-bbox="588 1413 687 1576">“client” and “potential client”</td> <td data-bbox="687 1413 895 1576"><i>client</i></td> </tr> <tr> <td data-bbox="513 1576 588 1700"></td> <td data-bbox="588 1576 687 1700">“competent authority”</td> <td data-bbox="687 1576 895 1700"><i>FCA</i></td> </tr> <tr> <td data-bbox="513 1700 588 1863"></td> <td data-bbox="588 1700 687 1863">“investment firm” and “firm”</td> <td data-bbox="687 1700 895 1863"><i>firm</i></td> </tr> <tr> <td data-bbox="513 1863 588 2004"></td> <td data-bbox="588 1863 687 2004">“investment service” and “investment</td> <td data-bbox="687 1863 895 2004"><i>designated investment business</i></td> </tr> </tbody> </table>			(1)	(2)		“ancillary services”	<i>ancillary services</i> or <i>ancillary activities</i> associated with the <i>firm's</i> regulated activities		“client” and “potential client”	<i>client</i>		“competent authority”	<i>FCA</i>		“investment firm” and “firm”	<i>firm</i>		“investment service” and “investment	<i>designated investment business</i>
	(1)	(2)																				
	“ancillary services”	<i>ancillary services</i> or <i>ancillary activities</i> associated with the <i>firm's</i> regulated activities																				
	“client” and “potential client”	<i>client</i>																				
	“competent authority”	<i>FCA</i>																				
	“investment firm” and “firm”	<i>firm</i>																				
	“investment service” and “investment	<i>designated investment business</i>																				

			services and activities”	
			“portfolio management” and “portfolio management service”	<i>managing investments</i>
			“shall”	must [deleted]
		...		
		(4)	This rule does not apply to a collective portfolio management investment firm in relation to the firm’s business other than its MiFID business. [deleted]	
		(5)	The requirements in article 72 of the MiFID Org Regulation SYSC 9.1.1B and SYSC 9.1.2-AR do not apply to a firm to the extent that SYSC 9.1.2CR applies to the firm.	
		(6)	SYSC 1 Annex 1 2.8AR(1A) does not apply to a firm to the extent that SYSC 10A applies to the firm (see SYSC 1 Annex 1 3.1AG). [deleted]	
2.8B	G	The purpose of SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR is that the common platform organisational requirements and the common platform requirements on conflicts of interest also apply when carrying on any of the activities listed in SYSC 1 Annex 1 2.8R or SYSC 10.1.1R respectively even where they do not involve investment services and/or activities and, where relevant, ancillary services (unless provided otherwise within a specific rule). [deleted]		
2.8C	G	SYSC 1 Annex 1 2.8AR(3) has the effect that, where the requirement in the MiFID Org Regulation that is a common platform organisational requirement or a common platform requirement on conflicts of interest includes a reference or cross reference to another part of the MiFID Org Regulation, that reference or cross reference is given the same meaning as for the purposes of SYSC 1 Annex 1 2.8AR. [deleted]		
2.8D	G	For the purpose of SYSC 1 Annex 1 2.8AR , a firm should apply any guidance published by the FCA that assists with interpreting		

		the definitions in MiFID, MiFIR and the MiFID Org Regulation. [deleted]
...		
2.10	R	The provisions on record-keeping in SYSC 9, and articles 21 and 72 of the MiFID Org Regulation SYSC 4.1.1-AR, SYSC 5.1.1R, SYSC 5.1.6R, SYSC 5.1.12R, SYSC 5.1.13R and SYSC 5.1.14R, apply as set out in SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR , except that they only apply to the carrying on of <i>ancillary activities</i> that are performed in relation to:
		(1) <i>designated investment business</i> ;
		(2) <i>home finance activity</i> ;
		(3) <i>insurance distribution activity</i> ;
		(4) <i>credit-related regulated activity</i> .
...		
2.14B	G	Firms should refer to articles 38 to 42 of the MiFID Org Regulation COBS 11A.1 (Underwriting and placing) for additional organisational requirements for underwriting and placing.
...		
	Actions for damages	
2.19	R	A contravention of a <i>rule</i> in the <i>common platform requirements</i> and in SYSC 10A (Recording telephone <u>conversations and electronic communications</u>) does not give rise to a right of action by a private <i>person</i> under section 138D of the <i>Act</i> (and each of those rules is specified under section 138D(3) of the <i>Act</i> as a provision giving rise to no such right of action).

Part 3	Tables summarising the application of the common platform requirements to different types of firm
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3.1	G	The <i>common platform requirements</i> apply as described in the following table (subject to the provisions in Part 2 of this Annex (Application of the common platform requirements)).	
		Type of firm	Common platform requirements
		<i>Common platform firm</i>	SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2 AR and SYSC 1 Annex 1 3.2 BR
	
...			
Common platform firm			
3.2	G	For a <i>common platform firm</i> (other than a dormant asset fund operator not subject to MiFID):	
		(1)	SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and
		(2)	articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation are directly applicable to the firm. [deleted]
...			
3.2-A	R	For a <i>common platform firm</i> (other than a dormant asset fund operator) not subject to <i>MiFID</i>, articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> apply to the <i>firm's</i> business other than <i>MiFID</i> business or structured deposits regulated activities as if the <i>MiFID Org Regulation</i> applied to the <i>firm</i> as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR. [deleted]	
3.2-B	R	For a <i>common platform firm</i> that is a <i>dormant asset fund operator</i> and is not subject to <i>MiFID</i> :	
		(1)	SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and

		(2)	articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> apply as if the <i>MiFID Org Regulation</i> applied to the <i>firm</i> as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR. [deleted]
...			
MiFID optional exemption firm and a third country firm			
3.2C	R	For a <i>MiFID optional exemption firm</i> and a <i>third country firm</i> :	
		(1)	SYSC 4 to SYSC 10 apply as <i>rules</i> or as <i>guidance</i> in accordance with Table B below in the following way:
		(a)	where a <i>rule</i> is shown modified as ‘Guidance’, it should be read as <i>guidance</i> (as if “should” appeared in that <i>rule</i> instead of “must”); and
		(b)	the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the <i>firm</i> ’s business; and
		(2)	articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i> apply as if the <i>MiFID Org Regulation</i> applied to the <i>firm</i> as rules (in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR) or as <i>guidance</i> in accordance with Part 1 of Table C below. Part 2 of Table C sets out those articles of the <i>MiFID Org Regulation</i> . [deleted]
...			
Other firms			
...			
3.3	R	For all other <i>firms</i> :	
		(1)	SYSC 4 to SYSC 10 apply as <i>rules</i> or as <i>guidance</i> in accordance with Column B in Table A below in the following way:

		(a)	where a <i>rule</i> is shown modified in Column B as ‘Guidance’, it should be read as <i>guidance</i> (as if “should” appeared in that <i>rule</i> instead of “must”); and
		(b)	the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the <i>firm</i> ’s business; and
	(2)	articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation do not apply. [deleted]	
...			

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, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 4.1.1R	...	...	...	...
<u>SYSC 4.1.1-AR</u>	<u>Rule</u>	<u>Rule for a UCITS investment firm;</u>	<u>Not applicable</u>	<u>Not applicable</u>

		<u>otherwise not applicable</u>		
...				
<i>SYSC</i> 4.1.7R	Rule <i>CRR</i> <i>firm for a</i> only	Rule	Not applicable	Guidance
...				
<i>SYSC</i> 4.3.2R	...	...	...	...
<u><i>SYSC</i></u> 4.3.2-AR	<u>Rule</u>	<u>Rule for a UCITS investment firm in relation to its MiFID business; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</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, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				

SYSC 5.1.1R	Not applicable <u>Rule</u>	Rule	Not applicable	Rule
...				
SYSC 5.1.6R	Not applicable <u>Rule</u>	Rule	Guidance	Guidance
...				
SYSC 5.1.12R	Not applicable <u>Rule</u>	Rule	Not applicable	Guidance
...				
SYSC 5.1.13R	Not applicable <u>Rule</u>	Rule	Not applicable	Rule
SYSC 5.1.14R	Not applicable <u>Rule</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, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
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...				
SYSC 6.1.2R
<u>SYSC 6.1.2-AR</u>	<u>Rule</u>	<u>Rule for a UCITS investment firm in relation to its MiFID business; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 6.1.3R	...	...	...	...
<u>SYSC 6.1.3-AR</u>	<u>Rule</u>	<u>Rule for a UCITS investment firm in relation to its MiFID business; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 6.1.4R	...	...	...	...
<u>SYSC 6.1.4-AAR</u>	<u>Rule</u>	<u>Rule for a UCITS investment firm; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 6.1.5R	...	...	...	...

<u>SYSC</u> <u>6.1.5AR</u>	<u>Rule</u>	<u>Rule for a</u> <u>UCITS</u> <u>investment</u> <u>firm; otherwise</u> <u>not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 6.2.1R	Not applicable <u>Rule</u>	Rule	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
...				

Provision SYSC 7	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 7.1.2R	Not applicable	Rule for a <i>UCITS investment firm in relation to its non-MiFID business; otherwise guidance</i>	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>

<u>SYSC</u> <u>7.1.2-AR</u>	<u>Rule</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 7.1.3R	Not applicable <u>Rule</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule for an <i>operator of an electronic system in relation to lending</i>
...				
SYSC 7.1.5R	Not applicable <u>Rule</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 7.1.6R	Not applicable <u>Rule</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 7.1.7R	Not applicable <u>Rule</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule to an <i>operator of an electronic system in relation to lending</i>
...				

Provision SYSC 8	COLUMN A Application to a common	COLUMN A+ Application to a UCITS	COLUMN A++ Application to a full-scope UK	COLUMN B Application to all other firms apart
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	platform firm other than to a UCITS investment firm	management company	AIFM of an authorised AIF	from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 8.1.4R	...	...	...	...
<u>SYSC 8.1.4AR</u>	<u>Rule</u>	<u>Rule for a UCITS investment firm; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 8.1.5R	Not applicable <u>Rule</u>	Rule for a UCITS investment firm; otherwise guidance	Not applicable	Guidance
...				
SYSC 8.1.6R	...	...	...	...
<u>SYSC 8.1.6-AR</u>	<u>Rule</u>	<u>Rule for a UCITS investment firm; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				

SYSC 8.1.7R	Not applicable <u>Rule</u>	Rule for a <i>UCITS</i> <i>investment</i> <i>firm in relation</i> to its non- <i>MIFID</i> <i>business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.8R	Not applicable <u>Rule</u>	Rule for a <i>UCITS</i> <i>investment</i> <i>firm in relation</i> to its non- <i>MIFID</i> <i>business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.9R	Not applicable <u>Rule</u>	Rule for a <i>UCITS</i> <i>investment</i> <i>firm in relation</i> to its non- <i>MIFID</i> <i>business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.10R	Not applicable <u>Rule</u>	Rule for a <i>UCITS</i> <i>investment</i> <i>firm in relation</i> to its non- <i>MIFID</i> <i>business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.11R	...	...	...	...
<u>SYSC</u> <u>8.1.11-CR</u>	<u>Rule</u>	<u>Rule for</u> <u>a <i>UCITS</i></u> <u><i>investment firm</i></u> <u>in relation to its</u>	<u>Not applicable</u>	<u>Not applicable</u>

		<u>MiFID business; otherwise not applicable</u>		
<u>SYSC 8.1.11-BR</u>	<u>Rule</u>	<u>Rule for a UCITS investment firm in relation to its MiFID business; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 8.1.11-AG</u>	<u>Guidance</u>	<u>Guidance for a UCITS investment firm in relation to its MiFID business; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
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, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 9.1.1AR	...	...	...	...

<u>SYSC 9.1.1BR</u>	<u>Rule applies only in relation to MiFID business</u>	<u>Rule applies only in relation to MiFID business of a UCITS investment firm</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 9.1.2R	...	...	...	...
<u>SYSC 9.1.2-AR</u>	<u>Rule applies only in relation to MiFID business</u>	<u>Rule applies only in relation to MiFID business of a UCITS investment firm</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				

Provision	Column A	COLUMN A+	COLUMN A++	Column B
SYSC 10	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 10.1.4R	Not applicable <u>Rule</u>	Rule, but not applicable in relation to	Not applicable	Guidance - but applies as a rule in relation to the

		<i>insurance distribution activities</i>		production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2 Not applicable in relation to <i>insurance distribution activities</i> or <i>funeral plan distribution</i>
...
SYSC 10.1.6R	Not applicable Rule	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
...
<u>SYSC 10.1.6AAR</u>	Not applicable <u>Rule</u>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>

...
<u>SYSC 10.1.8R</u>	Rule in relation to insurance distribution activities. Otherwise, not applicable	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Rule
SYSC 10.1.9G	Not applicable <u>Guidance</u>	Guidance	Not applicable	Guidance
SYSC 10.1.9AR	Not applicable <u>Rule</u>	Rule in relation to insurance distribution activities. Otherwise, not applicable	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance - but applies as a rule in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
SYSC 10.1.10R	Not applicable <u>Rule</u>	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS 12.2</i> ; and (b) in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
SYSC10.1.11R	Not applicable <u>Rule</u>	Rule	Rule in relation to <i>insurance distribution activities</i> .	Guidance - but applies as a rule: (a) in relation to the production or arrangement of

			Otherwise, not applicable	investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS 12.2</i> ; and (b) in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
...				
SYSC 10.1.11AA R	Not applicable <u>Rule</u>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution</i>
...				

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		
...		
SYSC 4.1.1R	...	...
<u>SYSC 4.1.1-AR</u>	<u>Rule</u>	<u>(1)(a): Guidance</u> <u>(1)(b), (c), (d) and first paragraph: Rule</u> <u>(2): Rule</u>

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 4		
		<u>(3) to (5): Guidance</u>
...		
SYSC 4.3.2R	...	...
<u>SYSC 4.3.2-AR</u>	<u>Guidance</u>	<u>(1) and (2): Rule</u> <u>(3): Guidance</u>
...		

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 5		
...		
SYSC 5.1.1R	Not applicable <u>Rule</u>	Not applicable <u>Rule</u>
...		
SYSC 5.1.6R	Not applicable <u>Rule</u>	Not applicable <u>Guidance</u>
...		
SYSC 5.1.12R	Not applicable <u>Rule</u>	Not applicable <u>Guidance</u>
...		

SYSC 5.1.13R	Not applicable <u>Rule</u>	Not applicable <u>Rule</u>
SYSC 5.1.14R	Not applicable <u>Rule</u>	Not applicable <u>Guidance</u>
...		

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 6		
...		
SYSC 6.1.2R	...	...
<u>SYSC 6.1.2-AR</u>	<u>Guidance</u>	<u>Guidance</u>
...		
SYSC 6.1.3R	...	...
<u>SYSC 6.1.3-AR</u>	<u>Guidance</u>	<u>Guidance</u>
...		
SYSC 6.1.4R	...	...
<u>SYSC 6.1.4-AAR</u>	<u>Guidance</u>	(1), (3), (4) and (5): <u>Guidance</u> (2): <u>Rule</u>
...		
SYSC 6.1.5R	...	...
<u>SYSC 6.1.5AR</u>	<u>Guidance</u>	<u>Guidance</u>

...		
SYSC 6.2.1R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
...		

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 7		
...		
SYSC 7.1.2R	...	...
<u>SYSC 7.1.2-AR</u>	<u>Guidance</u>	<u>Guidance</u>
...		
SYSC 7.1.3R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
...		
SYSC 7.1.5R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
SYSC 7.1.6R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
SYSC 7.1.7R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
...		

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 8		
...		
SYSC 8.1.4R	...	...
<u>SYSC 8.1.4AR</u>	<u>Guidance</u>	<u>Guidance</u>
SYSC 8.1.5R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
...
SYSC 8.1.6R	...	...
<u>SYSC 8.1.6-AR</u>	<u>Rule</u>	<u>Rule</u>
...		
SYSC 8.1.7R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
SYSC 8.1.8R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
SYSC 8.1.9R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
SYSC 8.1.10R	Not applicable <u>Guidance</u>	Not applicable <u>Guidance</u>
...		
SYSC 8.1.11R	...	...

<u>SYSC 8.1.11-CR</u>	<u>Guidance</u>	<u>Guidance</u>
<u>SYSC 8.1.11-BR</u>	<u>Rule</u>	<u>Guidance</u>
<u>SYSC 8.1.11-AG</u>	<u>Guidance</u>	<u>Guidance</u>
...		

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 9		
...		
<u>SYSC 9.1.1AR</u>	...	...
<u>SYSC 9.1.1BR</u>	<u>Rule</u>	<u>Guidance</u>
...		
<u>SYSC 9.1.2R</u>	...	...
<u>SYSC 9.1.2-AR</u>	<u>Rule</u>	<u>Guidance</u>
...		

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 10		
...		
<u>SYSC 10.1.6AAR</u>	<u>Rule in relation to <i>insurance distribution activities</i></u>	<u>Rule Guidance – but applies as a rule in relation to <i>insurance distribution activities</i></u>

...		
SYSC 10.1.9AR	Rule in relation to <i>insurance distribution activities</i> . Otherwise not applicable	Rule in relation to <i>insurance distribution activities</i> . Otherwise not applicable
...		
SYSC 10.1.11AAR	Rule in relation to <i>insurance distribution activities</i>	<u>Rule Guidance</u> , but applies as a rule in relation to <i>insurance distribution activities</i>
...		

Table C is deleted in its entirety. The deleted text is not reproduced in this instrument.

Amend the following as shown.

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 [deleted]~~
- (2) the *rules* and *guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	SYSC 4.1-2G, SYSC 4.1.1R, SYSC 4.1.1CR, SYSC 4.1.1-AR, SYSC 4.1.2R, SYSC 4.1.2AAR
Business continuity	SYSC 4.1.6R, SYSC 4.1.7R, SYSC 4.1.8G

Audit committee	SYSC 4.1.11G, SYSC 4.1.13G, SYSC 4.1.14G
Persons who effectively direct the business	SYSC 4.2.1R, SYSC 4.2.2R, SYSC 4.2.3G, SYSC 4.2.4G, SYSC 4.2.5G, SYSC 4.2.6R
Responsibility of senior personnel	SYSC 4.3.2-AR , SYSC 4.3.3G
Management body	SYSC 4.3A.-1R to SYSC 4.3A.7R
Nominations committee	SYSC 4.3A.8R to SYSC 4.3A.11R

Application to a MiFID optional exemption firm and to a third country firm

- 4.1.-1 G 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).~~ [deleted]

General requirements

- 4.1.1 R ...
- 4.1.1-A R (1) A common platform firm must, taking into account the nature, scale and complexity of its business, and the nature and range of the activities carried on in the course of its *designated investment business*, comply with the following organisational requirements:
- (a) 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;
 - (b) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the *common platform firm*;
 - (c) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *common platform firm*; and
 - (d) maintain adequate and orderly records of its business and internal organisation;

- (2) A common platform firm 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.
- (3) A common platform firm must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions and the maintenance of its *designated investment business*, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its *designated investment business*.
- (4) A common platform firm 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.
- (5) A common platform firm 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 4.1.1-AR(1) to (4), SYSC 5.1.1R, SYSC 5.1.6R, SYSC 5.1.12R, SYSC 5.1.13R and SYSC 5.1.14R, and take appropriate measures to address any deficiencies.

...

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 ~~article 21(3) of the MiFID Org Regulation~~ SYSC 4.1.1-AR(3), SYSC 5.1.7R, SYSC 7 and whichever of the following is applicable:

...

...

Business continuity

...

4.1.8 G The matters dealt with in a business continuity policy should include:

...

- (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~~ SYSC 4.1.1-AR(5) and SYSC 5.1.14R.

...

4.3 Responsibility of senior personnel

...

4.3.2 R ...

- 4.3.2-A R (1) A common platform firm, when allocating functions internally, must ensure that senior management and, where appropriate, the supervisory function, are responsible for ensuring that the firm complies with its obligations under the UK law on markets in financial instruments. In particular, senior management 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 UK law on markets in financial instruments, and take appropriate measures to address any deficiencies.
- (2) When allocating significant functions among senior management under SYSC 4.3.2-AR(1), a common platform firm must:
- (a) establish who is responsible for overseeing and maintaining the firm's organisational requirements; and
- (b) keep up-to-date records of such allocation.
- (3) A common platform firm must ensure that:
- (a) its senior management receive on a frequent basis, and at least annually, written reports on the matters covered by SYSC 6.1.2-AR, SYSC 6.1.3-AR, SYSC 6.1.4-AAR, SYSC 6.1.5R, SYSC 6.2.1R, SYSC 7.1.2-AR, 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
- (b) the supervisory function, if any, receives on a regular basis written reports on the same matters.

...

5 Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function

requirements. See <http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements.>]

Application to a common platform firm

5.1.-2

G For a *common platform firm*:

- (1) ~~the *MiFID Org Regulation* applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2 AR and SYSC 1 Annex 1 3.2 BR; and [deleted]~~
- (2) the *rules* and *guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
Competent employees rule, knowledge and competence and segregation of functions	<u>SYSC 5.1.-2G, SYSC 5.1.1R, 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 5.1.6R, SYSC 5.1.7R, SYSC 5.1.8G to SYSC 5.1.11G, SYSC 5.1.12R, SYSC 5.1.13R, SYSC 5.1.14R</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*:

- (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). [deleted]~~

Competent employees rule

5.1.1

R A *firm* (~~other than a *common platform firm*~~) must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

[**Note:** articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 5(1) of the *UCITS implementing Directive*]

...

Knowledge and competence

...

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 related to information to *clients*, and the assessment of suitability and appropriateness and reporting to *clients* under: *SYSC*, *COBS* and *PROD* in relation to *MiFID* business.

(1) ~~those rules which implement articles 24 and 25 of *MiFID* (including those rules which implement related provisions under the *MiFID Delegated Directive*); and [deleted]~~

(2) ~~related provisions of the *MiFID Org Regulation*. [deleted]~~

[**Note:** article 25(1) of *MiFID*]

...

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(3) of the *UCITS implementing Directive*]

...

Awareness of procedures: management company and common platform firm

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 4(1)(b) of the *UCITS implementing Directive*]

...

General

5.1.13 R The systems, internal control mechanisms and arrangements established by a *firm* (~~other than a *common platform firm*~~) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services, *claims management services* and other activities undertaken in the course of that business.

[**Note:** articles 4(1) final paragraph and 5(4) of the *UCITS implementing Directive*]

5.1.14 R A *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 4(5) of the *UCITS implementing Directive*]

...

6 Compliance, internal audit and financial crime

6.1 Compliance

...

Application to a common platform firm

6.1.-2 G For a *common platform firm*:

- (1) ~~the *MiFID Org Regulation* applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2 AR and SYSC 1 Annex 1 3.2 BR; and [deleted]~~
- (2) the *rules* and *guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
Adequate policy and procedures	<u>SYSC 6.1.-2G</u> , SYSC 6.1.1R, SYSC 6.1.1AG, <u>SYSC 6.1.2-AR</u>
Compliance function	<u>SYSC 6.1.3-AR</u> , SYSC 6.1.4-AAR, SYSC 6.1.4-AG, <u>SYSC 6.1.4-CG</u> , <u>SYSC 6.1.5AR</u>
Internal audit	<u>SYSC 6.2.1R</u> , SYSC 6.2.2G
Financial crime	SYSC 6.3.1R to SYSC 6.3.11G

Application to an MiFID optional exemption firm and to a third country firm

6.1.-1 G For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the *rules* and *guidance* in this chapter apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(1); ~~and~~
- (2) ~~those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(2). [deleted]~~

Adequate policy and procedures

...

6.1.2 R ...

6.1.2-A R A common platform firm 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 its designated investment 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 UK law on markets in financial instruments, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the FCA to exercise its powers effectively under the UK law on markets in financial instruments.

...

Compliance function

6.1.3 R ...

6.1.3-A R A common platform firm must establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

- (1) 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 SYSC 6.1.2-AR, and the actions taken to address any deficiencies in the firm's compliance with its obligations;
- (2) to advise and assist the relevant persons responsible for carrying out the firm's designated investment business to comply with the firm's obligations under the UK law on markets in financial instruments;
- (3) to report to the management body, at least on an annual basis, on:
 - (a) the implementation and effectiveness of the overall control environment for the firm's designated investment business;
 - (b) the risks that have been identified; and
 - (c) the complaints-handling reporting as well as remedies undertaken or to be undertaken;
- (4) 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.

To comply with SYSC 6.1.3-AR(1) and (2), the firm's compliance function must conduct an assessment on the basis of which it must establish a risk-based monitoring programme that takes into consideration all areas of the firm's designated investment business and any relevant ancillary services and ancillary activities associated with the firm's regulated

activities, including relevant information gathered in relation to the monitoring of complaints-handling. The monitoring programme must establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.

...

6.1.4 R ...

6.1.4-AA R In order to enable the compliance function referred to in SYSC 6.1.3-AR to discharge its responsibilities properly and independently, a common platform firm 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 replaced by the management body and must be responsible for the compliance function and for any reporting as to compliance required in relation to the UK law on markets in financial instruments and by SYSC 4.3.2-AR(3);
- (3) 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 the UK law on markets in financial instruments;
- (4) the relevant persons involved in the compliance functions must not be involved in the performance of the services or activities they monitor;
- (5) 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.

...

- 6.1.4-C G
- (1) This *guidance* is relevant to an *SMCR firm* required to appoint a compliance officer under SYSC 6.1.4R or ~~article 22(3) of the MiFID Org Regulation~~ SYSC 6.1.4-AAR as applicable.
 - (2) Taking account of the nature, scale and complexity of its activities, the *firm* should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the compliance officer does not undermine the independence of the compliance function.
 - (3) In the *FCA's* view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the compliance officer to require the approval of a majority of the *management*

body, including at least a majority of its members who do not perform any executive function in the *firm*.

6.1.5 R ...

6.1.5A R A common platform firm need not comply with SYSC 6.1.4-AAR(4) or SYSC 6.1.4-AAR(5) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of its designated investment business, the requirements under those rules are not proportionate and that its compliance function continues to be effective. In that case, a common platform firm must assess whether the effectiveness of the compliance function is compromised, and the assessment must be reviewed on a regular basis.

...

6.2 Internal audit

6.2.1 R A firm that is a common platform firm or a management company or an operator of an electronic system in relation to lending management company must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of its financial services and activities or (if it is a common platform firm) its designated investment business, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the *firm* and which has the following responsibilities:

- (1) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the *firm's* systems, internal control mechanisms and arrangements;
- (2) to issue recommendations based on the result of work carried out in accordance with (1);
- (3) to verify compliance with those recommendations;
- (4) to report in relation to internal audit matters in accordance with SYSC 4.3.2R or (if it is a common platform firm) SYSC 6.1.3-AR.

[**Note:** article 11 of the *UCITS implementing Directive*]

...

6.2.1B G (1) This *guidance* is relevant to an *SMCR firm* required to establish and maintain an internal audit function under ~~article 24 of the MiFID Org Regulation~~ SYSC 6.2.1R.

...

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~~ SYSC 6.2.1R 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 requirements

...

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 [deleted]~~
- (2) the *rules and guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
Risk assessment	SYSC 7.1.-2G, SYSC 7.1.1G, SYSC 7.1.2-AR
Risk management	SYSC 7.1.3R, SYSC 7.1.4R, SYSC 7.1.4AG, SYSC 7.1.5R, SYSC 7.1.6R, SYSC 7.1.7R
Risk control: remuneration	SYSC 7.1.7BG, SYSC 7.1.7BBG
Risk control: additional provisions	SYSC 7.1.7CG, SYSC 7.1.8G, SYSC 7.1.9R to SYSC 7.1.16R
Additional rules for CCR firms	SYSC 7.1.16CR to SYSC 7.1.22R

Application to an MiFID optional exemption firm and to a third country firm

7.1.-1 G For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the *rules and guidance* in this chapter apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(1); ~~and,~~

- (2) ~~those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(2). [deleted]~~

Risk assessment

...

7.1.2R R ...

7.1.2-A R *A common platform firm must 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.*

...

Risk management

7.1.3 R *A firm that is a UCITS investment firm common platform firm or an operator of an electronic system in relation to lending must adopt effective arrangements, processes and mechanisms to manage the risk relating to the firm's activities, processes and systems, in light of ~~that~~ the level of risk tolerance set in accordance with SYSC 7.1.2R or (if it is common platform firm) SYSC 7.1.2-AR.*

...

7.1.5 R *A firm that is a UCITS investment firm common platform firm or an operator of an electronic system in relation to lending 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.

7.1.6 R *A firm that is a UCITS investment firm common platform firm or an operator of an electronic system in relation to lending must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the *investment services and activities* designated investment business 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 or (if it is a *common platform firm*) to *senior management* in accordance with SYSC 4.3.2-AR(3).

7.1.7 R Where a *firm* that is a ~~UCITS investment firm~~ common platform firm or an operator of an electronic system in relation to lending 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.

...

Risk control: additional provisions

...

7.1.8 G ...

- (2) The term ‘risk management function’ in SYSC 7.1.6R and SYSC 7.1.7R, 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.

...

...

Additional rules for CRR firms

...

7.1.21 R (1) A *CRR firm*’s risk management function (~~article 23 of the MiFID Org Regulation~~ SYSC 7.1.2-AR, SYSC 7.1.3R, SYSC 7.1.5R to SYSC 7.1.7R) 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 firm

8.1.-2 G For a *common platform firm*:

- (1) ~~the *MiFID Org Regulation* applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2 AR and SYSC 1 Annex 1 3.2 BR; and [deleted]~~
- (2) the *rules* and *guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	<u>SYSC 8.1.-2G, SYSC 8.1.1R, SYSC 8.1.2G, SYSC 8.1.3G, SYSC 8.1.12G</u>
<u>Scope of critical and important operational functions</u>	<u>SYSC 8.1.4AR, SYSC 8.1.5R</u>
<u>Outsourcing critical or important operational functions</u>	<u>SYSC 8.1.6-AR to SYSC 8.1.8R, SYSC 8.1.9R, SYSC 8.1.10R, SYSC 8.1.11-CR, SYSC 8.1.11-BR, SYSC 8.1.11-AG, SYSC 8.1.12G</u>

Application to an MiFID optional exemption firm and to a third country firm

8.1.-1 G For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the *rules* and *guidance* in this chapter apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(1); ~~and.~~
- (2) ~~those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(2). [deleted]~~

General requirements

...

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.

Scope of critical and important operational functions

- 8.1.4 R ...
- 8.1.4A 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 *common platform firm* with the conditions and obligations of its *authorisation* or its other obligations under the *UK law on markets in financial instruments*, or its financial performance, or the soundness or the continuity of its *designated investment business*.
- 8.1.5 R For a *UCITS investment firm common platform firm*, and without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:
- (1) the provision to the *firm* of advisory services, and other services which do not form part of the relevant services and activities of the *firm*, including the provision of legal advice to the *firm*, the training of personnel of the *firm*, billing services and the security of the *firm's* premises and personnel;
 - (2) the purchase of standardised services, including market information services and the provision of price feeds;
 - (3) the recording and retention of relevant telephone conversations or electronic communications subject to SYSC 10A.
- ...

Outsourcing critical or important operational functions

- 8.1.6 R ...
- 8.1.6-A R If 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 *UK law on markets in financial instruments* and must comply with the following conditions:
- (1) the *outsourcing* must not result in the delegation by *senior management* of their responsibility;
 - (2) the relationship and obligations of the *firm* towards its *clients* under the *UK law on markets in financial instruments* must not be altered;

(3) the conditions with which the *firm* must comply in order to be authorised, and to remain so, must not be undermined;

(4) none of the other conditions subject to which the *firm*'s authorisation was granted must be removed or modified.

...

8.1.7 R A *UCITS investment firm common platform firm* must exercise due skill, and care and diligence when entering into, managing or terminating any arrangement for the *outsourcing* to a service provider of critical or important operational functions or of any relevant services and activities.

8.1.8 R A *UCITS investment firm common platform firm* must in particular take the necessary steps to ensure that the following conditions are satisfied:

- (1) the service provider must have the ability, capacity, appropriate organisational structure supporting the performance of the outsourced functions, and any *authorisation* required by law to perform the *outsourced* functions, services or activities reliably and professionally;
- (2) the service provider must carry out the *outsourced* services effectively, and in compliance with applicable laws and regulatory requirements, and to this end the *firm* must establish methods for assessing the standard of performance of the service provider and for reviewing on an ongoing basis the services provided by the service provider;
- (3) the service provider must properly supervise the carrying out of the *outsourced* functions, and adequately manage the risks associated with the *outsourcing*;
- (4) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
- (5) ~~the *firm* must retain the necessary expertise to supervise the *outsourced* functions effectively and to manage the risks associated with the *outsourcing*, and must supervise those functions and manage those risks~~ effectively supervise the *outsourced* functions or services and manage the risks associated with the *outsourcing*, and to this end the *firm* must retain the necessary expertise and resources to supervise the *outsourced* functions effectively and to manage those risks;
- (6) the service provider must disclose to the *firm* any development that may have a material impact on its ability to carry out the *outsourced* functions effectively and in compliance with applicable laws and regulatory requirements;

- (7) the *firm* must be able to terminate the arrangement for the *outsourcing* where necessary, with immediate effect when this is in the interest of its *clients*, without detriment to the continuity and quality of its provision of services to *clients*;
- (8) the service provider must co-operate with the *FCA* and any other relevant *competent authority* in connection with the *outsourced* activities;
- (9) the *firm*, its auditors, the *FCA* and any other relevant *competent authority* must have effective access to data related to the *outsourced* activities, as well as to the business premises of the service provider; and the *FCA* and any other relevant *competent authority* must be able to exercise those rights of access;
- (10) the service provider must protect any confidential information relating to the *firm* and its *clients*;
- (11) the *firm* and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary having regard to the function, service or activity that has been *outsourced*;
- (12) the *firm* must ensure 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.

- 8.1.9 R A ~~*UCITS investment firm*~~ *common platform 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. In particular, the *firm* must keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement must ensure that *outsourcing* by the service provider only takes place with the *firm*'s consent in writing.
- 8.1.10 R If a ~~*UCITS investment firm*~~ *common platform firm*, and the service provider are members of the same *group*, the *firm* may, for the purpose of complying with ~~*SYSC 8.1.6-AR*~~, *SYSC 8.1.7R* to ~~*SYSC 8.1.11R*~~ *SYSC 8.1.10R*, *SYSC 8.1.11-BR* and ~~*SYSC 8.2*~~ and ~~*SYSC 8.3*~~ *SYSC 8.1.11-AR*, take into account the extent to which the ~~*UCITS investment firm*~~ *common platform firm* *controls* the service provider or has the ability to influence its actions.
- 8.1.11 R ...
- 8.1.11-C R A *common platform firm* must make available on request to the *FCA* all information necessary to enable the *FCA* to supervise the compliance of the performance of the *outsourced* activities with the requirements of the *UK law on markets in financial instruments*.

8.1.11-B R In addition to the requirements in SYSC 8.1.6-AR, SYSC 8.1.7R to SYSC 8.1.10R and SYSC 8.1.11-BR, where a *common platform firm outsources functions related to portfolio management provided to clients to a service provider located in a third country, the firm must ensure that the following conditions are satisfied:*

- (1) the service provider is authorised or registered in its home jurisdiction to provide that service and is effectively supervised by a regulatory body in that third country; and
- (2) there is an appropriate cooperation agreement between the FCA and the regulatory body of the service provider.

8.1.11-A G For the purposes of the cooperation agreement referred to in SYSC 8.1.11-BR(2):

- (1) If the FCA enters into such agreement with a regulatory body in a third country, the FCA would include provisions to:
 - (a) obtain on request the information necessary to carry out their supervisory tasks pursuant to the UK law on markets in financial instruments;
 - (b) obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;
 - (c) receive information from the regulatory body in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements under the UK law on markets in financial instruments;
 - (d) cooperate with regard to enforcement, in accordance with the national and international law applicable to the regulatory body in a third country and the FCA in the United Kingdom in cases of breach of the requirements under the of UK law on markets in financial instruments.
- (2) The FCA publishes on its website a list of the cooperation agreements with regulatory bodies in third countries.

[Editor's note: The list of FCA's cooperation agreements with regulatory bodies in third countries can be found at:

<https://www.fca.org.uk/publication/corporate/outsourcing-portfolio-management-list-cooperation-agreements-2018.pdf>]

...

8.1.12 G As SUP 15.3.8G explains, a firm should notify the FCA when it intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities on a continuous and satisfactory basis.

[~~Note: recital 44 to the MiFID Org Regulation~~]

...

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 [deleted]~~
- (2) the *rules* and *guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	<u>SYSC 9.1.-2G, SYSC 9.1.1AR, SYSC 9.1.1BR, SYSC 9.1.2-AR</u>
Specific requirements for insurance distribution	SYSC 9.1.2AR, SYSC 9.1.2DR
Guidance on record-keeping	SYSC 9.1.2BG, SYSC 9.1.4G, SYSC 9.1.5G, SYSC 9.1.6G, SYSC 9.1.6AG

Application to an MiFID optional exemption firm and to a third country firm

9.1.-1 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). [deleted]~~

General requirements

...

9.1.1A R ...

9.1.1B R A common platform firm must:

- (1) at least keep the records in relation to organisational requirements as set out in the table below:

<u>Organisational requirements</u>	
<u>Type of record</u>	<u>Summary of content</u>
<u>The firm's business and internal organisation</u>	<u>Records as provided for under SYSC 4.1.1-AR(1)(d)</u>
<u>Compliance reports</u>	<u>Each compliance report to <i>management body</i></u>
<u>Conflict of Interest record</u>	<u>Records as provided for under SYSC 10.1.6R and SYSC 10.1.6-AR</u>
<u>Risk management reports</u>	<u>Each risk management report to <i>senior management</i></u>
<u>Internal audit reports</u>	<u>Each internal audit report to senior management</u>
<u>Records of personal transactions</u>	<u>Records as provided for under COBS 11.7A.5R(5)(c)</u>

- (2) keep written records of any policies and procedures it is required to maintain to comply with its obligations under the UK law on markets in financial instruments and the UK law on market abuse.

9.1.2 R ...

9.1.2-A 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 FCA, and so that the following conditions are met:

- (1) the FCA or any other relevant competent authority 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;
- (4) it must allow IT systems or any other efficient technology when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and
- (5) the firm's arrangements must comply with the record keeping requirements irrespective of the technology used.

...

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*.~~

...

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 3.2AR and SYSC 1 Annex 1 3.2 BR; and [deleted]~~
 - (2) the *rules* and *guidance* in the table below apply:

Subject	Applicable rule or guidance
<u>Application</u>	<u>SYSC 10.1.-4R, SYSC 10.1.-3R</u>
<u>General application</u>	<u>SYSC 10.1.1R</u>
<u>Provision of services Requirements only apply if a service is provided</u>	SYSC 10.1.2G
Identifying conflicts	SYSC 10.1.3R

Types of conflicts	<u>SYSC 10.1.4R</u> , SYSC 10.1.5G
<u>Records of conflicts</u>	<u>SYSC 10.1.6R</u> , <u>SYSC 10.1.6AAR</u>
Managing conflicts	SYSC 10.1.7R
<u>Disclosure of conflicts</u>	<u>SYSC 10.1.8R</u> , <u>SYSC 10.1.9G</u> , <u>SYSC 10.1.9AR</u>
Conflicts policy	<u>SYSC 10.1.10R</u> , SYSC 10.1.12G
<u>Contents of policy</u>	<u>SYSC 10.1.11R</u> , <u>SYSC 10.1.11AAR</u> , <u>SYSC 10.1.11ABR</u>

...

...

Requirements only apply if a service is provided

- 10.1.2 G (1) The requirements in this section only apply where a service is provided by a *firm*. The status of the *client* to whom the service is provided (as a *retail client*, *professional client* or *eligible counterparty*) is irrelevant for this purpose.

~~[Note: recital 46 to the MiFID Org Regulation]~~

...

...

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 damage the interests of a *client*, a ~~management company~~ *firm* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:
- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;
 - (2) has 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) (except in the case of a *common platform firm* or *MiFID optional exemption firm*) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service-; or
- (6) (in the case of a *common platform firm* or a *MiFID optional exemption firm*) 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 monetary or non-monetary benefits or services.

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 17(1) of the *UCITS implementing Directive*]

10.1.4A G Other *firms* (except *common platform firms*, *MiFID optional exemption firms*, *third country firms*, *UCITS management companies* and *insurance intermediaries*) should take account of the *rule* on the types of conflicts (see SYSC 10.1.4R) in accordance with 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 45 to the *MiFID Org Regulation*~~]

Records of conflicts

10.1.6 R A ~~*management company*, an *insurance intermediary* and a *firm* carrying on *funeral plan distribution*~~ *firm* 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, or for a common platform firm or a MiFID optional exemption firm, a 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 20(1) of the *UCITS implementing Directive*]

- 10.1.6A G Other *firms* (other than *common platform firms*, *MiFID optional exemption firms*, *third country firms* and *insurance intermediaries*) should also take account of the *rule* on records of conflicts (see SYSC 10.1.6 R) in accordance with ~~SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R~~.
- 10.1.6AA R ~~An insurance intermediary and a firm carrying on funeral plan distribution~~ A *firm* must ensure that its ~~management body~~ its senior management receives on a frequent basis, and at least annually, written reports on all situations referred to in SYSC 10.1.6R.
- 10.1.6B G Where SYSC 10.1.6AAR applies as *guidance* to a *firm* in accordance with SYSC 1 Annex 1.3.3R, a *firm* ~~(other than a common platform firm and an insurance intermediary)~~ should read SYSC 10.1.6AAR as if “should” appeared in that rule instead of “must”.

...

Disclosure of conflicts

- 10.1.8 R (1) If arrangements made by a *firm* under SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must clearly disclose the following to the *client* before undertaking business for the *client*:
- (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*;
 - (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 ~~*funeral plan distribution, insurance distribution activities, investment services or*~~

ancillary services services, taking into account the nature of the *client* to whom the disclosure is being made;

- (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:** 23(2) and (3) of *MiFID* and article 28(2) and (3) of the *IDD*]

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.

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 10.1.3R and 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 ~~management company, an insurance intermediary and a firm carrying on funeral plan distribution firm~~ must establish, implement and maintain an effective *conflicts of interest policy* that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
- (2) Where the ~~management company, or insurance intermediary or carrying on funeral plan distribution firm~~ is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

[**Note:** article 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, SYSC 10.1.4R, SYSC 10.1.4BR and SYSC 10.1.4CR (as applicable), by reference to the specific services and activities carried out by or on behalf of the ~~management company, insurance intermediary or firm carrying on funeral plan distribution~~ firm, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage, or for a common platform firm or a MiFID optional exemption firm a 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 by a firm in order to manage, or for a common platform firm or MiFID optional exemption firm to prevent or manage, such conflicts.
- (2) The procedures and measures provided for in paragraph (1)(b) must:
- (a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the ~~management company~~ firm and of the *group* to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of *clients*;
 - (aa) (for an *insurance intermediary* or a *firm* carrying on *funeral plan distribution*) be designed to ensure that the *insurance distribution activities* or *funeral plan distribution* are carried out in accordance with the best interests of the *client* and are not biased due to conflicting interests of the *insurance intermediary*, the *firm* carrying on *funeral plan distribution* or another *client*; and
 - (b) include, for an ~~insurance intermediary or a firm carrying on funeral plan distribution~~ a firm where appropriate, the following, and for a *management company*, such of the following as are necessary and appropriate for the *management company* to ensure the requisite degree of independence:
 - (i) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict

of interest where the exchange of that information may harm the interests of one or more *clients*;

- (ii) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;
- (iii) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- (iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant person* carries out services or activities;
- (v) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in separate services or activities where such involvement may impair the proper management of conflicts of interest; and
- (vi) (for *insurance intermediaries* or *firms* carrying on *funeral plan distribution*) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

...

10.1.11A G Other *firms* (except common platform firms, UCITS management companies, MiFID optional exemption firms, third-country firms, and *insurance intermediaries* and *firms* carrying on *funeral plan distribution*) should take account of the *rules* relating to *conflicts of interest policies* (see SYSC 10.1.10R and SYSC 10.1.11R) in accordance with ~~SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R~~

10.1.11AA R ~~An *insurance intermediary* and a *firm* carrying on *funeral plan distribution*. A *firm*~~ must assess and periodically review, on at least an annual basis, the conflicts of interest policy established in accordance with SYSC 10.1.10R and SYSC 10.1.11R (or for a *common platform firm* or MiFID optional exemption firm, SYSC 10.1.8R, SYSC 10.1.9AR to

SYSC 10.1.11R) and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).

10.1.11AB R A *common platform firm* and a *MiFID optional exemption firm* in relation to its *insurance distribution activities*, must:

- (1) take into account the factors set out in SYSC 10.1.4BR(4) and SYSC 10.1.4CR(5) when complying with ~~article 33 of the *MiFID Org Regulation* (as applied as a rule by SYSC 1 Annex 1 3.2 AR or 3.2 BR(2))~~ SYSC 10.1.4R; and
- (2) include the measure set out in SYSC 10.1.11R(2)(b)(vi) in the list of measures to be adopted, where necessary, when complying with ~~article 34(3) of the *MiFID Org Regulation* (as applied as a rule by SYSC 1 Annex 1 3.2 AR or 3.2 BR(2))~~ SYSC 10.1.11R(2).

...

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 47 to the *MiFID Org Regulation*~~]

...

10A Recording telephone conversations and electronic communications

10A.1 Application

Application

...

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* which is an onshored regulation, apply to the extent relevant to the subject matter of this chapter as if the *firm* were a *MiFID investment firm* providing *investment services* or performing *investment activities* in accordance with article 16(7) of *MiFID*.~~ [deleted]

...

- 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. [deleted]~~

Obligations for telephone and electronic communications

...

- 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) to (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 [deleted]~~
- (2) ~~retained in a format that does not allow the original record to be altered or deleted. [deleted]~~

Notification

...

- 10A.1.12 G ...

- 10A.1.12A R (1) Before carrying out any activities referred to in SYSC 10A.1.1R(2) (and that are not excluded by SYSC 10A.1.4R) to new and existing clients, a firm must inform the client that:
- (a) the conversations and communications are being recorded; and
 - (b) a copy of the recording of such conversations and communications with the client will be available, upon request, for a period of:
 - (i) 5 years to the client; and
 - (ii) 7 years to the FCA.
- (2) A firm must present the information referred to in SYSC 10A.1.11R to SYSC 10A.1.12AR(1) in the same language(s) used to provide designated investment business to clients.

...

Record keeping

10A.1.14 R ...

Additional requirements on recording of telephone conversations or electronic communications

10A.1.15 R A firm must:

- (1) establish, implement and maintain an effective recording of telephone conversations and electronic communications policy, set out in writing, and appropriate to the size and organisation of the firm, and the nature, scale and complexity of its business. The policy must include the following content:
 - (a) the identification of the telephone conversations and electronic communications, including relevant internal telephone conversations and electronic communications, that are subject to the requirements in accordance with this chapter; and
 - (b) the specification of the procedures to be followed and measures to be adopted to ensure the firm's compliance with SYSC 10A.1.6R and SYSC 10A.1.7R where exceptional circumstances arise and the firm is unable to record the conversation/communication on devices issued, accepted or permitted by the firm. A firm must retain the evidence of such circumstances and make it accessible to the FCA;
- (2) ensure that the management body has effective oversight and control over the policies and procedures relating to the firm's recording of telephone conversations and electronic communications;
- (3) ensure that the arrangements to comply with recording requirements are technology-neutral;
- (4) periodically evaluate the effectiveness of the firm's policies and procedures and adopt any such alternative or additional measures and procedures as are necessary and appropriate at a minimum when a new medium of communication is accepted or permitted for use by the firm;
- (5) keep and regularly update a record of those individuals who have firm's devices or privately owned devices that have been approved for use by the firm;
- (6) educate and train employees in procedures governing the requirements in this chapter;
- (7) monitor compliance with the recording and record-keeping requirements in accordance with this chapter, by periodically

monitoring the records of transactions and orders, including relevant conversations, subject to those requirements in a proportionate and risk-based manner; and

(8) demonstrate to the FCA, at the FCA's request, the policies, procedures and management oversight of the recording rules.

10A.1.16 R A firm must:

(1) record in a durable medium all relevant information related to relevant face-to-face conversations with clients. The information recorded shall include at least the following:

(a) date and time of meetings;

(b) location of meetings;

(c) identity of the attendees;

(d) initiator of the meetings; and

(e) relevant information about the client order including the price, volume, type of order and when it shall be transmitted or executed;

(2) store records in a durable medium, which allows them to be:

(a) replayed or copied;

(b) retained in a format that does not allow the original record to be altered or deleted. The period of time for the retention of a record must begin on the date when the record is created; and

(c) readily accessible and available to clients, upon request;

(3) ensure the quality, accuracy and completeness of the records of all telephone recordings and electronic communications.

...

19F Remuneration and performance management

19F.1 MiFID remuneration incentives

...

Remuneration policies and practices

19F.1.4 R (1) A dormant account fund operator in respect of its investment services and ancillary services, common platform firm (unless it is a collective portfolio management investment firm), 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:

...

...

19F.1.5 G A *firm* should also be aware of:

- (1) ~~in the case of a *common platform firm* (but excluding a *collective portfolio management investment firm*), the requirements on remuneration in article 27 of the *MiFID-Org Regulation* applying to it; [deleted]~~

...

...

19G MIFIDPRU Remuneration Code

...

19G.5 Application of remuneration requirements to material risk takers

Identifying material risk takers

...

19G.5.3 R For the purposes of SYSC 19G.5.1R, a staff member's professional activities are deemed to have a material impact on a *firm's* risk profile or the assets the *firm* manages if one or more of the following criteria are met:

...

- (8) in a *firm* that has permission for carrying on at least one of the *regulated activities* in (4)(a) to (g), the staff member is responsible for managing one of the following activities:

...

- (c) outsourcing arrangements of critical or important functions as referred to in ~~article 30(1) of the *MiFID-Org Regulation*~~ SYSC 8.1.4AR; and

...

...

24 Senior managers and certification regime: Allocation of prescribed responsibilities

...

24.3 Who prescribed responsibilities should be allocated to

...

Dividing and sharing management functions between different people

...

24.3.10 G ...

(2) The *firm* should make the judgement:

...

(d) any other applicable *Handbook* requirements, including:

(i) SYSC 2 (Apportionment of Responsibilities); and

(ii) SYSC 24.3.7G to SYSC 24.3.9G;;

(iii) ~~article 21 of the *MiFID Org Regulation* (as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2AR, SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R); and~~

(e) ~~article 21 of the *MiFID Org Regulation* (General organisational requirements); or other similar relevant *onshored regulations*.~~

...

...

Sch 1 Record keeping requirements

...

Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
SYSC 9.1.1AR

<u>SYSC 9.1.1BR</u>	<u>Organisational requirements</u>	<u>Details of the <i>firm's</i> policies and procedures on organisational requirements related to:</u>	<u>Within a reasonable time</u>	<u>5 years</u>
		<u>(a) The <i>firm's</i> business and internal organisation</u>		
		<u>(b) Compliance reports</u>		
		<u>(c) Conflict of Interest record</u>		
		<u>(d) Risk management reports</u>		
		<u>(e) Internal audit reports</u>		
		<u>(f) Records of <i>personal transactions</i></u>		
...				

Sch 2 Notification requirements

- Sch 2.1 G (1) The aim of the *guidance* in the following table is to give the reader a quick over-all view of the relevant notification requirements.
- (2) It is not a complete statement of those requirements and should not be relied on as if it were.
- (3) Table

Handbook reference	Matter to be notified	Contents of the notification	Trigger event
...			

<u>SYSC 10A.1.12AR</u>	<u>A firm must inform to new and existing clients that:</u>	<u>Matters as described in SYSC 10A.1.12AR</u>	<u>Before carrying out any activities referred to in SYSC 10A.1.1R(2) (and that are not excluded by SYSC 10A.1.4R)</u>
	<u>(a) the conversations and communications are being recorded; and</u>		
	<u>(b) a copy of the recording of such conversations and communications with the client will be available, upon request, for a period of: 5 years to the client; and 7 years to the FCA.</u>		
<u>SYSC 19D.3.51R</u>	...	...	...

...

Sch 5 Rights of action for damages

...

Sch 5.4 G

Chapter/Appendix	Section/Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
...					
<u>SYSC 4 to SYSC 10 SYSC 10A</u>			No	Yes SYSC 1 Annex 1.2.19R	No
...					

Annex C

Amendments to the Training and Competence sourcebook (TC)

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

4 Specified modified requirements

4.1 Specified requirements for MiFID investment firms and for third country investment firms

...

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 related to information to *clients*, and the assessment of suitability and appropriateness and reporting to *clients* under: *SYSC*, *COBS* and *PROD* in relation to *MiFID business*.

(1) ~~those *rules* which implement articles 24 and 25 of *MiFID* (including those *rules* which implement related provisions under the *MiFID Delegated Directive*); and [deleted]~~

(2) ~~related provisions of the *MiFID Org Regulation*. [deleted]~~

...

Annex D

Amendments to the General Provisions sourcebook (GEN)

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

1 FCA approval and emergencies

...

1.2 Referring to approval by the FCA

...

1.2.2A R (1) Unless required to do so under the *regulatory system*, a *firm* must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client, expressly or by implication, that its affairs, or any aspect of them, have the approval or endorsement of the *FCA* or another competent authority.

(1A) Paragraph (1) does not apply to a *firm* to the extent that it is incompatible with obligations under ~~article 44(8) of the *MiFID-Org Regulation*~~ COBS 4.5A.16R.

...

1.2.4 ~~G~~ A *firm* that carries on *MiFID*, *equivalent third country* or *optional exemption business* ~~should have regard to the requirement in article 44(8) of the *MiFID-Org Regulation* which is reproduced at COBS 4.5A.16UK~~ must comply with COBS 4.5A.16R.

...

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

European Economic Area (EEA)

...

Onshored Regulations and third country firms

2.2.22A R (1) ...

...

- (4) *GEN 2.2.22AR(1)* is subject to ~~articles 2A to 2E~~ article 1(2A) to (2E) of *MiFIR* and article 1(3) to (5) of the *MiFID Org Regulation*.
- (5) In relation to *TP firms* *GEN 2.2.22AR(1)* does not apply requirements imposed by and under *MiFIR* ~~or by the *MiFID Org Regulation*~~ in addition to those referred to in ~~articles (2A to 2E~~ article 1(2A) to (2E) of *MiFIR* and article 1(3) to (5) of the *MiFID Org Regulation*.

...

MiFID technical standards

- 2.2.29 R (1) ...
- (2) The provisions referred to in (1) are technical standards deriving from previously adopted *EU regulations* under *MiFID* which are assimilated law, except:
- ...
- (c) to the extent that their application to a *TP firm* would be inconsistent with the application to that *firm* of ~~Chapter 5 of the *MiFID Org Regulation* or MAR 10.4.~~

...

Annex E

Amendments to the Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)

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

7 Governance and risk management

7.1 Application

...

7.1.3 R MIFIDPRU 7 applies as follows:

_____	_____ _____ _____	_____ _____	_____ _____
...			
<i>MIFIDPRU</i> 7.2A (Risk management function)	Does not apply	Applies to a <i>non-SNI</i> <i>MIFIDPRU</i> <i>investment firm</i> that has a risk management function in accordance with article 23 of the <i>MIFID Org</i> <i>Regulation</i> <u>SYSC</u> <u>7.1.2-AR, SYSC</u> <u>7.1.3R, SYSC 7.1.5R,</u> <u>SYSC 7.1.6R and</u> <u>SYSC 7.1.7R.</u>	Does not apply
...			

...

7.2A Risk management function

7.2A.1 R MIFIDPRU 7.2A.2R and MIFIDPRU 7.2A.3R apply to a non-SNI MIFIDPRU investment firm that has a risk management function in accordance with ~~article 23 of the MIFID Org Regulation~~ SYSC 7.1.2-AR, SYSC 7.1.3R, SYSC 7.1.5R, SYSC 7.1.6R and SYSC 7.1.7R.

...

Annex F

Amendments to the Conduct of Business sourcebook (COBS)

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

[*Editor's note:* The shading shown in the 'Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017' (FCA 2017/39) and reflected as relevant in the 'Exiting the European Union: Business Standards Sourcebooks (Amendments) Instrument 2019' (FCA 2019/23) for certain provisions in COBS 3, COBS 4, COBS 6, COBS 8A, COBS 9A, COBS 10A, COBS 11, COBS 11A, COBS 12, COBS 14.3A and COBS 16A below is removed. This change is not shown.]

1 Application

1.1 General application

Introduction

- 1.1.-1 G (1) COBS 1.1.1R contains the *general application rule*. This is the starting point for the application of this sourcebook.
- (2) This section extends the general application of parts of this sourcebook to:
- (a) certain activities relating to *deposits* (including *structured deposits*) (COBS 1.1.1AR to COBS 1.1.1AER);
 - (b) the activity of *issuing electronic money* (COBS 1.1.1BR); and
 - (c) *auction regulation bidding* (COBS 1.1.1ER).
- (3) The general application of this sourcebook is further modified by:
- (a) COBS 1 Annex 1, in relation to certain activities of a *firm* (Part 1);
 - (b) COBS 1 Annex 1, in relation to the location from which a *firm's* activities are carried on (Part 2); and
 - (c) individual chapters of this sourcebook (which may extend the general application of this sourcebook) (COBS 1.1.3R).
- (4) The application of this sourcebook to *TP firms* and *Gibraltar-based firms* is addressed in COBS 1 Annex 2 (COBS 1.1.1CR).
- (5) Further *guidance* on:
- (a) the application of this sourcebook is in COBS 1 Annex 1 (Part 3); and

- (b) the interpretation of certain words and phrases used in this sourcebook is in COBS 1.4.

~~Designated investment business and long-term insurance business in relation to life policies~~ General application rule

...

Deposits (including structured deposits)

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

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

Structured deposits: further provisions

- 1.1.1AA R Except in COBS 6.2B, in the *rules* referred to in COBS 1.1.1AR(1) (and in any related *guidance*), references to:
- (1) *investment services* and *designated investment business* include selling, or advising *clients* in relation to, *structured deposits*; and
 - (2) *financial instruments* and *designated investments* include *structured deposits*.
- 1.1.1AB UK ~~Article 1(2) of the MiFID Org Regulation specifies how its provisions should be read where they apply to firms selling, or advising on, structured deposits.~~
- ~~1(2) References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements (so far as relevant) in Chapters II to IV of this Regulation. [deleted]~~
- 1.1.1AC R ~~A third country investment firm and a MiFID optional exemption firm must also comply with the provisions of the MiFID Org Regulation which relate~~

to the ~~rules~~ which implemented the articles of *MiFID* referred to in *COBS* 1.1.1AR(1), as modified by article 1(2) of the *MiFID Org Regulation*, when selling, or advising a *client* in relation to, a *structured deposit*. ~~[deleted]~~

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

COBS chapter	Description
<i>COBS</i> 2	Conduct of business obligations
<i>COBS</i> 3	Client categorisation
<i>COBS</i> 4	Communicating with clients, including financial promotions
<i>COBS</i> 6	Information about the firm, its services and remuneration
<i>COBS</i> 8A	Client agreements
<i>COBS</i> 9A	Suitability (MiFID provisions)
<i>COBS</i> 10A	Appropriateness (for non-advised services) (MiFID provisions)
<i>COBS</i> 11	Dealing and managing
<i>COBS</i> 14	Providing product information to clients
<i>COBS</i> 16A	Reporting information to clients (MiFID provisions)

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

1.1.1AE R ~~The rules which apply to a firm in *COBS* 1.1.1AR(1) when selling, or advising a *client* in relation to, a *structured deposit*:~~

- ~~(1) are those in the sections or provisions of this sourcebook specified in the table below which constitute *UK law on markets in financial instruments*; and~~
- ~~(2) as those *rules* otherwise apply to the firm in relation to its *MiFID*, *equivalent third country* or *optional exemption business*.~~

<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 6.1ZA</u>	<u>Information about the firm and compensation information (MiFID and insurance distribution provisions)</u>
<u>COBS 6.2B</u>	<u>Describing advice services</u>
<u>COBS 8A</u>	<u>Client agreements (MiFID provisions)</u>
<u>COBS 9A</u>	<u>Suitability (MiFID and insurance-based investment products provisions)</u>
<u>COBS 10A</u>	<u>Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)</u>
<u>COBS 11.2A.34R</u>	<u>Best execution – MiFID provisions</u>
<u>COBS 11.3</u>	<u>Client order handling</u>
<u>COBS 11.4</u>	<u>Client limit orders</u>
<u>COBS 11.5A</u>	<u>Record keeping: client orders and transactions</u>
<u>COBS 11A.1</u>	<u>Underwriting and placing</u>
<u>COBS 12.2</u>	<u>Investment research and non-independent research</u>
<u>COBS 14.3A</u>	<u>Information about financial instruments (MiFID provisions)</u>
<u>COBS 16A</u>	<u>Reporting information to clients (MiFID and insurance-based investment products provisions)</u>

1.1.1AF G The effect of *COBS 1.1.1AER* is that a *rule* in this sourcebook only applies to a *firm* when selling, or advising a *client* in relation to, a *structured deposit* if that *rule*:

- (1) would apply to the *firm* in relation to its *MiFID*, *equivalent third country* or *optional exemption business*; and

(2) derives from MiFD or its implementing measures.

...

Application to TP firms and Gibraltar-based firms

1.1.1C R ~~In addition to the application rules in COBS as relevant, TP firms and Gibraltar based firms carrying on business from an establishment in the United Kingdom must also comply with the provisions in: This sourcebook applies to TP firms and Gibraltar-based firms as specified in COBS 1 Annex 2.~~

(1) ~~COBS 16.6.7AR (drawdown pensions: annual statements) and COBS 16.6.8R to COBS 16.6.13G (income withdrawals—annual statements); [deleted]~~

(2) ~~COBS 19.10 (Drawdown, investment pathways and cash warnings). [deleted]~~

(3) ~~COBS TP 2 paragraphs 2.8G to 2.8J (Other Transitional Provisions) [deleted]~~

1.1.1D G ~~Unless the contrary intention appears, a reference to Gibraltar based firm in COBS 1.1.1CR has the same meaning as in the Gibraltar Order. COBS 1 Annex 2 also contains guidance on the application of this sourcebook to TP firms and Gibraltar-based firms.~~

...

1.1.6 G ...

Actions for damages

1.1.7 R A contravention of a rule in this sourcebook that requires specific records to be kept for the purpose of complying with rules in SYSC 9 does not give rise to a right of action by a private person under section 138D of the Act (and each of those rules is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).

COBS 1.2 (Markets in Financial Instruments Directive) is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

1.2 ~~Markets in Financial Instruments Directive [deleted]~~

COBS 1.3 (Insurance distribution) is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

1.3 ~~Insurance distribution [deleted]~~

Insert the following new section, COBS 1.4, after COBS 1.3 (Insurance distribution). The text is not underlined.

[*Editor's note:* The text at COBS 1.4.2G is not new; it is moved from COBS 1.2.5G and COBS 1.3.5G.]

1.4 Interpretation

Purpose

- 1.4.1 G The purpose of this section is to provide *guidance* on the interpretation of certain words and phrases used in this sourcebook.

In good time

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

Amend the following text as shown.

[*Editor's note:* The changes to COBS 1 Annex 1, Part 1 1.1R reflect the effect of Article 61 of the MiFID Org Regulation which was copied out at COBS 16A.3.5UK but is now deleted.]

1 Annex Application (see COBS 1.1.2R)

1

Part 1: What?

Modifications to the general application of COBS according to activities

1.	Eligible counterparty business
-----------	---------------------------------------

1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> except, where the <i>eligible counterparty business</i> is in scope of the <i>IDD</i> , those provisions which implemented the <i>IDD</i> continue to apply.	
		COBS provision	Description
		...	
		COBS 4 (other than COBS 4.2, and COBS 4.4.1R, COBS 4.5A.9UK and COBS 4.7.1AUK)	Communicating with clients including financial promotions
		...	
		COBS 6.1ZA.16R <u>COBS 6.1ZA (other than COBS 6.1ZA.11R to COBS 6.1ZA.13R)</u>	Information about costs and charges of different services or products (MiFID provisions)
		...	
		COBS 8A (other than COBS 8A.1.5UK to COBS 8A.1.8G)	Client agreements (MiFID provisions)
		...	
		COBS 12.2.18UK <u>COBS 12.2.18R</u>	Labelling of non-independent research
		<u>COBS 14.3</u>	Information about designated investments (non-MiFID provisions)
		<u>COBS 14.3A (other than COBS 14.3A.3R)</u>	<u>Information about financial instruments (MiFID provisions)</u>
		<u>COBS 16</u>	Reporting information to clients (non-MiFID provisions)
		<u>COBS 16A.3</u>	<u>Occasional reporting: MiFID business</u>
		[Note: paragraphs 1 and 2 of article 30(1) of <i>MiFID</i>]	
		...	
3A.	Operators of OTFs		

3A.1	G	A firm which operates an <i>organised trading facility</i> should refer to <i>MAR 5A.3.9R</i> which specifies how the provisions in this sourcebook apply to that activity. [deleted]
...		

...

Insert the following new Annex, COBS 1 Annex 2, after COBS 1 Annex 1 (Application). The text is not underlined.

1 Annex 2 Application to TP firms and Gibraltar-based firms (see COBS 1.1.1CR)

Part 1: TP firms

1.	Introduction		
1.1	G	(1)	<i>GEN 2.2</i> sets out how the <i>Handbook</i> applies to <i>TP firms</i> .
		(2)	This Part supplements <i>GEN 2.2</i> by further specifying how provisions in this sourcebook apply to <i>TP firms</i> .
		(3)	The combined effect of <i>GEN 2.2.26R</i> and the <i>rules</i> in this Annex is that, for the purposes of this sourcebook, <i>TP firms</i> are subject to those:
		(a)	<i>rules</i> which applied to them immediately prior to <i>IP completion day</i> (whether or not derived from <i>EU law</i>);
		(b)	<i>rules</i> which implemented an <i>EU Directive</i> and which relate to a matter which, immediately before <i>IP completion day</i> , was reserved to the <i>TP firm's Home State</i> or to the <i>EEA State</i> from where the service is provided; and
		(c)	<i>rules</i> which came into force after <i>IP completion day</i> and which are specified in this Annex.
		(4)	However, <i>GEN 2.2.26R(3)</i> and (4) and <i>COBS 1 Annex 2</i> include provisions which mean that a <i>TP firm</i> does not contravene certain <i>rules</i> in this sourcebook which derive from <i>EU law</i> to the extent that it complies with or applies a relevant provision of its <i>Home State's law</i> or directly applicable <i>EU law</i> .

2.	Application of COBS		
2.1	R	In addition to those <i>rules</i> specified in <i>GEN 2.2.26R</i> , a <i>TP firm</i> must also comply with:	
		(1)	those <i>rules</i> , as in force from time to time, which substitute the <i>UK</i> version of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 which was part of <i>UK</i> law by virtue of the <i>EUWA</i> as at [<i>Editor's note</i> : date of revocation of MiFID Org Reg provisions to be inserted];
			[Note : The FCA has provided derivation and changes tables which indicate where provisions of assimilated EU law appear in the Handbook: https://www.fca.org.uk/firms/repeal-replacement-retained-eu-law/derivation-changes-tables]
		(2)	(to the extent that the <i>rule</i> does not already apply to such a <i>TP firm</i> as a result of <i>GEN 2.2.26R</i>) the provisions in:
		(a)	<i>COBS 2.2</i> , where a <i>rule</i> in that section applies to a <i>firm</i> carrying on <i>designated investment business</i> in relation to a <i>non-mass market investment</i> ;
		(b)	<i>COBS 4.5.2R</i> (Communicating with retail clients (non-MiFID provisions) – General rule);
		(c)	<i>COBS 4.10</i> (Approving and confirming compliance of financial promotions);
		(d)	<i>COBS 4.11</i> (Record keeping: financial promotion);
		(e)	<i>COBS 4.12A</i> (Promotion of restricted mass market investments);
		(f)	<i>COBS 4.12B</i> (Promotion of non-mass market investments);
		(f)	the <i>rules</i> in <i>COBS 4</i> in so far as they relate to the <i>communication</i> and <i>approval</i> of <i>financial promotions</i> relating to <i>qualifying cryptoassets</i> ;
		(g)	<i>COBS 10</i> (Appropriateness (for non-advised services) (non-MiFID and non-insurance based investment products provisions));
		(h)	<i>COBS 14</i> (Information about designated investments (non-MiFID provisions)), where a <i>rule</i> in that chapter applies to a <i>firm</i> which is <i>arranging</i> (bringing about) or <i>executing a deal</i> in a <i>speculative illiquid security</i> ;

		(i)	<i>COBS</i> 16.6.7AR (Drawdown pensions: annual statements) and <i>COBS</i> 16.6.8R to <i>COBS</i> 16.6.13G (Income withdrawals – annual statements) in relation to business carried on from an establishment in the <i>United Kingdom</i> ;
		(j)	<i>COBS</i> 19.10 (Drawdown, investment pathways and cash warnings) in relation to business carried on from an establishment in the <i>United Kingdom</i> ; and
		(k)	<i>COBS</i> TP 2 paragraphs 2.8G to 2.8J (Other Transitional Provisions) in relation to business carried on from an establishment in the <i>United Kingdom</i> .
3.	Evidencing compliance		
3.1	R	A <i>TP firm</i> does not contravene a <i>rule</i> applied by paragraph 2.1R(1) ('the relevant rule') to the extent that:	
		(1)	at the time the <i>firm</i> was required to comply with the <i>rule</i> , the <i>firm</i> (or its <i>appointed representative</i>) complied with a requirement in Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU 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 as it has effect in EU law ('the EEA requirement') in relation to the services it provides in or into the <i>United Kingdom</i> ; and
		(2)	the EEA requirement has equivalent effect to the relevant rule as it applies in the <i>United Kingdom</i> .
3.2	R	Paragraph 3.1R does not apply unless a <i>TP firm</i> can demonstrate to the <i>FCA</i> that, at the relevant time, it complied with or applied a provision in that paragraph to the extent referred to there.	
3.3	G	(1)	The purpose of paragraph 3.1R is to achieve an equivalent effect to <i>GEN</i> 2.2.26R(3) and (4) in relation to <i>rules</i> in this sourcebook that derive from the <i>EU MiFID Org Regulation</i> .
		(2)	Further <i>guidance</i> on the application of the <i>Handbook</i> to <i>TP firms</i> can be found in <i>GEN</i> 2.2.

Part 2: Gibraltar-based firms

1.	Introduction
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1.1	G	(1)	<i>GEN 2.3</i> sets out how the <i>Handbook</i> applies to <i>Gibraltar-based firms</i> .	
		(2)	This Part supplements <i>GEN 2.3</i> by further specifying how provisions in this sourcebook apply to <i>Gibraltar-based firms</i> .	
		(3)	The combined effect of <i>GEN 2.3.1R</i> and the <i>rules</i> in this Annex is that, for the purposes of this sourcebook, <i>Gibraltar-based firms</i> are subject to:	
			(a)	<i>rules</i> which applied to them immediately prior to <i>IP completion day</i> (whether or not derived from <i>EU law</i>); and
			(b)	<i>rules</i> which came into force after <i>IP completion day</i> and which are specified in this Annex.
2.	Application of COBS			
2.1	R	In addition to those <i>rules</i> applying by virtue of <i>GEN 2.3.1R</i> , a <i>Gibraltar-based firm</i> must also comply with:		
		(1)	those <i>rules</i> , as in force from time to time, which substitute the <i>UK</i> version of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 which was part of <i>UK</i> law by virtue of the <i>EUWA</i> as at [<i>Editor's note</i> : date of revocation of MiFID Org Reg provisions to be inserted] when carrying on business from an establishment in the <i>United Kingdom</i> ;	
			[Note : The FCA has provided derivation and changes tables which indicate where provisions of assimilated <i>EU law</i> appear in the <i>Handbook</i> : https://www.fca.org.uk/firms/repeal-replacement-retained-eu-law/derivation-changes-tables]	
		(2)	(to the extent that the <i>rule</i> does not already apply to such a <i>Gibraltar-based firm</i> as a result of <i>GEN 2.3.1R</i>) the provisions in:	
			(a)	<i>COBS 2.2</i> , where a <i>rule</i> in that section applies to a <i>firm</i> carrying on <i>designated investment business</i> in relation to a <i>non-mass market investment</i> ;
			(b)	<i>COBS 4.5.2R</i> (Communicating with retail clients (non-MiFID provisions) – General rule);
			(c)	<i>COBS 4.10</i> (Approving and confirming compliance of financial promotions);
			(d)	<i>COBS 4.11</i> (Record keeping: financial promotion);

			(e)	<i>COBS 4.12A (Promotion of restricted mass market investments);</i>
			(f)	<i>COBS 4.12B (Promotion of non-mass market investments);</i>
			(f)	<i>the rules in COBS 4 in so far as they relate to the communication and approval of financial promotions relating to qualifying cryptoassets;</i>
			(g)	<i>COBS 10 (Appropriateness (for non-advised services) (non-MiFID and non-insurance based investment products provisions));</i>
			(h)	<i>COBS 14.3 (Information about designated investments (non-MiFID provisions)), where a rule in that chapter applies to a firm which is arranging (bringing about) or executing a deal in a speculative illiquid security;</i>
			(i)	<i>COBS 16.6.7AR (Drawdown pensions: annual statements) and COBS 16.6.8R to COBS 16.6.13G (Income withdrawals – annual statements) in relation to business carried on from an establishment in the United Kingdom;</i>
			(j)	<i>COBS 19.10 (Drawdown, investment pathways and cash warnings) in relation to business carried on from an establishment in the United Kingdom; and</i>
			(k)	<i>COBS TP 2 paragraphs 2.8G to 2.8J (Other Transitional Provisions) in relation to business carried on from an establishment in the United Kingdom.</i>

2 Conduct of business obligations

...

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

Application

2.2.-1 R ...

(3) ~~Where a rule in this section applies to a firm carrying on designated investment business in relation to a non-mass market investment the rule also applies to: [deleted]~~

(a) a *TP firm* (to the extent that the rule does not already apply to such a *TP firm* as a result of *GEN 2.2.26R*); and

- (b) ~~*Gibraltar-based firm to the extent that the rule does not already apply to such a Gibraltar-based firm as a result of GEN 2.3.1R.*~~

[*Editor's note:* The application of this sourcebook to TP firms and Gibraltar-based firms is now addressed in COBS 1 Annex 2.]

...

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

Application

...

- 2.2A.1A G Certain provisions in this section require *firms* to provide *clients* with information ‘in good time’. *Guidance* on the provision of information ‘in good time’ can be found in COBS 1.4.2G.

...

- 2.2A.5 R ...

Record-keeping

- 2.2A.6 G A *firm* to which SYSC 9 applies is required to keep records of all services, activities and transactions undertaken by it.

- 2.2A.7 R In complying with the requirements in SYSC 9, a *firm* to which those *rules* apply must keep a record of the information provided to *clients* in compliance with the *rules* in this section applicable to *MiFID*, *equivalent third country* and *optional exemption business*.

...

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

...

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

...

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

...

...

Acceptable minor non-monetary benefits

2.3A.19 R ...

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

...

Record keeping: inducements

...

2.3A.33 G ~~In relation to the *MiFID business* of a *firm*, article 72 and Annex 1 of the *MiFID-Org Regulation* SYSC 9 also make makes 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: [deleted]~~

- ~~(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.~~

[*Editor's note:* The text that was formerly at COBS 2.3A.34R now appears at SYSC 9.1.2-AR.]

2.3A.35 R In complying with the requirements in SYSC 9, a firm to which those rules apply must keep a record of the information provided to clients in compliance with the rules in this section applicable to MiFID, equivalent third country and optional exemption business.

...

3 Client categorisation

3.1 Application

Scope

...

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

...

Mixed business

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

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

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

...

3.3 General notifications

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

- (1) ~~45(1) Investment firms shall~~ A firm must notify a new ~~clients~~ *client*, and any existing ~~clients~~ *client* that the ~~investment firm~~ *firm* has newly categorised as required by ~~UK law on markets in financial instruments~~ this chapter, of their categorisation as a ~~retail client~~ *retail client*, a ~~professional client~~ *professional client* or an ~~eligible counterparty~~ *eligible counterparty* in accordance with ~~that Directive~~ this chapter.
- (2) ~~(2) Investment firms shall~~ A firm must inform ~~clients~~ *a client* in a ~~durable medium~~ *durable medium* about:

- (a) any right that ~~client~~ client has to request a different categorisation; and ~~about~~
- (b) any limitations to the level of ~~client~~ client protection that a different categorisation would entail.

~~[Note: articles 45(1) and (2) of the MiFID Org Regulation]~~

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

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

...

3.6 Eligible counterparties

...

Elective eligible counterparties

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

...

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

3.6.4A R Provided that it adheres to the procedure set out at ~~COBS 3.6.4BUK~~ COBS 3.6.4BR, a *firm* may treat a *client* as an *elective eligible counterparty* in relation to *MiFID* or *equivalent third country business* if the *client*:

...

3.6.4B ~~UK~~
R ~~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~~ If a *client* client requests to be treated as an eligible counterparty *eligible counterparty*, in accordance with ~~{COBS 3.6.4R or COBS 3.6.4AR}~~, the following procedure ~~shall~~ must be followed:

- (a) the ~~investment firm shall~~ firm must provide the ~~client~~ client with a (1) clear written warning of the consequences for the ~~client~~ client of such a request, including the protections they may lose; and
- (b) the ~~client shall~~ client must confirm in writing: (2)

- (a) the request to be treated as an ~~eligible counterparty~~ eligible counterparty either generally or in respect of one or more ~~investment services~~ services or a transaction or type of transaction or product; and
- (b) that they are aware of the consequences of the ~~protection~~ protections they may ~~have lost~~ lose as a result of the request.

...

3.7 Providing clients with a higher level of protection

...

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

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

- (a) as a ~~professional~~ professional client or ~~retail client~~ retail client where
 - (1) that ~~client~~ client might otherwise be classified as an ~~eligible counterparty~~ eligible counterparty pursuant to {COBS 3.6.2R}; or
- (b) as a ~~retail client~~ retail client where that ~~client~~ client that is considered
 - (2) a ~~professional client~~ professional client pursuant to Part 2 of Schedule 1 to Regulation (EU) No 600/2014 COBS 3.5.2R.

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

(1) ~~71(2) Where, pursuant to [COBS 3.7.1R], an eligible counterparty~~ If an eligible counterparty requests ~~treatment re-categorisation~~ as a ~~client~~ client whose business with an investment firm is subject to rules in the ~~Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which were relied on immediately before IP completion day to implement Articles 24, 25, 27 and 28 of Directive 2014/65/EU (“the relevant rules”)~~ client that benefits from a higher degree of investor protection, the request ~~should~~ must:

- (a) be made in writing; and ~~shall~~
- (b) indicate whether the treatment as ~~retail client~~ a retail client or ~~professional client~~ professional client refers to one or more ~~investment services~~ services or transactions, or one or more types of transaction or product.

- (3) ~~Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to the relevant rules~~ If an eligible counterparty makes the request in (1), but does not expressly request treatment as a retail client *retail client*, the firm shall ~~firm~~ firm must treat that ~~eligible counterparty~~ eligible counterparty as a professional client *professional client*.
- (4) ~~Where~~ If the ~~eligible counterparty~~ eligible counterparty expressly requests treatment as a ~~retail client~~ retail client, the ~~investment firm~~ firm must treat the ~~eligible counterparty~~ eligible counterparty as a ~~retail client~~ retail client, applying the provisions in respect of requests of non-professional treatment specified in paragraph 4 of Schedule 1 to Regulation (EU) No 600/2014 COBS 3.7.1R, COBS 3.7.2R and COBS 3.7.5R.

...

4 Communicating with clients, including financial promotions

4.1 Application

Who? What?

...

- 4.1.1B R (1) ~~TP firms must comply with the rules in (3) and (4) to the extent that those rules do not already apply to those TP firms as a result of GEN 2.2.26R.~~
- (2) ~~Gibraltar-based firms must comply with the rules in (3) and (4) to the extent that those rules do not already apply to such a Gibraltar-based firm as a result of GEN 2.3.1R.~~
- (3) The ~~rules~~ are those in:
- (a) ~~COBS 4.5.2R (communicating with retail clients—general rule);~~
 - (b) ~~COBS 4.10 (approving and confirming compliance of financial promotions); and~~
 - (c) ~~COBS 4.11 (Record keeping: financial promotion).~~
- (4) The ~~rules~~ are those in this chapter in so far as they relate to the ~~communication and approval of financial promotions relating to qualifying cryptoassets.~~ [deleted]
- 4.1.1C G ~~COBS 4.12A.3R and COBS 4.12B.1R apply the rules on promoting restricted mass market investments and non-mass market investments to TP firms and Gibraltar-based firms.~~ [deleted]

[*Editor's note:* The application of this sourcebook to TP firms and Gibraltar-based firms is now addressed in COBS 1 Annex 2.]

...

4.1.4 G ...

- (2) In the case of *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*~~ *COBS 4.2.1R(2)(ab)*, *COBS 4.3.1R(2)* and *COBS 4.5A.1R(2)(a)*). 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*.

...

...

4.1.7 G ...

~~[**Note:** see recital 16 to the *MiFID Org Regulation*]~~

...

4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

...

4.2.2 G ...

~~[**Note:** article 30(1) of *MiFID* and recital 65 to the *MiFID Org Regulation*, article 17(2) of the *IDD*]~~

...

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

Application

...

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

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

General requirements

- 4.5A.3 ~~UK~~ (1) ~~44(1) Investment firms shall~~ A firm must ensure that all information ~~they address~~ addressed to, or ~~disseminate~~ disseminated in such a way that it is likely to be received by, ~~retail a retail client or professional clients~~ a *retail client* or professional clients or ~~potential retail or professional clients~~, including marketing communications, satisfies the conditions ~~laid down in paragraphs 2 to 8 in (2) and COBS 4.5A.7R to COBS 4.5A.16R.~~
- (2) ~~44(2) Investment firm shall~~ A firm must ensure that the information referred to in paragraph 1 ~~in (1)~~ in (1) ~~complies with the following conditions:~~
- (a) ~~the information~~ includes the name of the ~~investment firm,~~ 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 investment service or financial instrument,~~ 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 that ensures that~~ 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 client,~~ client, unless the ~~client client~~ has ~~accepted~~ agreed to receive information in more than one language; ~~and~~
 - (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]

...

Comparative information

- 4.5A.7 UK (1) ~~44(3) Where the~~ This rule applies to information that compares;
R
- (a) ~~investment~~ investment services or ~~ancillary services;~~ ancillary services;
 - (b) ~~financial instruments;~~ financial instruments; or
 - (c) ~~persons~~ persons providing ~~investment~~ investment services or ~~ancillary services;~~ ancillary services.
- (2) ~~investment firms shall~~ A firm must 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; and
 - (c) the key facts and assumptions used to make the comparison are included.

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

Referring to tax

- 4.5A.8 UK 44(7) ~~Where the~~ If any information refers to a particular tax treatment, a
R firm must ensure that it shall prominently state states that the tax treatment depends on the individual circumstances of each client 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 UK 46(5) ~~Investment firms shall~~ A firm must ensure that information contained
R in a marketing communication is consistent with any information the firm firm provides to clients clients in the course of carrying on investment investment services and ancillary services ancillary services.

[**Note:** article 46(5) of the ~~MiFID Org Regulation~~]

Past performance

- 4.5A.10 UK 44(4) ~~Where the~~ A firm must ensure that information that contains an
R indication of past performance of a financial instrument financial instrument, a financial index or an investment service, investment service

~~investment firms shall ensure that~~ satisfies the following conditions are satisfied:

- (a) that indication is not the most prominent feature of the communication;
(1)
- (b) the information ~~must include~~ includes appropriate performance information which covers the preceding 5 years, or the whole period for which the ~~financial instrument~~ financial instrument has been offered, the financial index has been established, or the ~~investment service~~ investment service has been provided (where less than ~~five~~ 5 years, or such longer period as the ~~firm~~ firm may decide), and in every case that performance information is based on complete 12-month periods;
(2)
- (c) the reference period and the source of information ~~is~~ are clearly stated;
(3)
- (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;
(4)
- (e) ~~where~~ if the indication relies on figures denominated in a currency other than pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations; and
(5)
- (f) ~~where~~ if the indication is based on gross performance, the effect of commissions, fees or other charges ~~are~~ is disclosed.
(6)

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

4.5A.11 G ...

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

Simulated past performance

4.5A.12 UK R ~~44(5) Where the A firm must ensure that information that includes or refers to contains an indication of simulated past performance, investment firms shall ensure that the information relates to a financial instrument or a financial index, and~~ satisfies the following conditions are satisfied:

- (1) it relates to a financial instrument or a financial index;
- (2) ~~44(5)(a)~~ the simulated past performance is based on the actual past performance of one or more ~~financial instruments~~ financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the ~~financial instrument~~ financial instrument concerned;

- (3) ~~44(5)(b)~~ in respect of the actual past performance referred to in ~~point (a) (2)~~, the conditions set out in ~~points (a) to (c), (e) and (f) of paragraph 4 paragraphs (1) to (3), (5) and (6) of the rule on past performance (COBS 4.5A.10R)~~; ~~are satisfied~~ complied with; and
- (4) ~~44(5)(e)~~ the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

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

- 4.5A.13 G For the purposes of ~~COBS 4.5A.12UK~~, the conditions referred to in article 44(5)(b) ~~can be found reproduced in COBS 4.5A.10UK. [deleted]~~

Future performance

- 4.5A.14 ~~UK~~ R ~~44(6) Where the A firm must ensure that information that contains information on an indication of future performance, investment firms shall ensure that satisfies the following conditions are satisfied:~~
- (a) ~~the information~~ it is not based on ~~or~~ and does not refer to simulated
(1) past performance;
- (b) ~~the information~~ it is based on reasonable assumptions supported by
(2) objective data;
- (c) where the information is based on gross performance, the effect of
(3) commissions, fees or other charges is disclosed;
- (d) ~~the information~~ it is based on performance scenarios in different
(4) market conditions (both negative and positive scenarios), and reflects the nature and risks of the specific types of instruments included in the analysis; and
- (e) ~~the information~~ it contains a prominent warning that such forecasts
(5) are not a reliable indicator of future performance.

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

- 4.5A.15 G A *firm* should not provide information on future performance if it is not able to obtain the objective data needed to comply with the requirements regarding information on future performance in ~~COBS 4.5A.14UK~~ COBS 4.5A.14R. For example, objective data in relation to *EIS shares* may be difficult to obtain.

Information that uses the name of ~~any competent authority~~ the FCA or PRA

- 4.5A.16 ~~UK~~ R ~~44(8) The information shall must not use the name of any competent authority the FCA or PRA in such a way that would indicate or suggest endorsement or approval by that authority the FCA or PRA of the products or services of the investment firm the firm.~~

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

...

4.7 Direct offer financial promotions

Application

4.7.-2 R This section (other than ~~COBS 4.7.-1AEU~~ COBS 4.7.-1AR to COBS 4.7.-1DG) does not apply in relation to a communication:

...

4.7.-1 G (1) ~~COBS 4.7.-1AUK~~ COBS 4.7.-1AR to COBS 4.7.1R contain provisions on the communication of *direct offer financial promotions*.

(2) In broad terms:

(a) ~~COBS 4.7.-1AUK~~ COBS 4.7.-1AR is relevant to a *firm* communicating a *direct offer financial promotion* in relation 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.-1AUK~~ COBS 4.7.-1AR may be subject to the ~~rule~~ 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 ~~UK~~ R (1) ~~46(6) Marketing communications~~ This rule applies in relation to a marketing communication that relates to a firm's MiFID, equivalent third country or optional exemption business:

(a) ~~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~~ that contains:

- (a) an offer to enter into an agreement in relation to a
 - (i) ~~financial instrument~~ *financial instrument*, ~~or investment service~~ *investment service* or ~~ancillary service~~ *ancillary service* with any ~~person~~ *person* who responds to the communication; or
 - (b) an invitation to any ~~person~~ *person* who responds to the communication to make an offer to enter into an agreement in relation to a ~~financial instrument~~ *financial instrument*, ~~or investment service~~ *investment service* or ~~ancillary service~~ *ancillary service*; and
 - (ii) ~~which specifies the manner of response or includes a form by which any response may be made.~~
- (2) A firm must ensure that a marketing communication of the type in (1) includes such of the information referred to in the rules on information disclosure (COBS 6.1ZA and COBS 14.3A) as is relevant to that offer or invitation.
- (3) ~~However, the first subparagraph shall~~ This rule does not apply require the information in (2) to be included in the marketing communication if, in order to respond to an offer or invitation contained in ~~the marketing communication it~~, the ~~potential client~~ *client* must refer to another document or documents, which, alone or in combination, contain that information.

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

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

- 4.7.-1B R Provisions in this section marked “UK” apply in relation to *MiFID optional exemption business* as if they were ~~rules~~ (see *COBS 1.2.2G*). ~~[deleted]~~
- 4.7.-1C G The effect of *GEN 2.2.22AR* is that provisions in this section marked “UK” also apply in relation to the ~~equivalent business of a third country investment firm~~ as if they were ~~rules~~. ~~[deleted]~~
- 4.7.-1D G For the purposes of *COBS 4.7. 1AUK*, the provisions of articles 47 to 50 of the *MiFID Org Regulation* can be found reproduced in *COBS 6.1ZA* and *COBS 14.3A*. ~~[deleted]~~

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:

...

...

...

4.11 Record keeping: financial promotion

General

...

- 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. [deleted]~~

...

Insert the following new section, COBS 4.11A, after COBS 4.11 (Record keeping: financial promotion). The text is not underlined.

4.11A Record keeping: MiFID, equivalent third country and optional exemption business

- 4.11A.1 R This section applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.
- 4.11A.2 G A *firm* to which SYSC 9 applies is required to keep records of all services, activities and transactions undertaken by it.
- 4.11A.3 R In complying with the requirements in SYSC 9, a *firm* to which those *rules* apply must keep a record of:
- (1) each communication to a *client*; and
 - (2) each marketing communication issued by the *firm* (other than in oral form).

Amend the following as shown.

...

4.12A Promotion of restricted mass market investments

...

Application

...

- 4.12A.3 R ~~In this section, reference to a *firm* includes:~~

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

[*Editor's note*: The application of this sourcebook to TP firms and Gibraltar-based firms is now addressed in COBS 1 Annex 2.]

...

4.12B Promotion of non-mass market investments

Application

4.12B.1 R This section applies to:

...

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

...

...

4.12B.3 R Throughout this section, references to a *firm* include a *TP firm* and a ~~*Gibraltar-based firm*~~. [deleted]

...

6 Information about the firm, its services and remuneration

...

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

Application

...

6.1ZA.2 G ...

6.1ZA.2 G Certain provisions in this section require *firms* to provide *clients* with information ‘in good time’. *Guidance on the provision of information ‘in good time’* can be found in *COBS 1.4.2G*.
A

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

- 6.1ZA.3 R Provisions in this section (and in *COBS 6 Annex 7UK* to which this section refers) marked “UK” apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*). ~~[deleted]~~
- 6.1ZA.4 G The effect of *GEN 2.2.22AR* is that provisions in this section marked “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*. ~~[deleted]~~

[Note: ESMA has issued guidelines under article 16(3) of the ESMA Regulation on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN).]

Information about a firm and its services: MiFID business

- 6.1ZA.5 ~~UK~~ R ~~47(1) Investment firms shall~~ In good time before the provision of *investment services* or *ancillary services* to a *client*, a *firm* must provide ~~clients or potential clients~~ that *client* with the following general information, ~~where~~ if relevant:
- ~~(a)~~ (1) the name and address of the ~~investment firm~~ *firm*, and the contact details necessary to enable ~~clients~~ a *client* to communicate effectively with the ~~firm~~ *firm*;
 - ~~(b)~~ (2) the languages in which the ~~client~~ *client* may communicate with the ~~investment firm~~ *firm*, and receive documents and other information from the ~~firm~~ *firm*;
 - ~~(c)~~ (3) the methods of communication to be used between the ~~investment firm~~ *firm* and the ~~client~~ *client* including, where relevant, those for the sending and reception of orders;
 - ~~(d)~~ (4) a statement of the fact that the ~~investment firm~~ *firm* is authorised ~~and the name and contact address of the competent authority that has authorised it~~ by the *FCA* or the *PRA*, as applicable;
 - ~~(e)~~ (5) ~~where~~ if the ~~investment firm~~ *firm* is acting through an *appointed representative* or a *tied agent* *tied agent*, a statement of this fact;
 - ~~(f)~~ (6) the nature, frequency and timing of the reports on the performance of the service to be provided by the ~~investment firm~~ *firm* to the ~~client~~ *client* in accordance with ~~{*COBS 9A.3.2R* and *COBS 16A.2.1R*}~~;
 - ~~(g)~~ (7) ~~where~~ if the ~~investment firm~~ *firm* holds ~~client~~ *client* ~~financial instruments~~ *financial instruments* or ~~client funds~~ *client money*, 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~~ *firm* by virtue of its activities in the *United Kingdom*; and

- ~~(h)~~ (8) in relation to the firm's conflicts of interest policy:
- ~~(a)~~ (a) a description, which may be provided in summary form, of the ~~conflicts of interest policy~~ conflicts of interest policy maintained by the firm in accordance with Article 34; and
- ~~(i)~~ (b) ~~at the request of if requested by the client~~ client, further details of ~~that conflicts of interest policy~~ the conflicts of interest policy in a ~~durable medium~~ durable medium or by means of ~~via~~ a website (where that does not constitute a ~~durable medium~~ durable medium) provided that the ~~conditions set out Article 3(2)~~ website conditions 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]~~

...

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

- 6.1ZA.8 ~~UK~~ R ~~(1)~~ (1) ~~47(2) When A firm providing the service of portfolio management a portfolio management service, investment firms shall must~~ establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the ~~client~~ client and the types of ~~financial instruments~~ financial instruments included in the ~~client~~ client portfolio, so as to enable the ~~client for whom the service is provided~~ client to assess the ~~firm's~~ firm's performance.
- ~~(2)~~ (2) ~~47(3) Where investment firms propose If a firm proposes to provide portfolio management services a portfolio management service to a client or potential client client, they the firm shall must~~ provide the ~~client~~ client, in addition to the information required under paragraph ~~4~~, with such of the following information as is applicable (in addition to the information required by COBS 6.1ZA.5R):
- ~~(a)~~ (a) information on the method and frequency of valuation of the ~~financial instruments~~ financial instruments in the ~~client~~ client portfolio;
- ~~(b)~~ (b) details of any delegation of the discretionary management of all or part of the ~~financial instruments~~ financial instruments or funds in the ~~client~~ client portfolio;
- ~~(c)~~ (c) a specification of any benchmark against which the performance of the ~~client~~ client portfolio will be compared;

- (d) the types of ~~financial instrument~~ financial instrument that may be included in the ~~client~~ client portfolio and types of transaction that may be carried out in ~~such instruments~~ those financial instruments, including any limits; and
 - (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.
- (3) ~~The information listed in points (a) to (e) shall be provided~~ A firm must provide the information in (2) in good time before the provision of investment services investment services or ~~ancillary services~~ ancillary services to ~~clients or potential clients~~ a client.

~~[Note: articles 47(2) and (3) of the MiFID Org Regulation]~~

Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business

- 6.1ZA.9 ~~UK~~ R (1) ~~49(1) Investment firms holding financial instruments~~ A firm that holds financial instruments or funds client money belonging to clients for a client subject to the custody chapter or the client money chapter shall ~~must~~ provide those clients or potential clients that client with the following information specified in paragraphs 2 to 7 where relevant.:
- (a) if applicable:
 - (i) ~~49(2) The investment firm shall inform the client or potential client where~~ that the financial instruments financial instruments or funds client money of that client client may be held by a third party on behalf of the investment firm firm;
 - (ii) ~~and of the responsibility of the investment firm firm~~ under the applicable national law for any acts or omissions of the third party; and
 - (iii) ~~the consequences for the client client of the insolvency of the third party.;~~
 - (b) ~~49(3) Where financial instruments if applicable, that the financial instruments of the client or potential client 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~~ and a prominent warning of the resulting risks.;
 - (c) ~~49(4) The investment firm shall inform the client or potential client where~~ if it is not possible under national law for client financial instruments financial instruments belonging to a

client held with a third party to be separately identifiable from the proprietary ~~financial instruments~~ *financial instruments* of that third party or of the ~~investment firm~~ *firm*, that fact and ~~shall provide~~ a prominent warning of the resulting risks;

- (d) ~~49(5) The investment firm shall inform the client or potential client where if applicable, that accounts that contain financial instruments~~ *financial instruments* or ~~funds~~ *client money* belonging to that ~~client or potential client~~ *client* are or will be subject to the law of a jurisdiction other than that of the ~~United Kingdom~~ *United Kingdom* and shall ~~indicate an indication that the rights of the client or potential client~~ *client* relating to those ~~financial instruments~~ *financial instruments* or ~~funds~~ *client money* may differ accordingly.
- (2) ~~49(6) An investment firm shall inform the client~~ A firm that holds *financial instruments* or *client money* for a *client* must inform the *client*, if applicable:
- (a) about the existence and the terms of any security interest or lien which the ~~firm~~ *firm* has or may have over the ~~client's financial instruments~~ *client's financial instruments* or ~~funds~~ *client money*, or any right of set-off it holds in relation to ~~those instruments~~ the *client's financial instruments* or *funds*. *client money*; and
- (b) ~~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~~ *financial instruments* or *funds* *client money*.
- (3) ~~49(7) An investment firm~~ A firm that holds *financial instruments* or *client money* for a *client* must also, before entering into ~~securities financing transactions~~ *securities financing transactions* in relation to ~~financial instruments~~ *financial instruments* held by it on behalf of a ~~client~~ *client*, or before otherwise using such ~~financial instruments~~ *financial instruments* for its own account or the account of another ~~client~~ *client*, shall in good time before the use of those ~~instruments~~ *financial instruments* provide the ~~client~~ *client*, in a ~~durable medium~~ *durable medium*, with clear, full and accurate information on the obligations and responsibilities of the ~~investment firm~~ *firm* with respect to the use of those ~~financial instruments~~ *financial instruments*, including the terms for their restitution, and on the risks involved.

[~~Note: article 49 of the MiFID Org Regulation~~]

...

Information concerning safeguarding of client money: insurance distribution

6.1ZA.1 R (1) Where a *firm* doing *insurance distribution* activities holds *client*
0A money for a *retail client* and has elected to comply with the *client*
money chapter, it must provide that *client* with the information
specified in:

...

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

in relation to that *client money*.

...

...

Costs and associated charges disclosure: MiFID

[*Editor's note*: Articles 50 and 51 of the MiFID Org Reg are being preserved
without changes. They will be addressed as part of the FCA's separate work on a
new disclosure regime for certain retail investment products.]

6.1ZA.1 UK ...
4 R

[~~Note: article 50 of the MiFID Org Regulation~~]

6.1ZA.1 G 'Annex II' of the ~~MiFID Org Regulation~~ referred to in *COBS* 6.1ZA.14R is
4A reproduced in *COBS* 6 Annex ~~7UK~~ Annex 7R.

...

Timing of disclosure: MiFID business

6.1ZA.1 UK (1) ~~46(2) Subject to paragraph 2A (2) and unless otherwise provided,~~
7 R ~~investment firms~~ a *firm* must, provide a *client* with the information
required by this section in good time before the provision of
~~investment services~~ *investment services* or ~~ancillary services~~
ancillary services to clients or potential clients, to provide the
~~information required under Articles 47 to 50.~~

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

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

- (b) ~~may~~, subject to ~~meeting satisfying~~ the conditions referred to in paragraph 2B(a) and (b) in (3), the investment firm may provide the information on costs and charges ~~to clients in:~~
- (i) ~~in~~ electronic format; or
 - (ii) ~~where if requested by a retail client or potential retail client~~ *retail client*, on paper,

without undue delay after the conclusion of the transaction.

(3) ~~46(2B)~~ The conditions referred to in paragraph 2A(b) in (2)(b) are that:

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

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

6.1ZA.1 G The following provisions of ~~COBS~~ reproduce the information requirements
8 contained in Articles 47 to 50 of the *MiFID Org Regulation*: ~~COBS 6.1ZA.5UK, COBS 6.1ZA.8UK, COBS 6.1ZA.9UK, COBS 6.1ZA.14UK, and COBS 14.3A.5UK. [deleted]~~

Medium of disclosure: MiFID business

6.1ZA.1 UK 46(3) The Except where expressly provided, a firm must provide the
9 R information referred to in paragraphs 1 to 2B shall be provided required by this section in relation to MiFID, equivalent third country or optional exemption business in a durable medium durable medium or by means of via a website (where if it does not constitute a durable medium durable medium) provided that where the conditions specified in Article 3(2) website conditions are satisfied.

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

...

Keeping the client up to date: MiFID business

6.1ZA.2 UK (1) ~~46(4) Investment firms shall~~ A firm carrying on MiFID, equivalent
0 R third country or optional exemption business must notify a client client in good time about any material change to the information provided under ~~Articles 47 to 50~~ this section which is relevant to a service that the ~~firm~~ *firm* is providing to that ~~client~~ *client*.

(2) ~~That~~ A firm must provide this notification shall be given in a durable medium *durable medium* if the information to which it relates is was given in a durable medium *durable medium*.

~~[Note: article 46(4) of the *MiFID Org Regulation*]~~

...

Existing clients: MiFID business

6.1ZA.2 G (1) ...
1

~~[Note: recital 69 to the *MiFID Org Regulation*]~~

...

...

Record keeping: information about the firm and compensation information for MiFID business and insurance distribution

6.1ZA.2 G ...
3

6.1ZA.2 G A firm to which SYSC 9 applies is required to keep records of all services, activities and transactions undertaken by it.
4

6.1ZA.2 R In complying with the requirements in SYSC 9, a firm to which those rules apply must keep a record of the information provided to each client in compliance with the rules in this section applicable to MiFID, equivalent third country and optional exemption business.
5

...

6.2B Describing advice services

Application

...

6.2B.4 G ...

6.2B.4A G Certain provisions in this section require firms to provide clients with information 'in good time'. Guidance on the provision of information 'in good time' can be found in COBS 1.4.2G.

Introduction

6.2B.5 G This section ~~transposed provisions in *MiFID* contains~~ UK law on markets in financial instruments on describing advice services relating to financial instruments and structured deposits for all clients ~~and reproduces a number~~

of provisions of the *MiFID Org Regulation* as explained in *COBS* 1.2. The requirements apply in relation to *MiFID*, *equivalent third country* or *optional exemption business*. The requirements are extended to apply to other *investment advice* and cover other *retail investment products* when the *client* is a *retail client* in the *United Kingdom*.

...

Interpretation of ~~provisions marked “UK”~~ the relevant rules: 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 *COBS* 6.2B.15R, *COBS* 6.2B.18R, *COBS* 6.2B.29R, *COBS* 6.2B.32R, *COBS* 6.2B.35R and *COBS* 6.2B.36R (“the provisions relevant rules”) ~~in this section marked “UK”~~ in the course of *MiFID business* with a *retail client* in the *United Kingdom*.
- 6.2B.8 G References to *financial instruments* include *structured deposits* (but not other *retail investment products*) when a *firm* is complying with the ~~provisions in this section marked “UK”~~ relevant rules in the course of *MiFID business* with a *retail client* outside the *United Kingdom* or with a *professional client*.

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

Interpretation of ~~provisions marked “UK”~~ the relevant rules: non-MiFID business

- 6.2B.9 R In relation to business that is not *MiFID business*, a *firm* must comply with ~~provisions in this section marked “UK”~~ as if they were rules the relevant 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*~~ requirement in:
 - (a) ~~the requirement in paragraph 2 of article 52(1) of the *MiFID Org Regulation* (reproduced in *COBS* 6.2B.32UK)~~ *COBS* 6.2B.32R(3) not to give undue prominence to their its *independent advice* services;
 - (b) ~~the requirement in article 52(4) of the *MiFID Org Regulation* (reproduced in *COBS* 6.2B.36UK)~~ *COBS* 6.2B.36R(2)(c) to distinguish the range of *financial instruments* issued or provided by entities not being closely linked with the *firm*; and
 - (c) ~~the requirement in article 53(3)(c) of the *MiFID Org Regulation* (reproduced in *COBS* 6.2B.29UK)~~ *COBS*

6.2B.29R(4) that a *firm* does not allow a natural person to provide both *independent advice* and *restricted advice*.

...

Requirements for firms providing focused independent advice

6.2B.14 G ...

~~[Note: recital 71 to the MiFID Org Regulation]~~

6.2B.15 UK R ~~53(2) An investment firm~~ A firm that provides ~~investment advice on an independent basis~~ *independent advice* and that focuses on certain categories or a specified range of ~~financial instruments~~ *financial instruments* ~~shall comply with the following requirements~~ must:

~~(a) the firm shall~~ market itself in a way that is intended only to attract ~~clients~~ *clients* with a preference for those categories or range of ~~financial instruments~~ *financial instruments*;

~~(b) the firm shall~~ require ~~clients~~ *clients* to indicate that they are only ~~interested in investing in the specified category or range of financial instruments~~ *financial instruments*; and

~~(c) prior to the provision of the service, the firm shall~~ ensure that its ~~service is appropriate for each new client~~ *client* on the basis that its business model matches;

~~(a) the client's~~ *client's* needs and objectives; and

~~(b) the range of financial instruments~~ *financial instruments* that are suitable for the ~~client~~ *client*; and

~~(4) Where this is not the case the firm shall not provide such a~~ its service to the ~~client~~ *client* if the firm is not satisfied as to the matters in (3).

~~[Note: article 53(2) of the MiFID Org Regulation]~~

6.2B.16 G (1) ~~COBS 6.2B.15UK~~ COBS 6.2B.15R means that a *firm* providing *independent advice* need not provide advice on all relevant products. A *firm* may market itself as, for example, an independent stockbroker that provides *independent advice* on *shares* only. A *firm* might alternatively market itself on the basis of providing *independent advice* on a particular product market such as ethical and socially responsible investments. The requirements in ~~COBS 6.2B.15UK~~ COBS 6.2B.15R apply to ensure that *clients* of a *firm* that provides *independent advice* on a focused basis properly understand the nature of the advice that they will receive and that the service is appropriate.

...

Sufficient range

- 6.2B.17 G The extent of the assessment which a *firm* is required to undertake in order to meet the requirement to assess a sufficient range of relevant products will depend on:
- (1) the nature of the *independent advice* service provided by the *firm* (general or focused) for the purposes of ~~COBS 6.2B.15UK~~ COBS 6.2B.15R;
 - ...
- 6.2B.18 ~~UK~~ R (1) ~~53(1) Investment firms providing investment advice on an independent basis shall~~ A firm that provides *independent advice* must define and implement a selection process to assess and compare a sufficient range of ~~financial instruments~~ *financial instruments* available on the market in accordance with ~~{COBS 6.2B.11R}~~.
- (2) The selection process ~~shall in (1) must include the following elements ensure that:~~
 - (a) the number and variety of ~~financial instruments~~ *financial instruments* considered is proportionate to the scope of ~~investment advice services~~ *personal recommendations* offered by the independent investment adviser;
 - (b) the number and variety of ~~financial instruments~~ *financial instruments* considered is adequately representative of ~~financial instruments~~ the *financial instruments* available on the market; and
 - (c) the quantity of ~~financial instruments~~ *financial instruments* issued by the ~~investment firm~~ *firm* itself or by entities closely linked to ~~the investment firm itself~~ it is proportionate to the total amount of ~~financial instruments~~ *financial instruments* considered; and.
 - (d) A firm must ensure that the criteria for selecting the various financial
 - (3) ~~instruments~~ *financial instruments* ~~shall include~~ for the purposes of (1):
 - (a) consider all relevant aspects ~~such as~~ of the *financial instruments* including, but not limited to, risks, costs and complexity;
 - (b) ~~as well as~~ consider the characteristics of the ~~investment firm's~~ *firm's clients, clients*; and
 - (c) ~~shall~~ ensure that the selection of the ~~instruments~~ *financial instruments* that may be recommended is not biased.
 - (4) ~~Where such a~~ A firm that provides *personal recommendations* must not present itself as independent if the comparison in (1) is not

possible due to the business model of the *firm* 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 ...

- (2) Notwithstanding (1), since the assessment conducted by the *firm* must be such as to ensure the *client's* investment objectives can be suitably met, a *firm* providing *independent advice* should be in a position to advise on all types of relevant product within the scope of the market (for the purposes of ~~COBS 6.2B.15UK~~ COBS 6.2B.15R) 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*.

...

Guidance on the independence standard

...

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:

...

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

...

Requirements for firms providing both independent and restricted advice

6.2B.29 ~~UK~~ R ~~53(3) An investment firm offering investment advice on~~ A *firm* that offers both an independent basis *independent advice* and on a non-independent basis *restricted advice* shall must comply with the following obligations:

- (a) in good time before the provision of its services a personal
(1) recommendation to a *client*, the investment firm has informed inform its clients that *client*, in a durable medium *durable medium*, whether the advice will be independent *independent advice* or non-independent *restricted advice* in accordance with {~~COBS 6.2B.33R~~ and the relevant implementing measures to COBS 6.2B.36R;
- (b) ~~the investment firm has presented~~ present itself as independent for the
(2) only in respect of those services for in relation to which it provides

~~investment advice~~ *personal recommendations* on an independent basis; and

~~(e) the investment firms has~~ have adequate organisational requirements and controls ~~in place~~ to ensure that:

(a) both types of advice services and advisers are clearly separated from each other; and

(b) ~~that clients~~ *clients* are:

(i) not likely to be confused about the type of advice that they are receiving; and

(ii) ~~are~~ given the type of advice that is appropriate for them; and

(4) ~~The investment firm shall~~ not allow a natural person to provide both ~~independent~~ *independent advice* and ~~non-independent~~ *restricted advice*.

~~[Note: article 53(3) of the MiFID Org Regulation]~~

...

6.2B.32 UK R ~~52(1) Where advice is offered or provided~~ If a firm offers or provides both *independent advice* and *restricted advice* to the same client *client* on both an independent and non-independent basis, investment firms shall it must:

(1) explain the scope of both services to ~~allow investors~~ enable the *client* to understand the differences between them; and

(2) not present itself as an independent investment adviser for the overall activity; and

(3) ~~Firms shall~~ not give undue prominence to ~~their independent investment advice~~ its *independent advice* services over ~~its non-independent investment~~ its *restricted advice* services in ~~their~~ its communications with ~~clients~~ *clients*.

~~[Note: article 52(1) of the MiFID Org Regulation]~~

Disclosing the nature of advice provided

...

6.2B.35 UK R ~~52(1) Investment firms shall~~ A firm must explain to a *client* in a clear and concise way:

(1) whether and why ~~investment advice~~ a *personal recommendation* qualifies as ~~independent~~ *independent advice* or ~~non-independent~~ *restricted advice*; and

- (2) the type and nature of ~~the any~~ restrictions that apply, including, ~~when if providing investment advice on an independent basis~~ independent advice, the prohibition ~~to receive and retain on receiving and retaining~~ inducements.

[~~Note: article 52(1) of the MiFID Org Regulation~~]

- 6.2B.36 UK
R
- (1) ~~52(2) Investment firms providing investment advice, on an independent or non-independent basis, shall~~ A firm (whether providing independent advice or restricted advice) must:
- (a) explain to ~~the client~~ a client:
- (i) the range of ~~financial instruments~~ financial instruments that ~~it may be recommended~~ recommend, including; and
- (ii) the ~~firm's~~ firm's relationship with the issuers or providers of ~~the instruments. any of those~~ financial instruments; and
- (b) ~~52(3) Investment firms shall~~ in accordance with the scope of its service, provide to a client a description of:
- (i) the types of ~~financial instruments~~ financial instruments it ~~has considered;~~ and
- (ii) the range of ~~financial instruments~~ financial instruments and providers ~~it has analysed per in relation to~~ each type of instrument according to the scope of the service, financial instrument.
- (2) ~~and, when providing independent advice, A firm that provides independent advice must:~~
- (a) ~~explain to a client how the service provided satisfies the conditions for the provision of investment advice on an independent basis~~ independent advice (COBS 6.2B.11R); and
- (b) ~~inform a client of the factors taken into consideration considered in the selection process used by the investment firm firm to recommend financial instruments~~ provide its personal recommendation including, but not limited to, such as risks, costs and complexity of the financial instruments. financial instruments; and
- (c) ~~52(4) When the range of financial instruments distinguish, in relation to each type of financial instrument assessed by the investment firm providing investment advice on an independent basis~~ firm, the range of financial instruments issued or provided by entities not having any links with the firm, if the range of financial instruments assessed includes:

- (i) the investment firm's firm's own financial instruments 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~~ firm; and
- (ii) ~~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~~ financial instruments issued or provided by other issuers or providers which are not linked or related to the firm.

[~~Note: article 52(2), (3) and (4) of the MiFID Org Regulation~~]

...

Record keeping

6.2B.40 G ...

6.2B.40 G A firm to which SYSC 9 applies is required to keep records of all services, activities and transactions undertaken by it.

6.2B.40 R In complying with the requirements in SYSC 9, a firm to which those rules apply must keep a record of the information provided to each client in compliance with the rules in this section applicable to MiFID, equivalent third country and optional exemption business.

...

6 Annex 7 **UK** **R** **Identified costs that should form part of the costs to be disclosed to clients**

This Annex belongs to ~~COBS 6.1ZA.14UK~~ COBS 6.1ZA.14R.¹

Table 1 – All costs and associated charges charged for the investment service(s) and/or ancillary services provided to the client that should form part of the amount to be disclosed.

Cost items to be disclosed		Examples
One-off charges related to the provision of an investment service	All costs and charges paid to the investment firm <u>firm</u> at the beginning or at the end of the provided investment	Deposit fees, termination fees and switching costs ² .

	<u>service(s) provision of investment services.</u>	
Ongoing charges related to the provision of an investment service	All ongoing costs and charges paid to investment firms <u>firms</u> for their services provided to the client <u>client</u> .	Management fees, advisory fees, custodian fees.
All costs related to transactions initiated in the course of the provision of an investment service	All costs and charges that are related to transactions performed by the investment firm <u>firm</u> or other parties.	Broker commissions ³ , entry- and exit-charges paid to the fund manager, platform fees, mark ups (embedded in the transaction price), stamp duty, transactions tax and foreign exchange costs.
Any charges that are related to ancillary services	Any costs and charges that are related to ancillary services <u>ancillary services</u> that are not included in the costs mentioned above.	Research costs. Custody costs.
Incidental costs		Performance fees.

Table 2 – All costs and associated charges related to the financial instrument that should form part of the amount to be disclosed.

Cost items to be disclosed		Examples
One-off charges	All costs and charges (included in the price or in addition to the price of the financial instrument <u>financial instrument</u>) paid to product suppliers <u>providers</u> at the beginning or at the end of the investment in the financial instrument <u>financial instrument</u> .	Front-loaded management fee, structuring fee ⁴ , distribution fee.
Ongoing charges	All ongoing costs and charges related to the management of the financial product <u>financial instrument</u> that	Management fees, service costs, swap fees, securities lending costs and taxes, financing costs.

	are deducted from the value of the financial instrument <i>financial instrument</i> during the period of the investment in the financial instrument <i>financial instrument</i> .	
All costs related to the transactions	All costs and charges that <u>are</u> incurred as a result of the acquisition and disposal of investments <i>financial instruments</i> .	Broker commissions, entry- and exit-charges paid by the fund, mark ups embedded in the transaction price, stamp duty, transactions tax and foreign exchange costs.
Incidental costs		Performance fees.

¹ It should be noted that certain cost items appear in both tables but are not duplicative since they respectively refer to costs of the product and costs of the service. Examples are the management fees (in Table 1, this refers to management fees charged by ~~an investment firm~~ *a firm* providing the service of ~~portfolio management~~ *portfolio management* to its ~~clients~~ *clients*, while in Table 2 this refers to management fees charged by an investment fund manager to its investor) and broker commissions (in Table 1, this refers to commissions incurred by the ~~investment firm~~ *firm* when trading on behalf of its ~~clients~~ *clients*, while in Table 2 this refers to commissions paid by investment funds when trading on behalf of the fund).

² Switching costs should be understood as costs (if any) that are incurred by ~~investors~~ *clients* by switching from one ~~investment firm~~ *firm* to another ~~investment firm~~.

³ Broker commissions should be understood as costs that are charged by ~~investment firms~~ *firms* for the execution of orders.

⁴ Structuring fees should be understood as fees charged by manufacturers of structured investment products for structuring the products. They may cover a broader range of services provided by the manufacturer.

~~{Note: Annex II of the MiFID Org Regulation}~~

...

8A Client agreements (MiFID provisions)

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

Application and purpose provisions

...

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

8A.1.3 G In order to provide legal certainty and enable ~~clients~~ *clients* to better understand the nature of the services with which they are provided, ~~investment firms~~ *firms* that provide ~~investment~~ *investment services* or ~~ancillary services~~ *ancillary services* to ~~clients~~ *clients* should enter into a written basic agreement with the ~~client~~ *client*, setting out the essential rights and obligations of the ~~firm~~ *firm* and the ~~client~~ *client*.

~~[Note: recital 90 to the MiFID Org Regulation]~~

8A.1.3A G Certain provisions in this section require *firms* to provide *clients* with information ‘in good time’. *Guidance* on the provision of information ‘in good time’ can be found in COBS 1.4.2G.

Providing a client agreement: retail and professional clients

- 8A.1.4 ~~UK~~
R
- (1) ~~Investment firms providing any investment service or the ancillary service referred to in paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to a client after the date of application of this Regulation~~ This rule applies to a *firm* that provides to a *client*:
- (a) *an investment service*; or
- (b) *the ancillary service in paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order (safekeeping and administration of financial instruments)*.
- (2) ~~A *firm* shall~~ must enter into a written basic agreement with the ~~client~~ *client*, ~~in on~~ on paper or in another ~~durable medium~~, *durable medium*, with the client setting out the essential rights and obligations of the ~~firm and the client~~.
- (3) ~~Investment firms providing investment advice shall comply with this obligation~~ The requirement in (2) only applies to a *firm* that provides *investment advice* where the *firm* will undertake a periodic assessment of the suitability of the ~~financial instruments~~ *financial instruments* or services recommended ~~is performed~~.
- (4) The written agreement ~~in (2) shall~~ must set out the essential rights and obligations of the ~~parties~~, *firm* and the *client* and ~~shall~~ must include the following:
- (a) a description of the services, and where relevant the nature and extent of ~~the investment advice~~ *any personal recommendation*, to be provided;

- (b) ~~in case of portfolio management services, if the services covered by the agreement include *portfolio management*:~~
- (i) ~~the types of financial instruments *financial instruments* that may be purchased and sold and;~~
 - (ii) ~~the types of transactions that may be undertaken on behalf of the client *client*, as well as; and~~
 - (iii) ~~any instruments or transactions that are prohibited; and~~
- (c) ~~a description of the main features of any services referred to in paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order of the type in (1)(b) to be provided, including where applicable:~~
- (i) ~~the role of the firm *firm* with respect to corporate actions relating to client *client* instruments; and~~
 - (ii) ~~the terms on which securities financing transactions *securities financing transactions* involving client *client* securities will generate a return for the client *client*.~~

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

General requirement for information to clients

- 8A.1.5 ~~UK~~ R (1) ~~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 A firm must provide that client or potential client a *client* with the following information:~~
- (a) ~~the terms of any such agreement for the provision of *investment services or ancillary services*; and~~
 - (b) ~~the information required by Article 47 *COBS 6.1ZA.5R* and *COBS 6.1ZA.8R* relating to that agreement or to those investment *investment services* or ancillary services *ancillary services*.~~
- (2) ~~The *firm* must provide the terms and information in (1):~~
- (a) ~~in good time before the *client* is bound by the agreement; or~~
 - (b) ~~if earlier, before the provision of the relevant *investment services or ancillary services*.~~

~~[Note: article 46(1) of the *MiFID Org Regulation*]~~

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

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

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

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

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

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

8A.1.7 UK ~~46(3) The information referred to in paragraphs 1 to 2B shall COBS~~
R ~~8A.1.5R must be provided in a durable medium *durable medium* or by means of a website (where if it does not constitute a durable medium *durable medium*) provided that the conditions specified in Article 3(2) *website conditions* 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 Rules in COBS 6.1ZA and COBS 14.3A require a firm to provide a client with information about:~~

...

...

- (3) ~~The requirements for *firms* to provide *clients* with the information referred to in (1) are set out at COBS 6.1ZA. [deleted]~~

[**Note:** recital 84 to *MiFID*]

Record keeping: client agreements

...

- 8A.1.10 ~~UK~~ R ~~73~~ Records which set out the respective rights and obligations of the ~~investment firm~~ *firm* and the ~~client~~ *client* under an agreement to provide services, or the terms on which the ~~firm~~ *firm* provides services to the ~~client~~ *client*, ~~shall~~ must be retained for at least the duration of the relationship with the ~~client~~ *client*.

[**Note:** ~~article 73 of the *MiFID Org Regulation*~~]

...

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

9A.1 Application and purpose

...

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

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

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

9A.2 Assessing suitability: the obligations

...

- 9A.2.2 G ...

[**Note:** ~~recital 87 to the *MiFID Org Regulation*~~]

- 9A.2.3 G ...

[**Note:** ~~recital 89 to the *MiFID Org Regulation*~~]

...

Assessing the extent of the information required: MiFID business

9A.2.4 UK 54(2) Investment firms shall A firm must:
R

- (1) determine the extent of the information to be ~~collected~~ obtained from ~~clients~~ a client in light of all the features of the ~~investment advice or portfolio management services~~ service to be provided to those clients. that client; and
- (2) ~~Investment firms shall obtain from clients or potential clients~~ the client such information as is necessary for the ~~firm~~ firm to understand the essential facts about the ~~client~~ 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~~ portfolio management service, ~~satisfies the following criteria:~~
 - (a) ~~it~~ it meets the investment objectives of the ~~client~~ client in question, including ~~client's~~ their risk tolerance;
 - (b) ~~it~~ it is such that the ~~client~~ client is able financially to bear any related investment risks consistent with ~~his~~ their investment objectives; and
 - (c) ~~it~~ it is such that the ~~client~~ client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of ~~his~~ their portfolio.

~~[Note: article 54(2) of the MiFID Org Regulation]~~

...

Professional clients: MiFID business

9A.2.5 UK 54(3) ~~Where an investment firm provides an investment service to~~ If the
R client is a professional client a professional client it shall be entitled to the
firm can assume that:

- (1) in relation to the products, transactions and services for which it is so classified, the ~~client~~ client has the necessary level of experience and knowledge for the purposes of ~~point (e) of paragraph 2.~~ COBS 9A.2.4R(2)(c); and
- (2) ~~Where that investment service consists in the provision of investment advice to a professional client covered by Part 2 of Schedule 1 to Regulation (EU) No 600/2014, the investment firm shall be entitled to assume~~ (in relation to the provision of investment advice to a per se professional client only) for the purposes of point (b) of paragraph 2 COBS 9A.2.4R(2)(b), that the client client is able financially to bear

any related investment risks consistent with the investment objectives of that ~~client~~ client.

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

Obtaining information about knowledge and experience: MiFID business

- 9A.2.6 ~~UK~~ R ~~55(1) Investment firms shall ensure that the~~ The information regarding a ~~client's or potential client's~~ client's knowledge and experience in the investment field ~~includes the following~~ must include, to the extent appropriate to the nature of the ~~client~~ 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, information on:
- ~~(a)~~ (1) the types of service, transaction and ~~financial instrument~~ financial instrument with which the ~~client~~ client is familiar;
 - ~~(b)~~ (2) the nature, volume, and frequency of the ~~client's~~ client's transactions in ~~financial instruments~~ financial instruments and the period over which they have been carried out;
 - ~~(c)~~ (3) the level of education, and profession or relevant former profession of the ~~client or potential client~~ client.

~~[Note: article 55(1) of the MiFID Org Regulation]~~

...

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

- 9A.2.7 ~~UK~~ R ~~54(4) The information regarding the financial situation of the~~ client or ~~potential client shall~~ client must include, where relevant, information on the source and extent of ~~his~~ their regular income, ~~his~~ their assets, including liquid assets, investments and real property, and ~~his~~ their regular financial commitments.

~~[Note: article 54(4) of the MiFID Org Regulation]~~

...

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

- 9A.2.8 ~~UK~~ R ~~54(5) The information regarding the investment objectives of the~~ client or ~~potential client shall~~ client must include, where relevant, information on the length of time for which ~~the client wishes~~ they wish to hold the investment, ~~his~~ their preferences regarding risk taking, ~~his~~ their risk profile, and the purposes of the investment.

~~[Note: article 54(5) of the MiFID Org Regulation]~~

...

Reliability of information: MiFID business

- 9A.2.9 ~~UK~~ R (1) ~~54(7) Investment firms shall~~ A firm must take reasonable steps to ensure that the information collected about ~~their clients or potential clients~~ its clients is reliable.
- (2) ~~This shall~~ The steps in (1) must include, but shall not be limited to, the following:
- (a) ensuring ~~clients~~ 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~~ client's knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with ~~their clients~~ the firm's 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~~ clients, capture an accurate reflection of the ~~client's~~ 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~~ client information, such as by considering whether there are obvious inaccuracies in the information provided by ~~clients~~ clients.

~~[Note: article 54(7) of the MiFID Org Regulation]~~

...

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

- 9A.2.10 ~~UK~~ R ~~54(7) Investment firms having~~ If a firm has an on-going relationship with ~~the client~~ a client, such as by providing ~~an on-going advice or portfolio management service~~ portfolio management, ~~shall it must~~ have, and be able to demonstrate, appropriate policies and procedures to maintain adequate and up-to-date information about clients that client to the extent necessary to fulfil the requirements under ~~paragraph 2~~ COBS 9A.2.4R.

~~[Note: article 54(7) of the MiFID Org Regulation]~~

Discouraging the provision of information: MiFID business

- 9A.2.11 ~~UK~~ R ~~55(2) An investment firm shall~~ A firm must not discourage encourage a ~~client or potential client from providing~~ client not to provide information required for the purposes of ~~[COBS 9A.2.1R and COBS 10A.2.1R]~~.

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

...

Reliance on information: MiFID business

- 9A.2.12 UK 55(3) ~~An investment firm shall be~~ A firm is entitled to rely on the information provided by its ~~clients or potential clients~~ 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: MiFID business

- 9A.2.13 UK 54(8) ~~Where, when providing the investment service of investment advice or portfolio management, an investment firm~~ If a firm does not obtain the information required under ~~[COBS 9A.2.1R], the firm shall~~ it must not recommend ~~investment services~~ investment services or ~~financial instruments~~ financial instruments to the ~~client or potential client~~ client.

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

...

Identifying the subject of a suitability assessment: MiFID business

- 9A.2.15 UK (1) ~~54(6) Where a client~~ If a client is a legal person or a group of two or more natural persons, ~~or where~~ if one or more natural persons are represented by another natural person, the ~~investment firm shall~~ firm must establish, record and implement a policy which sets out:
- (a) ~~as to~~ who should be subject to the suitability assessment; and
 - (b) how ~~this~~ the suitability 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.~~
- (2) For the purposes of (1):
- (a) ~~Where~~ if a natural person is represented by another natural person ~~or where,~~ the financial situation and investment objectives to be considered must be those of the underlying client rather than of the representative. However, the knowledge and experience must be that of the representative or the person authorised to carry out transactions on behalf of the underlying client; and
 - (b) if a legal person ~~having requested treatment as professional client in accordance with Part 3 of Schedule 1 to Regulation~~

~~(EU) No 600/2014 is to be considered for the suitability assessment~~ is an elective professional client, the financial situation and investment objectives ~~shall to be considered~~ must 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~~ must be that of the ~~representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client~~ client.

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

...

Switching: MiFID business

- 9A.2.18 UK 54(11) When providing ~~investment advice~~ investment advice or ~~portfolio management services~~ portfolio management to retail clients that ~~involve~~ involves 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~~ a firm must collect the necessary information on the ~~client's~~ client's existing ~~investments~~ financial instruments and the recommended new ~~investments~~ financial instruments and ~~shall~~ undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.

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

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

...

Adequate policies and procedures: MiFID business

- 9A.2.19 UK 54(9) ~~Investment firms shall~~ A firm must have in place, and be able to demonstrate, adequate policies and procedures ~~in place~~ to ensure that ~~they~~ understand:
- (1) ~~it understands~~ it understands the nature, ~~and~~ and features, including ~~the~~ the costs and risks, of ~~investment services~~ the investment services and ~~financial instruments~~ financial instruments selected for ~~their clients~~ its clients; and
 - (2) ~~that they assess~~, while taking into account cost and complexity, ~~it~~ it assesses whether equivalent ~~investment services~~ investment services or ~~financial instruments can~~ financial instruments could meet ~~their client's~~ its client's profile.

~~[Note: article 54(9) of the MiFID Org Regulation]~~

Unsuitability: MiFID business

- 9A.2.20 ~~UK~~ 54(10) When providing ~~the investment service of investment advice~~
R ~~*investment advice* or portfolio management, *portfolio management* an~~
~~investment firm shall a firm~~ must not recommend or decide to trade where
none of the services or instruments are suitable for the ~~client~~ client.

~~[Note: article 54(10) of the *MiFID Org Regulation*]~~

...

Guidance on assessing suitability: MiFID business and insurance-based
investment products

- 9A.2.21 G ...

~~[Note: recital 88 to the *MiFID Org Regulation*, recital 9 to the *IDD*~~
~~*Regulation*]~~

...

Automated or semi-automated systems: MiFID business

- 9A.2.23 ~~UK~~ 54(1) Where ~~investment advice or portfolio management services are~~
R ~~provided~~ A firm that provides ~~*investment advice* or *portfolio management*~~
~~services (in whole or in part) through an automated or semi-automated~~
~~system, the responsibility to undertake~~ remains responsible for the
suitability assessment shall lie with the investment firm providing the
service and shall not be reduced required by this section. That obligation is
not affected by the use of an electronic system in making the ~~personal~~
~~recommendation~~ personal recommendation or decision to trade.

~~[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: MiFID business

- 9A.3.1 ~~UK~~ (1) ~~Investment firms shall~~ A firm must not create any ambiguity or
R ~~confusion about their its~~ responsibilities in the process when assessing
the suitability of ~~investment services~~ investment services or ~~financial~~
~~instruments~~ financial instruments in accordance with ~~{COBS~~
9A.2.1R}.
- (2) When undertaking the suitability assessment, ~~the firm shall~~ a firm
must inform ~~clients or potential clients~~ the client, clearly and simply,
that the reason for assessing suitability is to enable the ~~firm~~ firm to act
in the ~~client's~~ client's best interest.

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

...

Providing a suitability report: MiFID business

- 9A.3.3 UK R (1) ~~54(12) When providing investment advice, investment firms shall~~ investment advice to a retail client a firm must provide the client with a report to the retail client that includes an outline of:
- (a) ~~the advice given and how the recommendation provided is suitable for the retail client them, including;~~
 - (b) ~~how it the recommendation meets the client's their objectives and personal circumstances with reference to:~~
 - (i) ~~the investment term required;~~
 - (ii) ~~client's their knowledge and experience; and~~
 - (iii) ~~client's their attitude to risk and capacity for loss.~~
- (2) ~~Investment firms shall draw clients' attention to and shall~~ A firm must include in the suitability report suitability report information on whether the recommended services or instruments are likely to require the retail client retail client to seek a periodic review of their arrangements, and draw the client's attention to this information.
- (3) ~~Where an investment firm Paragraph (4) applies to a firm that provides a service that involves~~ involving periodic assessments of suitability.
- (4) Following the first suitability report provided to the client at the commencement of the service, any assessments and reports, the subsequent reports; after the initial service is established
- (a) ~~may need~~ only cover changes in:
 - (i) ~~the relevant services or instruments; involved and/or~~
 - (ii) ~~the circumstances of the client client; and~~
 - (b) ~~may not need not to repeat all of the details of information in the first report.~~

[~~Note: article 54(12) of the MiFID Org Regulation~~]

...

9A.3.3A R ...

Guidance on suitability reports

9A.3.4 G ...

9A.3.5 G ...

[**Note:** recital 85 to the *MiFID Org Regulation*]

9A.3.5A G Certain provisions in this section require *firms* to provide *clients* with information ‘in good time’. Guidance on the provision of information ‘in good time’ can be found in COBS 1.4.2G.

...

Periodic assessments: MiFID business

9A.3.8 UK (1) ~~52(5) Investment firms providing~~ This rule applies to a firm that provides a *client* with a periodic assessment of the suitability of the recommendations provided pursuant to Article 54(12) COBS 9A.3.3R.
R

(2) The firm must ~~shall~~ disclose all of the following to the *client*:

- (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~~ *client*.

[**Note:** article 52(5) of the *MiFID Org Regulation*]

9A.3.9 UK (1) ~~54(13) Investment firms~~ A firm providing a periodic suitability assessment ~~shall~~ must review, in order to enhance the service, the suitability of the recommendations given at least annually.
R

(2) The frequency of ~~this~~ the periodic suitability assessment ~~shall~~ must be increased ~~depending on where appropriate by reference to~~ the risk profile of the ~~client~~ *client* and the type of ~~financial instruments~~ *financial instruments* recommended.

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

...

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

...

9A.4.2 R ...

Record keeping: MiFID business

- 9A.4.2A R In complying with the requirements in SYSC 9, a firm to which those rules apply must keep a record of:
- (1) its compliance with the rules in COBS 9A.2 and COBS 9A.3 applicable to MiFID, equivalent third country and optional exemption business in respect of each assessment of suitability it undertakes;
 - (2) its compliance with COBS 9A.3.6R in informing each client to which it provides investment advice whether it will provide a periodic assessment of suitability; and
 - (3) in respect of investment advice provided to a retail client:
 - (a) the time and date on which the investment advice was provided;
 - (b) the financial instrument that was recommended; and
 - (c) the suitability report provided to the client.

...

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

10.1 Application

10.1.2 R ...

(The rules in this chapter also apply to:
2
)

- (a) a TP firm (to the extent that the rule does not already apply to such a TP firm as a result of GEN 2.2.26R); and
- (b) a Gibraltar-based firm to the extent that the rule does not already apply to such a Gibraltar-based firm as a result of GEN 2.3.1R).
[deleted]

...

[Editor's note: The application of this sourcebook to TP firms and Gibraltar-based firms is now addressed in COBS 1 Annex 2.]

...

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

10A.1 Application

...

Application

...

- 10A.1.3 R ~~The effect of GEN 2.2.22AR is that provisions in this chapter marked “UK” and including a Note (‘Note:’) referring to the MiFID Org Regulation also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*. [deleted]~~

10A.2 Assessing appropriateness: the obligations

...

Assessing a client’s knowledge and experience: MiFID business

- 10A.2.3 ~~UK~~ (1) ~~56(1) Investment firms, shall~~ When assessing appropriateness, a *firm* must determine whether that client *the client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service *investment service* offered or demanded when assessing whether an investment service as referred to in [COBS 10A.1.1R] is appropriate for a client.
- ~~R~~ (2) ~~An investment firm shall be entitled to~~ A *firm* may assume that a professional client *professional client* has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services *the investment services* or transactions, or types of transaction or product, for which ~~the client is~~ they are classified as a professional client *professional client*.

~~[Note: article 56(1) of the MiFID Org Regulation]~~

...

Information regarding a client’s knowledge and experience: MiFID business

- 10A.2.4 ~~UK~~ (1) ~~55(1) Investment firms shall ensure that~~ For the purposes of COBS 10A.2.1R, the information regarding a client’s or potential client’s *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 information on:
- ~~R~~ (a) the types of service, transaction and ~~financial instrument~~ *financial instrument* with which the client *client* is familiar;

- (b) the nature, volume, and frequency of the ~~client's~~ client's transactions in ~~financial instruments~~ financial instruments and the period over which they have been carried out; and
 - (c) the level of education, and profession or relevant former profession of the ~~client or potential client~~ client.
- (2) The information requirements in (1) apply to the extent appropriate to:
- (a) the nature of the client;
 - (b) the nature and extent of the service to be provided; and
 - (c) the type of product or transaction envisaged, including its complexity and the risks involved.

~~[Note: article 55(1) of the MiFID Org Regulation]~~

...

Discouraging the provision of information: MiFID business

- 10A.2.5 ~~UK~~ R ~~55(2) An investment firm shall~~ A firm must not discourage a client or potential client client from providing information required for the purposes of ~~[COBS 9A.2.1R and COBS 10A.2.1R]~~.

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

...

Reliance on information: MiFID business

- 10A.2.6 ~~UK~~ R ~~55(3) An investment firm shall be~~ A firm is entitled to rely on the information provided by ~~its clients or potential clients~~ a client 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]~~

...

Knowledge and experience: MiFID business and insurance-based investment products

- 10A.2.8 ~~G~~ G Depending on the circumstances, a *firm* may be satisfied that the *client's* knowledge alone is sufficient for ~~him~~ them to understand the risks involved in a product or service. Where reasonable, a *firm* may infer knowledge from experience.

Increasing the client's understanding: MiFID business and insurance-based investment products

- 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~~ them, relevant considerations are likely to include the nature and complexity of the information and the *client's* existing level of understanding.

...

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

...

Other non-complex financial instruments

- 10A.4.2 UK 57 ~~A financial instrument which is not explicitly specified in [COBS R 10A.4.1R(2)] shall be considered as~~ A financial instrument is non-complex for the purposes of ~~paragraph (2)(f) of that rule~~ COBS 10A.4.1R(2)(f) if it satisfies the following criteria:

- ~~(a)~~ (1) ~~it does not fall within Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order~~ it is not:
- (a) a derivative;
 - (b) a security giving the right to acquire or sell a transferable security or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures; or
 - (c) an emission allowance;
- ~~(b)~~ (2) ~~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)~~ (3) ~~it does not involve any actual or potential liability for the client~~ that exceeds the cost of acquiring the instrument;
- ~~(d)~~ (4) ~~it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment~~ financial instrument or pay out profile, such as investments a financial instrument that incorporate incorporates a right to convert the instrument it into a different investment;
- ~~(e)~~ (5) ~~it does not include any explicit or implicit exit charges that have the effect of making the investment~~ financial instrument illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it; and

- (f) adequately comprehensive information on its characteristics is
- (6) publicly available and is likely to be readily understood so as to enable the average ~~retail client~~ *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.7 Record keeping and retention periods for appropriateness records

...

Record keeping: MiFID business

- 10A.7.2 UK (1) ~~56(2) Investment firms shall~~ A firm must maintain records of the appropriateness assessments undertaken which shall include the following: it undertakes.
- R
- (2) The records maintained under (1) must include:
- (a) the result of the appropriateness assessment;
 - (b) any warning given to ~~the client~~ a client:
 - (i) ~~where the investment service~~ that an investment service or product purchase was had been 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~~ them; or
 - (ii) that the client did not provide sufficient information to enable the firm to undertake an appropriateness assessment;
 - (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~~ whether the client asked to proceed with a transaction despite being given a warning in (b); and
 - (d) if applicable, whether the firm accepted the client's request to proceed with a transaction despite being given a warning in (b).

~~[Note: article 56(2) of the MiFID Org Regulation]~~

...

11 Dealing and managing

11.1 Application

General application

...

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

11.1.2A G Certain provisions in this chapter require *firms* to provide *clients* with information ‘in good time’. *Guidance* on the provision of information ‘in good time’ can be found in COBS 1.4.2G.

Application of section on personal account dealing

11.1.4 The section on personal account dealing applies to the *designated investment business* of a *firm* in relation to activities carried on from an *establishment establishment* in the *United Kingdom*.

...

11.2A Best execution – MiFID provisions

11.2A.1 R (1) ~~Subject to (2) to (4), the following provisions apply to a *firm*’s business other than *MiFID business* as if they were *rules*:~~

(a) ~~provisions within this chapter marked “UK”. [deleted]~~

...

(4) ...

(5) Where a *firm* that provides the service of *portfolio management* or *reception and transmission of orders* also executes the orders received or the decision to deal on behalf of its *client*’s portfolio:

(a) it must comply with COBS 11.2A.8R and COBS 11.2A.25R; and

(b) COBS 11.2A.34R does not apply.

...

Application of best execution obligation

...

11.2A.4 G ...

~~[Note: first sentence, recital 103 to the *MiFID Org Regulation*]~~

...

11.2A.6 G ...

~~[Note: second sentence, recital 103 to the *MiFID Org Regulation*]~~

11.2A.7 G ...

~~[Note: recital 104 to the *MiFID Org Regulation*]~~

Best execution criteria

11.2A.8 UK (1) ~~64(1) When~~ A firm must, when executing ~~client~~ client orders, investment firms shall take into account the following criteria for determining the relative importance of the ~~factors referred to in~~ [COBS 11.2A.2R] execution factors:

R

- (a) the characteristics of the ~~client~~ client, including the categorisation of the ~~client~~ client as retail or professional;
- (b) the characteristics of the ~~client~~ client order, including where the order involves a ~~securities financing transaction (SFT)~~ securities financing transaction;
- (c) the characteristics of ~~financial instruments~~ financial instruments that are the subject of that order;
- (d) the characteristics of the ~~execution venues~~ execution venues to which that order can be directed.

~~For the purposes 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 functions performed by any of the foregoing.~~

- (2) ~~An investment firm~~ A firm satisfies its obligation under ~~[COBS 11.2A.2R, COBS 11.2A.3G, COBS 11.2A.9R, COBS 11.2A.12R and COBS 11.2A.15R]~~ to take all sufficient steps to obtain the best possible result for a client MiFID best execution obligation to the extent that it executes an order or a specific aspect of an order following specific instructions from the ~~client~~ client relating to the order or the specific aspect of the order.
- (3) ~~Investment firms shall~~ A firm must not structure or charge ~~their~~ its commissions in such a way as to discriminate unfairly between ~~execution venues~~ execution venues.

- (4) ~~When~~ A firm must, when executing orders or taking ~~decision~~ decisions to deal in ~~OTC~~ OTC products including bespoke products, ~~the investment firm shall~~ check the fairness of the price proposed to the ~~client~~ 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.1 G ...
0

~~[Note: recital 101 to the MiFID Org Regulation]~~

11.2A.1 G ...
1

~~[Note: recital 101 to the MiFID Org Regulation]~~

Following specific instructions from a client

...

11.2A.1 G ...
3

~~[Note: recital 102 to the MiFID Org Regulation]~~

11.2A.1 G ...
4

~~[Note: recital 102 to the MiFID Org Regulation]~~

...

Execution policies

11.2A.2 UK (1) ~~66 (1) Investment firms shall~~ A firm must review, its order execution
5 R policy and order execution arrangements:

(a) at least on an annual basis; and

(b) ~~execution policy established pursuant to [COBS 11.2A.20R], as well as their order execution arrangements. Such a review shall also be carried out whenever a material change as defined in Article 65(7) occurs~~ upon occurrence of a material change that affects the ~~firm's~~ firm's ability to continue to obtain the best possible result for the execution of its ~~client~~

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 and as part of such review, must consider making changes to the relative importance of the best execution factors~~ execution factors in meeting ~~the overarching best execution requirement~~ its MiFID best execution obligation.

- (2) The information on the execution policy ~~shall~~ must be customised depending on the class of ~~financial instrument~~ financial instrument and type of the service provided and ~~shall~~ must include information set out in paragraphs ~~3 to 9~~ (3) to (9).
- (3) ~~Investment firms shall~~ A firm must provide clients clients, in a durable medium (or by means of a website, in accordance with the website conditions to the extent it is not a durable medium), with the following details on ~~their~~ its execution policy in good time prior to the provision of the service:
 - (a) in compliance with COBS 11.2A.8R(1), an account of the relative importance the ~~investment firm~~ firm assigns, ~~in accordance with the criteria specified in Article 59(1), to the factors referred to in [COBS 11.2A.2R]~~ execution factors, or the process by which the ~~firm~~ firm determines the relative importance of those factors;
 - (b) a list of the ~~execution venues~~ execution venues on which the ~~firm~~ 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~~ MiFID best execution obligation and specifying which ~~execution venues~~ execution venues are used for each class of ~~financial instruments~~ financial instruments, for ~~retail client~~ retail client orders, ~~professional client~~ professional client orders and ~~SFTs~~ securities financing transactions;
 - (c) a list of factors used to select an ~~execution venue~~ 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~~ execution venue for execution ~~shall~~ must be consistent with the controls used by the ~~firm~~ firm to demonstrate to ~~clients~~ clients that best execution has been achieved ~~in~~ on a consistent basis when reviewing the adequacy of its policy and arrangements;
 - (d) how the ~~execution factors~~ 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~~ client;

- (e) where applicable, information that the ~~firm~~ firm executes orders outside a ~~trading venue~~ trading venue, the consequences, for example counterparty risk arising from execution outside a trading venue, and upon ~~client~~ 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~~ client may prevent the ~~firm~~ 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 venues, execution strategies employed, the procedures and process used to analyse the quality of execution obtained and how the ~~firms~~ firms monitor and verify that the best possible results were obtained for ~~clients~~ 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~~ a firm applies different fees depending on the ~~execution venue~~ execution venue, the ~~firm shall~~ firm must explain these differences in sufficient detail in order to allow the ~~client~~ client to understand the advantages and the disadvantages of the choice of a single ~~execution venue~~ execution venue.
- (5) Where ~~investment firms invite clients~~ a firm invites clients to choose an ~~execution venue~~ execution venue, fair, clear and not misleading information ~~shall must~~ be provided to prevent the ~~client~~ client from choosing one ~~execution venue~~ execution venue rather than another on the sole basis of the price policy applied by the ~~firm~~ firm.
- (6) ~~Investment firms shall~~ A firm must only receive third-party payments that comply with [~~COBS 2.3A.5R, COBS 2.3A.6R and COBS 2.3A.7E~~] the rules in COBS 2.3A and shall must inform ~~clients~~ clients about the inducements that the ~~firm~~ firm may receive from the ~~execution venues~~ execution venues. The information ~~shall must~~ specify the fees charged by the ~~investment firm~~ firm to all counterparties involved in the transaction, and where the fees vary depending on the ~~client~~ client, the information ~~shall must~~ indicate the maximum fees or range of the fees that may be payable.

- (7) Where ~~an investment firm~~ a firm charges more than one participant in a transaction, in compliance with [~~COBS 2.3A.5R, COBS 2.3A.6R and COBS 2.3A.7E~~] the rules in COBS 2.3A, the ~~firm shall~~ firm must inform its ~~client~~ client of the value of any monetary or non-monetary benefits received by the ~~firm~~ firm.
- (8) Where a ~~client~~ client makes reasonable and proportionate requests for information about its policies or arrangements and how they are reviewed to ~~an investment firm~~ a firm, that ~~investment firm shall~~ firm must answer clearly and within a reasonable time.
- (9) Where ~~an investment firm~~ a firm executes orders for ~~retail clients~~ retail clients, it ~~shall~~ must provide those ~~clients~~ clients with a summary of the relevant policy, focused on the total cost they incur.

11.2A.2 G ...
6

[~~Note: recital 99 to the MiFID Org Regulation~~]

11.2A.2 G ...
7

[~~Note: recital 99 to the MiFID Org Regulation~~]

...

11.2A.2 G ...
9

[~~Note: recital 108 to the MiFID Org Regulation~~]

11.2A.3 G ...
0

[~~Note: recital 105 to the MiFID Org Regulation~~]

...

11.2A.3 G ...
3

[~~Note: recital 107 to the MiFID Org Regulation~~]

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

11.2A.3 UK (1) ~~65 (1) Investment firms, when providing portfolio management, shall~~
4 R ~~comply with the obligation [COBS 2.1.1R] to act in accordance with~~
~~the best interests of their clients~~ A firm that provides portfolio
management services must comply with the client's best interests rule
when placing orders with other ~~entities~~ persons for execution that

result from decisions by the ~~investment firm~~ firm to deal in ~~financial instruments~~ financial instruments on behalf of its ~~client~~ client.

- (2) ~~Investment firms, when providing~~ A firm that provides the service of reception and transmission of orders, ~~shall~~ must comply with ~~the obligation under [COBS 2.1.1R]~~ to act in accordance with the best interests of their clients the client's best interests rule when transmitting ~~client~~ client orders to other ~~entities~~ persons for execution.
- (3) In order to comply with the client's best interests rule in the way described in paragraphs ~~1 or 2~~ (1) or (2), investment firms shall ~~a firm~~ must comply with paragraphs ~~4 to 7 of this Article and Article 64(4)~~ (4) to (8).
- (4) ~~Investment firms shall~~ A firm must take all sufficient steps to obtain the best possible result for ~~their clients~~ its client, taking into account the factors referred to in Article 27(1) of Directive 2014/65/EU. The execution factors, the relative importance of these factors shall which must be determined by reference:
 - (a) to the ~~criteria set out in Article 64(1)~~ execution criteria; and,
 - (b) for retail clients retail clients, to the requirement under Article 27(1) of Directive 2014/65/EU COBS 11.2A.9R.

~~An investment firm~~ A firm satisfies its obligations under paragraph ~~1 or 2~~ (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~~ client when placing an order with, or transmitting an order to, another entity for execution.

- (5) ~~Investment firms shall~~ A firm must establish and implement a policy that enables ~~them~~ it to comply with ~~the obligation in~~ paragraph 4 (4). The policy shall must identify, in respect of each class of instruments, the ~~entities~~ persons with which the orders are placed or to which the ~~investment firm~~ firm transmits orders for execution. The ~~entities~~ persons identified shall must have execution arrangements that enable the ~~investment firm~~ firm to comply with its obligations under this ~~Article~~ rule when it places or transmits orders to that ~~entity~~ person for execution.
- (6) ~~Investment firms shall~~ A firm must provide information to ~~their~~ its ~~clients~~ clients on the policy in (5) and its execution policy established in accordance with ~~paragraph 5 and paragraphs 2 to 9 of Article 66~~ COBS 11.2A.25R(2) to (9). ~~Investment firms shall~~ The firm must provide ~~clients~~ clients with appropriate information about the ~~firm~~ firm and its services and the ~~entities~~ persons chosen for execution.
Upon reasonable request from a ~~client~~ client, ~~investment firms shall~~ a firm must provide its ~~clients~~ clients or potential ~~clients~~ clients with

information about entities where the orders are transmitted or placed for execution.

- (7) ~~Investment firms shall~~ A firm must:
- (a) ~~monitor on a regular basis the effectiveness of the its policy established in accordance with paragraph 5 (5) and, in particular, shall monitor the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies;~~
 - (b) ~~Investment firms shall review the policy its order execution policy and order execution arrangements at least annually. Such a review shall also be carried out and whenever a material change material change occurs that affects the firm's firm's ability to continue to obtain the best possible result for their clients. its clients;~~
 - (c) ~~Investment firms shall assess whether a material change material change has occurred and shall must consider making changes to the execution venues execution venues or entities persons on which they place it places significant reliance in meeting the overarching best execution requirement its MiFID best execution obligation.~~
~~A material change shall be a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.~~
- (8) ~~This Article shall not apply where the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases, Articles 64 and 66 of this Regulation, and rules in [COBS] which were relied on immediately before exit to implement Article 27 of Directive 2014/65/EU shall apply. When executing client orders or taking decisions to deal in OTC products, including bespoke products, the firm must 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.~~

11.2A.3 G ...
5

~~[Note: recital 106 to the MiFID Org Regulation]~~

11.2A.3 G ...
6

[~~Note: recital 100 to the MiFID Org Regulation~~]

...

11.3 Client order handling

General principles

...

- 11.3.1A R (1) ~~Subject to (2) and (3), in this chapter provisions marked “UK” apply to a firm’s business other than MiFID business as if they were rules. [deleted]~~
- (2) ~~Provisions which derive from recitals to MiFID or the MiFID Org Regulation apply to all firms as guidance. [deleted]~~
- (3) ~~COBS 11.3.4AUK, which reproduces article 67(2) of the MiFID Org Regulation, COBS 11.3.4AR does not apply to a UCITS management company.~~

Carrying out client orders

- 11.3.2A ~~UK~~ R ~~67 (1) Investment firms shall satisfy the following conditions~~ A firm must, when carrying out ~~client~~ client orders:
- (a) ensure that orders executed on behalf of ~~clients~~ clients are promptly
- (1) and accurately recorded and allocated;
- (b) carry out otherwise comparable ~~client~~ client orders sequentially and
- (2) promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the ~~client~~ client require otherwise;
- (c) inform a ~~retail client~~ retail client about any material difficulty
- (3) relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

11.3.3 G ...

[~~Note: recital 110 to the MiFID Org Regulation~~]

...

Settlement of executed orders

- 11.3.4A ~~UK~~ R ~~67 (2) Where an investment firm a firm is responsible for overseeing or arranging the settlement of an executed order, it shall~~ must take all reasonable steps to ensure that any ~~client financial instruments~~ client financial instruments or ~~client funds~~ client money received in settlement of

that executed order are promptly and correctly delivered to the account of the appropriate ~~client~~ client.

Use of information relating to pending client orders

- 11.3.5A ~~UK~~ R ~~67(3) An investment firm shall~~ A firm must not misuse information relating to pending ~~client~~ client orders, and ~~shall~~ must take all reasonable steps to prevent the misuse of such information by any of its ~~relevant persons~~ relevant persons.
- 11.3.6 G Without prejudice to the *Market Abuse Regulation*, for the purposes of the provision on the misuse of information (see ~~COBS 11.3.5AEU~~ COBS 11.3.5AR), 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 110 to the MiFID Org Regulation]~~

Aggregation and allocation of orders

- 11.3.7A ~~UK~~ R ~~68(1) Investment firms shall~~ A firm must not carry out a ~~client~~ client order or a transaction for own account in aggregation with another ~~client~~ client order unless the following conditions are met:
- ~~(a)~~ (1) it is unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any ~~client~~ client whose orders ~~is~~ are to be aggregated;
 - ~~(b)~~ (2) it is disclosed to each ~~client~~ client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order; and
 - ~~(c)~~ (3) the firm has established and effectively implemented an order allocation policy ~~is established and effectively implemented, providing which provides~~ 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 11.3.7AUK, COBS 11.3.7AR(3) is in sufficiently precise terms.~~

~~[Note: article 28(1) of the UCITS implementing Directive]~~

Partial execution of aggregated client orders

- 11.3.8A ~~UK~~ ~~68(2)~~ Where ~~an investment firm~~ a firm aggregates an order with one or more other ~~client~~ client orders and the aggregated order is partially executed, it ~~shall~~ must allocate the related trades in accordance with its order allocation policy.

Aggregation and allocation of transactions for own account

- 11.3.9A ~~UK~~ ~~69(1)~~ ~~Investment firms~~ A firm which ~~have~~ has aggregated transactions for own account with one or more ~~client~~ client orders ~~shall~~ must not allocate the related trades in a way that is detrimental to a ~~client~~ client.

- 11.3.10 ~~UK~~ ~~(1)~~ ~~69(2)~~ Where ~~an investment firm~~ a firm aggregates a ~~client~~ client order with a transaction for own account and the aggregated order is partially executed, it ~~shall~~ must allocate the related trades to the ~~client~~ client in priority to the ~~firm~~ firm.

- ~~(2)~~ Where ~~an investment firm~~ a firm aggregates a ~~client~~ client order with a transaction for own account and the aggregated order is partially executed, it ~~shall~~ must allocate the related trades to the ~~client~~ client in priority to the ~~firm~~ firm. Where ~~an investment firm~~ 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 referred to in ~~Article 68(1)(e)~~ COBS 11.3.7AR(3).

- 11.3.11 ~~UK~~ ~~(3)~~ As part of the order allocation policy referred to in ~~Article 68(1)(e)~~ COBS 11.3.7AR(3), ~~investment firms~~ a firm ~~shall~~ must put in place procedures designed to prevent the reallocation, in a way that is detrimental to the ~~client~~ client, of transactions for own account which are executed in combination with ~~client~~ client orders.

- 11.3.12 G ...

~~[Note: recital 109 to the MiFID Org Regulation]~~

...

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. [deleted]~~

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

...

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

- 11.3.15 R *A firm* subject to *COBS 11.3.2AR* to *COBS 11.3.13G* must retain the records it is required to make under those *rules*.

11.4 Client limit orders

Obligation to make unexecuted client limit orders public

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

...

How client limit orders may be made public

- 11.4.3A ~~UK~~
R A ~~client~~ *client* limit order in respect of ~~shares~~ *shares* admitted to trading on a regulated market or traded on a trading venue which have not been immediately executed under prevailing market ~~condition~~ conditions as referred to in *COBS 11.4.1R* ~~shall be~~ is considered available to the public when the investment firm has

submitted the order for execution to a regulated market or a MTF or the order has been published by a ~~person~~ *person* authorised to provide ~~data reporting services~~ *data reporting services* under the *DRS Regulations* and can be easily executed as soon as market conditions allow.

...

11.5A Record keeping: client orders and transactions

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

Recording initial orders received from clients

- 11.5A.2 ~~UK~~ R (1) ~~74 An investment firm shall~~ A firm must, in relation to every initial order received from a ~~client~~ *client* and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the ~~competent authority~~ *FCA* at least the details set out in ~~Section 1 of Annex IV [reproduced below at COBS 11.5A.4UK]~~ to this Regulation COBS 11.5A.4R to the extent they are applicable to the order or decision to deal in question.
- (2) ~~Where the details set out in Section 1 of Annex IV to this Regulation COBS 11.5A.4R are also prescribed in requirements imposed by or 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 in requirements imposed by or under Articles 25 and 26 of Regulation No (EU) 600/2014.~~

Record keeping in relation to transactions and order processing

- 11.5A.3 ~~UK~~ R (1) ~~75 Investment firms shall~~ A firm must, 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~~ *FCA* at least the details set out in ~~Section 2 of Annex IV [reproduced below at COBS 11.5A.5UK]~~ COBS 11.5A.5R.
- (2) ~~Where the details set out in Section 2 of Annex IV COBS 11.5A.5R are also prescribed in requirements imposed by or under Articles 25 and 26 of Regulation No (EU) 600/2014, they shall~~

must be maintained in a consistent way and according to the same standards prescribed in requirements imposed by or under Articles 25 and 26 of Regulation (EU) No 600/2014.

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

- 11.5A.4 UK ~~Annex IV Section 1 of the MiFID Org Regulation makes provision for record keeping of client orders and decisions to deal. The minimum details to be recorded in accordance with COBS 11.5A.2R are as follows:~~
R Annex IV Section 1 of the MiFID Org Regulation makes provision for record keeping of client orders and decisions to deal. The minimum details to be recorded in accordance with COBS 11.5A.2R are as follows:
1. Name and designation of the ~~client~~ client
 2. Name and designation of any ~~relevant person~~ relevant person acting on behalf of the ~~client~~ client
 3. A designation to identify the trader (Trader ID) responsible within the ~~investment firm~~ firm for the investment decision
 4. A designation to identify the algorithm (Algo ID) responsible within the ~~investment firm~~ firm for the investment decision;
 - ...
 15. Any other details, conditions and particular instructions from the ~~client~~ client
 16. The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured according to the methodology prescribed in ~~Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or technical standards made by the Financial Conduct Authority under paragraph 33 of Schedule 1 MiFID RTS 25.~~

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

- 11.5A.5 UK The minimum details to be recorded in accordance with COBS 11.5A.3R are as follows:
R
1. Name and designation of the ~~client~~ client
 2. Name and designation of any ~~relevant person~~ relevant person acting on behalf of the ~~client~~ client
 3. A designation to identify the trader (Trader ID) responsible within the ~~investment firm~~ firm for the investment decision

4. A designation to identify the Algo (Ago ID) responsible within the ~~investment firm~~ firm for the investment decision
- ...
8. A unique identification for each group of aggregated ~~clients'~~ clients' orders (which will be subsequently placed as one block order on a given trading venue). This identification should ~~indicated~~ indicate "aggregated_X" with X representing the number of ~~clients~~ clients whose orders have been aggregated
- ...
10. The name and other designation of the ~~person~~ person to whom the order was transmitted
- ...
32. The date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed in ~~Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3~~ MiFID RTS 25.
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~~ MiFID RTS 25 on clock synchronisation.
34. The date and exact time any message that is transmitted to and received from another investment firm in relation to events affecting an order. The exact time must be measured according to the methodology prescribed in ~~Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3~~ MiFID RTS 25.
35. Any message that is transmitted to and received from the trading venue in relation to orders placed by the ~~investment firm~~ firm
36. Any other details and conditions that was submitted to and received from another ~~investment firm~~ firm in relation with the order

...

...

11.7 Personal account dealing

...

Rule on personal account dealing

...

11.7.2 R For the purposes of this section, the relevant provisions are:

- (1) ~~the rules article 37(2)(a) and (b) of the MiFID Org Regulation on personal transactions undertaken by financial analysts copied out in COBS 12.2.21EU which apply as rules as a result of COBS 12.2.15R~~ COBS 12.2.21R(1)(a) and (b); and
- (2) ~~article 67(3) of the MiFID Org Regulation on the misuse of information relating to pending client orders copied out in COBS 11.3.5AEU which applies as a rule as a result of COBS 11.3.1AR~~ COBS 11.3.5AR.

...

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

Application

...

- 11.7A.2 R
- (1) ~~Subject to (2), in this chapter provisions marked “UK” apply to a firm in relation to its equivalent third country or optional exemption business as if they were rules. [deleted]~~
 - (2) ~~In this chapter section, provisions which derive from recitals to MiFID or the MiFID Org Regulation apply to a firm in relation to its business which is the equivalent business of a third country investment firm or MiFID optional exemption business as guidance. [deleted]~~
 - (3) The requirements in COBS 11.7A.5R do not apply in respect of 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 units or shares, in UCITS or AIFs that are subject to supervision under the law of the UK 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.*

...

Scope of personal transactions

- 11.7A.4 UK ~~28 For the purposes of Article 29 and Article 37, a personal transaction shall be a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met:~~
- ~~(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 whom he has a family relationship, or with whom he has close links;~~
 - ~~(iii) a person in respect of whom the relevant person has a direct or indirect material interest in the outcome of the trade, other than obtaining a fee or commission for the execution of the trade. [deleted]~~~~

Requirements relating to personal transactions

- 11.7A.5 UK R (1) ~~29 (1) Investment firms shall ensure that relevant persons do~~ A *firm* must establish, implement and maintain adequate arrangements aimed at preventing the activities set out in paragraphs 2, 3 and 4 (2) to (4) in the case respect of any relevant person of its *relevant persons* who is are involved in activities that may give rise to a conflict of interest, or who has have access to inside information within the meaning of Article 7(1) of Regulation (EU) No 596/2014 *inside information* or to other confidential information relating to ~~clients~~ *clients* or transactions with, of or for, ~~clients~~ *clients*, by virtue of an activity carried out by him them on behalf of the firm *firm*.

- (2) ~~Investment firms shall~~ A firm must ensure that relevant persons ~~relevant persons~~ do not enter into a personal transaction ~~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~~ the Market Abuse Regulation;
 - (b) it involves the misuse or improper disclosure of ~~that~~ confidential information;
 - (c) it conflicts or is likely to conflict with an obligation of the ~~investment firm~~ firm under UK law on markets in financial instruments.
- (3) ~~Investment firms shall~~ A firm must ensure that relevant persons ~~relevant persons~~ do not advise or recommend, other than in the proper course of employment or contract for services, any other person ~~person~~ to enter into a transaction in financial instruments ~~financial instruments~~ which, if it were a personal transaction ~~personal transaction~~ of the relevant person ~~relevant person~~, would be covered by ~~paragraph 2 or Article 37(2)(a) or (b) or Article 67(3)~~ COBS 12.2.21R(1)(a) or (b), COBS 11.3.5AR or COBS 11.7A.5R(2);
- (4) ~~Without prejudice~~ Subject to Article 10 (1) of Regulation (EU) No 596/2014 ~~the Market Abuse Regulation~~, investment firms shall a firm must ensure that relevant persons ~~relevant persons~~ do not disclose, other than in the normal course of his ~~their~~ employment or contract for services, any information or opinion to any other person ~~person~~ where the relevant person ~~relevant person~~ knows, or reasonably ought to know, that as a result of that disclosure that other person ~~person~~ will or would be likely to take either of the following steps:
- (a) to enter into a transaction in ~~financial instruments~~ financial instrument which, if it were a ~~personal transaction~~ personal transaction of the ~~relevant person~~ relevant person, would be covered by ~~paragraphs 2 or 3 or Article 37(2)(a) or (b) or Article 67(3)~~ COBS 12.2.21R(1)(a) or (b), COBS 11.3.5AR or COBS 11.7A.5R(2);
 - (b) to advise or procure another ~~person~~ person to enter into such a transaction.
- (5) ~~The Firms must design the~~ arrangements required under paragraph 1 ~~shall be designed~~ (1) in such a way to ensure that:

- (a) each ~~relevant person~~ *relevant person* covered by ~~paragraphs 1, 2, 3 and 4~~ *this rule* is aware of the restrictions on ~~personal transactions~~ *personal transactions*, and of the measures established by the ~~investment firm~~ *firm* in connection with ~~personal transactions~~ *personal transactions* and disclosure, ~~in accordance with paragraphs 1, 2, 3 and 4 under this rule~~;
 - (b) the ~~firm~~ *firm* is informed promptly of any ~~personal transaction~~ *personal transaction* entered into by a ~~relevant person~~ *relevant person*, either by notification of that transaction or by other procedures enabling the ~~firm~~ *firm* to identify such transactions;
 - (c) a record is kept of the ~~personal transaction~~ *personal transaction* notified to the ~~firm~~ *firm* or identified by it, including any authorisation or prohibition in connection with such a transaction.
- (5A) In the case of outsourcing arrangements, the ~~investment firm~~ shall *firm* must ensure that the ~~firm~~ *third party* to which the activity is outsourced maintains a record of ~~personal transactions~~ *personal transactions* entered into by any ~~relevant person~~ *relevant person* and provides that information to the ~~investment firm~~ *firm* promptly on request.
- (6) Paragraphs 1 to 5 shall not apply to the following personal transactions:
- (a) ~~personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed~~;
 - (b) ~~personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of the United Kingdom which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.~~
[deleted]

11.7A.6 R ...

[Note: recital 42 to the *MiFID Org Regulation*]

...

11A Underwriting and placing

11A.1 Underwriting and placing

General application

11A.1.1 R ...

- (2) Subject to (3), in this chapter provisions marked “UK” apply to the *equivalent business of a third country investment* as if they were *rules*. [deleted]
- (3) In this chapter, provisions which derive from recitals to *MiFID* or ~~the *MiFID-Orig-Regulation*~~ apply to the *equivalent business of a third country investment firm* as guidance.

Requirements to provide specific information to issuer clients

11A.1.2 UK ~~38 (1) Investment firms~~ *Firms* which provide advice on corporate finance strategy, as set out in Paragraph 3 of Part 3A of Schedule 2 to the ~~Regulated Activities Order~~ *Regulated Activities Order*, and provide the service of underwriting or placing of ~~financial instruments~~, shall *financial instruments must*, before accepting a mandate to manage the offering, have arrangements in place to inform the ~~issuer client~~ *issuer client* of the following:

- (a) the various financing alternatives available with the ~~firm~~ *firm*, and
(1) an indication of the amount of transaction fees associated with each alternative;
- (b) the timing and the process with regard to the corporate finance
(2) advice on pricing of the offer
- (c) the timing and the process with regard to the corporate finance
(3) advice on placing of the offering;
- (d) details of the targeted investors, to whom the ~~firm~~ *firm* intends to
(4) offer the ~~financial instruments~~ *financial instruments*;
- (e) the job titles and departments of the relevant individuals involved
(5) in the provision of corporate finance advice on the price and allotment of ~~financial instruments~~ *financial instruments*; and
- (f) (6) ~~firm's~~ *the firm's* arrangements to prevent or manage conflicts of interest that may arise where the ~~firm~~ *firm* places the relevant ~~financial instruments~~ *financial instruments* with its investment ~~clients of~~ *clients* or with its own proprietary book.

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

- 11A.1.3 UK (1) ~~38 (2) Investment firms shall~~ Firms must have in place a centralised process to identify all underwriting and placing operations of the ~~firm~~ firm and record such information, including the date on which the ~~firm~~ firm was informed of potential underwriting and placing operations. ~~Firms shall~~ Firms must identify all potential conflicts of interest arising from other activities of the ~~investment firm~~ firm, or ~~group~~ group, and implement appropriate management procedures. In cases where ~~an investment firm~~ a firm cannot manage a conflict of interest by way of implementing appropriate procedures, the ~~investment firm shall~~ firm must not engage in the operation.
- (2) ~~Investment firms~~ Firms providing execution and research services as well as carrying out underwriting and placing activities ~~shall~~ must ensure adequate controls are in place to manage any potential conflicts of interest between these activities and between their different ~~clients~~ clients receiving those services.

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

- 11A.1.4 UK ~~39 (1) Investment firms shall~~ Firms must 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~~ firms must 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~~ clients or ~~firm's~~ firm's own interests, in a way that may conflict with the ~~issuer client's~~ issuer client's interests; and
- (b) the prevention or management of a situation where persons responsible for providing services to the ~~firm's~~ firm's investment ~~clients~~ clients are directly involved in decisions about corporate finance advice on pricing to the ~~issuer client~~ issuer client.

...

Further requirements concerning the provision of information

- 11A.1.5 UK ~~39 (2) Investment firms shall~~ Firms must provide ~~clients~~ 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~~ firm must inform and engage with the ~~issuer client~~ 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 client's~~ issuer client's interests. During the offering process, ~~firms shall~~ firms must

also take all reasonable steps to keep the ~~issuer-client~~ *issuer client* informed about developments with respect to the pricing of the issue.

- 11A.1.6 UK (1) ~~40(1) Investment firms~~ *Firms* placing ~~financial instruments~~ *financial instruments* shall ~~shall~~ establish, implement and maintain effective arrangements to prevent recommendations on placing from being inappropriately influenced by any existing or future relationships.
- R
- (2) ~~Investment firms shall~~ *Firms* must 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~~ *firm's* investment ~~clients~~ *clients* are directly involved in decisions about recommendations to the ~~issuer-client~~ *issuer client* on allocation.
- (3) ~~Investment firms shall~~ *Firms* must not accept any third-party payments or benefits unless such payments or benefits comply with ~~rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 which were relied on before IP completion day to implement requirements laid down in Article 24 of Directive 2014/65/EU~~ relevant applicable requirements in COBS 2.3A and COBS 6.2B.11R. In particular, the following practices ~~shall~~ will be considered not compliant with those requirements and ~~shall~~ will 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~~ *firm* ('laddering'), such as disproportionately high fees or commissions paid by an investment ~~client~~ *client*, or disproportionately high volumes of business at normal levels of commission provided by the investment ~~client~~ *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~~ *issuer client*, in consideration for the future or past award of corporate finance business ('spinning'); and
- (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~~ *firm* by an investment ~~client~~ *client*, or any entity of which the investor is a corporate officer.
- (4) ~~Investment firms shall~~ *A firm* must establish, implement and maintain an allocation policy that sets out the process for developing allocation recommendations. The allocation policy ~~shall~~ must be provided to the ~~issuer-client~~ *issuer client* before

agreeing to undertake any placing services. The policy ~~shall~~ must set out relevant information that is available at that stage, about the proposed allocation methodology for the issue.

- (5) ~~Investment firms shall~~ A firm must involve the ~~issuer client~~ issuer client in discussions about the placing process in order for the ~~firm~~ firm to be able to understand and take into account the ~~client's~~ client's interests and objectives. The ~~investment firm shall~~ firm must obtain the ~~issuer client's~~ issuer client's agreement to its proposed allocation per type of ~~client~~ client for the transaction in accordance with the allocation policy.

11A.1.7 UK (1)
R

~~41 (1) Investment firms shall~~ Firms must have in place systems, controls and procedures to identify and manage the conflicts of interest that arise when providing ~~investment services~~ investment services to an investment ~~client~~ client to participate in a new issue, where the ~~investment firm~~ 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~~ must comply with the ~~relevant applicable~~ requirements in [~~COBS 2.3A.5R to COBS 2.3A.7E, COBS 2.3A.15R, COBS 2.3A.16R, COBS 2.3A.19R~~ COBS 2.3A and COBS 6.2B.11R] and be documented in the ~~investment firm's~~ firm's conflicts of interest policies and reflected in the ~~firm's~~ firm's inducements arrangements.

- (2) ~~Investment firms~~ Firms engaging in the placement of ~~financial instruments~~ financial instruments issued by themselves or by entities within the same ~~group~~ group, to their own ~~clients~~ clients, including their existing depositor clients in the case of credit institutions, or investment funds managed by entities of their ~~group~~ group, ~~shall~~ must 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~~ must 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~~ clients.
- (3) When disclosure of conflicts of interest is required, ~~investment firms~~ firms ~~shall~~ must comply with the requirements in ~~Article 34(4) SYSC 10.1.812ER~~, 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~~ clients to make an informed investment decision.
- (4) ~~Investment firms~~ Firms which offer ~~financial instruments issued~~ financial instruments that are issued by themselves or other ~~group~~ group entities to their ~~clients~~ clients and that are included in the

calculation of prudential requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council¹, the law of the United Kingdom or any part of the United Kingdom (“UK law”) which was relied on before IP completion day to implement the Prudential sourcebook for MiFID Investment Firms (*MIFIDPRU*), the *UK CRR*, 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 or the *PRA* and *FCA rules* implementing the *RRD*, shall ~~must~~ provide those ~~clients~~ *clients* with additional information explaining the differences between the ~~financial instrument~~ *financial instrument* and bank deposits in terms of yield, risk, liquidity and any protection provided in accordance with UK law which was relied on before IP completion day to implement Directive 2014/49/EU of the European Parliament and of the Council the *PRA rules* implementing the *DGSD*.

¹Regulation (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)

²Directive 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)

³Directive 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)

Further requirements in relation to lending on provision of credit in the context of underwriting or placement

- 11A.1.8 ~~UK~~ (1) ~~42(1)~~ Where any previous lending or credit to the ~~issuer client~~ *issuer client* by an investment firm ~~a firm~~, or an entity within the same ~~group~~ *group*, may be repaid with the proceeds of an issue, the investment firm shall ~~firm~~ *firm* ~~must~~ 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~~ issuer client would be prevented, ~~investment firms shall~~ firms must disclose to the ~~issuer client~~ issuer client the specific conflicts of interest that have arisen in relation to their, or ~~group~~ group entities', activities in a capacity of credit provider, and their activities related to the securities offering.
- (3) ~~Investment firms'~~ Firms' conflict of interest policy ~~shall~~ must require the sharing of information about the ~~issuer's~~ issuer's financial situation with ~~group~~ group entities acting as credit providers, provided this would not breach information barriers set up by the ~~firm~~ firm to protect the interests of a ~~client~~ client.

Record keeping requirements in relation to underwriting or placing

- 11A.1.9 ~~UK~~ R ~~Investment firms shall~~ Firms must keep records of the content and timing of instructions received from ~~clients~~ clients. A record of the allocation decisions taken for each operation ~~shall~~ must be kept to provide for a complete audit trail between the movements registered in ~~clients'~~ clients' accounts and the instructions received by the ~~investment firm~~ firm. In particular, the final allocation made to each investment ~~client~~ client ~~shall~~ must be clearly justified and recorded. The complete audit trail of the material steps in the underwriting and placing process ~~shall~~ must be made available to ~~competent authorities~~ the FCA upon request.

...

12 Investment research

...

12.2 Investment research and non-independent research

Application

- 12.2.14 ~~G~~ R 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* (see COBS 12.2.19R to COBS 12.2.21AG); or
 - (2) produces or disseminates *non-independent research* (see COBS 12.2.18R to COBS 12.2.18BG).
- 12.2.14A G The concept of dissemination of *investment research* to *clients* or the public does not include dissemination exclusively to *persons* within the *group* of the *firm*.

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 “UK” shall apply as if they were *rules*, other than those that copy out recitals, which shall apply as if they were *guidance*. [deleted]~~

- 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*. [deleted]~~

Investment research and non-independent research

12.2.17 UK ~~36(1) For the purposes of Article 37 investment research shall be research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:~~

- (a) ~~the research or information is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;~~
- (b) ~~if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of UK law on markets in financial instruments. [deleted]~~

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

- 12.2.18 UK (1) ~~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 A firm which produces or disseminates *non-independent research* must:~~
- R (a) ~~treat it as a marketing communication for the purposes of UK law on markets in financial instruments and investment firms that produce or disseminate that recommendation shall and ensure that it is clearly identified as such;~~

- (b) ~~Additionally, firms shall ensure that any such recommendation~~ the *non-independent research* 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 *investment research*, and that it is not subject to any prohibition on dealing ahead of the dissemination of ~~investment research~~ *investment research*.

Non-independent research – conflicts of interest

- 12.2.18A R A firm which produces or disseminates *non-independent research* must implement the measures set out in SYSC 10.1.12DR(2), in relation to the *relevant persons* involved in the production of the *non-independent research* and other *relevant persons* whose responsibilities or business interests may conflict with the interests of the *persons* to whom such research is disseminated.
- 12.2.18B G In relation to *non-independent research*, firms are reminded to consider their SYSC 10 obligations more generally and, in particular, whether conflicts arise in relation to:
- (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) the preparation of *non-independent research* which is intended first for internal use by the firm and then for later publication to *clients*.

Conflicts of interest Investment research – conflicts of interest

- 12.2.19 UK (1) ~~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.~~

Subject to paragraph (2), 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, must implement the measures set out in SYSC 10.1.12DR(2), 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 such research is disseminated.

- (2) Paragraph (1) does not apply to a firm which disseminates investment research produced by another person to the public or to clients where the following conditions are met:

- (a) the person that produces the investment research is not a member of the group to which the firm belongs;
- (b) the firm does not substantially alter the recommendations within the investment research;
- (c) the firm does not present the investment research as having been produced by it; and
- (d) the firm verifies that the producer of the investment research is subject to requirements equivalent to those under this chapter in relation to the production of that research, or has established a policy setting such requirements.

12.2.19A G (1) The measures and arrangements adopted by the 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.

(2) The substantial alteration of investment research produced by a third party should be governed by the same requirements as the production of investment research.

12.2.20 G (1) Firms which produce, or arrange for the production of, investment research or non-independent research are also reminded of their obligations under SYSC 10 (Conflicts of interest).

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

(3) In relation to non-independent research, firms may wish to consider whether conflicts arise in relation to:

- (a) relevant persons trading in financial instruments that are the subject of non-independent research which they know the firm 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*. [deleted]~~

Measures and arrangements required for investment research

- 12.2.21 UK (1) R 37(2) Investment firms referred to in the first subparagraph of paragraph 1 shall A firm falling within COBS 12.2.19R(1) must have in place arrangements designed to ensure that the following conditions are satisfied:
- (a) ~~financial analysts~~ financial analysts and other ~~relevant persons~~ relevant persons do not undertake ~~personal transactions~~ personal transactions or trade, other than as ~~market makers~~ market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited ~~client~~ client order, on behalf of any other ~~person~~ person, including the ~~investment firm~~ firm, in ~~financial instruments~~ financial instruments to which ~~investment research~~ investment research relates, or in any related ~~financial instruments~~ financial instruments, with knowledge of the likely timing or content of that ~~investment research~~ investment research which is not publicly available or available to ~~clients~~ clients and cannot readily be inferred from information that is so available, until the recipients of the ~~investment research~~ investment research have had a reasonable opportunity to act on it;
- (b) in circumstances not covered by ~~point (a)~~ paragraph (1)(a), ~~financial analysts~~ financial analysts and any other ~~relevant persons~~ relevant persons involved in the production of ~~investment research~~ investment research do not undertake ~~personal transactions~~ personal transactions in ~~financial instruments~~ financial instruments to which the ~~investment research~~ investment research relates, or in any related ~~financial instruments~~ financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the ~~firm's~~ firm's legal or compliance function;
- (c) a physical separation exists between the ~~financial analysts~~ financial analysts involved in the production of ~~investment research~~ investment research and other ~~relevant persons~~ relevant persons whose responsibilities or business interests may conflict with the interests of the ~~persons~~ persons to whom the ~~investment research~~ investment research is disseminated or, when considered not appropriate to the

size and organisation of the ~~firm~~ 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~~ firm itself, ~~financial analysts~~ financial analysts, and other ~~relevant persons~~ relevant persons involved in the production of the ~~investment research~~ investment research do not accept inducements from those with a material interest in the subject-matter of the ~~investment research~~ investment research;
- (e) the ~~investment firms themselves~~ firm itself, ~~financial analysts~~ financial analysts, and other ~~relevant persons~~ relevant persons involved in the production of the ~~investment research~~ investment research do not promise ~~issuers~~ issuers favourable research coverage;
- (f) before the dissemination of ~~investment research~~ investment research to ~~issuers~~ issuers, where the ~~draft~~ draft includes a recommendation or target price, no ~~person~~ person, other than ~~financial analysts~~ financial analysts, and any other persons are not permitted to review a draft of the ~~investment research~~ investment research except 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~~ firm's legal obligations, where the ~~draft~~ draft includes a recommendation or a target price.

- (2) For the purposes of ~~this paragraph (1)(a) and (b)~~, 'related ~~financial instrument~~ financial instrument' shall be ~~means~~ means any ~~financial instrument~~ financial instrument the price of which is closely affected by price movements in another ~~financial instrument~~ financial instrument which is the subject of ~~investment research~~ investment research, and includes a ~~derivative~~ derivative on that other ~~financial instrument~~ financial instrument.

Recital 53

~~Exceptional circumstances in which financial analysts and other persons connected with the investment firm who are involved in the production of investment research may, with prior written approval, undertake personal transactions in instruments to which the research relates should include those circumstances where, for personal reasons relating to financial hardship, the financial analyst or other person is required to liquidate a position.~~

Recital 54

Fees, commissions, monetary or non-monetary benefits received by the firm providing investment research from any third party should only be acceptable when they are provided in accordance with requirements specified in Article 24(9) of Directive 2014/65/EU and Article 13 of Commission Delegated Directive (EU) 2017 / 593.

Recital 56

Financial analysts should not engage in activities other than the preparation of investment research where engaging in such activities are inconsistent with the maintenance of that person's objectivity. These include participating in investment banking activities such as corporate finance business and underwriting, participating in 'pitches' for new business or 'road shows' for new issues of financial instruments; or being otherwise involved in the preparation of issuer marketing.

- 12.2.21A G (1) The phrase "participating in 'pitches' for new business" in Recital 56 to the *MiFID Org Regulation* would generally include a *financial analyst* interacting with an *issuer* to whom the *firm* is proposing to provide underwriting or placing services (including the *issuer's* representatives outside of the *firm* and any *person* who has an ownership interest in the *issuer*), until both:
- (a) the *firm* that employs the *financial analyst* has agreed to carry on regulated activities that amount to underwriting or placing services for the *issuer*; and
 - (b) the extent of the *firm's* obligations to provide underwriting or placing services to the *issuer* as compared to the underwriting or placing services of any other *firm* that is appointed by the *issuer* for the same offering is confirmed in writing between the *firm* and *issuer*.
- (2) (a) It may nevertheless be possible, in limited circumstances, for a *financial analyst's* interactions with any such *person* referred to under paragraph (1) to be entirely separate from the *firm's* 'pitches' such that the risk to their objectivity being impaired would be reasonably low.
- (b) However, the *FCA* considers that would not be the case where the analyst is aware of the 'pitches', or may have reason to believe that the *firm* is conducting the 'pitches'.
- (3) In any case a *firm* should recognise that any situation in which there is a connection between its 'pitches' and a *person* with whom

~~its *financial analyst* interacts can give rise to a conflict of interest (see SYSC 10 (Conflicts of interest) and the relevant provisions of the *MiFID Org Regulation*). [deleted]~~

- 12.2.21B G (1) For the purposes of COBS 12.2.21R(1)(b):
- (a) exceptional circumstances in which *financial analysts* and other *persons* connected with the *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; and
 - (b) current recommendations should be considered to be those contained in *investment research* which have not been withdrawn and which have not lapsed.
- (2) For the purposes of COBS 12.2.21R(1)(c), *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*.
- (3) For the purposes of COBS 12.2.21R(1)(d), fees, commissions and 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 COBS 2.3A.
- 12.2.21C G (1) *Financial analysts* should not engage in activities other than the preparation of *investment research* where engaging in such activities is inconsistent with the maintenance of their 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.
- (2) ‘Participating in ‘pitches’ for new business’ would generally include a *financial analyst* interacting with an *issuer* to whom the *firm* is proposing to provide underwriting or placing services (including the *issuer*’s representatives outside of the *firm* and any *person* who has an ownership interest in the *issuer*), until both:

- (a) the firm that employs the financial analyst has agreed to carry on regulated activities that amount to underwriting or placing services for the issuer; and
- (b) the extent of the firm's obligations to provide underwriting or placing services to the issuer as compared to the underwriting or placing services of any other firm that is appointed by the issuer for the same offering is confirmed in writing between the firm and issuer.
- (3) It may nevertheless be possible, in limited circumstances, for a financial analyst's interactions with any such person referred to under paragraph (5) to be entirely separate from the firm's 'pitches' such that the risk to their objectivity being impaired would be reasonably low.
- (4) However, the FCA considers that would not be the case where the analyst is aware of the 'pitches', or may have reason to believe that the firm is conducting the 'pitches'.
- (5) In any case, a firm should recognise that any situation in which there is a connection between its 'pitches' and a person with whom its financial analyst interacts can give rise to a conflict of interest (see SYSC 10 (Conflicts of interest)).

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

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

...

12.2.24 G ...

12.2.25 R A firm subject to COBS 12 must retain the records it is required to make under these rules.

...

13 Preparing product information

...

13.2 Product information: production standards, form and contents

13.2.1 ...

~~[Note: article 29(4) of the MiFID implementing Directive]~~

...

13.4 Contents of a key features illustration

...

Exceptions

...

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~~ it should:

- (1) ~~Comply~~ comply with the requirements in this section unless the *projection* relates to an investment that is a *financial instrument*; or
- (2) ~~Where~~ where the *projection* relates to a *financial instrument*, ~~the firm should~~ comply with either:
 - (a) the requirements in ~~article 44(6) of the MiFID-Orig Regulation (see COBS 4.5A.14UK)~~ COBS 4.5A.14R 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

...

Projections: other situations

...

- 13.5.2B G Where a *firm* communicates a *projection* for a *packaged product* that is a *financial instrument*, the following future performance requirements are likely to apply:
- (1) ~~article 44(6) of the MiFID Org Regulation (see COBS 4.5A.14UK)~~ COBS 4.5A.14R where the *firm* is carrying on *MiFID*, *equivalent third country* or *optional exemption business*; or
 - (2) *COBS 4.6.7R* where the *firm* is not carrying on *MiFID*, *equivalent third country* or *optional exemption business*.

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

- 13.5.3 R A *firm* that communicates a *projection* of benefits for a *packaged product* which is not a *financial instrument*, as part of a combined *projection* where other benefits being projected include those for a *financial instrument* or *structured deposit*, is not required to comply with the projection rules in *COBS 13.4*, *COBS 13.5* and *COBS 13 Annex 2* to the extent that the combined *projection* complies with the future performance requirements in either:
- (1) ~~article 44(6) of the MiFID Org Regulation (see COBS 4.5A.14UK)~~ COBS 4.5A.14R 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 *COBS 4.6.7R*, or, if applicable, ~~the requirement in article 44(6) of the MiFID Org Regulation (see COBS 4.5A.14UK)~~ COBS 4.5A.14R, will need to explain how the combined *projection* differs from other information that has been or could be provided to the ~~client~~ *client*, including a *projection* provided under the *projection rules* in *COBS 13.4*, *COBS 13.5* and *COBS 13 Annex 2*. In particular, the *firm* should identify where a *projection* in real terms is required under *COBS 13*.

...

14 Providing product information to clients

...

14.3 Information about designated investments (non-MiFID provisions)

Application

- 14.3.1 R (2) ...

- (3) ~~Where a *rule* in this chapter applies to a *firm* which is *arranging* (bringing about) or *executing a deal* in a *speculative illiquid security*, the *rule* also applies to:~~
- ~~(a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of *GEN 2.2.26R*); and~~
 - ~~(b) a Gibraltar-based firm (having the same meaning as in the *Gibraltar Order*) to the extent that the *rule* does not already apply to such a Gibraltar-based firm as a result of *GEN 2.3.1R*.
[deleted]~~

[*Editor's note*: The application of this sourcebook to TP firms and Gibraltar-based firms is now addressed in COBS 1 Annex 2.]

- 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)) apply.

...

14.3A Information about financial instruments (MiFID provisions)

Application

- 14.3A.1 R ...

- 14.3A.1 G Certain provisions in this section require *firms* to provide *clients* with information 'in good time'. *Guidance* on the provision of information 'in good time' can be found in COBS 1.4.2G.

Effect of provisions marked "UK" for third country investment firms and MiFID optional exemption firms

- 14.3A.2 R Provisions in this section marked "UK" apply in relation to *MiFID optional exemption business* as if they were *rules* (see COBS 1.2.2G). [deleted]

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

Providing a description of the nature and risks of financial instruments

...

- 14.3A.5 UK (1) 48(1) Investment firms shall A *firm* must provide clients or potential clients in good time before the provision of investment services or ancillary services to clients or potential clients a *client* with a general description of the nature and risks of financial instruments *financial instruments*, taking into account, in particular, the client's *client's* categorisation as either a retail client

~~retail client, professional client~~ *professional client* or eligible counterparty *eligible counterparty*.

(2) ~~That~~ The description in (1) shall ~~must~~ explain, in sufficient detail to enable the *client* to take investment decisions on an informed basis:

- (a) the nature of the specific type of ~~instrument~~ *financial instrument* concerned;
- (b) the functioning and performance of the ~~financial instrument~~ *financial instrument* in different market conditions, including both positive and negative conditions; ~~and~~
- (c) ~~as well as~~ the risks particular to that specific type of ~~instrument~~ *financial instrument* ~~in sufficient detail to enable the client to take investment decisions on an informed basis.~~

(3) ~~48(2) The description of risks referred to in paragraph 1 shall include, where~~ Where relevant to the specific type of ~~instrument~~ *financial instrument* concerned and the status and level of knowledge of the ~~client~~ *client*, the following elements description of the risks in (1) must include:

- (a) the risks associated with that type of ~~financial instrument~~ *financial instrument*, including an explanation of leverage and its effects; ~~and~~
- (aa) 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 any impediments to, or restrictions for on, ~~disinvestment, for example (which as may, for example, be the case for relevant to illiquid financial instruments~~ *financial instruments* or ~~financial instruments~~ *financial instruments* with a fixed investment term), including. This must include:
 - (i) an illustration of the possible exit methods and consequences of any exit;
 - (ii) possible constraints on the sale of such instruments; and
 - (iii) the estimated time frame for the sale of ~~the financial instrument~~ such instruments 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; and
- (e) any margin requirements or similar obligations, applicable to instruments of that type.

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

~~48(4) Where a financial instrument is composed of two or more different financial instruments or services, the investment firm shall provide an adequate description of the legal nature of the financial instrument, the components of that instrument and the way in which the interaction between the components affects the risks of the investment.~~

~~48(5) In the case of financial instruments that incorporate a guarantee or capital protection, the investment firm shall provide a client or a potential client with information about the scope and nature of such guarantee or capital protection. When the guarantee is provided by a third party, information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the client or potential client to make a fair assessment of the guarantee.~~

~~[Note: article 48 of the MiFID Org Regulation]~~

14.3A.5 R If a firm provides a retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the Prospectus Regulation, that firm must inform the client where that prospectus is made available to the public.
A

14.3A.5 R Where a financial instrument is composed of 2 or more different financial instruments or services, a firm must provide an adequate description of:
B
(1) the legal nature of that financial instrument;
(2) the components of that financial instrument; and

(3) the way in which the interaction between the components affects the risks of the investment.

14.3A.5 R (1) Where a *financial instrument* incorporates a guarantee or capital protection, a *firm* must provide the *client* with information about the scope and nature of that guarantee or capital protection.

(2) When the guarantee is provided by a third party, the information in (1) must include sufficient detail about the guarantor and the guarantee to enable the *client* to make a fair assessment of the guarantee.

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*]

...

Timing of disclosure

~~14.3A.7 UK R Subject to paragraph 2A, investment firms~~ A *firm* must, provide the information required by this section in good time before the provision of investment services *firm provides investment services* or ancillary services *ancillary services* to clients or potential clients, to provide the information required under Articles 47 to 50 a *client*.

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

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

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

~~(i) electronic format; or~~

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

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

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

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

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

Medium of disclosure

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

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

Keeping the client up-to-date

- 14.3A.10 ~~UK~~ R (1) ~~46(4) Investment firms shall~~ A firm must notify a client client in good time about any material change to the information provided under ~~Articles 47 to 50~~ the rules in this section which is relevant to a service that the ~~firm~~ firm is providing to that ~~client~~ client.
- (2) ~~That~~ The notification shall ~~in (1) must~~ be given in a ~~durable medium~~ durable medium if the information to which it relates is ~~was given in a durable medium~~ durable medium.

~~[Note: article 46(4) of the MiFID Org Regulation]~~

Information provided in relation to units in collective investment undertakings or PRIIPs

[Editor's note: Articles 50 and 51 of the MiFID Org Reg are being preserved without changes. They will be addressed as part of FCA's separate work on the replacement of the disclosure regime for certain investment products.]

- 14.3A.11 ~~UK~~ ...
R

~~[Note: article 51 of the MiFID Org Regulation]~~

Record keeping

14.3A.12 G A firm to which SYSC 9 applies is required to keep records of all services, activities and transactions undertaken by it.

14.3A.13 R In complying with the requirements in SYSC 9, a firm to which those rules apply must keep a record of the information provided to each client in compliance with the rules in this section applicable to MiFID, equivalent third country and optional exemption business.

...

14 **Lifetime ISA information**
Annex 1

	This Annex belongs to COBS 13.3.1R(3) and COBS 14.2.1R(4A).		
	Information which comprises the following:		
...			
4	Projections		
4.1	R	Where a <i>firm</i> chooses to provide a <i>projection</i> , including a <i>personal projection</i> , in relation to investing in a <i>lifetime ISA</i> 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 <i>firm</i> must ensure that:	
		...	
		(2)	where a <i>firm</i> that communicates a <i>projection</i> for a <i>lifetime ISA</i> in relation to its <i>MiFID or equivalent third country business</i> , the <i>projection</i> complies with the future performance requirements in article 44(6) of the MiFID Org Regulation (see COBS 4.5A.14UK) <u>COBS 4.5A.14R</u> ; and
		...	
...			

...

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

16A.1 **Application**

...

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

16A.1.2 R ~~Provisions in this chapter marked “UK” and including a Note (‘Note:’) referring to the *MiFID Org Regulation* apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*). [deleted]~~

16A.1.2A G ~~The effect of *GEN 2.2.22AR* is that provisions in this chapter marked “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*. [deleted]~~

16A.2 General client reporting and record keeping requirements

...

16A.2.2 G ...

16A.2.3 G *A firm to which SYSC 9 applies is required to keep records of all services, activities and transactions undertaken by it.*

16A.2.4 R *In complying with the requirements in SYSC 9, a firm to which those rules apply must keep a record of each report provided to a client in compliance with the rules in this chapter applicable to MiFID, equivalent third country and optional exemption business.*

16A.3 Occasional reporting: MiFID business

Execution of orders other than when undertaking portfolio management

- 16A.3.1 UK (1) ~~59(1) Investment firms having~~ If a firm has carried out an order on behalf of a *retail client* *retail client* or a *professional client* *professional client*, other than for portfolio management, shall, in respect of that order it must:
- R
- (a) promptly provide the ~~retail client or professional client, as applicable~~ *client*, in a ~~durable medium~~ *durable medium*, with the essential information concerning the execution of that order;
 - (b) in the case of a *retail client*, send a notice to a *retail client* the *client* a notice in a ~~durable medium~~ *durable medium* confirming execution of the order:
 - (i) as soon as possible and no later than the first ~~business day~~ *business day* following execution; or;
 - (ii) ~~where if~~ if the confirmation is received by the ~~investment firm~~ *firm* from a third party, no later than the first ~~business day~~ *business day* following receipt of the confirmation from the third party; and
 - (c) supply the *client*, on request, with information about the status of their order.

- (2) Paragraph (1) does not apply to a firm providing a portfolio management service.
- (3) Point (b) shall Paragraph (1)(b) does not apply where if the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client client by another person person.
- (4) Points (a) and (b) shall Paragraphs (1)(a) and (b) do not apply where orders to an order executed on behalf of clients relate a client that relates to bonds a bond funding a mortgage loan agreements agreement with the said clients, in which case the client. The report on the transaction shall must be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.

~~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.~~

- (5) 59(3) In the case of retail client orders If a firm carries out an order for a retail client relating to units units or shares shares in a collective investment undertaking which is part of a series of orders that are executed periodically, investment firms shall it must:
- (a) either take the action specified in point (b) of paragraph 1 comply with paragraph 1(b) in relation to that order; or
- (b) provide the retail client client, at least once every six months, with the information listed in paragraph 4 (6) in respect of those transactions.
- (6) 59(4) The notice referred to in point (b) of paragraph 1 shall required by (1)(b) must include such of the following information as is applicable and, where if relevant, in accordance with the regulatory technical standards on reporting obligations adopted in accordance with Article 26 of Regulation (EU) No 600/2014 MiFID RTS 22:
- (a) the reporting firm firm identification;
- (b) the name or other designation of the retail client client;
- ...
- (m) a total sum of the commissions and expenses charged and, where the retail client client so requests, an itemised breakdown including, where relevant, the amount of any mark-up or mark-down mark-up or mark-down imposed by the firm where the firm acted as principal in executing the transaction was executed by an investment firm when dealing

~~on own account, and the investment firm *firm* owes a duty of best execution to the retail client *client*;~~

...

(o) ~~the retail client's *client's* responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the retail client *client*; and~~

(p) ~~where the retail client's *if the client's* counterparty was the investment firm *firm* itself or any person *person* in the investment firm's group *firm's group* or another retail client *client* of the investment firm *firm*, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.~~

(7) For the purposes of ~~point (k)~~ calculating the unit price in paragraph (6)(k), where the order is executed in tranches, the investment firm *firm* may supply the retail client *retail client* with information about the price of each tranche or the average price. ~~Where~~ If the average price is provided, the investment firm *firm* ~~shall~~ must supply the retail client *retail client* with information about the price of each tranche upon request.

(8) ~~59(5)~~ The investment firm *firm* may provide the retail client *retail client* with the information referred to in paragraph 4 ~~(6)~~ using standard codes if it also provides an explanation of the codes used.

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

...

~~Reporting obligations in respect of eligible counterparties~~

16A.3.5 UK ~~61 The requirements in articles 46 to 51 and 59 do not apply to services provided to eligible counterparties. [deleted]~~

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

[Editor's note: Article 61 of the MiFID Org Reg is now incorporated in the table modifying the application of COBS to eligible counterparty business in COBS 1 Annex 1, Part 1 1.1R.]

16A.4 Periodic reporting

Provision by a firm and contents: MiFID business

16A.4.1 UK (1) ~~60(1) Investments firms which provide the service of portfolio management to retail clients~~ If a firm is providing a portfolio

~~management service on behalf of a retail client or professional clients shall~~ professional client, it must provide each such client the client with a ~~periodic statement~~ periodic statement of the activities carried out on behalf of that client in a ~~durable medium of the portfolio management activities carried out on behalf of that client~~ durable medium, unless such a statement is provided by another ~~person~~ person.

- (2) ~~60(2)~~ The ~~periodic statement required under paragraph 1 shall~~ periodic statement must:
- (a) provide a fair and balanced review of the activities undertaken and of the performance of the client's portfolio during the reporting period; and
 - (b) ~~shall include, where relevant, the following information to retail clients~~ if the client is a retail client, include such of the following information as is applicable:
 - ~~(a)~~ (i) the name of the ~~investment firm~~ firm;
 - ~~(b)~~ (ii) the name or other designation of the ~~client's~~ client's account;
 - ~~(c)~~ (iii) a statement of the contents and the valuation of the portfolio, including details of:
 - ~~(A)~~ (A) each ~~financial instrument~~ financial instrument held, its market value, or fair value if market value is unavailable;
 - ~~(B)~~ (B) ~~and~~ the cash balance at the beginning and at the end of the reporting period; and
 - ~~(C)~~ (C) the performance of the portfolio during the reporting period;
 - ~~(d)~~ (iv) the total amount of ~~fees~~ fees and charges incurred during the reporting period, itemising at least total management ~~fees~~ fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;
 - ~~(e)~~ (v) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the ~~investment firm~~ firm and the ~~client~~ client;

- ~~(f)~~ (vi) the total amount of dividends, interest and other payments received during the reporting period in relation to the ~~client's~~ client's portfolio;
 - ~~(g)~~ (vii) information about other corporate actions giving rights in relation to ~~financial instruments~~ financial instruments held in the portfolio;
 - ~~(h)~~ (viii) for each transaction executed during the period, such of the information referred to in Article 59(4)(e) to (l) COBS 16A.3.1R(6)(c) to (l) where relevant as is applicable, unless the ~~client~~ client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case ~~paragraph 4 of this Article shall apply~~ (4) applies.
- (3) ~~60(3)~~ The periodic statement referred to in paragraph 1 shall periodic statement in paragraph (1) must be provided to ~~retail clients~~ a retail client once every three months, except in the following cases:
- (a) ~~where~~ if the investment firm firm:

 - (i) provides ~~its retail clients~~ the client with access to an online system, which qualifies as a ~~durable medium~~, durable medium, and provides the client with easy access to:

 - (A) ~~where~~ up-to-date valuations of the ~~client's~~ client's portfolio; ~~can be accessed and~~
 - (B) ~~where the client can easily access the information required by Article 63(2) specified in COBS 16A.5.1R(3); and~~
 - (ii) ~~the firm~~ has evidence that the ~~client~~ 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 the~~ periodic statement must be provided at least once every 12 months ~~if~~:

 - (i) the retail client elects to receive information about executed transactions on a transaction-by-transaction basis; and
 - (ii) there are no transactions in:

- (A) financial instruments covered by paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order; or
- (B) securities giving the right to acquire or sell a transferable security or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
- (c) ~~where if~~ the agreement between ~~an investment firm~~ the firm and ~~a retail client~~ the retail client for a ~~portfolio management service~~ portfolio management authorises a leveraged portfolio, the ~~periodic statement~~ periodic statement must be provided at least once a month.

~~The exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by Article 2(1)(24)(e) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order.~~

- (4) ~~60(4) Investment firms, in cases where the retail client~~ If a retail client elects to receive information about executed transactions on a transaction-by-transaction basis, ~~shall~~ the firm must:
 - (a) provide promptly to the ~~retail client~~ retail client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a ~~durable medium.~~ durable medium; and
 - (b) ~~The investment firm shall unless the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person,~~ send the ~~retail client~~ retail client a notice confirming the transaction and containing the information ~~referred to in Article 59(4) COBS 16A.3.1R(6):~~
 - (i) no later than the first ~~business day~~ business day following that execution; or,
 - (ii) ~~where if~~ the confirmation is received by the ~~investment firm~~ firm from a third party, no later than the first ~~business day~~ business day following receipt of the confirmation from the third party.

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

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

- 16A.4.2 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.4.1UK~~ COBS 16A.4.1R) to an agent, other than the *firm* or an associate of the *firm*, nominated by the *client* in writing.

...

[Editor's note: Article 62 of the MiFID Org Reg (copied out at COBS 16A.4.3UK has been repealed. The FCA has consulted separately on deleting COBS 16A.4.3UK in Quarterly Consultation Paper No. 44 (CP24/11).]

Guidance on contingent liability transactions

- 16A.4.4 G ...

~~[Note: recital 96 to the MiFID Org Regulation]~~

~~Guidance on contingent liability transactions~~

- 16A.4.5 G ...

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

- 16A.5.1 UK (1) ~~63(1) Investment firms~~ A firm that holds client financial instruments *financial instruments* or client funds shall *client money* for a *client* must send that *client*, at least on a quarterly basis, to each client for whom they hold financial instruments or funds, a statement in a durable medium *durable medium* of those financial instruments *financial instruments* or funds *client money*, unless:
- R
- (a) such a statement:
 - (i) has been provided in ~~any other periodic statement~~; a *periodic statement*; or
 - (ii) ~~Upon client request, firms shall~~ has been requested more frequently by a *client*, in which case the *firm* must provide such statement it more frequently at a commercial cost; or
 - (b) the *firm*:
 - (i) provides the *client* with access to an online system, which qualifies as a *durable medium*, where the *client* can easily access up-to-date statements of their *financial instruments* or *client money*; and
 - (ii) has evidence that the *client* has accessed an up-to-date statement at least once during the relevant quarter.

- (2) ~~The first subparagraph shall not apply to a credit institution that is a CRR firm as defined in Article 4(1)(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms~~ A UK credit institution need not send a statement in respect of deposits within the meaning of Article 2(1)(23A) of Regulation (EU) No 600/2014 held by that institution *MiFIR* held by it.
- (3) ~~63(2) The statement of client assets referred to in paragraph 1 shall~~ (1) must include the following information:
- (a) ~~details of all the financial instruments~~ *financial instruments* or ~~funds~~ *client money* held by the ~~investment firm~~ *firm* for the ~~client~~ *client* at the end of the period covered by the statement;
 - (b) the extent to which any ~~client financial instruments~~ *financial instruments* or ~~client funds~~ *client money* have been the subject of ~~securities financing transactions~~ *securities financing transactions*;
 - (c) the extent of any benefit that has accrued to the ~~client~~ *client* by virtue of participation in any ~~securities financing transactions~~ *securities financing transactions*, and the basis on which that benefit has accrued;
 - (d) a clear indication of the assets or ~~funds~~ *client money* which are subject to the ~~rules~~ *rules* of the UK law on markets in ~~financial instruments in CASS relating to MiFID business~~ and those that are not, such as those that are subject to ~~Title Transfer Collateral Agreement~~ *title transfer collateral arrangements* and excluded either from the ~~custody rules~~ *as a result of CASS 6.1.6R(3) or from the client money rules as a result of CASS 7.11.1R(4)*;
 - (e) a clear indication of which assets are affected by ~~some~~ *any* peculiarities in their ownership status, for instance due to a security interest; and
 - (f) the market or estimated value, when the market value is not available, of the ~~financial instruments~~ *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~~ *must* be performed by the ~~firm~~ *firm* on a best effort basis.
- (4) In cases where the portfolio of a ~~client~~ *client* includes the proceeds of one or more unsettled transactions, the information referred to in ~~point (a) (3)(a)~~ (3)(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.~~

- (5) ~~63(3) Investment firms A firm which hold financial instruments holds financial instruments or funds client money and which carry out the service of portfolio management provides a portfolio management service for a client client may include the statement of client assets referred to in paragraph 1 (1) in the periodic statement periodic statement it provides to that client client pursuant to Article 60(1).~~

~~[Note: article 63 of the *MiFID Org Regulation*]~~

...

18 Specialist Regimes

...

18.5 Residual CIS operators and small authorised UK AIFMs

...

General modifications

...

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*. [deleted]~~

...

18.5B UCITS management companies

...

General modifications

...

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).
[deleted]~~

...

18.8A OPS firms

...

Interpretation and general modifications

- 18.8A.2 R Where a *COBS rule* specified in this section applies to an *OPS firm*, the following modifications apply:
- (1) a reference to:
 - ...
 - (b) “*investment firm*” is to be construed as a reference to an *OPS firm*; and
 - (2) if an *OPS firm* is required by a *COBS rule* specified in this section to provide information to, or obtain consent from, a *client*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *occupational pension scheme* or *welfare trust* for whom that *firm* is acting; and
 - (3) ~~subject to the modifications in *COBS 18.8A.6 R*, *COBS 18.8A.15R(4)* and *COBS 18.8A.16R(4)*, *COBS 1.2.3R* (References in *COBS* to the MiFID Org Regulation) applies where a *COBS* provision marked “UK” applies to an *OPS firm*. [deleted]~~

...

Best execution

...

- 18.8A.14 R ~~The provisions in *COBS 11.2A* (Best execution – MiFID provisions) marked “UK” and *COBS 11 Annex 1UK* (Regulatory Technical Standard 28) apply to an *OPS firm* to which (1) applies as if they were *rules*.
[deleted]~~

Modification of best execution rules

18.8A.15 R ...

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

(a) the top five *investment firms* used by an *OPS firm* to execute *client* orders; and

(b) information on the quality of execution obtained,

applies in accordance with (3).

...

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

...

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

...

Client order handling

18.8A.16 R ...

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

...

...

Sch 1 Record keeping requirements

Sch 1.1 G

The aim of the *guidance* in the following table in *COBS Sch 1.3G* is to give the reader a quick overall view of the relevant record keeping requirements.

...

Sch 1.2A G (1) A MiFID investment firm, third country investment firm or MiFID optional exemption firm should refer to the requirements on record keeping in the ~~MiFID Org Regulation~~ this sourcebook 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 2.2A.7R</u>	<u>Information before providing services</u>	<u>Information provided to clients</u>		
...				
<u>COBS 2.3A.32R</u>	...	...	...	...
<u>COBS 2.3A.35</u>	<u>Inducements</u>	<u>Information provided to clients</u>		
...				
<u>COBS 4.11.5R</u>	...	...	...	...
<u>COBS 4.11A.3R</u>	<u>Communications to clients</u>	<u>Each communication to a client.</u> <u>Each marketing communication issued by the firm</u>		

		(<u>other than in oral form</u>).		
...				
<i>COBS</i> 4.12A.11R (5) <i>COBS</i> 4.12B.21R (5)	...	...	...	...
<u><i>COBS</i></u> 6.1ZA.25 R	<u>Information about the <i>firm</i> and compensation information (MiFID business)</u>	<u>Information provided to <i>clients</i> about the <i>firm</i> and compensation information</u>		
...				
<u><i>COBS</i></u> 6.2B.40B R	<u>Describing advice services</u>	<u>Information provided to <i>clients</i></u>		
...				
<i>COBS</i> 9A.4.1G	...	...	...	...
<u><i>COBS</i></u> 9A.4.2AR	<u>Suitability record (MiFID business)</u>	<u>Records of suitability assessments and information provided to <i>clients</i>; time /</u>		

		<u>date of advice provided; financial instrument recommended; suitability report</u>		
...				
COBS 10A.7.2U <u>COBS 10A.7.2R</u>	Appropriateness (MiFID provisions)	Records of appropriateness assessments including the results of such assessments and any warnings given to <i>clients</i>	Date of assessment	At least 5 years
COBS 10A.7.2AR	...	...	...	...
<u>COBS 11.3.15R</u>	<u>Client order handling – aggregated transactions, aggregation and allocation of transactions for own account</u>	<u>Records the firm is required to make under COBS 11.3.2AR to COBS 11.3.13G</u>		
COBS 11.5A.4U <u>COBS 11.5A.2R</u>	<i>Client orders</i>	Initial orders from <i>clients</i> and	Immediately	At least 5 years

		decisions to deal		
COBS 11.5A.5U COBS <u>11.5A.3R</u>	Client orders	Transactions and order processing	Immediately	At least 5 years
...				
COBS 11.7A.5U COBS <u>11.7A.5R</u>	Personal account dealing (MiFID provisions)	A record of any personal transaction notified or identified, including any authorisation or prohibition	Date of notification, identification or decision	At least 5 years
...				
COBS 11A.1.9U COBS <u>11A.1.9R</u>	Underwriting and placing	Content and timing of instructions received from clients and allocation decisions	Date of receipt of instructions or of allocation decision	5 years
<u>COBS</u> <u>12.2.25R</u>	<u>Investment research</u>	<u>Records the firm is required to make under COBS 12 (Investme</u>		

		nt Research)		
<u>COBS</u> 14.3A.13R	<u>Information</u> about <i>financial</i> <i>instruments</i> (MiFID business)	<u>Informati</u> <u>on</u> <u>provided</u> <u>to clients</u> <u>about</u> <u>financial</u> <u>instrumen</u> <u>ts</u>		
...				
<u>COBS</u> 16.3.11R	...	...	...	...
<u>COBS</u> 16A.2.4R	<u>Reporting</u> <u>information to</u> <u>clients (MiFID</u> <u>business)</u>	<u>Records</u> <u>of reports</u> <u>provided</u> <u>to clients</u>		
COBS 16A.3.1U COBS 16A.3.1R	Confirmation to <i>clients</i> (MiFID provisions)	A copy of a confirmati on	From date of despatch to <i>client</i>	At least 5 years
COBS 16A.4.1U COBS 16A.4.1R	<i>Periodic</i> <i>statements</i> (MiFID provisions)	A copy of a <i>periodic</i> <i>statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	At least 5 years
...				

...

Sch 5 Rights of action for damages

...

Sch 5.2 G

If a "Yes" appears in the column headed "For private person?", the rule may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of

the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section ~~150(2)~~ 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

...

Sch 5.4 G

			Right of action under section 138D			
Chapter/ Appendix	Section/ Annex	Paragraph	For private person?	Removed?	For other person?	
...						
<i>The fair, clear and not misleading rule</i>			Yes	In part (Note 1)	No	
<u>Any rule in COBS which imposes a requirement to keep a record for the purpose of complying with SYSC 9</u>			<u>No</u>	<u>Yes</u> <u>(COBS</u> <u>1.1.7R)</u>	<u>No</u>	
...						

Annex G

Amendments to Client Assets sourcebook (CASS)

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

3 Collateral

...

3.2 Requirements

Application

...

- 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 (Statements of client financial instruments or client funds) 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.

...

9 Information to clients

...

9.4 Information to clients concerning custody assets and client money

...

- 9.4.2A R (1) *Firms* to which COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions)) 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.3R~~ COBS 6.1ZA.9 R) to provide certain information to a *client* when the *firm* is holding the *client's financial instruments* or funds (see COBS 6.1ZA.9EUR) and the requirement under COBS 6.1ZA.10AR when a *firm* doing *insurance distribution activities* is holding *client money* and has elected to comply with the *client money chapter*.
- (2) ~~COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions))~~ applies to a *firm* in relation to its *MiFID, equivalent third country or*

optional exemption business or its insurance distribution activities 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~~ COBS 6.1ZA.9R 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*.

...

- 9.4.4 G (1) *Firms* are reminded of their obligation, under COBS 4.2.1R, to be fair, clear and not misleading in their communications with *clients*.
- (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~~ and COBS 4.5A (as applicable).

9.5 Reporting to clients on request

...

- 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 and COBS 16A.5.1R 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.

...

- 9.5.4A R (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)~~ COBS 16A.5.1R in relation to quarterly statements when the *firm* is holding a *client's financial instruments* or ~~funds~~ *client money* (see COBS 16A.4.1EUR and COBS 16A.5.1EUR).

...

...

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*~~ *COBS* 16A.5.1R(1)(a)(ii).

...

9.5.9 G *Firms* are reminded that under *CASS* 3.2.4G *firms* that enter into arrangements with *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*~~ *COBS* 16A.5.1R or *COBS* 16A.4 (as applicable) or this section the details of the assets which form the basis of that collateral arrangement.

Annex H

Amendments to the Market Conduct sourcebook (MAR)

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

Insert the following Annex, MAR 1 Annex 3R, after MAR 1 Annex 2UK (Accepted Market Practices). The text is not underlined.

1 Requirement for operators of trading venues to inform the FCA immediately Annex 3R

1	Signals that may indicate significant infringements of the rules of a trading venue or disorderly trading conditions or system disruptions in relation to a financial instrument	
	Significant infringements of the rules of a trading venue	
	(1)	Market participants infringe rules of the <i>trading venue</i> which aim to protect the market integrity, the orderly functioning of the market or the significant interests of the other market participants.
	(2)	A <i>trading venue</i> considers that an infringement is of sufficient severity or impact to justify consideration of disciplinary action.
	Disorderly trading conditions	
	(3)	The price discovery process is interfered with over a significant period of time.
	(4)	The capacities of the trading system are reached or exceeded.
	(5)	<i>Market makers</i> or liquidity providers repeatedly claim mis-trades.
	(6)	Breakdown or failure of critical mechanisms under paragraphs 3 to 3F of the Schedule to the <i>Recognition Requirements Regulations</i> , and <i>MAR 5.3A</i> and <i>MAR 5.5A</i> , which are designed to protect the <i>trading venue</i> against the risks of <i>algorithmic trading</i> .
	System disruptions	
	(7)	Any major malfunction or breakdown of the system for market access that results in participants losing their ability to enter, adjust or cancel their orders.
	(8)	Any major malfunction or breakdown of the system for the matching of transactions that results in participants losing certainty over the status of completed transactions or live orders as well as

		unavailability of information indispensable for trading (eg, index value dissemination for trading certain derivatives on that index).
	(9)	Any major malfunction or breakdown of the systems for the dissemination of pre- and post-trade transparency and other relevant data published by <i>trading venues</i> .
	(10)	Any major malfunction or breakdown of the systems of the <i>trading venue</i> to monitor and control the trading activities of the market participants; and any major malfunction or breakdown in the sphere of other interrelated services providers, in particular <i>central counterparties</i> and central securities depositories that has repercussions on the trading system.
2	Signals that may indicate abusive behaviour under the Market Abuse Regulation	
	Signals of possible insider dealing or market manipulation	
	(1)	Unusual concentration of transactions and/or orders to trade in a particular <i>financial instrument</i> with one member or participant or between certain members or participants.
	(2)	Unusual repetition of a transaction among a small number of members or participants over a certain period of time.
	Signals of possible insider dealing	
	(3)	Unusual and significant trading or submission of orders to trade in the <i>financial instruments</i> of a company by certain members or participants before the announcement of important corporate events or of price sensitive information relating to the company, and orders to trade or transactions resulting in sudden and unusual changes in the volume of orders or transactions and/or prices before public announcements regarding the <i>financial instrument</i> in question.
	(4)	Orders to trade are given or transactions are undertaken by a market member or participant before or immediately after that member or participant or persons publicly known as linked to that member or participant produce or disseminate research or investment recommendations that are made publicly available.
	Signals of possible market manipulation	
	The signals described in points (18) to (23) are particularly relevant in an automated trading environment.	
	(5)	Orders to trade given or transactions undertaken which represent a significant proportion of the daily volume of transactions in the relevant <i>financial instrument</i> on the <i>trading venue</i> concerned, in

		particular when these activities lead to a significant change in the price of the <i>financial instruments</i> .
	(6)	Orders to trade given or transactions undertaken by a member or participant with a significant buying or selling interest in a <i>financial instrument</i> which lead to significant changes in the price of the <i>financial instrument</i> on a <i>trading venue</i> .
	(7)	Orders to trade given or transactions undertaken which are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed.
	(8)	Orders to trade given which change the representation of the best bid or offer prices in a <i>financial instrument</i> admitted to trading or traded on a <i>trading venue</i> , or more generally the representation of the order book available to market participants, and are removed before they are executed.
	(9)	Transactions or orders to trade by a market participant with no other apparent justification than to increase or decrease the price or value of, or to have a significant impact on the supply of, or demand for, a <i>financial instrument</i> , namely near the reference point during the trading day, eg, at the opening or near the close.
	(10)	Buying or selling of a <i>financial instrument</i> at the reference time of the trading session (eg, opening, closing, settlement) in an effort to increase, to decrease or to maintain the reference price (eg, opening price, closing price, settlement price) at a specific level (usually known as ‘marking the close’).
	(11)	Transactions or orders to trade which have the effect of, or are likely to have the effect of, increasing or decreasing the weighted average price of the <i>day</i> or of a period during the session.
	(12)	Transactions or orders to trade which have the effect of, or are likely to have the effect of, setting a market price when the liquidity of the <i>financial instrument</i> or the depth of the order book is not sufficient to fix a price within the session.
	(13)	In the case of execution of a transaction, changing the bid-offer prices when this spread is a factor in the determination of the price of another transaction whether or not on the same <i>trading venue</i> .
	(14)	Entering orders representing significant volumes in the central order book of the trading system a few minutes before the price determination phase of the auction and cancelling these orders a few seconds before the order book is frozen for computing the auction price so that the theoretical opening price might look higher or lower than it otherwise would do.

	(15)	Engaging in a transaction or series of transactions which are shown on a public display facility to give the impression of activity or price movement in a <i>financial instrument</i> (usually known as ‘painting the tape’).
	(16)	Transactions carried out as a result of the entering of buy and sell orders to trade at, or nearly at, the same time, with a very similar quantity and similar price, by the same or different but colluding market members or participants (usually known as ‘improper matched orders’).
	(17)	Transactions or orders to trade which have the effect of, or are likely to have the effect of, bypassing the trading safeguards of the market (eg, as regards volume limits, price limits, bid/offer spread parameters, etc).
	(18)	Entering of orders to trade or a series of orders to trade, executing transactions or series of transactions likely to start or exacerbate a trend and to encourage other participants to accelerate or extend the trend in order to create an opportunity to close out or open a position at a favourable price (usually known as ‘momentum ignition’).
	(19)	Submitting multiple or large orders to trade often away from the touch on one side of the order book in order to execute a trade on the other side of the order book. Once that trade has taken place, the manipulative orders will be removed (usually known as ‘layering and spoofing’).
	(20)	Entry of small orders to trade in order to ascertain the level of hidden orders and particularly used to assess what is resting on a dark platform (usually know as a ‘ping order’).
	(21)	Entry of large numbers of orders to trade and/or cancellations and/or updates to orders to trade so as to create uncertainty for other participants, slowing down their process and to camouflage their own strategy (usually known as ‘quote stuffing’).
	(22)	Posting of orders to trade, to attract other market members or participants employing traditional trading techniques (‘slow traders’), that are then rapidly revised onto less generous terms, hoping to execute profitably against the incoming flow of ‘slow traders’ orders to trade (usually known as ‘smoking’).
	(23)	Executing orders to trade or a series of orders to trade, in order to uncover orders of other participants, and then entering an order to trade to take advantage of the information obtained (usually known as ‘phishing’).
	(24)	The extent to which, to the best knowledge of the operator of a <i>trading venue</i> , orders to trade given or transactions undertaken show

		evidence of position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant <i>financial instrument</i> on the <i>trading venue</i> concerned, and might be associated with significant changes in the price of a <i>financial instrument</i> admitted to trading or traded on the <i>trading venue</i> .
	Signals for cross-product market manipulation, including across trading venues	
	The signals described below are particularly relevant to the operator of a <i>trading venue</i> where both a <i>financial instrument</i> and related <i>financial instruments</i> are admitted to trading or traded or where the above mentioned instruments are traded on several <i>trading venues</i> operated by the same operator.	
	(25)	Transactions or orders to trade which have the effect of, or are likely to have the effect of increasing, decreasing or maintaining the price of a <i>financial instrument</i> during the <i>days</i> preceding the issue, optional redemption or expiry of a related derivative or convertible.
	(26)	Transactions or orders to trade which have the effect of, or are likely to have the effect of, maintaining the price of the underlying <i>financial instrument</i> below or above the strike price, or other element used to determine the pay-out (eg, barrier) of a related derivative at expiration date.
	(27)	Transactions which have the effect of, or are likely to have the effect of, modifying the price of the underlying <i>financial instrument</i> so that it surpasses or does not reach the strike price, or other element used to determine the pay-out (eg, barrier) of a related derivative at expiration date.
	(28)	Transactions which have the effect of, or are likely to have the effect of, modifying the settlement price of a <i>financial instrument</i> when this price is used as a reference or determinant, namely, in the calculation of margins requirements.
	(29)	Orders to trade given or transactions undertaken by a member or participant with a significant buying or selling interest in a <i>financial instrument</i> which lead to significant changes in the price of the related derivative or underlying asset admitted to trading on a <i>trading venue</i> .
	(30)	Undertaking trading or entering orders to trade in one <i>trading venue</i> or outside a <i>trading venue</i> (including entering indications of interest) with a view to improperly influencing the price of a related <i>financial instrument</i> in another or in the same <i>trading venue</i> or outside a <i>trading venue</i> (usually known as ‘cross-product manipulation’).

	(31)	Creating or enhancing arbitrage possibilities between a <i>financial instrument</i> and another related <i>financial instrument</i> by influencing reference prices of one of the <i>financial instruments</i> can be carried out with different <i>financial instruments</i> (e.g, rights or shares, cash markets or derivatives markets, warrants or shares, etc). In the context of rights issues, it could be achieved by influencing the (theoretical) opening or (theoretical) closing price of the rights.
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Amend the following as shown.

5 Multilateral trading facilities (MTFs)

...

5.6 Reporting requirements

5.6.1 R A *firm* must:

...

- (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;
- (4) when assessing whether the requirement to inform the *FCA* immediately of significant infringements of the rules of its *trading venue*, or disorderly trading conditions or system disruptions in relation to a *financial instrument* applies, consider the signals listed in *MAR* 1 Annex 3R 1; and
- (5) when assessing whether the requirement to immediately inform the *FCA* of conduct that may indicate behaviour that is prohibited under the *Market Abuse Regulation* applies, consider the signals listed in *MAR* 1 Annex 3R 2.

- 5.6.1A R (1) A *firm* operating one or several *trading venues* where a *financial instrument* and/or related *financial instrument* are traded must apply a proportionate approach and exercise judgement on the signals triggered, including any relevant signals not specifically included in *MAR* 1 Annex 3R 2, before informing the *FCA*, taking into account the following:
- (a) the deviations from the usual trading pattern of the *financial instruments* admitted to trading or traded on its *trading venue*; and

- (b) the information available or accessible to the *firm*, whether that be internally as part of the operations of the *trading venue* or publicly available.
- (2) For the purposes of (1) ‘related *financial instrument*’ means 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*.
- (3) (a) A *firm* operating one or several *trading venues* must also take into account front running behaviours, which consist in a market member or participant trading, for its own account, ahead of its client.
- (b) For the purposes of (a), a *firm* must use the order book data required to be recorded by the *trading venue* pursuant to Article 25 of *MiFIR* (Obligation to maintain records) – in particular, those relating to the way the member or participant conducts its trading activity.

[**Note:** article 31(2) of *MiFID* and articles 81 and 82 of the *MiFID Org Regulation*]

...

5.6.3 R ...

- 5.6.4 G (1) For the purposes of the signals referred to in MAR 1 Annex 3R, references to ‘order to trade’ should encompass all types of orders, including initial orders, modifications, updates and cancellations of orders, irrespective of whether or not they have been executed and irrespective of the means used to access the *trading venue*.
- (2) The list of signals of insider dealing and market manipulation is neither exhaustive nor determinative of market abuse or attempts of market abuse, as each of the signals may not necessarily constitute market abuse or attempts of market abuse per se. Transactions or orders to trade meeting one or more signals may be conducted for legitimate reasons or in compliance with the rules of the *trading venue*.

5.6A Suspension and removal of financial instruments

5.6A.1 R ...

[**Note:** article 32 of *MiFID*, ~~article 80 of the *MiFID Org Regulation*~~, *MiFID RTS 18* and *MiFID ITS 2*]

- 5.6A.2 R (1) For the purposes of MAR 5.6A.1R(1), a suspension or a removal from trading of a *financial instrument* will be likely to cause significant

damage to investors' interests or the orderly functioning of the market in at least the following circumstances:

- (a) where it would create a systemic risk undermining financial stability, such as where the need exists to unwind a dominant market position, or where settlement obligations would not be met in a significant volume;
 - (b) where the continuation of trading on the market is necessary to perform critical post-trade risk management functions when there is a need for the liquidation of *financial instruments* due to the default of a *clearing member* under the default procedures of a *CCP* and a *CCP* would be exposed to unacceptable risks as a result of an inability to calculate margin requirements;
 - (c) where the financial viability of the *issuer* would be threatened, such as where it is involved in a corporate transaction or capital raising.
- (2) For the purposes of determining whether a suspension or a removal is likely to cause significant damage to the investors' interest or the orderly functioning of the markets in any particular case, a *firm* must consider all relevant factors, including:
- (a) the relevance of the market in terms of liquidity where the consequences of the actions are likely to be more significant where those markets are more relevant in terms of liquidity than in other markets;
 - (b) the nature of the envisaged action where actions with a sustained or lasting impact on the ability of investors to trade a *financial instrument* on *trading venues*, such as removals, are likely to have a greater impact on investors than other actions;
 - (c) the knock-on effects of a suspension or removal of sufficiently related derivatives, indices or benchmarks for which the removed or suspended instrument serves as an underlying or constituent;
 - (d) the effects of a suspension on the interests of market end users who are not financial counterparties, such as entities trading in *financial instruments* to hedge commercial risks.
- (3) A *firm* must also take into account the factors set out in *MAR* 5.6A.2R(2) when deciding not to suspend or remove a *financial instrument* on the basis of circumstances other than those specified in *MAR* 5.6A.2R(1).

...

5.10 Operation of an SME growth market

Registering an MTF as an SME growth market

...

5.10.2 R ...

5.10.2 R For the purposes of MAR 5.10.2R, a firm must:

A

- (1) determine whether at least 50% of the issuers admitted to trading on an MTF are SMEs on the basis of a calculation of the average ratio of SMEs over the total number of issuers whose financial instruments are admitted to trading on that market;
- (2) calculate the average ratio on 31 December of the previous calendar year as the average of the 12 end-of-month ratios of that calendar year;
- (3) demonstrate that the MTF:
 - (a) has established and applies rules providing for objective and transparent criteria for the initial and ongoing admission to trading of issuers on its venue;
 - (b) has an operating model which is appropriate for the performance of its functions and ensures the maintenance of fair and orderly trading in the financial instruments admitted to trading on its venue;
 - (c) has established and applies rules that require an issuer seeking admission of its financial instruments to trading on the MTF to publish, in cases where the UK prospectus regime does not apply, an appropriate admission document, drawn up under the responsibility of the issuer and clearly stating whether or not it has been approved or reviewed and by whom;
 - (d) has established and applies rules that define the minimum content of the admission document referred to in (c), in such a way that sufficient information is provided to investors to enable them to make an informed assessment of the financial position and prospects of the issuer, and the rights attaching to its securities;
 - (e) requires the issuer to state, in the admission document referred to in (c), whether or not, in its opinion, its working capital is sufficient for its present requirements or, if not, how it proposes to provide the additional working capital needed;
 - (f) has made arrangements for the admission document referred to in (c) to be subject to an appropriate review of its completeness, consistency and comprehensibility;

- (g) requires the issuers whose securities are traded on its venue to publish annual financial reports within 6 months after the end of each financial year, and half yearly financial reports within 4 months after the end of the first 6 months of each financial year;
- (h) ensures dissemination to the public of prospectuses drawn up in accordance with the UK prospectus regime, admission documents referred to in (c), financial reports referred to in (g) and information defined in Article 7(1) of the Market Abuse Regulation (Authorisation of deferred publication) publicly disclosed by the issuers whose securities are traded on its venue, by publishing them on its website, or providing a direct link to the page of the website of the issuers where such documents, reports and information are published;
- (i) ensures that the regulatory information referred to in (h) and direct links remain available on its website for a period of at least 5 years;
- (j) requires issuers seeking admission of their shares to trading on its venue for the first time to allocate a minimum amount of their issued shares available for trading on the MTF, in accordance with a threshold to be established by the operator of the MTF and expressed either as an absolute value or as a percentage of the total issued share capital.

- 5.10.2B R (1) The operator of an MTF may exempt issuers that have no equity instruments traded on the MTF from the requirement to publish half-yearly financial reports referred to in MAR 5.10.2AR(3)(g).
- (2) Where the operator of an MTF exercises the option under MAR 5.10.2AR(4), issuers that have no equity instruments traded on the MTF will not be required to publish half-yearly financial reports pursuant to MAR 5.10.2AR(3)(g).
- 5.10.2C G (1) An SME growth market may be deregistered where the proportion of SMEs, as determined in accordance with MAR 5.10.2AR(1), falls below 50% for 3 consecutive calendar years.
- (2) The operator of an SME growth market is liable to deregistration where the conditions in MAR 5.10.2R(2) to (7) and MAR 5.10.2AR(3) are no longer satisfied.

...

5A Organised trading facilities (OTFs)

...

5A.3 Specific requirements for OTFs

...

Other MiFID Obligations

5A.3.9 R A *firm* must comply with the obligations under the following provisions of *MiFID*, 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), 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.1.2 and COBS 6.1ZA.16;*~~
- (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.]* [deleted]~~

...

5A.8 Reporting requirements

5A.8.1 R A *firm* must:

...

- (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;:

- (4) when assessing whether the requirement to inform the FCA immediately of significant infringements of the rules of its trading venue or disorderly trading conditions or system disruptions in relation to a financial instrument applies, consider the signals listed in MAR 1 Annex 3R 1; and
- (5) when assessing whether the requirement to immediately inform the FCA of conduct that may indicate behaviour that is prohibited under the Market Abuse Regulation applies, consider the signals listed in MAR 1 Annex 3R 2.

5A.8.1
A

- R (1) A firm operating one or several trading venues where a financial instrument and/or related financial instrument are traded must apply a proportionate approach and exercise judgement on the signals triggered, including any relevant signals not specifically included in MAR 1 Annex 3R 2, before informing the FCA, taking into account the following:
- (a) the deviations from the usual trading pattern of the financial instruments admitted to trading or traded on its trading venue; and
- (b) the information available or accessible to the firm, whether that be internally as part of the operations of the trading venue or publicly available.
- (2) For the purposes of (1) ‘related financial instrument’ means 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.
- (3) (a) A firm operating one or several trading venues must also take into account front running behaviours, which consist in a market member or participant trading, for its own account, ahead of its client.
- (b) For the purposes of (a) a firm must use the order book data required to be recorded by the trading venue pursuant to Article 25 of MiFIR (Obligation to maintain records) – in particular, those relating to the way the member or participant conducts its trading activity.

[**Note:** article 31(2) of MiFID, ~~articles 81 and 82 of the MiFID Org Regulation,~~ MiFID RTS 18 and MiFID ITS 2]

- 5A.8.2 G (1) For the purposes of the signals referred to in MAR 1 Annex 3R, references to ‘order to trade’ should encompass all types of orders, including initial orders, modifications, updates and cancellations of orders, irrespective of whether or not they have been executed and irrespective of the means used to access the trading venue.

- (2) The list of signals of insider dealing and market manipulation is neither exhaustive nor determinative of market abuse or attempts of market abuse, as each of the signals may not necessarily constitute market abuse or attempts of market abuse per se. Transactions or orders to trade meeting one or more signals may be conducted for legitimate reasons or in compliance with the rules of the *trading venue*.

5A.9 Suspension and removal of financial instruments

5A.9.1 R ...

[**Note:** article 32 of *MiFID*, ~~article 80 of the *MiFID Org Regulation*~~ and *MiFID RTS 18*]

5A.9.2 R (1) For the purposes of MAR 5A.9.1R(1), a suspension or a removal from trading of a *financial instrument* will be likely to cause significant damage to investors' interests or the orderly functioning of the market in at least the following circumstances:

- (a) where it would create a systemic risk undermining financial stability, such as where the need exists to unwind a dominant market position, or where settlement obligations would not be met in a significant volume;
- (b) where the continuation of trading on the market is necessary to perform critical post-trade risk management functions when there is a need for the liquidation of *financial instruments* due to the default of a *clearing member* under the default procedures of a *CCP* and a *CCP* would be exposed to unacceptable risks as a result of an inability to calculate margin requirements;
- (c) where the financial viability of the *issuer* would be threatened, such as where it is involved in a corporate transaction or capital raising.

(2) For the purposes of determining whether a suspension or a removal is likely to cause significant damage to the investors' interest or the orderly functioning of the markets in any particular case, a *firm* must consider all relevant factors, including:

- (a) the relevance of the market in terms of liquidity where the consequences of the actions are likely to be more significant where those markets are more relevant in terms of liquidity than in other markets;
- (b) the nature of the envisaged action where actions with a sustained or lasting impact on the ability of investors to trade a *financial instrument* on *trading venues*, such as removals, are likely to have a greater impact on investors than other actions;

- (c) the knock-on effects of a suspension or removal of sufficiently related derivatives, indices or benchmarks for which the removed or suspended instrument serves as an underlying or constituent;
 - (d) the effects of a suspension on the interests of market end users who are not financial counterparties, such as entities trading in financial instruments to hedge commercial risks.
- (3) A firm must also take into account the factors set out in MAR 5A.9.2R(2) when deciding not to suspend or remove a financial instrument on the basis of circumstances other than those specified in MAR 5A.9.2R(1).

...

Sch 5 Rights of action for damages

...

Sch 5.2 G

Chapter/ Appendix	Section/ Annex	Paragraph	For Private Person?	Removed	For other person?
...					
MAR 4 (all rules)			Yes	Yes MAR 3.1.5R	No
<u>MAR 5 (all rules)</u>			<u>Yes</u>	<u>Yes</u>	<u>No</u>
<u>MAR 5A (all rules)</u>			<u>Yes</u>	<u>Yes</u>	<u>No</u>

Annex I

Amendments to the Supervision manual (SUP)

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

6 Applications to vary and cancel Part 4 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.9EU*)~~ *COBS 6.1ZA.9R* (Information concerning safeguarding of designated investments belonging to clients and client money);

...

...

6 Annex 4 Additional guidance for a firm winding down (running off) its business

...

6 Annex 4.2A G

1	<p>A <i>firm</i> must comply with CASS 5.5.80 R and CASS 7.11.34R (Client money: discharge of fiduciary duty) and CASS 7.11.50 R (Allocated but unclaimed client money) if it is ceasing to hold <i>client money</i>.</p> <p>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 COBS 6.1.7R or article 49 of the MiFID Org Regulation (see COBS 6.1ZA.9EU) <u>COBS 6.1ZA.9R</u> (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.</p>
...	

...

10C FCA senior managers regime for approved persons in SMCR firms

...

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 *person* who is allocated the function in:

...

- (2) ~~article 22(3) of the MiFID Org Regulation~~ SYSC 6.1.4-AAR;
- (3) ~~article 22(3) of the MiFID Org Regulation~~ SYSC 6.1.4-AAR (as applied in accordance with ~~SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2AR, SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR~~ and SYSC 1 Annex 1 3.3R);

...

...

Annex J

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted 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*~~ *SYSC* 4.1.1-AR(5) and *SYSC* 5.1.14R (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 K

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1 Treating complaints fairly

...

1.1A Complaints handling requirements for MiFID complaints

...

Application: Who? What?

...

1.1A.2 R For the ~~MiFID complaints of a third country investment firm~~, the provisions marked “UK” shall apply as *rules*. ~~[deleted]~~

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:

...

[**Note:** see article 1(1), 1(3) and 1(4) of *MiFID*, and ~~article 1 of the MiFID Org Regulation~~]

...

1.1A.6 R (1) Only the provisions in ~~this section marked “UK” and DISP 1.1A.39R~~ (a) to (l) below apply to a *MiFID complaint* received from a *retail client, professional client* or an *eligible counterparty* that is not an *eligible complainant*;

(a) 1.1A.10R;

(b) 1.1A.12R;

(c) 1.1A.13R;

(d) 1.1A.16R;

- (e) 1.1A.17R;
- (f) 1.1A.18R;
- (g) 1.1A.24R;
- (h) 1.1A.25R;
- (i) 1.1A.29R;
- (j) 1.1A.30R;
- (k) 1.1A.37R; and
- (l) 1.1A.38R

...

Application: Where?

1.1A.7 R ...

Table: Application of DISP 1.1A to the MiFID business of firms in the UK, and the equivalent business of third country investment 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?
1.1A.10UK <u>1.1A.10R</u>	Yes	Yes
...		
1.1A.12UK <u>1.1A.12R</u>	Yes	Yes
1.1A.13UK <u>1.1A.13R</u>	Yes	Yes
...		
1.1A.16UK	Yes	Yes

<u>1.1A.16R</u>		
1.1A.17UK <u>1.1A.17R</u>	Yes	Yes
1.1A.18UK <u>1.1A.18R</u>	Yes	Yes
...		
1.1A.24UK <u>1.1A.24R</u>	Yes	Yes
1.1A.25UK <u>1.1A.25R</u>	Yes	Yes
...		
1.1A.29UK <u>1.1A.29R</u>	Yes	Yes
1.1A.30UK <u>1.1A.30R</u>	Yes	Yes
...		
1.1A.37UK <u>1.1A.37R</u>	Yes	Yes
1.1A.38UK <u>1.1A.38R</u>	Yes	Yes
...		

Interpretation of this section

- 1.1A.8 G ~~This section contains a number of provisions marked with the status letters “UK”, which have been selectively reproduced from the *MiFID Org Regulation*. [deleted]~~
- 1.1A.9 G ~~References in column (1) to a word or phrase used in those provisions marked “UK” 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*~~] ~~[deleted]~~

Consumer awareness

- 1.1A.10 ~~UK~~ R ~~Investment firms shall~~ *MiFID investment firms must* publish the details of the process to be followed when handling a ~~complaint~~ *MiFID complaint*. Such details ~~shall~~ must include information about the complaints management policy and the contact details of the complaints management function. This information ~~shall~~ must be provided to clients or potential clients, on request, or when acknowledging a ~~complaint~~ *MiFID complaint*.

[~~Note: article 26(2) of the *MiFID Org Regulation*~~]

...

Complaints handling

- 1.1A.12 ~~UK~~ R ~~Investment firms shall~~ *MiFID investment firms must* establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of *MiFID* clients’ or potential clients’ complaints.

[~~Note: first paragraph, article 26(1) of the *MiFID Org Regulation*~~]

- 1.1A.13 ~~UK~~ R The complaints management policy ~~shall~~ must provide clear, accurate and up-to-date information about the complaints-handling process. This policy ~~shall~~ must be endorsed by the ~~firm’s~~ *MiFID investment firm’s* management body.

[~~Note: second paragraph, article 26(1) of the *MiFID Org Regulation*~~]

...

- 1.1A.16 ~~UK~~ R ~~Investment firms shall~~ *MiFID investment firms must* enable clients and potential clients to submit ~~complaints~~ *MiFID complaints* free of charge.

[~~Note: article 26(2) of the *MiFID Org Regulation*~~]

- 1.1A.17 ~~UK~~ R ~~Investment firms shall~~ *MiFID investment firms must* establish a complaints management function responsible for the investigation of ~~complaints~~ *MiFID complaints*. This function may be carried out by the compliance function.

[~~Note: article 26(3) of the *MiFID Org Regulation*~~]

- 1.1A.18 ~~UK~~ R ~~Investment firms' *MiFID investment firms*' compliance function shall~~ must analyse ~~complaints~~ *MiFID 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 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~~ day on which it is received, it may choose to comply with ~~DISP 1.1A.24UK~~ DISP 1.1A.24R to *DISP 1.1A.27G* rather than with *DISP 1.1A.28R* to *DISP 1.1A.34G*.

- 1.1A.24 ~~UK~~ R When handling a ~~complaint~~ *MiFID complaint*, ~~investment firms shall~~ *MiFID investment firms must* communicate with clients or potential clients clearly, in plain language that is easy to understand and ~~shall~~ must reply to the ~~complaint~~ *MiFID complaint* without undue delay.

~~[Note: article 26(4) of the *MiFID Org Regulation*]~~

- 1.1A.25 ~~UK~~ R ~~Investment firms shall~~ *MiFID investment firms must* communicate ~~the firm's~~ their position on the ~~complaint~~ *MiFID 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 regulation 4 of the *ADR Regulations*, or that the client may be able to take civil action.

~~[Note: article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive*.]~~

- 1.1A.26 R The explanation given by *MiFID investment firms* to *clients* or potential clients in accordance with ~~DISP 1.1A.25UK~~ DISP 1.1A.25R must also:

...

- 1.1A.27 G The information regarding the *Financial Ombudsman Service* required to be provided in a communication sent under ~~DISP 1.1A.25UK~~ DISP 1.1A.25R 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.29 ~~UK~~ R When handling a ~~complaint~~ *MiFID complaint*, ~~investment firms shall~~ *investment firms must* communicate with clients or potential clients clearly, in plain language that is easy to understand and ~~shall~~ must reply to the complaint without undue delay.

~~[Note: article 26(4) of the MiFID Org Regulation]~~

- 1.1A.30 ~~UK~~ R ~~Investment firms shall~~ *MiFID investment firms must* communicate ~~the firm's~~ their position on the ~~complaint~~ *MiFID 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 regulation 4 of the *ADR Regulations*, or that the client may be able to take civil action.

~~[Note: article 26(5) of the MiFID Org Regulation. See the ADR Directive.]~~

- 1.1A.31 R The explanation given by *MiFID investment firms* to *clients* or potential *clients* in accordance with ~~DISP 1.1A.30UK~~ DISP 1.1A.30R must also:

...

- 1.1A.32 G The information regarding the *Financial Ombudsman Service* required to be provided in a *final response* sent under ~~DISP 1.1A.30UK~~ DISP 1.1A.30R 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]~~

...

Complaints records

- 1.1A.37 ~~UK~~ R ~~Investment firms shall~~ *MiFID investment firms must* 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 ~~UK~~ R ~~Investment firms shall~~ *MiFID investment firms must* 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]~~

...

Complaints data publication

...

- 1.1A.41 G The effect of the *complaints data publication rules* and ~~DISP 1.1A.37UK~~ DISP 1.1A.37R 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*.

...

1 Annex **Application of DISP 1 to type of respondent / complaint**
2G

The table below summarises the application of *DISP 1*. Where the table indicates that a particular section may apply, its application in relation to any particular activity or *complaint* is dependent on the detailed application provisions set out in *DISP 1*.

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	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	DISP 1.10B Complaints reporting directions
...								
<i>firm</i> in relation to <i>MiFID complaints</i> concerning <i>MiFID business</i> carried on from an establishment in the <i>UK</i> (or in an <i>EEA State</i> , in the case of a <i>TP firm</i> with respect to services provided into the <i>United Kingdom</i>)	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also <i>DISP 1.1A.6R</i>)	Does not apply	Does not apply	<i>DISP 1.7</i> applies as set out in <i>DISP 1.1A</i>	Does not apply (but see <i>DISP 1.1A.37UK</i> <i>DISP 1.1A.37R</i>)	Applies as set out in <i>DISP 1.1A</i>	Applies as set out in <i>DISP 1.1A</i>	Does not apply
...								

<i>equivalent business of a third country investment firm in relation to MiFID complaints</i>	Applies as set out in <i>DISP</i> 1.1A	Does not apply	Does not apply	Applies as set out in <i>DISP</i> 1.1A	Does not apply (but see <i>DISP</i> 1.1A.37EU <u><i>DISP</i> 1.1A.37R</u>)	Applies as set out in <i>DISP</i> 1.1A'	Applies as set out in <i>DISP</i> 1.1A	Does not apply
...								

2 Jurisdiction of the Financial Ombudsman Service

...

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

...

2.3.1A R ...

~~[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*]~~

2.3.1C G For guidance regarding the type of advice that is considered investment advice for the purposes of *MiFID*, see *PERG* 13.3, Q21.

...

Sch 1 Record keeping requirements

...

Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>DISP</i> 1.1A.37U K <u><i>DISP</i> 1.1A.37R</u>	<i>MiFID complaints</i> subject to <i>DISP</i> 1.1A.	Each <i>MiFID complaint</i> received and the complaint handling measures taken to address the <i>MiFID complaint</i>	Not specified [Note: see article 26(1), article 72, and Annex 1 of the <i>MiFID Org Regulation</i>]	Not specified [Note: see article 72 of the <i>MiFID Org Regulation</i>]

		and for its resolution [Note: see article 26(1) , article 72 , and Annex 1 of the <i>MiFID Org Regulation</i>]		
...				

Annex L

Amendments to the Professional Firms sourcebook (PROF)

In this Annex, underlining indicated new text and striking through indicates deleted 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*~~ paragraph 6 of Part 2 of Schedule 3 to the *Regulated Activities Order*.

(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(e) of the *MiFID Org Regulation*~~ paragraph 6(c) of Part 2 of Schedule 3 to the *Regulated Activities Order* imposes a disclosure obligation when an *exempt professional firm* markets or otherwise promotes its ability to provide *investment services*.

...

Annex M

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

2 Recognition requirements

...

2.6 General safeguards for investors, suspension and removal of financial instruments from trading and order execution on regulated markets

...

2.6.6 UK ...

- 2.6.6A R (1) For the purpose of paragraph 7E of the Schedule to the *Recognition Requirements Regulations*, a suspension or a removal from trading of a *financial instrument* will be likely to cause significant damage to investors' interests or the orderly functioning of the market in at least the following circumstances:
- (a) where it would create a systemic risk undermining financial stability, such as where the need exists to unwind a dominant market position, or where settlement obligations would not be met in a significant volume;
 - (b) where the continuation of trading on the market is necessary to perform critical post-trade risk management functions when there is a need for the liquidation of *financial instruments* due to the default of a *clearing member* under the default procedures of a *CCP* and a *CCP* would be exposed to unacceptable risks as a result of an inability to calculate margin requirements;
 - (c) where the financial viability of the *issuer* would be threatened, such as where it is involved in a corporate transaction or capital raising.
- (2) For the purposes of determining whether a suspension or a removal is likely to cause significant damage to the investor's interest or the orderly functioning of the markets in any particular case, a *UK RIE* must consider all relevant factors, including:
- (a) the relevance of the market in terms of liquidity where the consequences of the actions are likely to be more significant where those markets are more relevant in terms of liquidity than in other markets;

- (b) the nature of the envisaged action where actions with a sustained or lasting impact on the ability of investors to trade a *financial instrument on trading venues*, such as removals, are likely to have a greater impact on investors than other actions;
- (c) the knock-on effects of a suspension or removal of sufficiently related derivatives, indices or benchmarks for which the removed or suspended instrument serves as an underlying or constituent;
- (d) the effects of a suspension on the interests of market end users who are not financial counterparties, such as entities trading in *financial instruments* to hedge commercial risks.
- (3) A UK RIE must take into consideration the factors set out in (2) where it decides not to suspend or remove a *financial instrument* on the basis of circumstances other than those listed in (1).

...

- 2.6.10 UK ~~[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] [deleted]~~

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 [MiFID] [(see REC 2.6.3 UK)] may be granted by the [FCA] for systems operated by an MTF 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 REC 2.6.11 EU)]; 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 MTF 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 2.6.12 EU</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 2.6.3 UK</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 the <i>MTF</i> pending their being disclosed to the market.		

2.6.11 UK [**Note:** article 5 of *MiFIR*, and *MiFID RTS 3*] [deleted]

Article 19 of the MiFID Regulation

References to negotiated transaction	
For the purpose of Article 18(1)(b) [(see <i>REC 2.6.10 EU</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.

...

2.6.15 UK [**Note:** article 6 of *MiFIR* now covers post trade transparency requirements for *trading venues* in respect of shares, depositary 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} [deleted]~~

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 2.6.16 EU)]
(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 2.6.17 EU)];
(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.

2.6.16 UK [Note: MiFID RTS 1] [deleted]

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 transaction was executed.
3.	Trading time	The time at which the transaction was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction 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 the 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;
			...

...

2.16A Operation of a multilateral trading facility (MTF) or an organised trading facility (OTF)

...

- 2.16A.1 R For the purposes of complying with the requirement set out in paragraph 9E
D of the Schedule to the *Recognition Requirement Regulations* (SME Growth Markets), the 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~~ a *MiFID investment firm*.

...

...

3 Notification rules for UK recognised bodies

...

3.25 Significant breaches of rules and disorderly trading conditions

- 3.25.1 R ...

- 3.25.2 R When assessing whether the requirement to inform the FCA immediately of significant infringements of the rules of its trading venue or disorderly trading conditions or system disruptions in relation to a financial instrument applies, a UK RIE must consider the signals listed in MAR 1 Annex 3R 1.
- 3.25.3 R (1) When assessing whether the requirement to immediately inform the FCA of conduct that may indicate behaviour that is prohibited under the Market Abuse Regulation applies, a UK RIE must consider the signals listed in MAR 1 Annex 3R 2.
- (2) A UK RIE operating one or several trading venues where a financial instrument and/or related financial instrument are traded must apply a proportionate approach and exercise judgement on the signals triggered, including any relevant signals not specifically included in MAR 1 Annex 3R 2, before informing the FCA, taking into account the following:
- (a) the deviations from the usual trading pattern of the financial instruments admitted to trading or traded on its trading venue; and
- (b) the information available or accessible to the UK RIE, whether that be internally as part of the operations of the trading venue or publicly available.
- (3) For the purposes of (2) ‘related financial instrument’ means 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.
- (4) (a) A UK RIE operating one or several trading venues must also take into account front running behaviours, which consist in a market member or participant trading, for its own account, ahead of its client.
- (b) For the purposes of (a) a UK RIE must use the order book data required to be recorded by the trading venue pursuant to Article 25 of MiFIR (Obligation to maintain records) – in particular, those relating to the way the member or participant conducts its trading activity.
- 3.25.4 G (1) For the purposes of the signals referred to in MAR 1 Annex 3 references to ‘order to trade’ should encompass all types of orders, including initial orders, modifications, updates and cancellations of orders, irrespective of whether or not they have been executed and irrespective of the means used to access the trading venue.
- (2) The list of signals of insider dealing and market manipulation is neither exhaustive nor determinative of market abuse or attempts of

market abuse, as each of the signals may not necessarily constitute market abuse or attempts of market abuse per se. Transactions or orders to trade meeting one or more signals may be conducted for legitimate reasons or in compliance with the rules of the trading venue.

...

Sch 5 Rights of action for damages

Sch 5.1 G

There are no rights of action under ~~section 150~~ section 138D of the *Act* in respect of any contravention by a *recognised body* of any *rule* made under the *Act*.

Annex N

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 by the *FCA* or the *PRA* under the *United Kingdom* provisions which implemented *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 2(7) of the *MiFID-Org Regulation* when undertaking *portfolio management*, provided that:

...

...

Annex O

Amendments to the MiFID 2 Onshoring Guide (M2G)

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

2 Onshoring of senior management arrangements and systems and controls obligations

2.1 Background

...

- 2.1.4 G ~~The Commission Delegated Regulation 2017/565 of 25 April 2016~~), as onshored by the Exit Regulations, contains detailed organisational requirements for those firms to which it applies, including authorised MiFID investment firms and credit institutions. ~~[deleted]~~

2.3 Main types of senior management and organisational requirements in MiFID II

...

- 2.3.2 G The general organisational requirements in article 16 are added to by detailed provisions in ~~the MiFID Org Regulation~~ SYSC including the following areas:

...

2.4 MiFID II onshoring and SYSC

- 2.4.1 G The combination of senior management and systems and controls requirements for firms in a directive and regulation means that FCA rules are used to onshore the provisions in the directive. As such, the approach to onshoring MiFID II retains the familiar approach of the common platform and the following:

...

- ~~a rule which has the effect, amongst other things, of extending the application of certain parts of the MiFID Org Regulation to all of a UK MiFID investment firm's designated investment business, MiFID or otherwise (SYSC 1 Annex 1 2.8AR) (in the Handbook, the definition of 'MiFID investment firm' captures any UK firm to which MiFID would apply if the United Kingdom were a Member State);~~
- ~~a rule which extends the application of the MiFID Org Regulation in relation to general organisational requirements, compliance, risk management, internal audit, responsibility of senior management, remuneration policies and practices and outsourcing to all of a MiFID optional exemption firm's designated investment business, by way of rule or guidance depending on the individual provision (SYSC 1 Annex 1 3.2CR discussed further in M2G 2.5);~~

- ~~signposting references in the application provisions to individual SYSC chapters to identify the relevant articles of the MiFID Org Regulation which supplement the rules implementing the MiFID requirements. These are also listed in the new Table C in SYSC 1 Annex 1;~~

...

...

2.5 Navigating SYSC

...

- 2.5.2 G SYSC 1.1A summarises the application of the sourcebook to different types of firms. UK MiFID investment firms and MiFID optional exemption firms fall into the category of ‘every other firm’ in SYSC 1.1A and so the applicable chapters are 4 to 12, 18, 19A, 19D and 21. The detailed application of the provisions in chapters 4-10 is cut back in SYSC 1 Annex 1 and it is this annex which provides the starting point for understanding and determining the application of the common platform requirements to your business. More specifically, SYSC 1 Annex 1 Part 3.1G provides a roadmap for individual categories of firms, including UK MiFID investment firms and MiFID optional exemption firms, in explaining how the common platform requirements ~~and the MiFID Org Regulation~~ apply to them. These include requirements that were previously contained in the MiFID Org Regulation and restated to sit within FCA rules.

2.6 UK MiFID investment firms

- 2.6.1 G In the case of UK MiFID investment firms, these are common platform firms for the purposes of the Handbook so are subject to the following MiFID II related obligations:

...

- ~~The MiFID Org Regulation.~~
 Certain provisions of the MiFID Org Regulation are also adapted to apply to the firm’s non-MiFID business in accordance with SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR. The effect of SYSC 1 Annex 1.2.8AR is to adapt the MiFID Org Regulation so that a small number of its terms are to be read as if they were broader corresponding Handbook terms. For example, references in the MiFID Org Regulation to ‘investment service’ and ‘investment services and activities’ are to be read as ‘designated investment business’. This helps maintain a common single standard of organisational requirements applying to all of a UK MiFID investment firm’s business.

...

2.7 MiFID optional exemption firms

2.7.1 G MiFID optional exemption firms are subject to the following MiFID II related obligations:

...

- ~~Articles 21 to 25, 27, 30 to 35 and 72 of the MiFID Org Regulation are applied to the business of a MiFID optional exemption firm in accordance with SYSC 1 Annex 1 3.2CR. The effect of SYSC 1 Annex 1 3.2CR is to apply these provisions of the MiFID Org Regulation:~~
 - ~~(i) as either rules or guidance in accordance with SYSC 1 Annex 1 Part 3 Table C; and~~
 - ~~(ii) to the firm's regulated activities generally and other activities identified in SYSC 1 Annex 1.2.8R.~~

~~The effect of SYSC 1 Annex 1 3.2CR is to also to adapt articles 21 to 25, 27, 30 to 35 and 72 of the MiFID Org Regulation so that a small number of terms in the regulation are to be read as if they were broader corresponding Handbook terms, as set out in SYSC 1 Annex 1.2.8AR.~~

...

...

2 Annex 1 Overview

G The diagrams in this Annex provide an overview of organisational requirements deriving from MiFID II and the location of their implementation, ~~as well as the MiFID Org Regulation including its extension to non-MiFID II business in the case of UK MiFID investment firms and MiFID optional exemption firms.~~

The diagram focuses on the position of UK MiFID investment firms (other than CPPI and authorised professional firms) and MiFID optional exemption firms.

MiFID II Organisational requirements for firms

[Editors's note: The diagram "MiFID II Organisational requirements for firms" remains the same.]

~~MiFID Org Regulation~~

[Editors's note: The diagram "MiFID Org Regulation" is deleted.]

