

# Conduct of Business Sourcebook



## Conduct of Business Sourcebook

### **COBS 1            Application**

- 1.1            The general application rule**
- 1 Annex 1    Application (see COBS 1.1.2R)**

### **COBS 2            Conduct of business obligations**

- 2.1            Acting honestly, fairly and professionally**
- 2.2            Information disclosure before providing services**
- 2.3            Inducements**
- 2.4            Agent as client and reliance on others**

### **COBS 3            Client categorisation**

- 3.1            Application**
- 3.2            Clients**
- 3.3            General notifications**
- 3.4            Retail clients**
- 3.5            Professional clients**
- 3.6            Eligible counterparties**
- 3.7            Providing clients with a higher level of protection**
- 3.8            Policies, procedures and records**

### **COBS 4            Communicating with clients, including financial promotions**

- 4.1            Application**
- 4.2            Fair, clear and not misleading communications**
- 4.3            Financial promotions to be identifiable as such**
- 4.4            Compensation information**
- 4.5            Communicating with retail clients**
- 4.6            Past, simulated past and future performance**
- 4.7            Direct offer financial promotions**
- 4.8            Cold calls and other promotions that are not in writing**
- 4.9            Financial promotions with an overseas element**
- 4.10          Systems and controls and approving and communicating financial promotions**
- 4.11          Record keeping: financial promotion**
- 4.12          Unregulated collective investment schemes**
- 4.13          UCITS**

### **COBS 5            Distance communications**

|               |   |
|---------------|---|
| 5.1           | The distance marketing disclosure rules   |
| 5.2           | E-Commerce  |
| 5 Annex 1     | Distance marketing information  |
| 5 Annex 2     | Abbreviated distance marketing disclosure   |
| <b>COBS 6</b> | <b>Information about the firm, its services and remuneration</b>  |
| 6.1           | Information about the firm and compensation information   |
| 6.1A          | Adviser charging and remuneration   |
| 6.1B          | Retail investment product provider and platform service provider requirements relating to adviser charging and remuneration |
| 6.1C          | Consultancy charging and remuneration   |
| 6.1D          | Product provider requirements relating to consultancy charging and remuneration   |
| 6.1E          | Platform service providers  |
| 6.1F          | Using a platform service for arranging and advising   |
| 6.1G          | Re-registration of title to retail investment products  |
| 6.2           | [Deleted]   |
| 6.2A          | Describing advice services  |
| 6.3           | Disclosing information about services, fees and commission  |
| 6.4           | Disclosure of charges, remuneration and commission  |
| 6 Annex 1     | Services and costs disclosure document described in COBS 6.3.7G(1)  |
| 6 Annex 2     | Combined initial disclosure document described in COBS 6.3, ICOBS 4.5, MCOB 4.4.1R(1) and MCOB 4.10.2R(1)                   |
| 6 Annex 3     | [deleted]   |
| 6 Annex 4     | [deleted]   |
| 6 Annex 5     | [deleted]   |
| 6 Annex 6     | Calculating commission equivalent   |
| <b>COBS 7</b> | <b>Insurance mediation</b>  |
| 7.1           | Application   |
| 7.2           | Information to be provided by the insurance intermediary  |
| <b>COBS 8</b> | <b>Client agreements</b>  |
| 8.1           | Client agreements: designated investment business   |
| <b>COBS 9</b> | <b>Suitability (including basic advice)</b>   |
| 9.1           | Application and purpose provisions  |
| 9.2           | Assessing suitability   |
| 9.3           | Guidance on assessing suitability   |
| 9.4           | Suitability reports   |
| 9.5           | Record keeping and retention periods for suitability records  |
| 9.6           | Special rules for giving basic advice on a stakeholder product  |
| 9 Annex 1     | Basic advice initial disclosure information   |
| 9 Annex 2     | Sales processes for stakeholder products  |

|                |  |
|----------------|--|
| <b>COBS 10</b> | <b>Appropriateness (for non-advised services)</b>                                  |
| 10.1           | Application and purpose provisions   |
| 10.2           | Assessing appropriateness: the obligations   |
| 10.3           | Warning the client   |
| 10.4           | Assessing appropriateness: when it need not be done                                |
| 10.5           | Assessing appropriateness: guidance  |
| 10.6           | When a firm need not assess appropriateness  |
| 10.7           | Record keeping and retention periods for appropriateness records                   |
| <br>           |  |
| <b>COBS 11</b> | <b>Dealing and managing</b>  |
| 11.1           | Application  |
| 11.2           | Best execution   |
| 11.3           | Client order handling  |
| 11.4           | Client limit orders  |
| 11.5           | Record keeping: client orders and transactions                                     |
| 11.6           | Use of dealing commission  |
| 11.7           | Personal account dealing   |
| 11.8           | Recording telephone conversations and electronic communications                    |
| <br>           |  |
| <b>COBS 12</b> | <b>Investment research</b>   |
| 12.1           | Purpose and application  |
| 12.2           | Investment research  |
| 12.3           | Non-independent research   |
| 12.4           | Research recommendations: required disclosures                                     |
| <br>           |  |
| <b>COBS 13</b> | <b>Preparing product information</b>   |
| 13.1           | The obligation to prepare product information                                      |
| 13.2           | Product information: production standards, form and contents                       |
| 13.3           | Contents of a key features document  |
| 13.4           | Contents of a key features illustration  |
| 13.5           | Preparing product information: other projections                                   |
| 13.6           | Preparing product information: changes to adviser and consultancy charges          |
| 13 Annex 1     | The Consolidated Life Directive Information  |
| 13 Annex 2     | Projections  |
| 13 Annex 3     | Charges information for a packaged product   |
| 13 Annex 4     | Charges information for a personal pension scheme and a stakeholder pension scheme |
| <br>           |  |
| <b>COBS 14</b> | <b>Providing product information to clients</b>                                    |
| 14.1           | Interpretation   |
| 14.2           | Providing product information to clients   |
| 14.3           | Information about designated investments   |

|                |   |
|----------------|---|
| 14.4           | [Not yet in force]  |
| <b>COBS 15</b> | <b>Cancellation</b>   |
| 15.1           | Application   |
| 15.2           | The right to cancel   |
| 15.3           | Exercising a right to cancel  |
| 15.4           | Effects of cancellation   |
| 15.5           | Special situations  |
| 15 Annex 1     | Exemptions from the right to cancel   |
| <b>COBS 16</b> | <b>Reporting information to clients</b>   |
| 16.1           | General client reporting requirement  |
| 16.2           | Occasional reporting  |
| 16.3           | Periodic reporting  |
| 16.4           | Statements of client designated investments or client money                                 |
| 16.5           | Quotations for surrender values   |
| 16.6           | Communications to clients - life insurance, long term care insurance and income withdrawals |
| 16 Annex 1R    | Trade confirmation and periodic information   |
| 16 Annex 2R    | Information to be included in a Periodic report   |
| <b>COBS 17</b> | <b>Claims handling for long-term care insurance</b>   |
| 17.1           | Providing information to claimants and dealing with claims                                  |
| <b>COBS 18</b> | <b>Specialist Regimes</b>   |
| 18.1           | Trustee Firms   |
| 18.2           | Energy market activity and oil market activity  |
| 18.3           | Corporate finance business  |
| 18.4           | Stock lending activity  |
| 18.5           | Operators of collective investment schemes  |
| 18.6           | Lloyd's   |
| 18.7           | Depositaries  |
| 18.8           | OPS firms - non scope business  |
| 18.9           | ICVCs   |
| 18.10          | UCITS qualifiers and service companies  |
| 18.11          | Authorised professional firms   |
| <b>COBS 19</b> | <b>Pensions supplementary provisions</b>  |
| 19.1           | Pension transfers and opt-outs  |
| 19.2           | Personal pensions, FSAVCs and AVCs  |

- 19.3 Product disclosure to members of occupational pension schemes
- 19.4 Open market options

## **COBS 20 With-profits**

- 20.1 Application
- 20.2 Treating with-profits policyholders fairly
- 20.3 Principles and Practices of Financial Management
- 20.4 Communications with with-profits policyholders
- 20.5 With-profits governance

## **COBS 21 Permitted Links**

- 21.1 Application
- 21.2 Principles for firms engaged in linked long-term insurance business
- 21.3 Rules for firms engaged in linked long-term insurance business

## **Transitional Provisions and Schedules**

- TP 1 Transitional Provisions relating to Client Categorisation
- TP 2 Other Transitional Provisions
- Sch 1 Record keeping requirements
- Sch 2
- Sch 3 Fees and other required payments
- Sch 4 Powers exercised
- Sch 5 Rights of action for damages
- Sch 6 Rules that can be waived

# Chapter 1

# Application



## 1.1 The general application rule

[Note: ESMA has issued guidelines under article 16(3) of the ESMA Regulation on certain aspects of the MiFID suitability requirements which also includes guidelines on conduct of business obligations. See <http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-suitability-requirements>.]

### 1.1.1

FCA PRA

R

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

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

and activities connected with them.

### 1.1.1A

FCA

R

This sourcebook does not apply to a *firm* with respect to the activity of *accepting deposits* carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*, except for ■ COBS 4.6 (Past, simulated past and future performance), ■ COBS 4.7.1 R (Direct offer financial promotions), ■ COBS 4.10 (Systems and controls and approving and communicating financial promotions), ■ COBS 13 (Preparing product information) and ■ COBS 14 (Providing product information to clients) which apply as set out in those provisions, ■ COBS 4.1 and the Banking: Conduct of Business sourcebook (*BCOBS*).

### 1.1.1B

FCA

R

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

### 1.1.1C

FCA

R

The following *rules* in COBS apply to a *firm* in relation to its carrying on of *auction regulation bidding*:

- (1) ■ COBS 5 (Distance communications);

- (2) (for a *firm* that has exercised an opt-in to CASS in accordance with ■ CASS 1.4.9 R in relation only to those *clients* for which it holds *client money* or *safe custody assets* in accordance with CASS) ■ COBS 3 (Client categorisation), ■ COBS 6.1.7 R (Information concerning safeguarding of designated investments belonging to clients and client money), ■ COBS 6.1.11 R (Timing of disclosure) and ■ COBS 16.4 (Statements of client designated investments or client money).

#### Modifications to the general application rule

1.1.2

FCA PRA

R

The *general application rule* is modified in ■ COBS 1 Annex 1 according to the activities of a *firm* (Part 1) and its location (Part 2).

1.1.3

FCA PRA

R

The *general rule* is also modified in the chapters to this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

#### Guidance

1.1.4

FCA PRA

G

*Guidance* on the application provisions is in ■ COBS 1 Annex 1 (Part 3).



## Application (see COBS 1.1.2R)

## Part 1: What?

## Modifications to the general application rule according to activities

## 1. Eligible counterparty business

1.1 R The *COBS* provisions shown below do not apply to *eligible counterparty business*.

[FCA]

| COBS provision                                    | Description   |
|---|---|
| COBS 2 (other than COBS 2.4)                      | Conduct of business obligations                                     |
| COBS 4 (other than COBS 4.4.1 R and COBS 4.4.2 G) | Communicating with clients including financial promotions           |
| COBS 6.1  | Information about the firm, its services and remuneration           |
| COBS 8  | Client agreements   |
| COBS 10   | Appropriateness (for non-advised services)                          |
| COBS 11.2, COBS 11.3 and COBS 11.6                | Best execution, client order handling and use of dealing commission |
| COBS 12.3.1 R to COBS 12.3.3 R                    | Labelling of non-independent research                               |
| COBS 14.3   | Information about designated investments                            |
| COBS 16   | Reporting information to clients                                    |
| [Note: article 24(1) of <i>MiFID</i> ]            |   |

## 2. Transactions between an MTF operator and its users

2.1 R The *COBS* provisions in paragraph 1.1R and **COBS 11.4 (Client limit orders)** do not apply to a transaction between an operator of an *MTF* and a member or participant in relation to the use of the *MTF*.

[FCA]

[Note: article 14(3) of *MiFID*]

## 3. Transactions concluded on an MTF

3.1 R The *COBS* provisions in paragraph 1.1R and **COBS 11.4 (client limit orders)** do not apply to transactions concluded under the rules governing an *MTF* between members or participants of the *MTF*. However, the member or participant must comply with those provisions in respect of its *clients* if, acting on its *clients* behalf, it is executing their orders on an *MTF*.

[FCA]

[Note: article 14(3) of *MiFID*]

#### 4. Transactions concluded on a regulated market

- 4.1 R In relation to transactions concluded on a *regulated market*, members and participants of the *regulated market* are not required to apply to each other the *COBS* provisions in paragraph 1.1R and **COBS 11.4** (client limit orders). However, the member or participant must comply with those provisions in respect of its *clients* if, acting on its *clients* behalf, it is executing their orders on a *regulated market*.

[FCA]

[Note: article 42(4) of *MiFID*]

#### 5. Consumer credit products

- 5.1 R If a *firm*, in relation to its *MiFID* business, offers an *investment service* as part of a financial product that is subject to other provisions of *EU* legislation or common European standards related to *credit institutions* and consumer credits with respect to risk assessments of clients and/or information requirements, that service is not subject to the *rules* in this sourcebook that implement Article 19 of *MiFID*.

[FCA]

[Note: article 19(9) of *MiFID*]

- 5.2 G This exclusion for consumer credit products is intended to apply on a narrow basis in relation to cases in which the *investment service* is a part of another financial product. It does not apply where the *investment service* is the essential or leading part of the financial product. It also does not apply where the service provided is a combination of an *investment service* and an *ancillary service* (for example, granting a credit for the execution of an order where the credit is instrumental to the buying or the selling of a *financial instrument*.) The exclusion also does not apply in relation to the sale of a *financial instrument* for the purpose of enabling a *client* to invest money to repay his obligations under a loan, mortgage or home reversion.

[FCA]

#### 6. Use of third party processors in life insurance mediation activities

- 6.1 R If a *firm* (or its *appointed representative* or, where applicable, its *tied agent*) outsources *insurance mediation activities* to a *third party processor*:

[FCA]

- (1) the *firm* must accept responsibility for the acts and omissions of that *third party processor* conducting those outsourced activities; and
- (2) any *COBS* rule requiring the *third party processor's* identity to be disclosed to *clients* must be applied as a requirement to disclose the *firm's* identity;
- unless the *third party processor* is *advising on investments*.

### Part 2: Where?

#### Modifications to the general application rule according to location

|     |       |     |  |
|-----|-------|-----|--|
| 1.  |       |     | <b>EEA territorial scope rule: compatibility with European law</b>   |
| 1.1 | R     | (1) | The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 3 for <i>guidance</i> on this).  |
|     | [FCA] |     |  |
|     | [PRA] |     |  |
|     |       | (2) | This <i>rule</i> overrides every other <i>rule</i> in this sourcebook.   |
| 1.2 | R     |     | In addition to the <i>EEA territorial scope rule</i> , the effect of the <i>Electronic Commerce Directive</i> on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 7.3 of Part 3 for <i>guidance</i> on this).                          |
|     | [FCA] |     |  |
|     | [PRA] |     |  |
|     |       |     | [Note: article 3(3) of, and Annex to, the <i>Electronic Commerce Directive</i> ]   |
| 2.  |       |     | <b>Business with UK clients from overseas establishments</b>   |
| 2.1 | R     | (1) | This sourcebook applies to a <i>firm</i> which carries on business with a <i>client</i> in the <i>United Kingdom</i> from an establishment overseas.   |
|     | [FCA] |     |  |
|     | [PRA] |     |  |
|     |       | (2) | But the sourcebook does not apply to those activities if the office from which the activity is carried on were a separate <i>person</i> and the activity:  |
|     |       | (a) | would fall within the overseas <i>persons</i> exclusions in article 72 of the <i>Regulated Activities Order</i> ; or   |
|     |       | (b) | would not be regarded as carried on in the <i>United Kingdom</i> .   |
| 2.2 | G     |     | One of the effects of the <i>EEA territorial scope rule</i> is to override the application of this sourcebook to the overseas establishments of <i>EEA firms</i> in a number of cases, including circumstances covered by <i>MiFID</i> , the <i>Distance Marketing Directive</i> or the <i>Electronic Commerce Directive</i> . See Part 3 for <i>guidance</i> on this. |
|     | [FCA] |     |  |
|     | [PRA] |     |  |

## Part 3: Guidance

|     |       |  |   |
|-----|-------|--|---|
| 1.  |       |  | <b>The main extensions and restrictions to the general application rule</b>   |
| 1.1 | G     |  | The <i>general application rule</i> is modified in Parts 1 and 2 of Annex 1 and in certain chapters of the <i>Handbook</i> . The modification may be an extension of this <i>rule</i> . For example, <b>COBS 4</b> (Communicating with clients, including financial promotions) has extended the application of the rule. |
|     | [FCA] |  |   |
|     | [PRA] |  |   |
| 1.2 | G     |  | The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the <i>general application rule</i> , particularly in relation to territorial scope. However, for the majority of circumstances, the <i>general application rule</i> is likely to apply.                               |
|     | [FCA] |  |   |
|     | [PRA] |  |   |
| 2.  |       |  | <b>The Single Market Directives and other directives</b>  |
| 2.1 | G     |  | This <i>guidance</i> provides a general overview only and is not comprehensive.   |

|                |   |   |
|----------------|---|---|
| [FCA]<br>[PRA] |   |   |
| 2.2            | G | When considering the impact of a directive on the territorial application of a <i>rule</i> , a <i>firm</i> will first need to consider whether the relevant situation involves a non-UK element. The <i>EEA territorial scope rule</i> is unlikely to apply if a <i>UK firm</i> is doing business in a <i>UK establishment</i> for a <i>client</i> located in the <i>United Kingdom</i> in relation to a <i>United Kingdom</i> product. However, if there is a non-UK element, the <i>firm</i> should consider whether: |
| [FCA]<br>[PRA] |   |   |
|                |   | (1) it is subject to the directive (in general, directives only apply to <i>UK firms</i> and <i>EEA firms</i> , but the implementing provisions may not treat non- <i>EEA firms</i> more favourably than <i>EEA firms</i> );  |
|                |   | (2) the business it is performing is subject to the directive; and  |
|                |   | (3) the particular <i>rule</i> is within the scope of the directive.  |
|                |   | If the answer to all three questions is 'yes', the <i>EEA territorial scope rule</i> may change the effect of the <i>general application rule</i> .   |
| 2.3            | G | When considering a particular situation, a <i>firm</i> should also consider whether two or more directives apply.   |
| [FCA]<br>[PRA] |   |   |
| 3.             |   | <b>MiFID: effect on territorial scope</b>   |
| 3.1            | G | <b>PERG 13</b> contains general <i>guidance</i> on the <i>persons</i> and <i>businesses</i> to which <i>MiFID</i> applies.  |
| [FCA]          |   |   |
| 3.2            | G | This <i>guidance</i> concerns the <i>rules</i> within the scope of <i>MiFID</i> including those <i>rules</i> which are in the same subject area as the <i>implementing rules</i> . A <i>rule</i> is within the scope of <i>MiFID</i> if it is followed by a 'Note:' indicating the article of <i>MiFID</i> or the <i>MiFID implementing Directive</i> which it implements.  |
| [FCA]          |   |   |
| 3.3            | G | For a <i>UK MiFID investment firm</i> , <i>rules</i> in this sourcebook that are within the scope of <i>MiFID</i> generally apply to its <i>MiFID business</i> carried on from an establishment in the <i>United Kingdom</i> . They also generally apply to its <i>MiFID business</i> carried on from an establishment in another <i>EEA State</i> , but only where that business is not carried on within the territory of that State. (See articles 31(1) and 32(1) and (7) of <i>MiFID</i> )                         |
| [FCA]          |   |   |
| 3.4            | G | For an <i>EEA MiFID investment firm</i> , <i>rules</i> in this sourcebook that are within the scope of <i>MiFID</i> generally apply only to its <i>MiFID business</i> if that business is carried on from an establishment in, and within the territory of, the <i>United Kingdom</i> . (See article 32(1) and (7) of <i>MiFID</i> )  |
| [FCA]          |   |   |
| 3.5            | G | However, the <i>rules</i> on <i>investment research</i> and <i>non-independent research</i> (COBS 12.2 and 12.3 ) and the <i>rules</i> on <i>personal transactions</i> ( COBS 11.7) apply on a "home state" basis. This means that they apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> and do not apply to an <i>EEA MiFID investment firm</i> .  |
| [FCA]          |   |   |
| 4.             |   | <b>Insurance Mediation Directive: effect on territorial scope</b>   |



- 4.1 G The *Insurance Mediation Directive's* scope covers most *firms* carrying on most types of *insurance mediation*. The *rules* in this sourcebook within the Directive's scope are those relating to *life policies* that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis. The *rules* implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in **COBS 7** (Insurance mediation) and **COBS 9** (Suitability (including basic advice)).
- [FCA]
- 4.2 G In the *FCA's* view, the responsibility for these minimum requirements rests with the *Home State*, but a *Host State* is entitled to impose additional requirements within the Directive's scope in the 'general good'. Accordingly, the general rules on territorial scope are modified so that:
- [FCA]
- (1) for a *UK firm* providing *passported activities* through a *branch* in another *EEA State* under the Directive, the *rules* implementing the Directive's minimum requirements apply but the territorial scope of the additional *rules* within the Directive's scope is not modified;
  - (2) for an *EEA firm* providing *passported activities* under the Directive in the *United Kingdom*, the *rules* implementing the Directive's minimum requirements do not apply, but the additional *rules* within the Directive's scope have their unmodified territorial scope unless the *Home State* imposes measures of like effect. (See recital 19 and article 12(5) of the *Insurance Mediation Directive*)
5. Consolidated Life Directive: effect on territorial scope
- 5.1 G The *Consolidated Life Directive's* scope covers *long-term insurers* authorised under that Directive conducting *long-term insurance business*. The *rules* in this sourcebook within the Directive's scope are the cancellation *rules*(**COBS 15**) and those *rules* requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the *contract of insurance*. The Directive specifies minimum information and cancellation requirements and permits *EEA States* to adopt additional information requirements that are necessary for a proper understanding by the *policyholder* of the essential elements of the commitment.
- [FCA]
- 5.2 G If the *State of the commitment* is an *EEA State*, the Directive provides that the applicable information rules and cancellation rules shall be determined by that state. Accordingly, if the *State of the commitment* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the commitment* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial promotion rules*, is not affected since the Directive explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the *Consolidated Life Directive*)
- [FCA]
6. Distance Marketing Directive: effect on territorial scope
- 6.1 G In broad terms, a *firm* is within the *Distance Marketing Directive's* scope when conducting an activity relating to a *distance contract* with a *consumer*. The *rules* in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information, the cancellation rules (**COBS 15**) and the other specific *rules* implementing the Directive contained in **COBS 5** (Distance communications).
- [FCA]



- 6.2 G In the *FCA's* view, the Directive places responsibility for requirements within the Directive's scope on the *Home State* except in relation to business conducted through a branch, in which case the responsibility rests with the *EEA State* in which the branch is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the *Distance Marketing Directive*)  
[FCA]
- 6.3 G This means that relevant *rules* in this sourcebook will, in general, apply to a *firm* conducting business within the Directive's scope from an establishment in the *United Kingdom* (whether the *firm* is a national of the *UK* or of any other *EEA* or non-*EEA* state).  
[FCA]
- 6.4 G Conversely, the territorial scope of the relevant *rules* in this sourcebook is modified as necessary so that they do not apply to a *firm* conducting business within the Directive's scope from an establishment in another *EEA state* if the *firm* is a national of the *United Kingdom* or of any other *EEA state*.  
[FCA]
- 6.5 G In the *FCA's* view:  
[FCA]
- (1) the 'country of origin' basis of the Directive is in line with that of the *Electronic Commerce Directive*; (See recital 6 of the *Distance Marketing Directive*)
  - (2) for business within the scope of both the *Distance Marketing Directive* and the *Consolidated Life Directive*, the territorial application of the *Distance Marketing Directive* takes precedence; in other words, the *rules* requiring pre-contract information and cancellation rules (COBS 15 ) derived from the *Consolidated Life Directive* apply on a 'country of origin' basis rather than being based on the *state of the commitment*; (See articles 4(1) and 16 of the *Distance Marketing Directive* noting that the *Distance Marketing Directive* was adopted after the *Consolidated Life Directive*)
  - (3) for business within the scope of both the *Distance Marketing Directive* and the *Insurance Mediation Directive*, the minimum information and other requirements in the *Insurance Mediation Directive* continue to be those applied by the '*Home State* ', but the minimum requirements in the *Distance Marketing Directive* and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the *Insurance Mediation Directive* was adopted after the *Distance Marketing Directive* and is not expressed to be subject to it.)
7. Electronic Commerce Directive: effect on territorial scope
- 7.1 G The *Electronic Commerce Directive's* scope covers every *firm* carrying on an *electronic commerce activity*. Every *rule* in this sourcebook is within the Directive's scope.  
[FCA]
- 7.2 G A key element of the Directive is the ability of a *person* from one *EEA state* to carry on an *electronic commerce activity* freely into another *EEA state*. Accordingly, the territorial application of the *rules* in this sourcebook is modified so  
[FCA]

that they apply at least to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA state*. Conversely, a *firm* that is a national of the *UK* or another *EEA State*, carrying on an *electronic commerce activity* from an *establishment* in another *EEA State* with or for a *person* in the *United Kingdom* need not comply with the *rules* in this sourcebook. (See article 3(1) and (2) of the *Electronic Commerce Directive*)

7.3 G The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the *FCA* has adopted for this sourcebook. The derogation applies to an *insurer* that is authorised under and carrying on an *electronic commerce activity* within the scope of the *Consolidated Life Directive* and permits *EEA States* to continue to apply their advertising rules in the 'general good'. Where the derogation applies, the *financial promotion rules* continue to apply for incoming *electronic commerce activities* (unless the *firm's* 'country of origin' applies rules of like effect) but do not apply for outgoing *electronic commerce activities*. (See article 3(3) and Annex, fourth indent of the *Electronic Commerce Directive*; Annex to European Commission Discussion Paper MARKT/2541/03)

7.4 G In the *FCA's* view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):

[FCA]

- (1) is in line with the *Distance Marketing Directive*; and
- (2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.

7.5 G The 'derogations' in the Directive may enable other *EEA States* to adopt a different approach to the *United Kingdom* in certain fields. (See recital 19 of the *Insurance Mediation Directive*, recital 6 of the *Distance Marketing Directive*, article 3 and Annex of the *Electronic Commerce Directive*)

[FCA]

## 8. Investor Compensation Directive

8.1 G (1) The *Investor Compensation Directive* generally requires *MiFID investment firms* to belong to a compensation scheme established in accordance with the Directive. The *rules* in this sourcebook that implement the Directive are those (i) requiring *MiFID investment firms*, including their branches, to make available specified information about the compensation scheme to which they belong and specifying the language in which such information must be provided ( [COBS 6.1.16 R](#) ) and (ii) restricting mention of the compensation scheme in advertising to factual references ( [COBS 4.2.5 G](#) ).

[FCA]

- (2) In the *FCA's* view, these matters are a *Home State* responsibility although a *Host State* may continue to apply its own rules in the 'general good'. Accordingly, these *rules* apply to the establishments of a *UK MiFID investment firm* in the *United Kingdom* and another *EEA State* but also apply in accordance with their standard territorial scope to an *EEA MiFID investment firm* providing services in the *UK* unless its *Home State* applies rules of like effect.

9. UCITS Directive: effect on territorial scope
- 9.1 G The *UCITS Directive* covers undertakings for collective investment in transferable securities (*UCITS*) meeting the requirements of the Directive, and their management companies and depositaries. The rules in this sourcebook within the Directive's scope (all of which will apply to a *management company*) are those in:
- [FCA]
- (1) COBS 2.1 (Acting honestly, fairly and professionally);
  - (2) COBS 2.3 (Inducements);
  - (3) COBS 4.2.1 R (The fair, clear and not misleading rule);
  - (4) COBS 4.3.1 R (Financial promotions to be identifiable as such);
  - (5) COBS 4.13 (UCITS);
  - (6) COBS 11.2 (Best execution);
  - (7) COBS 11.3 (Client order handling);
  - (8) COBS 11.7 (Personal account dealing);
  - (9) COBS 14 (Providing product information to clients) relating to the provision of *key investor information* by the *management company* (in addition to applying to a *management company*, COBS 14.2 also applies to an *ICVC* that is a *UCITS scheme*); and
  - (10) COBS 16.2 (Occasional reporting).
- 9.1A G The majority of the *COBS rules* referred to in paragraph 9.1 are rules of conduct which each *EEA State* must draw up under article 14.1 of the *UCITS Directive* which *management companies* authorised in that State must observe at all times. The exceptions are COBS 4 and COBS 14 in so far as they relate to a *UCITS scheme*, which form part of the *FCA's fund application rules* and which are the responsibility of the *UCITS Home State* (for a *UCITS scheme*, the *FCA* - see COLL 12.3.5 R (COLL fund rules under the management company passport: the fund application rules) and article 19 of the *UCITS Directive*).
- [FCA]
- 9.1B G Where a *management company* is providing *collective portfolio management* services for a *UCITS* established in a different *EEA State*, responsibility for its compliance with the applicable rules of conduct drawn up under article 14 will generally be for the *management company's Home State*, but when a *branch* is established it will be the responsibility of the *Host Member State (UCITS Home State)* (see articles 17(4) and 17(5) of the *UCITS Directive*).
- [FCA]
- 9.1C G Under the *UCITS Directive* certain *Host State* marketing and *MiFID*-specific rules might also apply to a *management company* providing *collective portfolio management* services for a *UCITS* established in a different *EEA State*. Consequently, an *EEA UCITS management company* should note that, under *COBS*, certain of the *FCA's rules* apply to it, including the *financial promotion rules*. COBS 4.13 (UCITS) is concerned with marketing communications for *UCITS schemes* and *EEA UCITS schemes*.
- [FCA]
- 9.1D G *EEA UCITS management companies* should be aware that there is a special narrower application of *COBS* for *scheme management activity* provided for by COBS 18.5 (Operators of collective investment schemes).
- [FCA]

---

|       |   |   |
|-------|---|---|
| 9.2   | G | [deleted]   |
| 9.3   | G | <b>The Directive does not affect the territorial scope of <i>rules</i> as they apply to an intermediary (that is not a <i>management company</i>) selling <i>units</i> of a <i>UCITS</i>.</b> |
| [FCA] |   |   |
|       |   | [Note: articles 12, 14, 17, 18, 19 and 94 of the <i>UCITS Directive</i> ]   |



## Chapter 2

# Conduct of business obligations

**2.1 Acting honestly, fairly and professionally**

**The client's best interests rule**

2.1.1  
FCA

**R**

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

[Note: article 19(1) of *MiFID* and article 14(1)(a) and (b) of the *UCITS Directive*]

**Exclusion of liability**

2.1.2  
FCA

**R**

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

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

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

2.1.3  
FCA

**G**

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

any duty or liability it may have to a *client* other than under the *regulatory system*, unless it is honest, fair and professional for it to do so.

- 
- (2) The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.



## 2.2 Information disclosure before providing services

### Application

2.2.-1  
FCA

R

- (1) This section applies in relation to *MiFID or equivalent third country business*.
- (2) This section applies in relation to other *designated investment business* carried on for a *retail client*:
  - (a) in relation to a *derivative*, a *warrant* or *stock lending activity*, but as regards the matters in ■ COBS 2.2.1R (1)(b) only; and
  - (b) in relation to a *retail investment product* , but as regards the matters in ■ COBS 2.2.1R (1)(a) and ■ (d) only.

[Note: article 19(3) of *MiFID*]

### Information disclosure before providing services

2.2.1  
FCA

R

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

so that the *client* is reasonably able to understand the nature and risks of the service and of the specific type of *designated investment* that is being offered and, consequently, to take investment decisions on an informed basis.
- (2) That information may be provided in a standardised format.
- (3) [deleted]

(4) [deleted]

[Note: article 19(3) of MiFID]

2.2.2  
FCA

G

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

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

2.2.3  
FCA

R

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

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

**2.3 Inducements**

**Interpretation**

2.3.-1  
FCA

**R**

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

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

**Rule on inducements**

2.3.1  
FCA

**R**

A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* or, in the case of its *MiFID* or *equivalent third country business*, another *ancillary service*, carried on for a *client* other than:

- (1) a fee, commission or non-monetary benefit paid or provided to or by the *client* or a *person* on behalf of the *client*; or
- (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:
  - (a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the *firm's* duty to act in the best interests of the *client*; and
  - (b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to

the *client*, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

- (i) this requirement only applies to business other than *MiFID or equivalent third country business* if it includes giving a *personal recommendation* in relation to a *retail investment product*, or giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*;
  - (ii) where this requirement applies to business other than *MiFID or equivalent third country business*, a *firm* is not required to make a disclosure to the client in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-monetary benefits in ■ COBS 2.3.15 G as though that table were part of this *rule* for this purpose only;
  - (iii) this requirement does not apply to a *firm* giving *basic advice*; and
- (c) in relation to *MiFID or equivalent third country business* or when carrying on a *regulated activity* in relation to a *retail investment product*, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or
- (3) proper fees which enable or are necessary for the provision of *designated investment business* or *ancillary services*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the *firm's* duties to act honestly, fairly and professionally in accordance with the best interests of its *clients*.

[Note: article 26 of the *MiFID implementing Directive* and articles 29(1) and 29(2) of the *UCITS implementing Directive*]

[Note: The European Securities and Markets Authority has issued recommendations on inducements under MiFID]

2.3.1A

FCA

R

■ COBS 2.3.1 R applies to a *UK UCITS management company* and *EEA UCITS management company* when providing *collective portfolio management* services, as if:

- (1) references to a *client*, were references to any *UCITS* it manages; and
- (2) in (2)(b) and (c) and (3) of that *rule*, references to *MiFID or equivalent third country business* were also references to the *collective portfolio management* activities of investment management and administration for the *scheme*.

2.3.2  
FCA

R

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

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

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

[Note: article 26 of the *MiFID implementing Directive* and article 29(2) of the *UCITS implementing Directive*]

2.3.2A  
FCA

R

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

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

#### Guidance on inducements

2.3.3  
FCA

G

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

2.3.4  
FCA

G

■ COBS 11.6 (Use of dealing commission) deals with the acceptance of certain inducements by *investment managers* and builds upon the requirements in this section. *Investment managers* should ensure they comply with this section and ■ COBS 11.6.

2.3.5  
FCA

G

For the purposes of this section, a non-monetary benefit would include the direction or referral by a *firm* of an actual or potential item of *designated investment business* to another *person*, whether on its own initiative or on the instructions of an *associate*.

2.3.6  
FCA

G

For the purposes of this section, the receipt by an *investment firm* of a commission in connection with a *personal recommendation* or a general recommendation, in circumstances where the advice or recommendation is not biased as a result of the receipt of commission, should be considered as designed to enhance the quality of the recommendation to the *client*.

[Note: recital 39 of *MiFID implementing Directive*]

2.3.6A  
FCA

G

■ COBS 6.1A (Adviser charging and remuneration), ■ COBS 6.1B (Retail investment product provider requirements relating to adviser charging and remuneration), ■ COBS 6.1C (Consultancy charging and remuneration) and ■ COBS 6.1D (Product provider requirements relating to consultancy charging and remuneration) set out specific requirements as to when it is acceptable for a *firm* to pay or receive commissions, fees or other benefits:

- (1) relating to the provision of a *personal recommendation on retail investment products*; or
- (2) for giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

2.3.7  
FCA

**G** The fact that a fee, commission or non-monetary benefit is paid or provided to or by an *appointed representative* or, where applicable, by a *tied agent*, does not prevent the application of the *rule* on inducements.

2.3.8  
FCA

**G** The *rule* on inducements is applicable to a *firm* and those acting on behalf of a *firm* in relation to the provision of an *investment service* or *ancillary service* to a *client*. Small gifts and minor hospitality received by an individual in their personal capacity below a level specified in the *firm's* conflict's of interest policy, will not be relevant for the purpose of the *rule* on inducements.

**Paying commission on non-advised sales of packaged products**

2.3.9  
FCA

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

2.3.10  
FCA

- A**
- (1) If a *firm* is required to disclose *commission* (see ■ COBS 6.4) to a *client* in relation to the sale of a *packaged product* (other than in relation to arrangements between firms that are in the same *immediate group*) the firm should not enter into any of the following:
    - (a) volume overrides, if *commission* paid in respect of several transactions is more than a simple multiple of the *commission* payable in respect of one transaction of the same kind; and
    - (b) an agreement to indemnify the payment of *commission* on terms that would or might confer an additional financial benefit on the recipient in the event of the *commission* becoming repayable.
  - (2) Contravention of (1) may be relied upon as tending to establish contravention of the *rule* on inducements (■ COBS 2.3.1 R).

2.3.11  
FCA

**G**

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

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

2.3.11A

FCA

G

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

2.3.12

FCA

A

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

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

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

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

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

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

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



made in relation to *retail investment products* given by the *firm* or the advice given, or services provided to, an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

- (5) In this *evidential provision*, in applying (2) and (3) any holding of, or *credit* provided by, a *retail investment product* provider's *associate* is to be regarded as held by, or provided by, that *retail investment product* provider.
- (6) [deleted]
- (7) Contravention of (2) or (3) may be relied upon as tending to establish contravention of the *rule* on inducements (■ COBS 2.3.1 R).

2.3.12A  
FCA

G

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

2.3.13  
FCA

G

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

**Reasonable non-monetary benefits**

2.3.14  
FCA

G

- (1) In relation to the sale of *retail investment products*, the table on reasonable non-monetary benefits (■ COBS 2.3.15 G) indicates the kind of benefits which are capable of enhancing the quality of the service provided to a *client* and, depending on the circumstances, are capable of being paid or received without breaching the *client's best interests rule*. However, in each case, it will be a question of fact whether these conditions are satisfied.
- (2) The *guidance* in the table on reasonable non-monetary benefits is not relevant to non-monetary benefits which may be given by a *retail investment product* provider or its *associate* to its own *representatives*. The *guidance* in this provision does not apply directly to non-monetary benefits provided by a *firm* to another *firm* that is in the same *immediate group*. In this situation, the *rules* on *commission equivalent* (■ COBS 6.4.3 R), the requirements on a *retail investment product* provider making a *personal recommendation* in respect of its own *retail investment products* (■ COBS 6.1A.9 R) or the requirements on a *firm* giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* produced by the *firm* (■ COBS 6.1C.8 R) will apply.



2.3.15

FCA

G

**Reasonable non-monetary benefits**

This table belongs to ■ COBS 2.3.14 G.

**Reasonable non-monetary benefits**

Gifts, Hospitality and Promotional Competition Prizes

1 A *retail investment product* provider giving and a *firm* receiving gifts, hospitality and promotional competition prizes of a reasonable value.

Promotion

2 A *retail investment product* provider assisting another *firm* to promote its *retail investment products* so that the quality of its service to *clients* is enhanced. Such assistance should not be of a kind or value that is likely to impair the recipient *firm's* ability to pay due regard to the interests of its *clients*, and to give advice on, and recommend, *retail investment products* available from the recipient *firm's* whole range or ranges.

Joint marketing exercises

3 A *retail investment product* provider providing generic product literature (that is, letter heading, leaflets, forms and envelopes) that is suitable for use and distribution by or on behalf of another *firm* if:

(a) the literature enhances the quality of the service to the *client* and is not primarily of promotional benefit to the *retail investment product* provider; and

(b) the total costs (for example, packaging, posting, mailing lists) of distributing such literature to its *client* are borne by the recipient *firm*.

4 A *retail investment product* provider supplying another *firm* with 'freepost' envelopes, for forwarding such items as completed applications, medical reports or copy client agreements.

5 A *retail investment product* provider supplying product specific literature (for example, *key features documents*, minimum information) to another *firm* if:

(a) the literature does not contain the name of any other *firm*; or

(b) if the name of the recipient *firm* is included, the literature enhances the quality of the service to the *client* and is not primarily of promotional benefit to the recipient *firm*.

6 A *retail investment product* provider supplying draft articles, news items and *financial promotions* for publication in another *firm's* magazine, only if in each case any costs paid by the *product provider* for placing the articles and *financial promotions* are not more than market rate, and exclude distribution costs.

Seminars and conferences

7 A *retail investment product* provider taking part in a seminar organised by another *firm* or a third party and paying toward the cost of the seminar, if:

(a) its participation is for a genuine business purpose; and

(b) the contribution is reasonable and proportionate to its participation and by reference to the time and sessions at the seminar when its staff play an active role.

Technical services and information technology

8 A *retail investment product* provider supplying a 'freephone' link to which it is connected.

9 A *retail investment product* provider supplying another *firm* with any of the following:

- (a) quotations and *projections* relating to its *retail investment products* and, in relation to specific *investment* transactions (or for the purpose of any scheme for review of past business), advice on the completion of forms or other *documents*;
  - (b) access to data processing facilities, or access to data, that is related to the *retail investment product* provider's business;
  - (c) access to third party electronic dealing or quotation systems that are related to the *retail investment product* provider's business; and
  - (d) software that gives information about the *retail investment product* provider's *retail investment products* or which is appropriate to its business (for example, for use in a scheme for review of past business or for producing *projections* or technical product information).
- 10 A *retail investment product* provider paying cash amounts or giving other assistance to a *firm* not in the same *immediate group* for the development of software or other computer facilities necessary to operate software supplied by the *retail investment product* provider, but only to the extent that by doing so it will generate equivalent cost savings to itself or *clients*.
- 11 A *retail investment product* provider supplying another *firm* with information about sources of mortgage finance.
- 12 A *retail investment product* provider supplying another *firm* with generic technical information in writing, not necessarily related to the *product provider's* business, when this information states clearly and prominently that it is produced by the *product provider* or (if different) supplying *firm*.
- Training
- 13 A *retail investment product* provider providing another *firm* with training facilities of any kind (for example, lectures, venue, written material and software).
- Travel and accommodation expenses
- 14 A *retail investment product* provider reimbursing another *firm's* reasonable travel and accommodation expenses when the other *firm*:
- (a) participates in market research conducted by or for the *retail investment product* provider ;
  - (b) attends an annual national event of a *United Kingdom* trade association, hosted or co-hosted by the *retail investment product* provider ;
  - (c) participates in the *retail investment product* provider's training facilities (see 13);
  - (d) visits the *retail investment product* provider's *United Kingdom* office in order to:
    - (i) receive information about the *retail investment product* provider's administrative systems; or
    - (ii) attend a meeting with the *retail investment product* provider and an existing or prospective *client* of the receiving *firm*.

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

2.3.16A

FCA

G

■ COBS 6.1C), these benefits should be made available equally across those *firms* if they are provided at all.

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

2.3.17

FCA

R

**Record keeping: inducements**

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

[Note: see article 51(3) of the *MiFID implementing Directive*]

## 2.4 Agent as client and reliance on others

2.4.1

FCA

R

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

2.4.2

FCA

G

This section is not relevant to the question of who is the *firm's* counterparty for prudential purposes and it does not affect any obligation a *firm* may owe to any other *person* under the general law.

### Agent as client

2.4.3

FCA

R

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

If this is the case, C2 is the *client* of F in respect of that business and C1 is not.
- (3) If there is an agreement under (2)(a) in relation to more than one C2 represented by C1, F may discharge any requirement to notify, obtain consent from, or enter into an agreement with each C2 by sending to, or receiving from, C1 a single communication expressed to cover each C2, except that the following will be required for each C2:
  - (a) separate risk warnings required under this sourcebook;
  - (b) separate confirmations under the requirements on occasional reporting (■ COBS 16.3); and
  - (c) separate *periodic statements*.

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

2.4.4

FCA

R

- (1) This *rule* applies if a *firm* (F1), in the course of performing *MiFID or equivalent third country business*, receives an instruction to perform an *investment or ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:
- (a) a *MiFID investment firm* or a *third country investment firm*; or
  - (b) an *investment firm* that is:
    - (i) a *firm* or authorised in another *EEA State*; and
    - (ii) subject to equivalent relevant requirements.
- (2) F1 may rely upon:
- (a) any information about C transmitted to it by F2; and
  - (b) any recommendations in respect of the service or transaction that have been provided to C by F2.
- (3) F2 will remain responsible for:
- (a) the completeness and accuracy of any information about C transmitted by it to F1; and
  - (b) the appropriateness for C of any advice or recommendations provided to C.
- (4) F1 will remain responsible for concluding the services or transaction based on any such information or recommendations in accordance with the applicable requirements under the *regulatory system*.

[Note: article 20 of *MiFID*]

2.4.5

FCA

G

- (1) If F1 is required to perform a suitability assessment or an appropriateness assessment under ■ COBS 9 or ■ COBS 10, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in ■ COBS 9 (excluding the *basic advice rules*) or equivalent requirements in another *EEA State* in performing that assessment.
- (2) If F1 is required to perform an appropriateness assessment under ■ COBS 10, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in ■ COBS 10.2 or equivalent requirements in another *EEA State* in performing that assessment.

**Reliance on others: other situations**

2.4.6

FCA

R

- (1) This *rule* applies if the *rule* on reliance on other *investment firms* (■ COBS 2.4.4 R ) does not apply.

2.4.7  
FCA

A

(2) A *firm* will be taken to be in compliance with any *rule* in this sourcebook that requires it to obtain information to the extent it can show it was reasonable for it to rely on information provided to it in writing by another *person*.

(1) In relying on ■ COBS 2.4.6 R, a *firm* should take reasonable steps to establish that the other *person* providing written information is not connected with the *firm* and is competent to provide the information.

(2) Compliance with (1) may be relied upon as tending to establish compliance with ■ COBS 2.4.6 R.

(3) Contravention of (1) may be relied upon as tending to establish contravention of ■ COBS 2.4.6 R.

2.4.8  
FCA

G

It will generally be reasonable (in accordance with ■ COBS 2.4.6 R (2)) for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information.

2.4.9  
FCA

R

Any information that a *rule* in COBS or CASS requires to be sent to a *client* may be sent to another *person* on the instruction of the *client* so long as the recipient is not connected to the *firm*.

2.4.10  
FCA

R

In the case of business that is not *MiFID* or *equivalent third country business*, if a *rule* in COBS or CASS requires information to be sent to a *client*, a *firm* need not send that information so long as it takes reasonable steps to establish that it has been or will be supplied by another *person*.



## Chapter 3

# Client categorisation



## 3.1 Application

### Scope

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

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

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

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

### Mixed business

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

- (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*.

**3.1.5** **G** (1) For example, the requirement concerning mixed business will apply if a *MiFID investment firm* advises a *client* on whether to invest in a *scheme* or a *life policy*. This is because the former is within the scope of *MiFID* and the latter is not. In such a case, the *MiFID client* categorisation requirements prevail.  
**FCA**

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

## 3.2 Clients

### General definition

3.2.1

FCA

R

- (1) A *person* to whom a *firm* provides, intends to provide or has provided:
  - (a) a service in the course of carrying on a *regulated activity*;  
or
  - (b) in the case of *MiFID* or *equivalent third country business*, an *ancillary service*,
 is a "client" of that *firm*;
- (2) A "client" includes a potential client.
- (3) In relation to the *financial promotion rules*, a *person* to whom a *financial promotion* is or is likely to be *communicated* is a "client" of a *firm* that *communicates* or *approves* it.
- (4) A client of an *appointed representative* or, if applicable, a *tied agent* is a "client" of the *firm* for whom that *appointed representative*, or *tied agent*, acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* or *MiFID* (see sections 39 and 39A of the *Act* and ■ SUP 12.3.5 R).

[Note: article 4(1)(10) of *MiFID*]

3.2.2

FCA

G

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

3.2.3

FCA

R

**Who is the client?**

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

### 3.3 General notifications

#### 3.3.1

FCA

R

A *firm* must:

- (1) notify a new *client* of its categorisation as a *retail client*, *professional client*, or *eligible counterparty* in accordance with this chapter; and
- (2) prior to the provision of services, inform a *client* in a *durable medium* about:
  - (a) any right that *client* has to request a different categorisation; and
  - (b) any limitations to the level of *client* protection that such a different categorisation would entail.

[Note: paragraph 2 of section I of annex II to *MiFID* and articles 28(1) and (2) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

#### 3.3.2

FCA

G

This chapter requires a *firm* to allow a *client* to request re-categorisation as a *client* that benefits from a higher degree of protection (see ■ COBS 3.7.1 R). A *firm* must therefore notify a *client* that is categorised as a *professional client* or an *eligible counterparty* of its right to request a different categorisation whether or not the *firm* will agree to such requests. However, a *firm* need only notify a *client* of a right to request a different categorisation involving a lower level of protection if it is prepared to consider such requests.

## 3.4 Retail clients

3.4.1

FCA

R

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

[Note: article 4(1)(12) of *MiFID*]

3.4.2

FCA

R

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

## 3.5 Professional clients

3.5.1

FCA

R

A *professional client* is a *client* that is either a *per se professional client* or an *elective professional client*.

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

### Per se professional clients

3.5.2

FCA

R

Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

- (1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised by an *EEA State* or a third country and whether or not authorised by reference to a directive:
  - (a) a *credit institution*;
  - (b) an *investment firm*;
  - (c) any other authorised or regulated financial institution;
  - (d) an insurance company;
  - (e) a collective investment scheme or the management company of such a scheme;
  - (f) a pension fund or the management company of a pension fund;
  - (g) a commodity or commodity derivatives dealer;
  - (h) a local;
  - (i) any other institutional investor;
- (2) in relation to *MiFID* or *equivalent third country business* a large undertaking meeting two of the following size requirements on a company basis:
  - (a) balance sheet total of EUR 20,000,000;

- (b) net turnover of EUR 40,000,000;
  - (c) own funds of EUR 2,000,000;
- (3) in relation to business that is not *MiFID* or *equivalent third country business* a large undertaking meeting any of the following conditions:
- (a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) (or has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);
  - (b) an undertaking that meets (or any of whose *holding companies* or *subsidiaries* meets) two of the following tests:
    - (i) a balance sheet total of EUR 12,500,000;
    - (ii) a net turnover of EUR 25,000,000;
    - (iii) an average number of employees during the year of 250;
  - (c) a *partnership* or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited *partnership* without deducting loans owing to any of the *partners*;
  - (d) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and *designated investments* forming part of the trust's assets, but before deducting its liabilities;
  - (e) a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or *operator* of a *personal pension scheme* or *stakeholder pension scheme* where the scheme has (or has had at any time during the previous two years):
    - (i) at least 50 members; and
    - (ii) assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
  - (f) a local authority or public authority.
- (4) a national or regional government, a public body that manages public debt, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECP, the EIB) or another similar international organisation;



- (5) another institutional investor whose main activity is to invest in *financial instruments* (in relation to the *firm's MiFID or equivalent third country business*) or *designated investments* (in relation to the *firm's other business*). This includes entities dedicated to the securitisation of assets or other financing transactions.

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

3.5.2A

FCA

R

In relation to *MiFID or equivalent third country business* a local authority or a public authority is not likely to be a regional government for the purposes of ■ COBS 3.5.2 R (4). In the FCA's opinion, a local authority may be a *per se professional client* for those purposes if it meets the test for large undertakings in ■ COBS 3.5.2 R (2) .

3.5.3

FCA

R

#### Elective professional clients

A *firm* may treat a *client* as an *elective professional client* if it complies with (1) and (3) and, where applicable, (2):

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

- (b) the *firm* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and
- (c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

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

3.5.4

FCA

R

If the *client* is an entity, the qualitative test should be performed in relation to the *person* authorised to carry out transactions on its behalf.

[Note: fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.5

FCA

G

The fitness test applied to managers and directors of entities licensed under directives in the financial field is an example of the assessment of expertise and knowledge involved in the qualitative test.

[Note: fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.6

FCA

R

Before deciding to accept a request for re-categorisation as an *elective professional client* a *firm* must take all reasonable steps to ensure that the *client* requesting to be treated as an *elective professional client* satisfies the qualitative test and, where applicable, the quantitative test.

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

3.5.7

FCA

G

An *elective professional client* should not be presumed to possess market knowledge and experience comparable to a *per se professional client*

[Note: second paragraph of section II.1 of annex II to *MiFID*]

3.5.8

FCA

G

*Professional client* are responsible for keeping the *firm* informed about any change that could affect their current categorisation.

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

3.5.9

FCA

R

- (1) If a *firm* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as an *elective professional client*, the *firm* must take the appropriate action.
- (2) Where the appropriate action involves re-categorising that client as a *retail client*, the *firm* must notify that *client* of its new categorisation.

[Note: fourth paragraph of section II.2 of annex II to *MiFID* and article 28(1) of the *MiFID implementing Directive*]

## 3.6 Eligible counterparties

3.6.1

FCA

R

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

[Note: article 24(1) of *MiFID*]

### Per se eligible counterparties

3.6.2

FCA

R

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

- (1) an *investment firm*;
- (2) a *credit institution*;
- (3) an insurance company;
- (4) a *collective investment scheme* authorised under the *UCITS Directive* or its management company;
- (5) a pension fund or its management company;
- (6) another financial institution authorised or regulated under *EU* legislation or the national law of an *EEA State*;
- (7) an undertaking exempted from the application of *MiFID* under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive;
- (8) a national government or its corresponding office, including a public body that deals with the public debt;

(9) a central bank;

(10) a supranational organisation.

[Note: first paragraph of article 24(2) and first paragraph of article 24(4) of *MiFID*]

3.6.3

FCA

G

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

### Elective eligible counterparties

3.6.4

FCA

R

A *firm* may treat a *client* as an *elective eligible counterparty* if:

(1) the *client* is an undertaking and:

(a) is a *per se professional client* (except for a *client* that is only a *per se professional client* because it is an institutional investor under ■ COBS 3.5.2 R (5)) and, in relation to business other than *MiFID or equivalent third country business*:

(i) is a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time); or

(ii) meets the criteria in the *rule* on meeting two quantitative tests (■ COBS 3.5.2 R (3)(b) ); or

(b) requests such categorisation and is an *elective professional client*, but only in respect of the services or transactions for which it could be treated as a *professional client*; and

(2) the *firm* has, in relation to *MiFID or equivalent third country business*, obtained express confirmation from the prospective counterparty that it agrees to be treated as an *eligible counterparty*.

[Note: article 24(3) and the second paragraph of article 24(4) of *MiFID* and article 50(1) of the *MiFID implementing Directive*]

3.6.5

FCA

G

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

3.6.6

FCA

R

A *firm* may obtain a prospective counterparty's confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.

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

### Client and firm located in different jurisdictions

3.6.7

FCA

R

In the case of *MiFID or equivalent third country business*, in the event of a transaction where the prospective counterparties are located in different

*EEA States*, the *firm* shall defer to the status of the other undertaking as determined by the law or measures of the *EEA State* in which that undertaking is established.

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

## 3.7 Providing clients with a higher level of protection

3.7.1

FCA

R

A *firm* must allow a *professional client* or an *eligible counterparty* to request re-categorisation as a *client* that benefits from a higher degree of protection.

[Note: second paragraph of article 24(2) of, and the second paragraph of section I of annex II to, *MiFID* and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.2

FCA

G

It is the responsibility of a *professional client* or *eligible counterparty* to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

[Note: third paragraph of section I and fourth paragraph of section II.2 of annex II to *MiFID* and second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.3

FCA

R

A *firm* may, either on its own initiative or at the request of the *client* concerned:

- (1) treat as a *professional client* or a *retail client* a *client* that might otherwise be categorised as a *per se eligible counterparty*;
- (2) treat as a *retail client* a *client* that might otherwise be categorised as a *per se professional client*;

and if it does so, the *client* will be re-categorised accordingly. Where applicable, this re-categorisation is subject to the requirement for a written agreement in ■ COBS 3.7.5 R.

[Note: second paragraph of article 24(2) of, and second paragraph of section I of annex II to, *MiFID* and article 28(3) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.4

FCA

R

If a *per se eligible counterparty* requests treatment as a *client* whose business with the *firm* is subject to conduct of business protections, but does not expressly request treatment as a *retail client* and the *firm* agrees to that request, the *firm* must treat that *eligible counterparty* as a *professional client*.

[Note: first paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.5

FCA

R

- (1) If, in relation to *MiFID* or equivalent third country business a *per se professional client* or a *per se eligible counterparty* requests treatment as a *retail client*, the *client* will be classified as a *retail client* if it enters into a written agreement with the *firm* to the effect that it will not be treated as a *professional client* or *eligible counterparty* for the purposes of the applicable conduct of business regime.
- (2) This agreement must specify the scope of the re-categorisation, such as whether it applies to one or more particular services or transactions, to one or more types of product or transaction or to one or more *rules*.

[Note: fourth paragraph of section I of annex II to *MiFID* and second paragraph of article 50(2) of the *MiFID* implementing Directive]

3.7.6

FCA

G

- (1) In accordance with *Principle 7* (communications with *clients*) if a *firm* at its own initiative re-categorises a *client* in accordance with this section, it should notify that *client* of its new category under this section.
- (2) If the *firm* already has an agreement with the *client*, it should also consider any contractual requirements concerning the amendment of that agreement.

3.7.7

FCA

G

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

- (1) on a general basis; or
- (2) on a trade by trade basis; or
- (3) in respect of one or more specified *rules*; or
- (4) in respect of one or more particular services or transactions; or
- (5) in respect of one or more types of product or transaction.

[Note: second paragraph of article 24(2) of *MiFID*]

3.7.8

FCA

G

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

## 3.8 Policies, procedures and records

### Policies and procedures

3.8.1

FCA

R

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

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

### Records

3.8.2

FCA

R

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

This record must be made at the time of categorisation and should be retained for the relevant period after the *firm* ceases to carry on business with or for that *client*.
- (3) The relevant periods are:
  - (a) indefinitely, in relation to a *pension transfer, pension opt-out* or *FSAVC*;
  - (b) at least five years, in relation to a *life policy* or *pension contract*;
  - (c) five years in relation to *MiFID* or *equivalent third country business*; and
  - (d) three years in any other case.



[Note: article 51(3) of the *MiFID implementing Directive*]

3.8.3

FCA

G

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

## Chapter 4

# Communicating with clients, including financial promotions

## 4.1 Application

### Who? What?

4.1.1

FCA

R

This chapter applies to a *firm*:

- (1) communicating with a *client* in relation to its *designated investment business*;
- (2) *communicating* or *approving* a *financial promotion* other than:
  - (a) a *financial promotion* of *qualifying credit*, a *home purchase plan* or a *home reversion plan*; or
  - (b) a *financial promotion* in respect of a *non-investment insurance contract*; or
  - (c) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the *Act* if made by an *authorised person* (*firms* may not *communicate* or *approve* such promotions).

4.1.1A

FCA

R

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

4.1.2

FCA

G

- (1) This chapter applies in relation to an *authorised professional firm* in accordance with ■ COBS 18 (Specialist regimes).
- (2) This chapter applies, to a limited extent, in relation to *communicating* or *approving* a *financial promotion* that relates to a *deposit* if the *deposit* is a *structured deposit*, *cash deposit ISA* or *cash deposit CTF*.

4.1.3

FCA

G

A *firm* is required to comply with the *financial promotion rules* in relation to a *financial promotion communicated* by its *appointed representative* even where the *financial promotion* does not require *approval* because of the exemption in article 16 of the *Financial Promotion Order* (Exempt persons).

[Note: see section 39 of the *Act*]

4.1.4

FCA

G

- (1) In ■ COBS 4.3.1 R, ■ COBS 4.5.8 R and ■ COBS 4.7.1 R, the defined terms "*financial promotion*" and "*direct offer financial promotion*" include, in

relation to *MiFID or equivalent third country business*, all communications that are marketing communications within the meaning of *MiFID*.

- (2) In the case of *MiFID or equivalent third country business*, certain requirements in this chapter are subject to an exemption for the communication of a *third party prospectus* in certain circumstances. 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*.
- (3) In this chapter "*financial promotion*" and "*direct offer financial promotion*" include communications that are marketing communications for the purposes of the *UCITS Directive*.

4.1.5

FCA

G

- (1) A *firm* communicating with an *eligible counterparty* should have regard to the application of *COBS* to *eligible counterparty business* (■ *COBS 1 Annex 1 Part 1*).
- (2) This chapter does not apply in relation to communicating with an *eligible counterparty* other than the section on compensation information (see ■ *COBS 4.4*) but elements of the requirements in *PRIN* may apply.

4.1.6

FCA

G

*Approving a financial promotion without communicating it* (which includes causing it to be communicated) is not *MiFID or equivalent third country business*. *Communicating a financial promotion to a person*, such as a *corporate finance contact* or a *venture capital contact*, who is not a *client* within the meaning of ■ *COBS 3.2.1 R (1)*, ■ *COBS 3.2.1 R (2)* or ■ *COBS 3.2.1 R (4)* in respect of the *MiFID or equivalent third country business* to which the *financial promotion* relates, is also not *MiFID or equivalent third country business*. Further *guidance* on what amounts to *MiFID business* may be found in ■ *PERG 13*.

4.1.7

FCA

G

A reference in this chapter to *MiFID or equivalent third country business* includes a reference to communications that occur before an agreement to perform services in relation to *MiFID or equivalent third country business*.

[Note: see recital 82 to the *MiFID implementing Directive*]

**Where? General position**

4.1.8

FCA

R

- (1) In relation to communications by a *firm* to a *client* in relation to its *designated investment business* this chapter applies in accordance with the *general application rule* and the *rule on business with UK clients* from an overseas establishment (■ *COBS 1 Annex 1 Part 2 paragraph 2.1R*).
- (2) In addition, the *financial promotion rules* apply to a *firm* in relation to:
  - (a) the *communication of a financial promotion to a person inside the United Kingdom*;
  - (b) the *communication of a cold call to a person outside the United Kingdom*, unless:
    - (i) it is made from a place outside the *United Kingdom*; and

(ii) it is made for the purposes of a business which is carried on outside the *United Kingdom* and which is not carried on in the *United Kingdom*; and

(c) the *approval* of a *financial promotion* for *communication* to a *person* inside the *United Kingdom*.

**Where? Modifications to comply with EU law**

4.1.9

FCA

G

- (1) The *EEA territorial scope rule* modifies the general territorial scope of the *rules* in this chapter to the extent necessary to be compatible with European law. This means that in a number of cases, the *rules* in this chapter will apply to *communications* made by *UK firms* to *persons* located outside the *United Kingdom* and will not apply to *communications* made to *persons* inside the *United Kingdom* by *EEA firms*. Further *guidance* on this is located in ■ COBS 1 Annex 1.
- (2) One effect of the *EEA territorial scope rule* is that the *rules* in this chapter will not generally apply to an *EEA key investor information document* but will, for example, apply to a *firm* (including an *EEA UCITS management company*) when *marketing* in the *United Kingdom* the *units* of an *EEA UCITS scheme* that is a *recognised scheme*.
- (3) The *financial promotion rules* do not apply to incoming communications in relation to the *MiFID business* of an *investment firm* from another *EEA State* that are, in its *home member state*, regulated under *MiFID* in another *EEA State*. For the purpose of article 36 of the *Financial Promotion Order* the *FCA* does not make any *rules* in relation to such incoming communications.

4.1.10

FCA

G

*Firms* should note the territorial scope of this chapter is also affected by:

- (1) the disapplication for *financial promotions* originating outside the *United Kingdom* that are not capable of having an effect within the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotion)) (see the defined term "*excluded communication*");
- (2) the exemptions for overseas communicators (see the defined term "*excluded communication*"); and
- (3) the *rules* on *financial promotions* with an overseas element (see ■ COBS 4.9).



## 4.2 Fair, clear and not misleading communications

### The fair, clear and not misleading rule

4.2.1

FCA

R

- (1) A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.
- (2) This *rule* applies in relation to:
  - (a) a communication by the *firm* to a *client* in relation to *designated investment business* other than a *third party prospectus*;
  - (b) a *financial promotion communicated* by the *firm* that is not:
    - (i) an *excluded communication*;
    - (ii) a *non-retail communication*;
    - (iii) a *third party prospectus*; and
  - (c) a *financial promotion* approved by the *firm*.

[Note: article 19(2) of MiFID , recital 52 to the MiFID implementing Directive and article 77 of the UCITS Directive]

4.2.2

FCA

G

- (1) The *fair, clear and not misleading rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey. So a communication addressed to a *professional client* may not need to include the same information, or be presented in the same way, as a communication addressed to a *retail client*.
- (2) ■ COBS 4.2.1R(2)(b) does not limit the application of the *fair, clear and not misleading rule* under ■ COBS 4.2.1R (2) (a). So, for example, a communication in relation to *designated investment business* that is both a communication to a *professional client* and a *financial promotion*, will still be subject to the *fair, clear and not misleading rule*.

PAGE  
5

4.2.3

FCA

G

Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 creates criminal offences relating to certain misleading statements and practices.

4.2.4

FCA

G

**Fair, clear and not misleading financial promotions**

A *firm* should ensure that a *financial promotion*:

- (1) for a product or service that places a *client's* capital at risk makes this clear;
- (2) that quotes a yield figure gives a balanced impression of both the short and long term prospects for the *investment*;
- (3) that promotes an *investment* or service whose charging structure is complex, or in relation to which the *firm* will receive more than one element of remuneration, includes the information necessary to ensure that it is fair, clear and not misleading and contains sufficient information taking into account the needs of the recipients;
- (4) that names the *FCA*, *PRA* or both as its regulator and refers to matters not regulated by either the *FCA*, *PRA* or both makes clear that those matters are not regulated by the *FCA*, *PRA* or either;
- (5) that offers *packaged products* or *stakeholder products* not produced by the *firm*, gives a fair, clear and not misleading impression of the producer of the product or the manager of the underlying investments.

4.2.5

G

A communication or a *financial promotion* should not describe a feature of a product or service as "guaranteed", "protected" or "secure", or use a similar term unless:

- (1) that term is capable of being a fair, clear and not misleading description of it; and
- (2) the *firm* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

4.2.6

FCA

R

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

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



### 4.3 Financial promotions to be identifiable as such

4.3.1

FCA

R

- (1) A *firm* must ensure that a *financial promotion* addressed to a *client* is clearly identifiable as such.

[Note: article 19(2) of *MiFID* and article 77 of the *UCITS Directive*]

- (2) If a *financial promotion* relates to a *firm's MiFID or equivalent third country business*, this *rule* does not apply to the extent that the *financial promotion* is a *third party prospectus*.
- (3) If a *financial promotion* relates to a *firm's business* that is not *MiFID or equivalent third country business*, this *rule* applies to *communicating* or *approving* the *financial promotion* but does not apply:
  - (a) to the extent that it is an *excluded communication*;
  - (b) to the extent that it is a prospectus advertisement to which ■ PR 3.3 applies;
  - (c) if it is *image advertising*;
  - (d) if it is a *non-retail communication*;
  - (e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.
- (4) In the case of a marketing communication that relates to a *UCITS scheme* or an *EEA UCITS scheme*, (2) and (3) do not limit the application of this *rule*.





## 4.4 Compensation information

4.4.1

FCA

R

A *firm* must ensure that any reference in advertising to an investor compensation scheme established under the *Investor Compensation Directive* is limited to a factual reference to the scheme.

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

4.4.2

G

[deleted]

4.4.3

FCA

R

To ensure that a *firm* pays due regard to the information needs of its *clients*, and communicates information to them in a way which is clear, fair and not misleading with respect to the activity of *issuing electronic money*, a *firm* must ensure that, in good time before the *firm* issues *electronic money* to a *person*, it has been communicated to that *person* on paper or in another *durable medium* that the *compensation scheme* does not cover claims made in connection with *issuing electronic money*.

## 4.5 Communicating with retail clients

### Application

4.5.1

FCA

R

- (1) Subject to (2) and (3), this section applies to a *firm* in relation to:
  - (a) the provision of information in relation to its *designated investment business*; and
  - (b) the *communication* or *approval* of a *financial promotion*; where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.
- (2) If a communication relates to a *firm's MiFID or equivalent third country business*, this section does not apply:
  - (a) to the extent that it is a *third party prospectus*;
  - (b) if it is *image advertising*.
- (3) If a communication relates to a *firm's* business that is not *MiFID or equivalent third country business*, this section does not apply:
  - (a) to the extent that it is an *excluded communication*;
  - (b) to the extent that it is a prospectus advertisement to which **■ PR 3.3** applies;
  - (c) if it is *image advertising*.

### General rule

4.5.2

FCA

R

A *firm* must ensure that information:

- (1) includes the name of the *firm*;
- (2) is accurate and in particular does not emphasise any potential benefits of *relevant business* or a *relevant investment* without also giving a fair and prominent indication of any relevant risks;

- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
- (4) does not disguise, diminish or obscure important items, statements or warnings.

[Note: article 27(2) of the *MiFID implementing Directive*]

4.5.3  
FCA

**G** The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *retail client* can identify the *firm* communicating the information.

4.5.4  
FCA

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

4.5.5  
FCA

**G** When communicating information, a *firm* should consider whether omission of any relevant fact will result in information being insufficient, unclear, unfair or misleading.

#### Comparative information

4.5.6  
FCA

- R**
- (1) If information compares *relevant business, relevant investments, or persons who carry on relevant business*, a *firm* must ensure that:
    - (a) the comparison is meaningful and presented in a fair and balanced way; and
    - (b) in relation to *MiFID or equivalent third country business*;
      - (i) the sources of the information used for the comparison are specified; and
      - (ii) the key facts and assumptions used to make the comparison are included.
  - (2) In this *rule*, in relation to *MiFID or equivalent third country business, ancillary services* are to be regarded as *relevant business*.

[Note: article 27(3) of the *MiFID implementing Directive*]

#### Referring to tax

4.5.7  
FCA

- R**
- (1) If any information refers to a particular tax treatment, a *firm* must ensure that it prominently states that the tax treatment depends on the individual circumstances of each *client* and may be subject to change in future.

[Note: article 27(7) of the *MiFID implementing Directive*]

- (2) This *rule* applies in relation to *MiFID or equivalent third country business* or, otherwise, to a *financial promotion*. However, it does not apply to a *financial promotion* to the extent that it relates to:
- (a) [deleted]
  - (b) a *pure protection contract* that is a *long-term care insurance contract*.

**Consistent financial promotions**

4.5.8

FCA

R

- (1) A *firm* must ensure that information contained in a *financial promotion* is consistent with any information the *firm* provides to a *retail client* in the course of carrying on *designated investment business* or, in the case of *MiFID or equivalent third country business, ancillary services*.

[Note: article 29(7) of the *MiFID implementing Directive*]

- (2) This *rule* does not apply to a *financial promotion* to the extent that it relates to:
- (a) [deleted]
  - (b) a *pure protection contract* that is a *long-term care insurance contract*.

4.6.1  
FCA

R

### Application

- (1) Subject to (2) and (3), this section applies to a *firm* in relation to:
- (a) the provision of information in relation to its *MiFID or equivalent third country business*;
  - (b) the *communication or approval of a financial promotion*;

where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

- (2) If a communication relates to a *firm's MiFID or equivalent third country business*, this section does not apply:
- (a) to the extent that the communication is a *third party prospectus*;
  - (b) if it is *image advertising*.
- (3) If a communication relates to a *firm's business that is not MiFID or equivalent third country business*, this section does not apply:
- (a) to the extent that it is an *excluded communication*;
  - (b) to the extent that it is a prospectus advertisement to which ■ PR 3.3 applies;
  - (c) if it is *image advertising*;
  - (d) to the extent that it relates to a *deposit* that is not a *structured deposit*;
  - (e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

Past performance

4.6.2

FCA

R

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

- (1) that indication is not the most prominent feature of the communication;
- (2) the information includes appropriate performance information which covers at least the immediately preceding five years, or the whole period for which the investment has been offered, the financial index has been established, or the service has been provided if less than five years, or such longer period as the *firm* may decide, and in every case that performance information must be based on and show complete 12-month periods;
- (3) the reference period and the source of information are clearly stated;
- (4) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
- (5) if the indication relies on figures denominated in a currency other than that of the *EEA State* in which the *retail client* is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- (6) if the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed.

[Note: article 27(4) of the *MiFID implementing Directive*]

4.6.3

FCA

G

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

4.6.4

FCA

G

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

4.6.4A  
FCA

G

This Table belongs to ■ COBS 4.6.4 G

| Percentage growth |                                     |                                     |                                      |                                      |                                     |
|-------------------|-------------------------------------|-------------------------------------|--------------------------------------|--------------------------------------|-------------------------------------|
| [Fund name]       | Quarter/Year<br>- Quar-<br>ter/Year | Quarter/Year<br>- Quar-<br>ter/Year | Quarter/ Year<br>- Quar-<br>ter/Year | Quarter/ Year<br>- Quar-<br>ter/Year | Quarter/ Year<br>- Quarter/<br>Year |
|                   | pgr%                                | pgr%                                | pgr%                                 | pgr%                                 | pgr%                                |

Notes:

1. The table should show performance information for five (or if performance information for fewer than five is available, all) complete 12-month periods, the most recent of which ends with the last full quarter preceding the date on which the *firm* first *communicates* or *approves* the *financial promotion*.
2. For products with performance data for fewer than five 12-month periods, *firms* should clearly indicate that performance data does not exist for the relevant periods.
3. No allowance should be made for tax recoveries on income for *pension contracts*, *ISAs* or *PEPs*.
4. pgr is the percentage growth rate for the year, where:  $pgr = ((P1 - P0)/P0) * 100$  and rounded to the nearest 0.1%, with exact 0.05% rounded to the nearest even 0.1%; and where P0 is the price at the start of the 12-month period and P1 is the price on the same day in the following 12-month period.
5. The prices should allow for any net distributions to be reinvested.
6. The price at P1 must be adjusted for any charges since the date of P0 which are based on a proportion of the fund and are levied by the cancellation of units.
7. The *firm* should use single pricing, or (if this is not available) bid to bid prices, unless the *firm* has reasonable grounds to be satisfied that another basis would better reflect the past performance of the fund.

4.6.4B  
FCA

G

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

4.6.5  
FCA

G

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

**Simulated past performance**

4.6.6

FCA

R

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

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

[Note: article 27(5) of the *MiFID implementing Directive*]

**Future performance**

4.6.7

FCA

R

(1) A *firm* must ensure that information that contains an indication of future performance of *relevant business*, a *relevant investment*, a *structured deposit* or a financial index, satisfies the following conditions:

- (a) it is not based on and does not refer to simulated past performance;
- (b) it is based on reasonable assumptions supported by objective data;
- (c) it discloses the effect of commissions, fees or other charges if the indication is based on gross performance; and
- (d) it contains a prominent warning that such forecasts are not a reliable indicator of future performance.

(2) Other than in relation to *MiFID* or *equivalent third country business*, this *rule* only applies to *financial promotions* that relate to a *financial instrument* (or a financial index that relates exclusively to *financial instruments*) or a *structured deposit*.

[Note: article 27(6) of the *MiFID implementing Directive*]

PAGE  
15

4.6.8

FCA

G

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



4.6.9

FCA

**R**

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

## 4.7 Direct offer financial promotions

4.7.1

FCA

R

- (1) Subject to (3) and (4), a *firm* must ensure that a *direct offer financial promotion* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client* contains:
  - (a) such of the information referred to in the *rules* on information disclosure (■ COBS 6.1.4 R, ■ COBS 6.1.6 R, ■ COBS 6.1.7 R, ■ COBS 6.1.9 R, ■ COBS 14.3.2 R, ■ COBS 14.3.3 R, ■ COBS 14.3.4 R and ■ COBS 14.3.5 R) as is relevant to that offer or invitation; and  
  
[Note: article 29(8) of the *MiFID implementing Directive*, the *rules* listed implement Articles 30 to 33 of the *MiFID implementing Directive*]
  - (b) if it does not relate to *MiFID* or *equivalent third country business*, additional appropriate information about the *relevant business* and *relevant investments* so that the *client* is reasonably able to understand the nature and risks of the *relevant business* and *relevant investments* and consequently to take investment decisions on an informed basis.
- (2) This *rule* does not require the information in (1) to be included in a *direct offer financial promotion* if, in order to respond to an offer or invitation contained in it, the *retail client* must refer to another document or documents, which, alone or in combination, contain that information.
- (3) If a communication relates to a *firm's MiFID* or *equivalent third country business*, this section does not apply:
  - (a) to the extent that it is a *third party prospectus*;
  - (b) if it is *image advertising*.
- (4) If a communication relates to a *firm's* business that is not *MiFID* or *equivalent third country business*, this section does not apply:
  - (a) to the extent that it is an *excluded communication*;

- (b) to the extent that it is a prospectus advertisement to which ■ PR 3.3 applies;
- (c) if it is *image advertising*;
- (d) to the extent that it relates to a *deposit* that is not a *cash deposit ISA* or *cash deposit CTF*;
- (e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

(5) In this rule, in relation to *MiFID* or *equivalent third country business*, *ancillary services* are to be regarded as *relevant business*.

**Guidance**

4.7.2  
FCA

G

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

4.7.3  
FCA

G

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

4.7.4  
FCA

G

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

- (1) a summary of the taxation of any *investment* to which it relates and the taxation consequences for the average member of the group to whom it is directed or by whom it is likely to be received;
- (2) a statement that the recipient should seek a *personal recommendation* if he has any doubt about the suitability of the *investments* or services being promoted; and
- (3) (in relation to a promotion for a *packaged product* that is not a *financial instrument*) a *key features illustration*, in which a *generic projection* may generally be used.

4.7.5

G

[deleted]

4.7.5A  
FCA

G

■ COBS 4.13.2 R (Marketing communications relating to UCITS schemes or EEA UCITS schemes) and ■ COBS 4.13.3 R (Marketing communications relating to feeder UCITS) contain additional disclosure requirements for *firms* in relation to marketing

communications (other than *key investor information*) that concern particular investment strategies of a *UCITS scheme* or *EEA UCITS scheme*.

4.7.6

FCA

**R**

(1) *A firm must not communicate or approve a direct offer financial promotion:*

- (a) relating to a *warrant* or *derivative*;
- (b) to or for *communication* to a *retail client*; and
- (c) where the *firm* will not itself be required to comply with the *rules* on appropriateness (see ■ COBS 10);

unless the *firm* has adequate evidence that the condition in (2) is satisfied.

(2) The condition is that the *person* who will *arrange* or *deal* in relation to the *derivative* or *warrant* will comply with the *rules* on appropriateness or equivalent requirements for any application or order that the *person* is aware, or ought reasonably to be aware, is in response to the *direct offer financial promotion*.

4

## 4.8 Cold calls and other promotions that are not in writing

### Application

4.8.1

FCA

R

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

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

### Restriction on cold calling

4.8.2

FCA

R

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

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

(b) generally marketable non-g geared *packaged products*.

**Promotions that are not in writing**

4.8.3

FCA

R

A *firm* must not *communicate* a solicited or unsolicited *financial promotion* that is not in writing, to a *client* outside the *firm's* premises, unless the *person communicating* it:

- (1) only does so at an appropriate time of the day;
- (2) identifies himself and the *firm* he represents at the outset and makes clear the purpose of the communication;
- (3) clarifies if the *client* would like to continue with or terminate the communication, and terminates the communication at any time that the *client* requests it; and
- (4) gives a contact point to any *client* with whom he arranges an appointment.

4



## 4.9 Financial promotions with an overseas element

### Application

4.9.1

FCA

R

- (1) Subject to (2) and (3), this section applies to a *firm* in relation to the *communication* or *approval* of a *financial promotion* that relates to the business of an *overseas person*.
- (2) This section does not apply to a *firm* in relation to its *MiFID* or *equivalent third country business*.
- (3) If a communication relates to a *firm's* business that is not *MiFID* or *equivalent third country business*, this section does not apply:
  - (a) to the extent that it is an *excluded communication*;
  - (b) to the extent that it is a prospectus advertisement to which ■ PR 3.3 applies;
  - (c) if it is *image advertising*;
  - (d) if it is a *non-retail communication*;
  - (e) [deleted]
  - (f) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

4.9.2

FCA

G

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

### Financial promotions for the business of an overseas person

4.9.3

FCA

R

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

- (1) the *financial promotion* makes clear which *firm* has *approved* or *communicated* it and, where relevant, explains:
  - (a) that the *rules* made under the *Act* for the protection of *retail clients* do not apply;

- (b) the extent and level to which the *compensation scheme* will be available, or if the scheme will not be available, a statement to that effect; and
  - (c) if the communicator wishes, the protection or compensation available under another system of regulation; and
- (2) the *firm* has taken reasonable steps to satisfy itself that the *overseas person* will deal with *retail clients* in the *United Kingdom* in an honest and reliable way.

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

4.9.4  
FCA

**R**

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

- (1) an *authorised person*; or
- (2) an *exempt person* who is exempt in relation to *effecting or carrying out contracts of insurance* of the *class* to which the *financial promotion* relates; or
- (3) an *overseas long-term insurer* that is entitled under the law of its home country or territory to carry on there *insurance business* of the *class* to which the *financial promotion* relates.

4.9.5  
FCA

**R**

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

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

4.9.6  
FCA

**R**

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



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

4.9.7

FCA

R

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

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

## 4.10 Systems and controls and approving and communicating financial promotions

### Systems and controls

4.10.1

FCA

G

The *rules* in ■ SYSC 3 and ■ SYSC 4 require a *firm* that communicates with a *client* in relation to *designated investment business*, or *communicates* or *approves* a *financial promotion*, to put in place systems and controls or policies and procedures in order to comply with the *rules* in this chapter.

### Approving financial promotions

4.10.2

FCA

R

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

4.10.3

FCA

G

- (1) Section 21(1) of the *Act* (Restrictions on financial promotion) prohibits an *unauthorised person* from *communicating* a *financial promotion*, in the course of business, unless an exemption applies or the *financial promotion* is *approved* by a *firm*. Many of the *rules* in this chapter apply when a *firm* *approves* a *financial promotion* in the same way as when a *firm* *communicates* a *financial promotion* itself.
- (2) A *firm* may also wish to *approve* a *financial promotion* that it *communicates* itself. This would ensure that an *unauthorised person* who then also *communicates* the *financial promotion* to another *person* will not contravene the restriction on *financial promotion* in the *Act* (section 21).
- (3) *Approving* a *financial promotion* for *communication* by an *unauthorised person* is not *MiFID* or *equivalent third country business*.

- (4) A firm may not approve a financial promotion relating to an unregulated collective investment scheme unless the firm would be able to communicate the promotion without breaching section 238(1) of the Act (see section 240 of the Act). The exemptions from that section in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (as amended from time to time) are relevant.

4.10.4  
FCA

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

4.10.5  
FCA

**R** If a firm approves a financial promotion in circumstances in which one or more of the financial promotion rules, or the prohibition on approval of promotions for collective investment schemes in section 240(1) of the Act (Restriction on approval), are expressly disapplied, the approval must be given on terms that it is limited to those circumstances.

4.10.6  
FCA

**G** For example, if a firm approves a financial promotion for communication to a professional client or an eligible counterparty, the approval must be limited to communication to such persons.

4.10.7  
FCA

**G** If an approval is limited, and an unauthorised person communicates the financial promotion to persons not covered by the approval, the unauthorised person may commit an offence under the restriction on financial promotion in the Act (section 21). A firm giving a limited approval may wish to notify the unauthorised person accordingly.

### Communicating financial promotions

4.10.8  
FCA

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

4.10.9  
FCA

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

### Relying on another firm's confirmation of compliance

4.10.10  
FCA

- R**
- (1) A firm (A) will not contravene any of the financial promotion rules if it communicates a financial promotion which has been produced by another person and:
    - (a) A takes reasonable care to establish that another firm (B) has confirmed that the financial promotion complies with the financial promotion rules;
    - (b) A takes reasonable care to establish that it communicates the financial promotion only to recipients of the type for whom it was intended at the time B carried out the confirmation exercise; and
    - (c) so far as A is, or ought reasonably to be, aware:

- (i) the *financial promotion* has not ceased to be fair, clear and not misleading since that time; and
- (ii) B has not withdrawn the *financial promotion*.

(2) This *rule* does not apply in relation to *MiFID* or equivalent third country business.

4.10.11

FCA

G

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

4

## 4.11 Record keeping: financial promotion

- (1) A *firm* must make an adequate record of any *financial promotion* it *communicates* or *approves*, other than a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.
- (2) For a telemarketing campaign, a *firm* must make an adequate record of copies of any scripts used.
- (3) A *firm* must retain the record in relation to a *financial promotion* relating to:
  - (a) a *pension transfer*, *pension opt-out* or *FSAVC*, indefinitely;
  - (b) a *life policy*, *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*, for six years;
  - (c) *MiFID* or *equivalent third country business*, for five years; and
  - (d) any other case, for three years.
- (4) If a communication relates to a *firm's MiFID* or *equivalent third country business*, this section does not apply:
  - (a) to the extent that the communication is a *third party prospectus*;
  - (b) if it is *image advertising*;
  - (c) if it is a *non-retail communication*.
- (5) If a communication relates to a *firm's* business that is not *MiFID* or *equivalent third country business*, this section does not apply:
  - (a) to the extent that it is an *excluded communication*;
  - (b) to the extent that it is a prospectus advertisement to which **PR 3.3** applies;
  - (c) if it is *image advertising*;
  - (d) if it is a *non-retail communication*;

(e) [deleted]

(f) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

[Note: see article 51(3) of the *MiFID implementing Directive*]

4.11.2

FCA

G

A *firm* should consider maintaining a record of why it is satisfied that the *financial promotion* complies with the *financial promotion rules*.

4.11.3

FCA

G

If the *financial promotion* includes market information that is updated continuously in line with the relevant market, the record-keeping *rules* do not require a firm to record that information.

4

4.12.1

FCA

R

## 4.12 Unregulated collective investment schemes

- (1) A *firm* may *communicate* an invitation or inducement to participate in an *unregulated collective investment scheme* without breaching the restriction on promotion in section 238 of the *Act* if the promotion falls within an exemption in the table in (4), as explained further in the Notes.
- (2) Where the left-hand column in the table in (4) refers to promotion to a category of *person*, this means that the invitation or inducement:
  - (a) is made only to recipients who the *firm* has taken reasonable steps to establish are *persons* in that category; or
  - (b) is directed at recipients in a way that may reasonably be regarded as designed to reduce, so far as possible, the risk of participation in the *collective investment scheme* by *persons* who are not in that category.
- (3) A *firm* may rely on more than one exemption in relation to the same invitation or inducement.

| Promotion to:  | Promotion of an unregulated collective investment scheme which is:   |
|--|--|
| <p><b>Category 1 person</b></p> <p>(1) a <i>person</i> who is already a <i>participant</i> in an <i>unregulated collective investment scheme</i>;<br/>or</p> <p>(2) A <i>person</i> who has been, in the last 30</p> | <p><b>A. that <i>collective investment scheme</i>; or</b></p> <p><b>B. any other <i>collective investment scheme</i> whose underlying property and risk profile are both 'substantially similar' (see Note 1) to those of that <i>collective investment scheme</i>; or</b></p> |

| Promotion to:  | Promotion of an unregulated collective investment scheme which is:  |
|--|---|
| <p><b>months, a <i>participant</i> in an <i>unregulated collective investment scheme</i>.</b></p> <p><b>Category 2 person</b></p> <p><b>(1) A <i>person</i>:</b></p> <p><b>(a) for whom the <i>firm</i> has taken reasonable steps to ensure that <i>investment</i> in the <i>collective investment scheme</i> is suitable; and</b></p> <p><b>(b) who is an 'established' or 'newly accepted' <i>client</i> of the <i>firm</i> or of a <i>person</i> in the same <i>group</i> as the <i>firm</i> (see Notes 2 &amp; 3).</b></p> <p><b>Category 3 person</b></p> <p><b>A <i>person</i> who is eligible to participate in a scheme constituted under:</b></p> <p><b>(1) the Church Funds Investment Measure 1958;</b></p> <p><b>(2) section 96 of the Charities Act 2011; or</b></p> | <p><b>C. a <i>collective investment scheme</i> which is intended to absorb or take over the assets of that <i>collective investment scheme</i>; or</b></p> <p><b>D. a <i>collective investment scheme</i>, <i>units</i> in which are being offered by its <i>operator</i> as an alternative to cash on the liquidation of that <i>collective investment scheme</i>.</b></p> <p><b>That <i>collective investment scheme</i></b></p> <p><b>Any such <i>collective investment scheme</i></b></p> |



| Promotion to:   | Promotion of an unregulated collective investment scheme which is:  |
|---|---|
| <p><b>(3) section 25 of the Charities Act (Northern Ireland) 1964.</b></p> <p><b>Category 4 person</b></p> <p><b>An eligible employee, that is, a <i>person</i> who is:</b></p> <ul style="list-style-type: none"> <li><b>(1) an officer;</b></li> <li><b>(2) an <i>employee</i>;</b></li> <li><b>(3) a former officer or <i>employee</i>; or</b></li> <li><b>(4) a member of the immediate family of any of (1) - (3),</b></li> </ul> <p><b>of an employer which is (or is in the same <i>group</i> as) the <i>firm</i>, or which has accepted responsibility for the activities of the <i>firm</i> in carrying out the <i>designated investment business</i> in question.</b></p> | <p><b>1. A <i>collective investment scheme</i> the instrument constituting which:</b></p> <p><b>A. restricts the property of the <i>scheme</i>, apart from cash and near cash, to:</b></p> <ul style="list-style-type: none"> <li><b>(1) (where the employer is a company) <i>shares</i> in and <i>debentures</i> of <i>company</i> or any other connected <i>company</i> (see Note 4);</b></li> <li><b>(2) (in any case), any property, provided that the <i>scheme</i> takes the form of:</b> <ul style="list-style-type: none"> <li><b>(i) a limited <i>partnership</i>, under the terms of which the employer (or connected <i>company</i>) will be the unlimited partner and the eligible employees will be some or all of the limited partners; or</b></li> <li><b>(ii) a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than <i>charges</i>) for <i>investment</i> transactions earlier entered into,</b></li> </ul> </li> </ul> |

| Promotion to:   | Promotion of an unregulated collective investment scheme which is:   |
|---|--|
|   | <p><b>which the eligible employee was not aware of at the time he entered into them; and</b></p> <p><b>B. (in a case falling within A(1) above) restricts participation in the <i>scheme</i> to eligible employees, the employer and any connected <i>company</i>.</b></p> <p><b>2. Any <i>collective investment scheme</i> provided that the participation of eligible employees is to facilitate their co-investment:</b></p> <p><b>(i) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer); or</b></p> <p><b>(ii) with one or more <i>clients</i> of such a <i>company</i>.</b></p> |
| <p><b>Category 5 person</b></p> <p><b>A <i>person</i> admitted to membership of the Society of Lloyd's or any <i>person</i> by law entitled or bound to administer his affairs.</b></p> | <p><b>A <i>scheme</i> in the form of a limited <i>partnership</i> which is established for the sole purpose of underwriting <i>insurance business</i> at Lloyd's.</b></p>  |
| <p><b>Category 6 person</b></p> <p><b>An exempt <i>person</i> (other than a <i>person</i> exempted only by section 39 of the <i>Act</i> (Exemption of appointed representa-</b></p>     | <p><b>Any <i>collective investment scheme</i>.</b></p>   |

| Promotion to:  | Promotion of an unregulated collective investment scheme which is:   |
|--|--|
| <p>tives)) if the <i>financial promotion</i> relates to a <i>regulated activity</i> in respect of which the <i>person</i> is exempt from the <i>general prohibition</i>.</p> <p>Category 7 person</p> <p>An <i>eligible counterparty</i> or a <i>professional client</i>.</p> <p>Category 8 person</p> <p>A <i>person</i>:</p> <p>(1) in relation to whom the <i>firm</i> has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the <i>person</i> is capable of making his own investment decisions and understanding the risks involved;</p> <p>(2) to whom the <i>firm</i> has given a clear written warning that this will enable the <i>firm</i> to promote <i>unregulated collective investment schemes</i> to the <i>client</i>; and</p> | <p>Any <i>collective investment scheme</i> in relation to which the <i>client</i> is categorised as a <i>professional client</i> or <i>eligible counterparty</i> (see Note 5).</p> <p>Any <i>collective investment scheme</i> covered by the assessment.</p> |

|               |  |
|---------------|--|
| Promotion to: | Promotion of an unregulated collective investment scheme which is: |
|---------------|--|

(3) who has stated in writing, in a *document* separate from the contract, that he is aware of the fact the *firm* can promote certain *unregulated collective investment schemes* to him.

The following Notes explain certain words and phrases used in the table above.

**Note 1**                      The property of a *collective investment scheme* is 'substantially similar' to that of another *collective investment scheme* if in both cases the objective is to invest in the same one of the following sectors:

- ) a (     *on-exchange derivatives* or *warrants*;
- ) b (     *on-exchange* (or quoted) *securities*;
- ) c (     the property market (whether in *security* of property *companies* or in property itself);
- ) d (     collectable items of a particular description (such as works of art, antique vehicles, etc);
- ) e (     artistic productions (such as films, television, opera, theatre or music);
- ) f (     *unlisted investments* (including *unlisted debt securities*).

The risk profile of a *scheme* will be substantially similar to that of another *scheme* only if there is such similarity in relation to both liquidity and volatility.

**Note 2**                      A *person* is an 'established client' of another *person* if he has been and remains an actual *client* of that *person* in relation to *designated investment business* done with or through that other *person*.

**Note 3**                      A *person* is a 'newly accepted' *client* of a *firm* if:

- ) a (     a written agreement relating to *designated investment business* ex-

ists between the *client* and the *firm* (or, if the *client* is normally resident outside the *United Kingdom*, an oral or written agreement); and

) b ( that agreement has been obtained without any contravention of section 238 or 240 of the *Act*, or of any *rule* in *COBS* applying to the *firm* or (as far as the *firm* is reasonably aware) any other *authorised person*.

Note 4 A *company* is 'connected' with another *company* if:

) a ( they are in the same *group*; or

) b ( one *company* is entitled either alone or with another *company* in the same *group*, to exercise or control the exercise of a majority of the voting rights attributable to the share capital, which are exercisable in all circumstances at any general meeting of the other *company* or of its *holding company*.

Note 5 *Firms* may use the *client* categorisation regime that applies to business other than *MiFID* or equivalent third country *business*. [This is the case even if the *firm* will be within the scope of *MiFID* when it makes the promotion.]

4.12.2  
FCA

G

Guidance on the regulatory system as it applies to *unregulated collective investment schemes* appears at PERG 8.20.

4.13 UCITS

Application

4.13.1

FCA

R

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

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

Marketing communications relating to UCITS schemes or EEA UCITS schemes

4.13.2

FCA

R

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

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

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

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

**Marketing communications relating to a feeder UCITS**

4.13.3

FCA

R

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

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

## Chapter 5

# Distance communications



## 5.1 The distance marketing disclosure rules

### Application

5.1.-1

FCA

R

- (1) This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.
- (2) If a *firm* is an intermediary rather than the supplier under the *distance contract*, references to '*firm*' in ■ COBS 5 Annex 1 R and ■ COBS 5 Annex 2 R are to be interpreted as referring to the supplier except for references to '*firm*' in ■ COBS 5 Annex 1 R (2), (4) and (18).

### The distance marketing disclosure rules

5.1.1

FCA

R

A *firm* must provide a *consumer* with the distance marketing information (■ COBS 5 Annex 1R ) in good time before the *consumer* is bound by a *distance contract* or offer.

[Note: article 3(1) of the *Distance Marketing Directive*]

5.1.2

FCA

R

A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[Note: article 3(2) of the *Distance Marketing Directive*]

5.1.3

FCA

R

When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

### Exception: contracts for payment services

5.1.3A

FCA

R

Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to

provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of ■ COBS 5 Annex 1 R. [Note: article 4(5) of the *Distance Marketing Directive*]

5.1.3B

FCA

G

Where a *distance contract* covers both *payment services* and *non-payment services*, this exception applies only to the payment services aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

5.1.4

FCA

R

A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

#### Terms and conditions, and form

5.1.5

FCA

R

A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (■ COBS 5.1.1 R to ■ COBS 5.1.4 R) on a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: article 5(1) of the *Distance Marketing Directive*]

5.1.6

FCA

G

A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

#### Exception: distance contract as a stage in the provision of another service

5.1.7

FCA

R

This section does not apply to a *distance contract* to deal as agent, advise or arrange, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[Note: recital 19 to the *Distance Marketing Directive*]

#### Exception: successive operations

5.1.8

FCA

R

In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

[Note: article 1(2) of the *Distance Marketing Directive*]

5.1.9

FCA

R

If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure rules (■ COBS 5.1.1 R to ■ COBS 5.1.4 R) will only apply:

- (1) when the first operation is performed; and
- (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[Note: recital 16 and article 1(2) of the *Distance Marketing Directive*]

5.1.10

FCA

G

In this section:

- (1) 'initial service agreement' includes the opening of a bank account and the concluding of a portfolio management contract;
- (2) 'operations' includes transactions made within the framework of a portfolio management contract; and
- (3) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with one's existing bank account, does not constitute an 'operation' but an additional contract to which the *rules* in this section apply. The subscription to new *units* of the same *collective investment scheme* is considered to be one of 'successive operations of the same nature'.

[Note: recital 17 of the *Distance Marketing Directive*]

5.1.11

FCA

G

In the *FCA's* view, other examples of:

- (1) 'initial service agreement' include:
  - (a) subscribing to an *investment trust savings scheme*; or
  - (b) concluding a *life policy*, *personal pension scheme* or *stakeholder pension scheme* that includes a pre-selected option providing for future increases or decreases in regular *premiums* or payments; and
- (2) 'operations' include:
  - (a) successive purchases or sales of *shares* under an *investment trust savings scheme*; and
  - (b) subsequent index-linked changes to premiums or increases or decreases to pension contributions following fluctuations in salary.

#### Exception: voice telephony communications

5.1.12

FCA

R

In the case of a voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information ( ■ COBS 5 Annex 2R ) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information ( ■ COBS 5 Annex 1R ) on a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

[Note: articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

#### Exception: means of distance communication not enabling disclosure

5.1.13

FCA

R

A *firm* may provide the distance marketing information ( ■ COBS 5 Annex 1R ) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: article 5(2) of the *Distance Marketing Directive*]

#### Exception: contracts for payment services

5.1.13A

FCA

R

Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of ■ COBS 5 Annex 1 R.

[Note: article 4(5) of the *Distance Marketing Directive*]

5.1.13B

FCA

G

Where a *distance contract* covers both *payment services* and non-*payment services*, this exception applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

#### Distance marketing: other provisions

5.1.14

FCA

R

If, at any time during the contractual relationship, a *consumer* that is a party to a *distance contract* asks a *firm*:

- (1) for a paper copy of the terms and conditions of that contract; or
- (2) to change the means of distance communication used;

the *firm* must provide that paper copy or change the means of distance communication used, unless (in the latter case) that would be incompatible with the contract or the nature of the service provided.

[Note: article 5(3) of the *Distance Marketing Directive*]

#### Unsolicited services

5.1.15

FCA

R

- (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of reply not constituting consent.

- (2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[Note: article 9 of the *Distance Marketing Directive*]

**Mandatory nature of consumer's rights**

---

5.1.16

FCA

R

If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[Note: article 12 of the *Distance Marketing Directive*]

5.1.17

FCA

R

If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of one or more *EEA States*.

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

## 5.2 E-Commerce

### Application

5.2.1

FCA

R

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

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

5.2.2

FCA

R

A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (
  - GEN 4 Annex 1 R or ■ GEN 4 Annex 1A as appropriate ), together with a statement which explains that it is on the *Financial Services Register* and includes its *Financial Services Register* number;
- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
  - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
  - (b) the professional title and the *EEA State* where it was granted;
  - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
- (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

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

5.2.3  
FCA

**R** If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

5.2.4  
FCA

**R** A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

5.2.5  
FCA

**R** An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

#### Requirements relating to the placing and receipt of orders

5.2.6  
FCA

**R** A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
  - (a) the different technical steps to follow to conclude the contract;
  - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
  - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
  - (d) the languages offered for the conclusion of the contract;

- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
- (4) make available to an *ECA recipient*, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

5.2.7

FCA

R

For the purposes of ■ COBS 5.2.6 R (3), an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

[Note: article 11(1) of the *E-Commerce Directive*]

5.2.8

FCA

R

Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the *E-Commerce Directive*]

#### **Exception: contract concluded by e-mail**

5.2.9

FCA

R

The requirements relating to the placing and receipt of orders (■ COBS 5.2.6 R) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: article 10(4) and 11(3) of the *E-Commerce Directive*]





## Distance marketing information

**FCA**

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

**Information about the firm**

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *consumer's* *EEA State* of residence, the name of that representative and the geographical address relevant for the *consumer's* relations with that representative.
- (3) Where the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant to the *consumer's* relations with that professional.
- (4) An appropriate statutory status disclosure statement (**GEN 4**), a statement that the *firm* is on the *Financial Services Register* and its *FCA* registration number.

**Information about the financial service**

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related fees, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the *firm's* control and that past performance is no indicator of future performance.

- (8) **Notice of the possibility that other taxes or costs may exist that are not paid via the *firm* or imposed by it.**
- (9) **Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a *firm's* offer applies as it stands.**
- (10) **The arrangements for payment and performance.**
- (11) **Details of any specific additional cost to the *consumer* for using a means of distance communication.**
- Information about the contract**
- (12) **The existence or absence of a right to cancel or withdraw under the cancellation rules ( COBS 15) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those *rules*, as well as the consequences of not exercising the right to cancel or withdraw.**
- (13) **The minimum duration of the contract, in the case of services to be performed permanently or recurrently.**
- (14) **Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.**
- (15) **Practical instructions for exercising any right to cancel or withdraw, including the address to which any cancellation or withdrawal notice should be sent.**
- (16) **The *EEA State* or States whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the contract.**
- (17) **Any contractual clause on the law applicable to the contract or on the competent court, or both.**
- (18) **In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.**

**Information about redress****(19)**

**How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.**

**(20)**

**Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities.**

**[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]**



## Abbreviated distance marketing disclosure

**FCA**

This Annex belongs to ■ COBS 5.1.12 R

- (1) **The identity of the *person* in contact with the *consumer* and his link with the *firm*.**
- (2) **A description of the main characteristics of the financial service.**
- (3) **The total price to be paid by the *consumer* to the *firm* for the financial service including all taxes paid via the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.**
- (4) **Notice of the possibility that other taxes and/or costs may exist that are not paid via the *firm* or imposed by him.**
- (5) **The existence or absence of a right to cancel or withdraw in accordance with the cancellation rules ( COBS 15) and, where the right to cancel or withdraw exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay on the basis of the cancellation rules.**
- (6) **That other information is available on request and what the nature of that information is.**  
**[Note: article 3(3)(b) of the *Distance Marketing Directive*]**



## Chapter 6

# Information about the firm, its services and remuneration





## 6.1 Information about the firm and compensation information

### Application

6.1.1  
FCA

R

- (1) This section applies to a *firm* that carries on *designated investment business* for:
  - (a) a *retail client*; and
  - (b) in the case of *MiFID or equivalent third country business*, a *client*.
- (2) If expressly provided, this section also applies to *ancillary services* not covered by (1), but only in the course of *MiFID or equivalent third country business* carried on with or for a *client*.

6.1.2  
FCA

R

If a *firm* provides *basic advice on stakeholder products* in accordance with the *basic advice rules*, this section does not apply to that service.

6.1.3  
FCA

G

This section imposes requirements relating to disclosure of information to *clients* that are additional to the general requirement in ■ COBS 2.2.

6.1.4  
FCA

R

### Information about a firm and its services

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

- (1) the name and address of the *firm*, and the contact details necessary to enable a *client* to communicate effectively with the *firm*;
- (2) in the case of *MiFID or equivalent third country business*, the languages in which the *client* may communicate with the *firm*, and receive documents and other information from the *firm*;
- (3) the methods of communication to be used between the *firm* and the *client* including, where relevant, those for the sending and reception of orders;
- (4) a statement of the fact that the *firm* is authorised and the name of the *competent authority* that has authorised it;

- (5) in the case of *MiFID* or *equivalent third country business*, the contact address of the *competent authority* that has authorised the *firm*;
- (6) if the *firm* is acting through an *appointed representative* or, where applicable, a *tied agent*, a statement of this fact specifying the *EEA State* in which that *appointed representative* or *tied agent* is registered;
- (7) the nature, frequency and timing of the reports on the performance of the service to be provided by the *firm* to the *client* in accordance with the *rules* on reporting to *clients* on the provision of services (■ COBS 16);
- (8) (a) in the case of a *common platform firm*, a description, which may be provided in summary form, of the *conflicts of interest policy*;
- (b) other than in the case of a *common platform firm*, when a *material interest* or conflict of interest may or does arise, the manner in which the *firm* will ensure fair treatment of the *client*;
- (9) in the case of a *common platform firm*, at any time that the *client* requests it, further details of the *conflicts of interest policy*.

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

6.1.5

FCA

G

A *firm* disclosing details of its authorisation should refer to the appropriate forms of words set out in ■ GEN 4 Annex 1 R or ■ GEN 4 Annex 1A R as appropriate .

6.1.6

FCA

R

- (1) A *firm* that *manages investments* for a *client* must establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the *client* and the types of *designated investments* included in the *client* portfolio, so as to enable the *client* to assess the *firm's* performance.
- (2) If a *firm* proposes to *manage investments* for a *retail client*, the *firm* must provide the *client* with such of the following information as is applicable:
  - (a) information on the method and frequency of valuation of the *designated investments* in the *client* portfolio;
  - (b) details of any delegation of the discretionary management of all or part of the *designated investments* or funds in the *client* portfolio;
  - (c) a specification of any benchmark against which the performance of the *client* portfolio will be compared;

- (d) the types of *designated investments* that may be included in the *client* portfolio and types of transaction that may be carried out in those *designated investments*, including any limits; and
- (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

[Note: articles 30(2) and (3) of the *MiFID implementing Directive*]

**Information concerning safeguarding of designated investments belonging to clients and client money**

6.1.7  
FCA

R

- (1) A *firm* that holds *designated investments* or *client money* for a *retail client* subject to the *custody chapter* or the *client money chapter* must provide that *client* with the following information:
  - (a) if applicable,
    - (i) that the *designated investments* or *client money* of that *client* may be held by a third party on behalf of the *firm*;
    - (ii) the responsibility of the *firm* under the applicable national law for any acts or omissions of the third party; and
    - (iii) the consequences for the *client* of the insolvency of the third party;
  - (b) if applicable, that the *designated investments* belonging to the *retail client* may be held in an omnibus account by a third party and a prominent warning of the resulting risks;
  - (c) if it is not possible under national law for *designated investments* belonging to a *client* held with a third party to be separately identifiable from the proprietary *designated investments* of that third party or of the *firm*, that fact and a prominent warning of the resulting risks;
  - (d) if applicable, that accounts that contain *designated investments* or *client money* belonging to that *client* are or will be subject to the law of a jurisdiction other than that of a *EEA State*, an indication that the rights of the *client* relating to those instruments or money may differ accordingly;
  - (e) a summary description of the steps which it takes to ensure the protection of any *designated investments* belonging to the *client* or *client money* it holds, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the *firm* by virtue of its activities in an *EEA State*.

- (2) A *firm* that holds *designated investments* or *client money* for a *retail client* must inform the client:
  - (a) if applicable, about the existence and the terms of any security interest or lien which the *firm* has or may have over the *client's designated investments* or *client money*, or any right of set-off it holds in relation to the *client's designated investments* or *client money*; and
  - (b) if applicable, that a depositary may have a security interest or lien over, or right of set-off in relation to those instruments or money.
  
- (3) A *firm* within (1) must also, before entering into *securities financing transactions* in relation to *designated investments* held by it on behalf of a *retail client*, or before otherwise using such *designated investments* for its own account or the account of another *client*, in good time before the use of those *designated investments* provide the *client*, in a *durable medium*, with clear, full and accurate information on the obligations and responsibilities of the *firm* with respect to the use of those *designated investments*, including the terms for their restitution, and on the risks involved.
  
- (4) A *firm* within (1) that holds *client designated investments* or *client money* for a *professional client* must provide that *client* with the information in paragraphs (1)(d) and (2)(a) and (b).

[Note: articles 29(3), 30(1)(g) and 32 of the *MiFID implementing Directive*]

6.1.8

G

[deleted]

#### Information about costs and associated charges

6.1.9

R

A *firm* must provide a *retail client* with information on costs and associated charges including, if applicable:

FCA

- (1) the total price to be paid by the *client* in connection with the *designated investment* or the *designated investment business* or *ancillary services*, including all related fees, commissions, charges and expenses, and all taxes payable via the *firm* or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the *client* can verify it. The commissions charged by the *firm* must be itemised separately in every case;
  
- (2) if any part of the total price referred to (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;
  
- (3) notice of the possibility that other costs, including taxes, related to transactions in connection with the *designated investment* or

the *designated investment business* may arise for the *client* that are not paid via the *firm* or imposed by it; and

- (4) the arrangements for payment or other performance.

[Note: article 33 of the *MiFID implementing Directive*]

6.1.10  
FCA

G

The *rules* on inducements in ■ COBS 2.3 may also require a *firm* to disclose information to a *client* in relation to benefits provided to the *firm*.

#### Timing of disclosure

6.1.11  
FCA

R

- (1) A *firm* must provide a *client* with the information required by this section in good time before the provision of *designated investment business* or *ancillary services* unless otherwise provided by this *rule*.

- (2) A *firm* may instead provide that information immediately after starting to provide *designated investment business* or *ancillary services* if:

- (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from doing so; and
- (b) in any case where the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if that *client* were a *consumer*.

[Note: article 29(2), 29(3) and 29(5) of the *MiFID implementing Directive*]

6.1.12  
FCA

G

A *firm* should take into account ■ COBS 8.1.3 R (1), which requires earlier disclosure of some items of information covered in this section.

#### Medium of disclosure

6.1.13  
FCA

R

Except where expressly provided, a *firm* must provide the information required by this section in a *durable medium* or via a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.

[Note: article 29(4) of the *MiFID implementing Directive*]

#### Keeping the client up to date

6.1.14  
FCA

R

- (1) A *firm* must notify a *client* in good time about any material change to the information provided under this section which is relevant to a service that the *firm* is providing to that *client*.

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

[Note: article 29(6) of the *MiFID implementing Directive*]

#### **Existing clients**

6.1.15

FCA

G

- (1) A *firm* need not treat each of several transactions in respect of the same type of *financial instrument* as a new or different service and so does not need to comply with the disclosure *rules* in this chapter in relation to each transaction.

[Note: recital 50 to the *MiFID implementing Directive*]

- (2) But a *firm* should ensure that the *client* has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.

#### **Compensation information**

6.1.16

FCA

R

- (1) A *firm* carrying on *MiFID business* must make available to a *client*, who has used or intends to use those services, information necessary for the identification of the *compensation scheme* or any other investor-compensation scheme of which the *firm* is a member (including, if relevant, membership through a *branch*) or any alternative arrangement provided for in accordance with the *Investor Compensation Directive*.

- (2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the *EEA State* pursuant to article 2 (3) of the *Investor Compensation Directive*.

- (3) A *firm* must provide, on the *client's* request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

- (4) The information provided for in this *rule* must be made available in a *durable medium* or via a website if the *website conditions* are satisfied in the official language or languages of the *EEA State*.

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

#### **Record keeping: information about the firm and compensation information**

6.1.17

FCA

G

*Firms* are reminded of the general record-keeping requirements in ■ SYSC 3.2 and ■ SYSC 9.



## 6.1A Adviser charging and remuneration

### Application - Who? What?

6.1A.1  
FCA

R

- (1) This section applies to a *firm* which makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*.
- (2) This section does not apply to a *firm* giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

6.1A.1A  
FCA

G

*Guidance* on the regulated activity of advising in relation to a new or existing *investment* can be found in ■ PERG 8.24 to ■ PERG 8.29. Although the *guidance* in ■ PERG 8.29.7 G relates to *advising on investments* under article 53 of the *Regulated Activities Order*, exactly the same answers apply to a *personal recommendation* because the examples given relate to the relationship between a *firm* and a particular *client* and advice given to that specific *client*. A *firm* wishing to know when it will be giving advice but not making a *personal recommendation* should refer to ■ PERG 13.3.

6.1A.2  
FCA

R

This section does not apply to a *firm* when it gives *basic advice* in accordance with the *basic advice rules*.

6.1A.2A  
FCA

R

This section does not apply to a *firm* when it makes a *personal recommendation* to a *retail client* in relation to a *Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.

### Application - Where?

6.1A.3  
FCA

R

This section does not apply if the *retail client* is outside the *United Kingdom*.

### Requirement to be paid through adviser charges

6.1A.4  
FCA

R

Except as specified in ■ COBS 6.1A.4A R and ■ COBS 6.1A.4B R, a *firm* must:

- (1) only be remunerated for the *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*; and



- (2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in relation to the *personal recommendation* or any other related service, regardless of whether it intends to refund the payments or pass the benefits on to the *retail client*; and
- (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *adviser charges* in relation to the *retail client's retail investment product* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *adviser charges* are recovered from the *retail client*.

6.1A.4A

FCA

R

A *firm* and its *associates* may:

- (1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1A.4 R if:
  - (a) the *personal recommendation* was made on or before 30 December 2012;
  - (b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012;
  - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
  - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
  - (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to that *firm* or its *associate*.

6.1A.4AA

FCA

G

- (1) A *firm* may continue to accept a commission, remuneration or benefit of any kind after 30 December 2012 if there is a clear link between the payment and an investment in a *retail investment product* which was made by the *retail client* following a *personal recommendation* made, or a transaction executed, on or before 30 December 2012. This is the case even if the *firm* makes a *personal recommendation* to the same *retail client* after 30 December 2012 to the extent that the continued payment can properly be regarded as linked to the pre 31 December 2012 *personal recommendation* or transaction, rather than the new *personal recommendation*. Of course this is dependent upon the terms of the contract contemplating the continued receipt of such payments.



- (2) Examples of circumstances where a commission, remuneration or benefit is clearly linked to the retention of an investment in a *retail investment product* and can therefore continue to be accepted include (in each case where the terms of the contract contemplate a continued payment of the kind referred to in (1)):
- (a) no change is made to the *retail client's* investment in the relevant *retail investment product*;
  - (b) the *retail client's* investment in, or regular contribution to, the relevant *retail investment product* is reduced; the *firm* may continue to accept the payment associated with the reduced investment amount;
  - (c) the *retail client's* investment in the relevant *retail investment product* is transferred from accumulation *units* to income *units* or vice versa;
  - (d) the *retail client* transfers all or part of his investment between funds within a *life policy*.
- (3) If a *firm* makes a *personal recommendation* to a *retail client* and wishes to:
- (a) receive remuneration for that *personal recommendation* in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by (1); or
  - (b) be paid additional amounts for any actions which are linked to a new amount invested by the *retail client* in the relevant *retail investment product*;

it should only be paid those additional amounts for that *personal recommendation* or for those actions by *adviser charges*.

- (4) A *firm* may offset against any *adviser charges* which are payable by the *retail client* any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in (1).

#### **Re-registration of commission when a retail client moves to a new adviser**

6.1A.4B

FCA

**R**

If a *retail client* chooses to become a *client* of a *firm* and that *firm* or its *associate* enters into an arrangement in ■ COBS 6.1A.4AR (2), the *firm* must:

- (1) before the arrangement is entered into, disclose to the *retail client* that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its *associate*;
- (2) throughout the period during which the *firm* or its *associate* receives the commission, remuneration or benefit of any kind, provide the *retail client* with an ongoing service; and
- (3) as soon as reasonably practicable after it makes the disclosure in (1):
  - (a) disclose to the *retail client*, as a cash amount or percentage of funds under management, the amount of the commission,

remuneration or benefit of any kind it expects to receive and any it has received; and

- (b) provide the *retail client* with a description of the ongoing service it will provide to the *retail client* in accordance with (2).

6.1A.5

FCA

G

A *firm* may receive an *adviser charge* that is no longer payable (for example, after the service it is received in payment for has been amended or terminated) provided the *firm* refunds any such payment to the *retail client*.

6.1A.6

FCA

R

'Related service(s)' for the purposes of ■ COBS 6.1A includes:

- (1) *arranging* or *executing* a transaction which has been recommended to a *retail client* by the *firm*, an *associate* or another *firm* in the same *group* or conducting administrative tasks associated with that transaction; or
- (2) managing a relationship between a *retail client* (to whom the *firm* provides *personal recommendations* on *retail investment products*) and a *discretionary investment manager* or providing a service to such a client in relation to the investments managed by such a manager; or
- (3) recommending a *discretionary investment manager* to a *retail client* (to whom the *firm* provides *personal recommendations* on *retail investment products*).

6.1A.7

FCA

G

The requirement to be paid through *adviser charges* does not prevent a *firm* from making use of any facility for the payment of *adviser charges* on behalf of the *retail client* offered by another *firm* or other third parties provided that the facility complies with the requirements of ■ COBS 6.1B.9R.

6.1A.8

FCA

G

Examples of payments and benefits that should not be accepted under the requirement to be paid through *adviser charges* include:

- (1) a share of the *retail investment product* charges or *platform service provider's* charges, or *retail investment product* provider's or *platform service provider's* revenues or profits; and
- (2) a commission set and payable by a *retail investment product* provider in any jurisdiction.

**Requirements on a retail investment product provider making a personal recommendation in respect of its own retail investment products**

6.1A.9

FCA

R

If the *firm* or its *associate* is the *retail investment product* provider, the *firm* must ensure that the level of its *adviser charges* is at least reasonably representative of the services associated with making the *personal recommendation* (and related services).

6.1A.10  
FCA

G

An *adviser charge* is likely to be reasonably representative of the services associated with making the *personal recommendation* if:

- (1) the expected long term costs associated with making a *personal recommendation* and distributing the *retail investment product* do not include the costs associated with manufacturing and administering the *retail investment product*;
- (2) the allocation of costs and profit to *adviser charges* and product charges is such that any cross-subsidisation is not significant in the long term; and
- (3) were the *personal recommendation* and any related services to be provided by an unconnected *firm*, the level of *adviser charges* would be appropriate in the context of the service being provided by the *firm*.

### Requirement to use a charging structure

6.1A.11  
FCA

R

**A *firm* must determine and use an appropriate charging structure for calculating its *adviser charge* for each *retail client*.**

6.1A.12  
FCA

G

A *firm* can use a standard charging structure.

6.1A.13  
FCA

G

In determining its charging structure and *adviser charges* a *firm* should have regard to its duties under the *client's best interests rule*. Practices which may indicate that a *firm* is not in compliance with this duty include:

- (1) varying its *adviser charges* inappropriately according to provider or, for substitutable and competing *retail investment products*, the type of *retail investment product*; or
- (2) allowing the availability or limitations of services offered by third parties to facilitate the payment of *adviser charges* to influence inappropriately its charging structure or *adviser charges*.

6.1A.14  
FCA

R

**A *firm* must not use a charging structure which conceals the amount or purpose of any of its *adviser charges* from a *retail client*.**

6.1A.15  
FCA

G

A *firm* is likely to be viewed as operating a charging structure that conceals the amount or purpose of its *adviser charges* if, for example:

- (1) it makes arrangements for amounts in excess of its *adviser charges* to be deducted from a *retail client's* investments from the outset, in order to be able to provide a cash refund to the *retail client* later; or
- (2) it provides other services to a *retail client* (for example, *advising on a home finance transaction* or *advising on an equity release transaction*), and its *adviser charges* do not represent a reasonable proportion of the costs associated with the *personal recommendation* for the *retail investment product* and its related services.

**Calculation of the cost of adviser services to a client**

**6.1A.16** **G** In order to meet its responsibilities under the *client's best interests rule* and *Principle 6* (Customers' interests), a *firm* should consider whether the *personal recommendation* or any other related service is likely to be of value to the *retail client* when the total charges the *retail client* is likely to be required to pay are taken into account.

**FCA**

**Initial information for clients on the cost of adviser services**

**6.1A.17** **R** A *firm* must disclose its charging structure to a *retail client* in writing, in good time before making the *personal recommendation* (or providing related services).

**FCA**

**6.1A.18** **G** A *firm* may wish to consider disclosing as its charging structure a list of the advisory services it offers with the associated indicative charges which will be used for calculating the *adviser charge* for each service.

**FCA**

**6.1A.19** **G** In order to meet the requirement in the *rule* on information disclosure before providing services (■ COBS 2.2.1 R), a *firm* should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses cash terms. If a *firm's* charging structure is in non-cash terms, examples in cash terms should be used to illustrate how the charging structure will be applied in practice.

**FCA**

**6.1A.20** **G** A *firm* is unlikely to meet its obligations under the *fair, clear and not misleading rule* and the *client's best interests rule* unless it ensures that:

**FCA**

- (1) the charging structure it discloses reflects, as closely as is practicable, the total *adviser charge* to be paid; for example, the *firm* should avoid using a wide range; and
- (2) if using hourly rates in its charging structure, it states whether the rates are indicative or actual hourly rates, provides the basis (if any) upon which the rates may vary and provides an approximate indication of the number of hours that the provision of each service is likely to require.

**6.1A.21** **G** A *firm* may meet the disclosure requirements in this section by using a *services and costs disclosure document* or a *combined initial disclosure document* (■ COBS 6.3 and ■ COBS 6 Annex 1G or ■ COBS 6 Annex 2).

**FCA**

**Ongoing payment of adviser charges**

**6.1A.22** **R** A *firm* must not use an *adviser charge* which is structured to be payable by the *retail client* over a period of time unless (1) or (2) applies:

**FCA**

- (1) the *adviser charge* is in respect of an ongoing service for the provision of *personal recommendations* or related services and:
  - (a) the *firm* has disclosed that service along with the *adviser charge*; and
  - (b) the *retail client* is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances,

without penalty and without requiring the *retail client* to give any reason; or

- (2) the *adviser charge* relates to a *retail investment product* for which an instruction from the *retail client* for regular payments is in place and the *firm* has disclosed that no ongoing *personal recommendations* or service will be provided.

6.1A.22A  
FCA

G

To comply with the *rule* on providing a *retail client* with the right to cancel an ongoing service for the provision of *personal recommendations* or related services without penalty (■ COBS 6.1A.22R (1)(b)) a *firm* should:

- (1) ensure that any notice period of the *retail client's* right of cancellation is reasonable;
- (2) not make any charge in respect of cancellation of the ongoing service except for an amount which is in proportion to the extent of the service already provided by the *firm* up to the date of cancellation of the ongoing service; and
- (3) not make cancellation conditional on, for example, requiring the *retail client* to sell any *retail investment products* to which the ongoing service relates.

6.1A.22B  
FCA

R

If a *retail client* exercises his right to cancel an ongoing service, the *firm* must clearly disclose to the *retail client* whether charges for other services provided by the *firm*, such as *custody* services, will continue to be payable by the *retail client*.

6.1A.23  
FCA

R

If ■ COBS 6.1A.22R(1) or ■ (2) do not apply, a *firm* may not offer *credit* to a *retail client* for the purpose of paying *adviser charges* unless this would be in the best interests of the *retail client*.

#### Disclosure of total adviser charges payable

6.1A.24  
FCA

R

- (1) A *firm* must agree with and disclose to a *retail client* the total *adviser charge* payable to it or any of its *associates* by a *retail client*.
- (2) A disclosure under (1) must:
  - (a) be in cash terms (or convert non-cash terms into illustrative cash equivalents);
  - (b) be as early as practicable;
  - (c) be in a *durable medium* or through a website (if it does not constitute a *durable medium*) if the *website conditions* are satisfied; and
  - (d) if there are payments over a period of time, include the amount and frequency of each payment due, the period over which the *adviser charge* is payable and the implications

for the *retail client* if the *retail investment product* is cancelled before the *adviser charge* is paid and, if there is no ongoing service, the sum total of all payments.

6.1A.24A

FCA

G

If the price of the *retail investment product* may vary as a result of fluctuations in the financial markets and the *adviser charge* is expressed as a percentage of that price, a *firm* need not disclose to the *retail client* the total *adviser charge* payable to the *firm* or any of its *associates* by the *retail client* until after execution of the transaction, provided it then does so promptly.

6.1A.25

FCA

G

A *firm* may include the information required by the *rule* on disclosure of total *adviser charges* (■ COBS 6.1A.24 R) in a *suitability report*.

6.1A.26

FCA

G

To comply with the *rule* on disclosure of total *adviser charges* (■ COBS 6.1A.24 R) and the *fair, clear and not misleading rule*, a *firm's* disclosure of the total *adviser charge* should:

- (1) provide information to the *retail client* as to which particular service an *adviser charge* applied to;
- (2) include information as to when payment of the *adviser charge* is due;
- (3) inform the *retail client* if the total *adviser charge* varies materially from the charge indicated for that service in the *firm's* charging structure;
- (4) if an ongoing *adviser charge* is expressed as a percentage of funds under management, clearly reflect in the disclosure that the *adviser charge* may increase as the fund grows; and
- (5) if an ongoing *adviser charge* applies for an ongoing service, clearly confirm the details of the ongoing service, its associated charges, and how the *retail client* can cancel this service and cease payment of the associated charges.

### Record keeping

6.1A.27

FCA

R

A *firm* must keep a record of:

- (1) its charging structure;
- (2) the total *adviser charge* payable by each *retail client*; and
- (3) if the total *adviser charge* paid by a *retail client* has varied materially from the charge indicated for that service in the *firm's* charging structure, the reasons for that difference.



## 6.1B Retail investment product provider and platform service provider requirements relating to adviser charging and remuneration

### Application - Who? What?

6.1B.1

FCA

R

(1) This section applies to:

- (a) a *firm* which is a *retail investment product* provider; and
- (b) in relation to ■ COBS 6.1B.9 R, ■ COBS 6.1B.10 G and ■ COBS 6.1B.11 G, a *platform service provider*;

in circumstances where a *retail client* receives a *personal recommendation* in relation to a *retail investment product*.

(2) This section does not apply to a *retail investment product* provider in circumstances where a *firm* gives advice or provides services to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

6.1B.1A

FCA

G

*Guidance* on the regulated activity of advising in relation to a new or existing *investment* can be found in ■ PERG 8.24 to ■ PERG 8.29. Although the *guidance* in ■ PERG 8.29.7 G relates to *advising on investments* under article 53 of the *Regulated Activities Order*, exactly the same answers apply to a *personal recommendation* because the examples given relate to the relationship between a *firm* and a particular *client* and advice given to that specific *client*. A *firm* wishing to know when it will be giving advice but not making a *personal recommendation* should refer to ■ PERG 13.3.

6.1B.2

FCA

R

This section does not apply to a *firm* when a *retail client* receives *basic advice* in accordance with the *basic advice rules*.

6.1B.2A

FCA

R

This section does not apply to a *firm* in circumstances where a *retail client* receives a *personal recommendation* in relation to one of the *firm's Holloway sickness policies*, provided that the *Holloway policy special application conditions* are met.

6.1B.3

FCA

G

This section applies to a *firm* when it makes a *personal recommendation* on a *retail investment product* and where a *retail investment product* for which it is the *retail investment product* provider is the subject of a *personal recommendation* made by another *firm*.



**Application - Where?**

6.1B.4

FCA

R

This section does not apply if the *retail client* is outside the *United Kingdom*.

**Requirement not to offer commissions**

6.1B.5

FCA

R

Except as specified in ■ COBS 6.1B.5A R, a *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, or to any other third party for the benefit of that *firm*, in relation to a *personal recommendation* (or any related services), except those that facilitate the payment of *adviser charges* from a *retail client's* investments in accordance with this section.

6.1B.5A

FCA

R

A *firm* and its *associates* may:

- (1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1B.5 R if:
  - (a) the *personal recommendation* was made on or before 30 December 2012;
  - (b) the offer and payment was permitted by the *rules* in force on 30 December 2012;
  - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
  - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
  - (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its *associate*.

6.1B.5B

FCA

G

A *firm* may continue paying commission, remuneration or benefits of any kind to another *firm* in relation to a *personal recommendation* made by that other *firm* in circumstances where that other *firm* may accept that commission, remuneration or benefit of any kind (see ■ COBS 6.1A.4A R and ■ COBS 6.1A.4AA G).

6.1B.6

FCA

G

The requirement not to offer or pay commission does not prevent a *firm* from making a payment to a third party in respect of administration or other charges incurred, for example a payment to a *platform service provider* or a third party administrator.



**Distinguishing product charges from adviser charges**

6.1B.7

FCA

**R**

A *firm* must:

- (1) take reasonable steps to ensure that its *retail investment product* charges are not structured so that they could mislead or conceal from a *retail client* the distinction between those charges and any *adviser charges* payable in respect of its *retail investment products*; and
- (2) not include in any marketing materials in respect of its *retail investment products* or facilities for collecting *adviser charges* any statements about the appropriateness of levels of *adviser charges* that a *firm* could charge in making *personal recommendations* or providing related services in relation to its *retail investment products*.

6.1B.8

FCA

**G**

A *firm* should not offer to invest more than 100% of the *retail client's* investment.

**Requirements on firms facilitating the payment of adviser charges**

6.1B.9

FCA

**R**

A *firm* that offers to facilitate, directly or through a third party, the payment of *adviser charges*, including by means of a *platform service* must:

- (1) obtain and validate instructions from a *retail client* in relation to an *adviser charge*;
- (2) offer sufficient flexibility in terms of the *adviser charges* it facilitates; and
- (3) not pay out or advance *adviser charges* to the *firm* to which the *adviser charge* is owed over a materially different time period, or on a materially different basis to that in which it recovers the *adviser charge* from the *retail client* (including paying any *adviser charges* to the *firm* that it cannot recover from the *retail client*).

6.1B.9A

FCA

**G**

A *firm* facilitates the payment of *adviser charges* for the purposes of ■ COBS 6.1B.9 R if the *adviser charge* is not paid directly by the *retail client*, but is instead paid on behalf of the *retail client* via the *firm*.

6.1B.9B

FCA

**G**

A *firm* may facilitate the payment of *adviser charges* for the purposes of ■ COBS 6.1B.9 R by:

- (1) selling all or part of the *retail client's retail investment product* to pay the *adviser charge*; or
- (2) disposing of or reducing all or part of the *retail client's* rights under the *retail investment product* (for example, by way of a part disposal which creates benefits under a *life policy*) to pay the *adviser charge*; or

- (3) separating out an amount or amounts for the payment of the *adviser charge* from the amount received from the *retail client* to be invested or from the *premium* in the case of a *life policy*; or
- (4) paying the *adviser charge* from the *retail client's* cash account.

**6.1B.10**

**FCA**

**G**

A *firm* should consider whether the flexibility in levels of *adviser charges* it offers to facilitate is sufficient so as not to unduly influence or restrict the charging structure and *adviser charges* that the *firm* providing the *personal recommendation* or related services can use.

**6.1B.11**

**FCA**

**G**

■ COBS 6.1B.9R(3) does not prevent a *firm*, if this is in the *retail client's* best interests, from entering into an agreement with another *firm* which is providing a *personal recommendation* to a *retail client*, or with a *retail client* of such a *firm*, to provide it with *credit* separately in accordance with the *rules* on providing credit and other benefits to *firms* that advise on *retail investment products* (■ COBS 2.3.12 E and ■ COBS 2.3.12A G).



## 6.1C Consultancy charging and remuneration

### Application - Who? What?

6.1C.1  
FCA

R

- (1) This section applies to a *firm* that gives advice, or provides services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.
- (2) Without prejudice to (1), this section does not apply to a *firm* that makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*.

### Application - Where?

6.1C.2  
FCA

R

This section does not apply if the employer is outside the *United Kingdom*.

### Interpretation

6.1C.3  
FCA

R

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

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

### Requirement to be paid through consultancy charges

6.1C.4  
FCA

G

■ COBS 6.1C.1 (Application - Who? What?) and ■ COBS 6.1C.3 (Interpretation) mean (for example) that the cost of any advice given to an employee pursuant to an agreement between the employer and the adviser about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of a *group personal pension scheme* or *group stakeholder pension scheme* are subject to the *rules* in this section, not the *rules* on *adviser charging* ( ■ COBS 6.1A).

6.1C.5

FCA

**R** Except as specified in ■ COBS 6.1C.5A R and ■ COBS 6.1C.5B R, a *firm* must:

- (1) only be remunerated for giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* by *consultancy charges* or by a fee payable by the employer;
- (2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in relation to that advice, or those services, regardless of whether it intends to refund the payments or pass the benefits on to the *group personal pension scheme* or *group stakeholder pension scheme*; and
- (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *consultancy charges* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *consultancy charges* are recovered from the relevant *group personal pension scheme* or *group stakeholder pension scheme*.

6.1C.5A

FCA

**R** A *firm* and its *associates* may:

- (1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1C.5 R if:
  - (a) the employer's part of the relevant scheme was established on or before 30 December 2012; and
  - (b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit in (1) is transferred to that *firm* or its *associate*.

**Re-registration of commission when an employer moves to a new adviser**

6.1C.5B

FCA

**R** If an employer chooses to appoint a *firm* to provide advice or services in connection with a *group personal pension scheme* or a *group stakeholder pension scheme* and that *firm* or its *associate* enters into an arrangement in ■ COBS 6.1C.5AR (2), the *firm* must:

- (1) before the arrangement is entered into, disclose to the employer that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its *associate*;

- (2) throughout the period during which the *firm* or its *associate* receives the commission, remuneration or benefit of any kind, provide the employer with an ongoing service; and
- (3) as soon as reasonably practicable after it makes the disclosure in (1):
  - (a) disclose to the employer the basis and amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and
  - (b) provide the employer with a description of the ongoing service it will provide to the employer in accordance with (2).

6.1C.6  
FCA

G

A *firm* may receive a *consultancy charge* that is no longer payable (for example, after the service it is received in payment for has been amended or terminated) provided the *firm* passes any such payments to the relevant *group personal pension scheme* or *group stakeholder pension scheme*.

6.1C.7  
FCA

G

The requirement to be paid through *consultancy charges* does not prevent a *firm* from making use of any facility for the payment of *consultancy charges* provided by another *firm* or other third parties provided that the facility complies with the requirements of ■ COBS 6.1D.9 R.

6.1C.8  
FCA

G

Examples of payments and benefits that should not be accepted under the requirement only to be paid through *consultancy charges* include:

- (1) a share of the charges applied to a *group personal pension scheme*, *group stakeholder pension scheme* or the scheme provider's revenues or profits (except if the *firm* providing the advice to an employer in relation to such a scheme is the scheme provider);
- (2) a commission set and payable by a *retail investment product* provider in any jurisdiction.

Requirements on a product provider giving advice to an employer in respect of the product provider's own *group personal pension scheme* or *group stakeholder pension scheme* products.

6.1C.9  
FCA

R

If the *firm* or its *associate* is the *group personal pension scheme* or *group stakeholder pension scheme* provider, the *firm* must ensure that the level of its *consultancy charges* is at least reasonably representative of the cost associated with giving the advice to the employer in relation to the relevant scheme.

**6.1C.10**

**FCA**

**G**

A *consultancy charge* is likely to be reasonably representative of the services associated with giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* if:

- (1) the expected long term costs associated with advising the employer in relation to the *group personal pension scheme* or *group stakeholder pension scheme* do not include the costs associated with establishing and operating that scheme;
- (2) the allocation of costs and profits to *consultancy charges* and product charges is such that any cross-subsidisation between the different activities is not significant in the long term; and
- (3) (were the services to be provided by an unconnected *firm*), the level of *consultancy charges* would be appropriate in the context of the service being provided by the *firm*.

#### **Requirement to use a charging structure**

**6.1C.11**

**FCA**

**R**

**A *firm* must determine and use an appropriate charging structure for calculating its *consultancy charge* for each employer.**

**6.1C.12**

**FCA**

**G**

A *firm* can use a standard charging structure.

**6.1C.13**

**FCA**

**G**

- (1) In determining its charging structure and *consultancy charges* a *firm* should have regard to the best interests of the employer and the employer's employees.
- (2) A *firm* may not be acting in the best interests of the employer and the employer's employees if it:
  - (a) varies its *consultancy charges* inappropriately according to product provider; or
  - (b) allows the availability or limitation of services offered by third parties to facilitate the payment of *consultancy charges* to influence inappropriately its charging structure or *consultancy charges*.
- (3) *Firms* are reminded that the *client's best interests rule* may also apply.

**6.1C.14**

**FCA**

**R**

**A *firm* must not use a charging structure which conceals the amount or purpose of any of its *consultancy charges* from an employer or an employee.**

**6.1C.15**

**FCA**

**G**

A *firm* is likely to be viewed as operating a charging structure that conceals the amount or purpose of its *consultancy charges* if, for example, it makes arrangements for amounts in excess of its *consultancy charges* to be deducted from an employee's investments from the outset, in order to be able to provide a cash payment to the employer or employee later.

#### **Initial information for clients on the cost of consultancy services**

**6.1C.16**

**FCA**

**R**

**A *firm* must disclose its charging structure to an employer in writing, in good time before giving advice, or providing services, to the employer in**

connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

6.1C.17

FCA

G

A *firm* should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses cash terms. If a *firm's* charging structure is in non-cash terms, examples in cash terms should be used to illustrate how the charging structure will be applied in practice.

#### Disclosure of total consultancy charges payable

6.1C.18

FCA

R

- (1) A *firm* must agree with and disclose to an employer the total *consultancy charge* payable to it or any of its *associates*.
- (2) A disclosure under (1) must:
  - (a) be in cash terms (or convert non-cash terms into illustrative cash equivalents);
  - (b) be made as early as practicable and, in any event, before the employer:
    - (i) selects a particular *group personal pension scheme* or *group stakeholder pension scheme* for the benefit of its employees; or
    - (ii) if applicable, reviews its *group personal pension scheme* or *group stakeholder pension scheme* arrangements;
  - (c) be in a *durable medium* or through a website (if it does not constitute a *durable medium*) if the *website conditions* are satisfied;
  - (d) if there are payments over a period of time, include:
    - (i) the amount and frequency of each payment due; and
    - (ii) the period over which the *consultancy charge* is payable;
    - (iii) an explanation of the implications for the employer and its employees if an employee leaves the employer's service; and
    - (iv) an explanation of the implications for the employer and its employees if contributions to the *group personal pension scheme* or *group stakeholder pension scheme* are cancelled before the *consultancy charge* is fully paid.

6.1C.19

FCA

G

To comply with the *rule* on disclosure of total *consultancy charges* payable ( ■ COBS 6.1C.18R) and the *fair, clear and not misleading rule*, a *firm's* disclosure of the total *consultancy charge* should:

- (1) provide information to the employer as to which particular service a *consultancy charge* applies;

- (2) include information as to when payment of the *consultancy charge* is due;
- (3) if an ongoing *consultancy charge* is expressed as a percentage of funds under management, clearly reflect in the disclosure how that *consultancy charge* may increase as the fund grows.

**Requirement not to make a consultancy charge in certain circumstances**

6.1C.20

FCA

R

When an employer asks a *firm* to provide advice to the employer's employees, the *firm*:

- (1) may make a *consultancy charge* for the cost of preparing and giving advice to each employee who chooses to accept his employer's offer of advice;
- (2) must not make a *consultancy charge* for the cost of preparing or giving advice to an employee who chooses not to accept the offer of advice;
- (3) (if the *firm* prepares generic advice to be given to more than one employee) must not make more than one *consultancy charge* for preparing that advice.

**Record-keeping**

6.1C.21

FCA

R

A *firm* must keep a record of:

- (1) its charging structure;
- (2) the *consultancy charges* payable by each employer and each of the employer's employees; and
- (3) if the *consultancy charge* for a particular service has varied materially from that indicated in the *firm's* charging structure, the reasons for that difference.





## 6.1D Product provider requirements relating to consultancy charging and remuneration

### Application - Who? What?

6.1D.1  
FCA

**R** This section applies to a *firm* that is a *group personal pension scheme* or *group stakeholder pension scheme* provider, but only if the *firm* providing the relevant scheme (or another *firm*) gives advice, or provides services, to an employer in connection with that scheme.

### Application - Where?

6.1D.2  
FCA

**R** This section does not apply if the employer is outside the *United Kingdom*.

### Interpretation

6.1D.3  
FCA

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

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

### Requirement not to offer commission, provide factoring or offer credit to a third party

6.1D.4  
FCA

**R** (1) Except as specified in ■ COBS 6.1D.6A R, a *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, an *employee benefit consultant* or to any other third party for the benefit of that *firm*, *employee benefit consultant* or third party in relation to the sale or purchase of:

- (a) a *group personal pension scheme* or *group stakeholder pension scheme*, whether or not that sale or purchase is accompanied or facilitated by advice given to the purchasing employer or the employer's employees; or
  - (b) an *investment*, if that sale or purchase is, or was, for the benefit of an *occupational pension scheme* established as an alternative to a *group personal pension scheme* or *group stakeholder pension scheme*.
- (2) Paragraph (1)(a) does not prevent a *firm* from making a payment to a third party that has facilitated the payment of a *consultancy charge* from a *group personal pension scheme* or *group stakeholder pension scheme*, provided that that payment is only in respect of that facilitation.
- (3) For the purposes of (1)(b) only, an *occupational pension scheme* will be established as an alternative to a *group personal pension scheme* or *group stakeholder pension scheme* if, in order to meet the most material of its objectives, an employer could reasonably have chosen to establish an *occupational pension scheme* on the one hand, or a *group personal pension scheme* or *group stakeholder pension scheme* on the other, and it chose to establish an *occupational pension scheme*.

6.1D.5  
FCA

G

The requirement not to offer or pay commission does not prevent a *firm* from making a payment to a third party in respect of administration or other charges incurred, for example a payment to a fund supermarket or a third party administrator.

6.1D.6  
FCA

R

A *firm* that produces a *group personal pension scheme* or *group stakeholder pension scheme* must not offer or make any credit available out of its own funds, and to or for the benefit of another *firm*, an *employee benefit consultant* or another third party.

6.1D.6A  
FCA

R

A *firm* and its *associates* may:

- (1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1D.4 R if:
  - (a) the employer's part of the relevant scheme was established on or before 30 December 2012; and
  - (b) the offer or payment was permitted by the *rules* in force on 30 December 2012; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its *associate*.

**Distinguishing product charges from consultancy charges**

6.1D.7

FCA

R

A *firm* must:

- (1) take reasonable steps to ensure that its *group personal pension scheme* and *group stakeholder pension scheme* charges are not structured so that they could mislead or conceal from an employer the distinction between those charges and any *consultancy charges* payable in respect of the scheme; and
- (2) not include in any marketing materials in respect of its *group personal pension schemes* or *group stakeholder pension schemes* any statements about the appropriateness of levels of *consultancy charges* that a *firm* could charge in giving advice to an employer in relation to a such a scheme.

6.1D.8

FCA

G

A *firm* should not offer to invest more than 100% of the *retail client's* contribution to a *group personal pension scheme* or *group stakeholder pension scheme*.

**Requirements on firms facilitating the payment of consultancy charges**

6.1D.9

FCA

R

A *firm* that offers to facilitate, directly or through a third party, the payment of *consultancy charges* must:

- (1) obtain and validate instructions from the relevant employer in relation to the *consultancy charge*;
- (2) offer sufficient flexibility in terms of the *consultancy charges* it facilitates;
- (3) not pay out or advance *consultancy charges* to the *firm* to which the *consultancy charge* is owed over a materially different time period, or on a materially different basis to that in which it recovers the *consultancy charges* from the employee (including paying any *consultancy charges* to the *firm* that it cannot recover from the employee); and
- (4) ensure that the *consultancy charges* levied do not exceed those agreed between the employee's employer and the relevant adviser (unless the prior written consent of the employee is obtained).

6.1D.9A

FCA

G

A *firm* facilitates the payment of *consultancy charges* for the purposes of ■ COBS 6.1D.9 R if the *consultancy charge* is not paid directly by the employee, but is instead paid on behalf of the employee via the *firm*.

6.1D.9B

FCA

G

A *firm* facilitates the payment of *consultancy charges* for the purposes of ■ COBS 6.1D.9 R by:

- (1) selling all or part of, or rights under, the employee's investment in a *group personal pension scheme* or *group stakeholder pension scheme* to pay the *consultancy charge*; or

- (2) disposing of or reducing all or part of the employee's rights under the *group personal pension scheme* or *group stakeholder pension scheme* (for example, by way of a part disposal which creates benefits under a *life policy*) to pay the *consultancy charge*; or
- (3) separating out an amount or amounts for the payment of the *consultancy charge* from the amount received from the employer on behalf of the employee or from the premium in the case of a *life policy*.

**6.1D.10**

**FCA**

**G**

A *firm* should consider whether the flexibility in levels of *consultancy charges* it offers to facilitate is sufficient so as not to unduly influence or restrict the charging structure and *consultancy charges* that the *firm* providing advice to an employer in relation to a *group personal pension scheme* or *group stakeholder pension scheme* can use.

**Disclosure of total consultancy charges payable**

**6.1D.11**

**FCA**

**R**

**A *firm* must, in good time, provide an employee with sufficient information on the total *consultancy charge* payable by the employee.**

**6.1D.12**

**FCA**

**G**

To comply with **■** COBS 6.1D.11R, a *firm's* disclosure should be in cash terms (or convert non-cash terms into illustrative cash equivalents) and should:

- (1) include information as to the period over which the *consultancy charge* is payable;
- (2) provide information on the implications for the employee if the employee leaves the employer's service or their contributions to the *group personal pension scheme* or *group stakeholder pension scheme* are cancelled before the *consultancy charge* is fully paid.

**6.1D.13**

**FCA**

**G**

A *firm* may provide the disclosure in **■** COBS 6.1D.11R at the same time as it provides a *key features document*.

**6**



## 6.1E Platform service providers

### Platform service providers: fees and commission

6.1E.1

FCA

R

- (1) If, in relation to a *retail investment product*, a *platform service provider* arranges to accept a fee or commission paid by a third party or a *person* acting on behalf of a third party, it must clearly disclose the amount of that fee or commission to the *professional client* or *retail client* in a *durable medium* in good time before the provision of *designated investment business*.
- (2) In the event that it is not possible to make the disclosure in (1) in good time before the provision of *designated investment business*, the disclosure must be made as soon as practicable thereafter.

6.1E.2

FCA

G

If a *platform service provider* accepts a fee or commission referred to in ■ COBS 6.1E.1 R, it should pay due regard to its obligations under *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and the *client's best interests rule*, and ensure that it presents *retail investment products* to *professional clients* and *retail clients* without bias.



## 6.1F Using a platform service for arranging and advising

### Client's best interests rule and using a platform service

6.1F.1

FCA

R

A *firm* (other than a *platform service provider*) which:

- (1) *arranges for a retail client to buy a retail investment product or makes a personal recommendation to a retail client in relation to a retail investment product; and*
- (2) *uses a platform service for that purpose;*

must take reasonable steps to ensure that it uses a *platform service* which presents its *retail investment products* without bias.

6.1F.2

FCA

G

When selecting and using a *platform service* for the purpose described in ■ COBS 6.1F.1 R, a *firm* should be mindful of its duty to comply with the *client's best interests rule* and the *rule on inducements* (■ COBS 2.3.1 R).



## 6.1G Re-registration of title to retail investment products

6.1G.1

FCA

R

If a *client* requests a *firm* (F) to transfer the title to a *retail investment product* which is held by F directly, or indirectly through a third party, on that *client's* behalf to another *person* (P), and F may lawfully transfer the title to that *retail investment product* to P, F must execute the *client's* request within a reasonable time and in an efficient manner.

6.1G.2

FCA

R

A *firm* acting as a *registrar* should carry out a request by F for the re-registration of ownership of a *retail investment product* to P within a reasonable time.



**6.2 [Deleted]**





## 6.2A Describing advice services

### Application - Who? What?

6.2A.1

FCA

R

- (1) This section applies to a *firm* that either:
- (a) makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*; or
  - (b) provides *basic advice* to a *retail client*.
- (2) This section does not apply to a *firm* when it makes a *personal recommendation* or provides *basic advice* to an employee, if that recommendation or advice is provided under the terms of an agreement between the *firm* and that employee's employer which is subject to the *rules on consultancy charges* ( ■ COBS 6.1C).

6.2A.1A

FCA

R

This section does not apply to a *firm* when it makes a *personal recommendation* to a *retail client* in relation to a *Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.

### Application - Where?

6.2A.2

FCA

R

This section does not apply if the *retail client* is outside the *United Kingdom*.

### Firms holding themselves out as independent

6.2A.3

FCA

R

- (1) A *firm* must not hold itself out to a *retail client* as acting independently unless the only *personal recommendations* in relation to *retail investment products* it offers to that *retail client* are:
- (a) based on a comprehensive and fair analysis of the relevant market; and
  - (b) unbiased and unrestricted.

6.2A.4

FCA

G

(2) Paragraph (1) does not apply to *group personal pension schemes* if a *firm* discloses information to a *client* in accordance with the *rule on group personal pension schemes* ( ■ COBS 6.3.21 R).

- (1) A *firm* that provides both *independent advice* and *restricted advice* should not hold itself out as acting independently for its business as a whole. However, a *firm* may hold itself out as acting independently in respect of its services for which it provides *independent advice* or advice which meets other independence requirements for particular *investments*. For example, a *firm* that provides *independent advice* on *regulated mortgage contracts* in accordance with MCOB but *restricted advice* on *retail investment products* will not be able to hold itself out as an independent financial adviser. However, it would be able to hold itself out as an adviser providing *independent advice* for *regulated mortgage contracts* provided it was made clear in accordance with the *fair, clear and not misleading rule* that it provided *restricted advice* for *retail investment products*.
- (2) A *firm* whose relevant market is relatively narrow should not hold itself out as acting independently in a broader sense. For example, a *firm* "Greenfield", which specialises in ethical and socially responsible investments could not hold itself out as "Greenfield Independent Financial Advisers". "Greenfield - providing independent advice on ethical products" may be acceptable.
- (3) A *firm* that provides *basic advice* on *stakeholder products* may still use the facilities and stationery it uses for other business in accordance with the *rule* on basic advice on stakeholder products: other issues (■ COBS 9.6.17 R (2)).

6.2A.4A

FCA

R

In complying with ■ COBS 6.2A.3 R, a *firm* which:

- (1) holds itself out to a *retail client* as acting independently; and
- (2) relies upon a single *platform service* to facilitate the majority of its *personal recommendations* in relation to *retail investment products*;

must take reasonable steps to ensure that, as appropriate, the *platform service provider* bases its selection of *retail investment products* on a comprehensive, fair and unbiased analysis of the relevant market.

6.2A.4B

FCA

G

When a *firm* considers whether a *platform service provider's* selection of *retail investment products* is based on an unbiased analysis of the relevant market, a *firm* should take into account any fees, commission or non-monetary benefits the *platform service provider* receives in relation to those *retail investment products*.

#### Describing the breadth of a firm's advice service

6.2A.5

FCA

R

A *firm* must disclose in writing to a *retail client*, in good time before the provision of its services in respect of a *personal recommendation* or *basic advice* in relation a *retail investment product*, whether its advice will be:

- (1) *independent advice*; or
- (2) *restricted advice*.

**Content and wording of disclosure**

6.2A.6  
FCA

R

- (1) A *firm* must include the term "independent advice" or "restricted advice" or both, as relevant, in the disclosure.
- (2) If a *firm* provides *independent advice* in respect of a relevant market that does not include all *retail investment products*, a *firm* must include in the disclosure an explanation of that market, including the types of *retail investment products* which constitute that market.
- (3) If a *firm* provides *restricted advice*, its disclosure must explain the nature of the restriction.
- (4) If a *firm* provides both *independent advice* and *restricted advice*, the disclosure must clearly explain the different nature of the *independent advice* and *restricted advice* services.

**Medium of disclosure**

6.2A.7  
FCA

R

A *firm* must provide the disclosure information required by the *rule* on describing the breadth of a *firm's* advice service (■ COBS 6.2A.5 R) in a *durable medium* or through a website (if it does not constitute a *durable medium*) provided the *website conditions* are satisfied.

6.2A.8  
FCA

G

A *firm* may meet the disclosure requirements in the *rule* on describing the breadth of a *firm's* advice service (■ COBS 6.2A.5 R) and the *rule* on content and wording of disclosure (■ COBS 6.2A.6R) by using a *services and costs disclosure document* or a *combined initial disclosure document* (■ COBS 6.3 and ■ COBS 6 Annex 1G or ■ COBS 6 Annex 2).

**Additional oral disclosure for firms providing restricted advice**

6.2A.9  
FCA

R

If a *firm* provides *restricted advice* and engages in spoken interaction with the *retail client*, a *firm* must disclose orally in good time before the provision of its services in respect of a *personal recommendation* that it provides *restricted advice* and the nature of that restriction.

6.2A.10  
FCA

G

Examples of statements which would comply with ■ COBS 6.2A.9 R include:

- (1) "I am a [Firm X] adviser offering restricted advice, which means that my advice is restricted to advice on [Firm X] [products/stakeholder products] only" or
- (2) "I am a [Firm X] adviser offering restricted advice, which means that my advice is restricted to advice on [products/stakeholder products] from a limited number of companies that [Firm X] has selected".

**Guidance on what constitutes a relevant market**

6.2A.11  
FCA

G

A relevant market should comprise all *retail investment products* which are capable of meeting the investment needs and objectives of a *retail client*.

**6.2A.12** **G** A relevant market can be limited by the investment needs and objectives of the *retail client*. For example, ethical and socially responsible investments or Islamic financial products could both be relevant markets. However, a *firm* would be expected to consider all *retail investment products* within those investment parameters.  
**FCA**

**6.2A.13** **G** For a *firm* not specialising in a particular market, the relevant market will generally include all *retail investment products*.  
**FCA**

### Guidance on providing unbiased and unrestricted advice

**6.2A.14** **G** A *personal recommendation* on a *retail investment product* that invests in a number of underlying *investments* would not of itself meet the requirements for providing unbiased and unrestricted advice even if the *retail investment product* invests in a wide range of underlying *investments*.  
**FCA**

**6.2A.15** **G** In order to satisfy the *rule* on *firms* holding themselves out as independent (■ COBS 6.2A.3 R) a *firm* should ensure that it is not bound by any form of agreement with a *retail investment product* provider that restricts the *personal recommendation* the *firm* can provide or imposes any obligation that may limit the *firm's* ability to provide a *personal recommendation* which is unbiased and unrestricted.  
**FCA**

**6.2A.16** **G** A *firm* may be owned by, or own in whole or part, or be financed by or provide finance to, a *retail investment product* provider without contravening the 'unbiased, unrestricted' requirement provided the *firm* ensures that that ownership or finance does not prevent the *firm* from providing a *personal recommendation* which is unbiased and unrestricted.  
**FCA**

**6.2A.17** **G** In providing unrestricted advice a *firm* should consider relevant financial products other than *retail investment products* which are capable of meeting the investment needs and objectives of a *retail client*, examples of which could include national savings and investments products and *cash deposit ISAs*.  
**FCA**

### Guidance on using panels and/or third parties to provide a comprehensive and fair analysis of the market

**6.2A.18** **G** A *firm* may provide a *personal recommendation* on a comprehensive and fair analysis basis required by the *rule* on *firms* holding themselves out as independent (■ COBS 6.2A.3 R) by using 'panels'. A *firm* would need to ensure that any panel is sufficiently broad in its composition to enable the *firm* to make *personal recommendations* based on a comprehensive and fair analysis, is reviewed regularly, and that the use of the panel does not materially disadvantage any *retail client*.  
**FCA**

**6.2A.19** **G** When using a panel a *firm* may exclude a certain type or class of *retail investment product* from the panel if, after review, there is a valid reason consistent with the *client's best interests rule*, for doing so.  
**FCA**

**6.2A.20** **G** If a *firm* chooses to use a third party to conduct a fair and comprehensive analysis of its relevant market, the *firm* is responsible for ensuring the criteria used by the third party are sufficient to meet the requirement. For example, criteria which selected *retail investment product* providers on the basis of payment of a fee (or facilitation of *adviser charges*),  
**FCA**

whilst excluding those not paying a fee (or such a facilitation) would not meet the comprehensive and fair analysis requirement.

### Record keeping

6.2A.21

FCA

G

*Firms* are reminded of the general record keeping requirements in ■ SYSC 3.2 and ■ SYSC 9. A *firm* should keep appropriate records of the disclosures required by this section.

### Systems and controls

6.2A.22

FCA

G

- (1) *Firms* are reminded of the systems and controls requirements in SYSC.
- (2) A *firm* providing *restricted advice* should take reasonable care to establish and maintain appropriate systems and controls to ensure that if there is no *retail investment product* in the *firm's* range of products which meets the investment needs and objectives of the *retail client*, no *personal recommendation* should be made.
- (3) A *firm* specialising in a relevant market should take reasonable care to establish and maintain appropriate systems and controls to ensure that it does not make a *personal recommendation* if there is a *retail investment product* outside the relevant market which would meet the investment needs and objectives of the *retail client*.



## 6.3 Disclosing information about services, fees and commission

### Application

- 6.3.1** FCA R This section applies to a *firm* which makes a *personal recommendation* to, *deals in investments as agent* for, or *arranges for*, a *retail client* in relation to a *packaged product*.
- 6.3.1A** FCA R This section does not apply to a *firm* when it makes a *personal recommendation* to a *retail client* and that *retail client* is outside the *United Kingdom*.
- 6.3.1B** FCA G If a *firm* makes a *personal recommendation* to a *retail client* in relation to a *packaged product* and uses the *services and costs disclosure document* or *combined initial disclosure document* to make the disclosures required under the *rule* on describing the breadth of a *firm's* advice service (■ COBS 6.2A.5 R) and the *rule* on content and wording of disclosure (■ COBS 6.2A.6 R), it may also use these documents for its disclosures in respect of any other *retail investment products*.
- 6.3.2** FCA R This section does not apply to a *firm* giving *basic advice* where the *firm* follows the *basic advice rules* in ■ COBS 9.6.

### Disclosure to retail clients in good time

- 6.3.3** FCA G
- (1) In the *FCA's* opinion, a *firm* may comply with the *rules* referred to in (4) of which (a) to (g) are derived from the *Single Market Directives* and the *Distance Marketing Directive* by ensuring that in good time before:
    - (a) a *retail client* is bound by an agreement for the provision of a *personal recommendation* on *packaged products*; or
    - (b) the *firm* performs an act preparatory to the provision of a *personal recommendation*;
    - (c) ( in relation to the amendment of a *life policy* for that *retail client* ) it gives a *personal recommendation* in relation to *packaged products*;

its *representative* provides the *client* with a *services and costs disclosure document* or *combined initial disclosure document* .
  - (2) A *firm* should consider the extent to which it is appropriate to provide a *services and costs disclosure document* or a *combined initial disclosure document* if the appropriate information has been given to the *client* on a previous occasion and the information is still accurate and appropriate for the *client*.

- (3) A *firm* should provide the information required by this section in a *durable medium*.
- (4) For the purposes of (1), provision of a *services and costs disclosure document* or *combined initial disclosure document* will comply with:
- (a) the elements of the *rule* on summary disclosure of fees, commissions and non-monetary benefits (■ COBS 2.3.1 R (2)(b), as qualified by ■ COBS 2.3.2 R) that relate to disclosure of fees and commissions and, where included, non-monetary benefits;
  - (b) the *rule* on information about costs and charges (■ COBS 6.1.9 R) but only if in the *services and costs disclosure document* or *combined initial disclosure document* :
    - (i) if a *firm* is providing a *personal recommendation* or related services and the total *adviser charge* can be determined, the total *adviser charge* is disclosed as part of the charging structure; or
    - (ii) if the total *adviser charge* cannot be determined or a *firm* is not providing a *personal recommendation*, if hourly rates are disclosed, the hourly rates are actual hourly rates rather than indicative hourly rates;
  - ;
  - (c) the *rule* on information disclosure before providing services ( ■ COBS 2.2.1 R (1)(a) and ■ COBS 2.2.1 R (1)(d));
  - (d) the items of distance marketing information, set out in paragraphs (1), (2), (4), (5), (19) and (20) of ■ COBS 5 Annex 1 R;
  - (e) paragraphs (1) (so far as it relates to the *firm's* name and address), (4) and (6) of the *rule* on disclosure of information about a *firm* and its services (■ COBS 6.1.4 R);
  - (f) the investor compensation scheme *rule* in ■ COBS 6.1.16R (1) and ■ (2);
  - (g) the *rule* on information to be provided by an *insurance intermediary* (■ COBS 7.2.1 R (1) and ■ COBS 7.2.1 R (2)); and
  - (h) the *rule* on describing the breadth of a *firm's* advice service ( ■ COBS 6.2A.5 R), the *rule* on content and wording of disclosure (■ COBS 6.2A.6 R) and the *rule* on initial information for *clients* on the cost of advice services (■ COBS 6.1A.15 G).
- (5) [deleted]
- (a) [deleted]
  - (b) [deleted]
  - (c) [deleted]
  - (d) [deleted]
  - (e) [deleted]



■ COBS 5, ■ 6.1 or ■ COBS 7 unless it is a *services and costs disclosure document* or a *combined initial disclosure document* produced in accordance with the templates and Notes in the annexes to this chapter.

6.3.5

FCA

G

Each of the *services and costs disclosure document* and *combined initial disclosure document* that a *firm* provides to a *client* should be *documents* which the *firm* reasonably considers will be, or are likely to be, appropriate for the *client* having regard to the type of service which the *firm* may provide or business which the *firm* may conduct.

6.3.6

FCA

G

- (1) A *firm* will satisfy the requirements as to timing in the *rules* referred to in ■ COBS 6.3.3 G (4) if its *representative* provides information to the *client* on first making contact with the *client*.
- (2) [deleted]

### Services and costs disclosure document and combined initial disclosure document

6.3.7

FCA

G

- (1) A *services and costs disclosure document* is a document that contains the keyfacts logo, headings and text in the order shown in ■ COBS 6 Annex 1 G and in accordance with the Notes.
- (2) A *combined initial disclosure document* is a document that contains the keyfacts logo, headings and text in the order shown in ■ COBS 6 Annex 2 and in accordance with the Notes.

6.3.8

FCA

G

A *firm* may include, in a *services and costs disclosure document* or a *combined initial disclosure document*, information required by COBS or by the *rule* on disclosing a *tiered agent's capacity* ( ■ SUP 12.6.13 R) and which is not in the template for the *services and costs disclosure document* or *combined initial disclosure document*, if the information would be sufficiently prominent. For example, a *firm* may wish to use those documents to satisfy:

- (1) the parts of the *rule* on information about the *firm* and its services (■ COBS 6.1.4 R);
- (2) the *rule* on costs and associated charges (■ COBS 6.1.9 R);
- (3) the items of distance marketing information described in paragraphs (6), (8), (10) and (11) of ■ COBS 5 Annex 1 R;

that would not otherwise be satisfied by providing the *services and costs disclosure document* or *combined initial disclosure document*.

6.3.9

FCA

G

*Firms* can obtain from the FCA website <http://www.fca.org.uk> a specimen of the *services and costs disclosure document* and the *combined initial disclosure document*. A *firm* may produce its *services and costs disclosure document* or *combined initial disclosure document* by using its own house style and brand. Electronic tools to help *firms* to construct their own versions of these documents are available from the FCA website.



|        |          |   |
|--------|----------|---|
| 6.3.10 | G        | (1) [deleted]<br>(2) [deleted]  |
| 6.3.11 | R        | (1) [deleted]<br>(2) [deleted]  |
| 6.3.12 | G        | [deleted]<br>(1) [deleted]<br>(2) [deleted]<br>(3) [deleted]  |
| 6.3.13 | G        | [deleted]   |
| 6.3.14 | G<br>FCA | A <i>firm</i> would be unlikely to comply with the <i>client's best interests rule</i> and the <i>fair, clear and not misleading rule</i> , if: <ol style="list-style-type: none"> <li>(1) the <i>services and costs disclosure document</i> or the <i>combined initial disclosure document</i> that it provided initially did not reflect the relevant <i>adviser charge</i> or expected <i>commission</i> arrangements; or</li> <li>(2) the <i>firm</i> arranged to retain any <i>commission</i> which exceeded the amount or rate disclosed without first providing further appropriate inducements information and obtaining the <i>client's</i> prior informed consent to the proposed alteration in a <i>durable medium</i>.</li> </ol> |
| 6.3.15 | G        | [deleted]   |
| 6.3.16 | G        | [deleted]   |
| 6.3.17 | G        | [deleted]   |
| 6.3.18 | G        | (1) [deleted]<br>(2) (a) [deleted] <ol style="list-style-type: none"> <li>(i) [deleted]</li> <li>(ii) [deleted]</li> </ol> (b) [deleted]  |

### Telephone sales

6.3.19

FCA

G

In cases where *firms* make initial contact with a *client* on the telephone a *firm* may, in addition, have to take into account and comply with the requirements in this sourcebook applicable to the conclusion of *distance contracts* (see ■ COBS 5).

6.3.20

FCA

G

- (1) In accordance with the *rule* on information disclosure before providing services (■ COBS 2.2.1 R), if a *firm's* initial contact with a *retail client* with a view to providing a *personal recommendation* on *packaged products* is by telephone then the following information should be provided before proceeding further:
  - (a) the name of the *firm* and, if the call is initiated by or on behalf of a *firm*, the commercial purpose of the call;
  - (b) whether the *firm* provides *independent advice* or *restricted advice* and, if a *firm* provides *restricted advice*, the oral disclosure required by the *rule* on additional oral disclosure for *firms* providing *restricted advice* (■ COBS 6.2A.9 R);
  - (c) the *firm's* charging structure; and
  - (d) that the information given under (a) to (c) will subsequently be confirmed in writing.
  - (e) [deleted]
  - (f) [deleted]
- (2) If a *firm's* initial contact with a *retail client* is by telephone in circumstances in which the *firm* would otherwise provide a *services and costs disclosure document*, or a *combined initial disclosure document*, it should consider sending the *client* the *document* as soon as is reasonably practicable following the conclusion of the call.

### Group Personal Pensions

6.3.21

FCA

R

A *firm* must take reasonable steps to ensure that its *representatives*, when making contact with an employee with a view to giving a *personal recommendation* on his employer's *group personal pension scheme* or *group stakeholder pension scheme*, inform the employee:

- (1) that the *firm* will be providing a *personal recommendation* on a *group personal pension scheme* and/or a *group stakeholder pension scheme* provided by the employer;
- (2) whether the employee will be provided with a *personal recommendation* that is restricted to the *group personal pension scheme* or *group stakeholder pension scheme* provided by the employer or the recommendation will also cover other products;
- (3) [deleted]
- (4) that the employee will have to pay an *adviser charge* (if applicable) unless the *representative* is making contact pursuant to an agreement made between the *firm* and the employer which is

subject to *consultancy charging* (■ COBS 6.1C (Consultancy charging and remuneration)).

6.3.22

G

[deleted]



## 6.4 Disclosure of charges, remuneration and commission

### Application

6.4.1  
FCA

**R** This section applies to a *firm* when it sells or *arranges* the sale of a *packaged product* to a *retail client* and the *firm's* services to sell or *arrange* are not in connection with the provision of a *personal recommendation* .

6.4.2  
FCA

**G** Under the territorial application *rules* in ■ COBS 1, the *rules* in this section apply to:

- (1) a *UK firm's* business carried on from an establishment in an *EEA State* other than the *United Kingdom* for a *retail client* in the *United Kingdom* unless, if the office from which the activity is carried on were a separate *person*, the activity:
  - (a) would fall within the overseas *persons* exclusion in article 72 of the *Regulated Activities Order*; or
  - (b) would not be regarded as carried on in the *United Kingdom*.
- (2) a *firm's* business carried on from an establishment in the *United Kingdom* carried on for a *client* in an other *EEA state*.

### Disclosure of commission (or equivalent) for packaged products

6.4.3  
FCA

**R** (1) If a *firm* sells or *arranges* the sale of a *packaged product* to a *retail client*, and subsequently if the *retail client* requests it, the *firm* must disclose to the *client* in cash terms:

- (a) any *commission* receivable by it or any of its *associates* in connection with the transaction;
- (b) if the *firm* is also the *product provider*, any *commission* or *commission equivalent* payable in connection with the transaction; and
- (c) if the *firm* or any of its *associates* is in the same *immediate group* as the *product provider*, any *commission equivalent* in connection with the transaction.

- (2) Disclosure "in cash terms" in relation to *commission* does not include the value of any indirect benefits listed in the table at ■ COBS 2.3.15 G.

- (3) In determining the amount to be disclosed as *commission equivalent*, a *firm* must put a proper value on the cash payments, benefits and services provided to its *representatives* in connection with the transaction.
- (4) This *rule* does not apply if:
- (a) the *firm* is acting as an *investment manager*; or
  - (b) the *retail client* is not present in the *EEA* at the time of the transaction; or
  - (c) the *firm* provides the *client* with a *key features document*, a *simplified prospectus*, a *key investor information document* or *EEA key investor information document*, in accordance with ■ COBS 14, provided that the *firm* discloses to the *client* the actual amount or value of *commission* or *equivalent* within five *business days* of effecting the transaction.
- (5) If the terms of a *packaged product* are varied in a way that results in a material increase in *commission* or *commission equivalent*, a *firm* must disclose to a *retail client* in writing any consequent increase in *commission* or *equivalent* receivable by it in relation to that transaction.

6.4.4  
FCA

**G** Where a *firm* is required to disclose the value of *commission equivalent*, the value will be at least as high as the amount of any *commission*.

6.4.4A  
FCA

**R** If the *firm* or its *associate* is the *pure protection contract insurer*, it may comply with ■ COBS 6.4.3R (1)(b) and ■ (c) by disclosing to the *consumer* an *indicative adviser charge* as an alternative to a *commission equivalent*.

6.4.4B  
FCA

**R** The *indicative adviser charge* must be at least reasonably representative of the services associated with making the *personal recommendation* in relation to the *pure protection contract*.

6.4.4C  
FCA

**G** An *indicative adviser charge* is likely to be reasonably representative of the services associated with making the *personal recommendation* if:

- (1) the expected long term costs associated with making a *personal recommendation* and distributing the *pure protection contract* do not include the costs associated with manufacturing and administering the *pure protection contract*;
- (2) the allocation of costs and profit to the *indicative adviser charge* and product charges is such that any cross-subsidisation is not significant in the long term; and

6.4.5  
FCA

**R**

- (3) the *personal recommendation* and any related services were to be provided by an unconnected *firm*, the level of the *indicative adviser charge* would be appropriate in the context of the service being provided by an unconnected *firm*.
- (1) A *firm* must make the disclosure required by the *rule* on disclosure of *commission* or *equivalent* ( ■ COBS 6.4.3 R) as close as practicable to the time that it sells or *arranges* the sale of a *packaged product*.
- (2) The *firm* must make the disclosure:
- (a) in a *durable medium*; or
  - (b) when a *retail client* does not make a written application to enter into a transaction, orally. In these circumstances, the *firm* must give written confirmation as soon as possible after the date of the transaction, and in any event within five *business days*.

6.4.6  
FCA

**A**

- (1) When determining the value of cash payments, benefits and services under the *rule* on disclosure of *commission equivalent* (■ COBS 6.4.3 R), a *firm* should follow the provisions of ■ COBS 6 Annex 6 E.
- (2) Compliance with this *evidential provision* may be relied on as tending to establish compliance with ■ COBS 6.4.3 R; and
- (3) Contravention of this *evidential provision* may be relied on as tending to establish contravention of ■ COBS 6.4.3 R.

6.4.7  
FCA

**R**

**Guidance on disclosure requirements for packaged products.**  
A *firm* must not enter into an arrangement to pay *commission* other than to the *firm* responsible for a sale, unless:

- (1) the *firm* responsible for the sale has passed on its right to receive the *commission* to the recipient; or
- (2) [deleted]
- (3) the *commission* is paid following the sale of a *packaged product* by the *firm* in response to a *financial promotion* communicated by that *firm* to a *client* of the recipient *firm*; or
- (4) the arrangement is with a *firm* in the same *immediate group*.

PAGE  
47

6.4.8  
FCA

**G**

A disclosure made under this section should indicate the timing of any payment. For example, if a *firm* exchanges its right to future *commission* payments for a lump sum, whether by way of a loan or other commercial arrangement, it should disclose the amount of *commission* receivable by it that has been exchanged for the lump sum.

6.4.9  
FCA

G

The *rules* in this section build on the disclosure of fees, commissions and non-monetary benefits made under the *rule* on inducements (■ COBS 2.3.1 R).

6.4.10  
FCA

G

If the precise rate or value of *commission* or *equivalent* is not known in advance, the *firm* should estimate the rate likely to apply to the *representative* in respect of the transaction.

6.4.11  
FCA

G

### Commission or equivalent disclosure statements: content and wording

A *firm* should consider including the following in its written statement of *commission*:

- (1) Amounts or values of *commission* rounded as appropriate to help the *client* understand the document (for example, large amounts might be rounded to three significant figures).
- (2) The names of the *firms* involved in paying and receiving *commission* or *commission equivalent*.
- (3) A plain language description of whether remuneration takes the form of *commission* or *commission equivalent*. *Commission* equivalent could, for example, be described as "remuneration and services received from XYZ Ltd".
- (4) The timing of payments and period over which they are paid.
- (5) For payments relating to the *client's* fund, examples of how much money might be taken, such as:
  - (a) where the *commission* or *equivalent* is on an increasing basis, the amount to be taken in the first and tenth year in which it is paid; or
  - (b) where the *commission* or *equivalent* is a percentage of the fund, the amount that would be taken if the fund was worth a certain value and the amount that would be taken if the fund was worth twice that value.

---

**Services and costs disclosure document described in COBS 6.3.7G(1)**

**FCA**

*Firms* should omit the notes and square brackets which appear in the following specimen.

*Services and costs disclosure document described in COBS 6.3.7G(1) - COBS 6 Annex 1*





**Combined initial disclosure document described in COBS 6.3, ICOBS 4.5, MCOB 4.4.1R(1) and MCOB 4.10.2R(1)**

**FCA**

This specimen covers services in relation to *packaged products, non-investment insurance contracts and home finance transactions* (including *equity release transactions*).

If the *firm* is not providing services in relation to all products, the parts of the *combined initial disclosure document* that are not relevant should be omitted.

*Firms* should omit the notes and square brackets that appear in the following *combined initial disclosure document*. The completed *combined initial disclosure document* should contain the keyfacts logo, headings and text in the order shown and in accordance with the notes. Subject to this, a *firm* may use its own house style and brand.

*COBS 6 Annex 2: Combined initial disclosure document described in COBS 6.3, ICOBS 4.5, MCOB 4.4.1R(1) and MCOB 4.10.2R(1) - COBS 6 Annex 2*



---

**[deleted]**



---

**[deleted]**



---

**[deleted]**





## Calculating commission equivalent

**FCA**

This table forms part of ■ COBS 6.4.6 E.

### Calculating commission equivalent

This table sets out the basis on which the *firm* should determine the value of cash payments, benefits and services to be disclosed as *commission equivalent*. Benefits and services, as set out in parts B and C below, need be included only if their value is such that they could not be provided to a *firm* as a non-monetary benefit listed in the table in COBS 2.3.15 G. The result of the calculation should be that the amounts disclosed as *commission equivalent* are, as far as possible, the same as the amounts and value of *commission* which would be paid in a corresponding sale.

#### Part A: Cash payments

1. These cover all payments by a *firm* to a *representative*, *appointed representative* or, where applicable, a *tied agent*, or a *firm* in the same *immediate group* in relation to a transaction in a *packaged product*. This includes bonus payments, manager's overrides, extra earnings from other transactions and other payments conditional on amounts of new business.
2. In determining the amounts to be included in the calculation, a *firm* should have regard to the following:
  - (a) when the precise rate of *commission equivalent* is not known in advance (for example, if retrospective volume overrides apply), the *firm* should estimate the rate likely to apply to the *representative* in question. When an identical *commission equivalent* scale applies to all *representatives* (although they might earn differing percentages of it), the same average amount of *commission equivalent* (and the value of other benefits and services) in respect of identical transactions may be disclosed, regardless of the percentage of the scale paid to each individual *representative*. Averaging should not be used for *appointed representatives*, or, where applicable, *tied agents*.
  - (b) all credits to an account from which periodic withdrawals may be made should be included.
  - (c) when a payment is made before the *firm* receives the *premium* or the investment monies to which it relates (for example, indemnity *commission equivalent*), it should be included as being received at the time of payment. *Firms* that wish to explain this arrangement to the *clients* are free to do so, provided this does not detract from the required disclosure.
  - (d) when the *firm* arranges for a third party to make a payment to a *representative* in exchange for the income stream to which the *representative* is entitled, or to make a loan to the *representative* on the security or expectation of future payments from the *firm*, this should be treated as if it were a payment from the *firm* at the time of the transaction.

### Calculating commission equivalent

- (e) when a *firm* provides, or arranges for a third party to provide, a loan to a *representative*, on the security of, or in the expectation of, future payments from the firm, the amounts to be included are the payments to the *representative* on which the provision of the loan is based, as if they were received at the time the transaction was effected, irrespective of their actual timing.
- (f) when an agent is employed and remunerated by the *firm's appointed representative*, or, where applicable, *tied agent*, the payments to be included should be those made by the *firm* to the *appointed representative* or *tied agent*, not those made by the *appointed representative* or *tied agent* to its own agent.

#### Part B: Benefits

3. Benefits include the cost to the *firm* of all non-monetary benefits provided by it to a *representative*. A benefit should be included whether or not the *representative* is liable to income tax on it and whether it is chargeable to tax. Examples of benefits include the use of a car, attendance at conferences, subsidised loans, contributions to *pension schemes*, national insurance contributions, and the value of *share option* (taking into account any discount on issue and assuming that the *shares* in question grow at a reasonable rate in line with other *investments*).

#### Part C: Services

4. Services include benefits which are not indirect benefits within the table in COBS 2.3.15 G.
5. The following services should be included:
- (a) office accommodation and equipment, including telephone, photocopying and fax;
  - (b) loans where a commercial rate of interest is not charged, including *commission equivalent* advances overdue for repayment;
  - (c) general stationery and mailing or distribution costs;
  - (d) computer hardware and software (except software which specifically relates to the *firm's packaged product*, such as software used for producing illustrations, *projection* and product information);
  - (e) clerical and administrative support;
  - (f) business insurance cover, including professional indemnity and fidelity guarantee;
  - (g) recruitment;
  - (h) compliance monitoring;
  - (i) *client services*;
  - (j) business planning services;
  - (k) line management.
6. To put a value on these services, the following costs should be included:
- (a) all overheads attributable to a particular cost item (for example, the cost of a compliance official);

### Calculating commission equivalent

- (b) salary costs pro rata if individuals are only engaged part-time on relevant business;
- (c) rent and associated premises costs at an appropriately reduced rate if the premises are also used for other business activities;
- (d) only that proportion of the cost of lead generation promotions attributable to the generation of relevant business (but including the placing of any *financial promotion*, and its mailing or provision of access to third party *clients*);
- (e) only the marginal additional compliance costs of ensuring that *representatives* and their support and training material comply with relevant *rules*;
- (f) the commercial value of a service which is the use of an asset owned by the *firm* (for example in the case of a property, its full market rent);
- (g) in respect of *appointed representative*, or, where applicable *tied agent*, the costs of any promotion in a newspaper or elsewhere and the provision of *representative-specific* literature in connection with a *financial promotion*;
- (h) in respect of a *firm* in the same *immediate group* and connected *appointed representatives* or, where applicable, *tied agents*, where the name of the company is included in the *financial promotion*, the costs of any promotion in a newspaper or elsewhere and the provision of literature specific to the *representative* in connection with a *financial promotion*.

7. The following costs should be excluded:

- (a) the cost of corporate awareness advertising;
- (b) training costs;
- (c) costs of developing and maintaining computer systems for the provision of *projections* of benefits, *client-specific key features documents*, *simplified prospectuses* or other product information;
- (d) costs of compensating *clients*;
- (e) the costs of head office and branch level management and support, other than payments to *managers* falling under Part 1, for *representatives*, if these services could also be provided to a *firm* not in the same *immediate group*, for example, broker consultants and 'inspectors'.

Part D: Calculation methodology

8. Estimating commission equivalent

The cost of benefits and services should normally be based on the most recent relevant experience of the *firm*, except if the *firm* has grounds to believe that the *commission equivalent* for the period concerned will be higher or lower than that implied by the experience or no such experience is available. In such a case, the estimate should be based on and evidenced by business plans which the *firm* is satisfied are achievable.

9. *Firms* that receive or expect to receive:

### Calculating commission equivalent

(a) *commission* in respect of *packaged products* which are not its own products or the products of a *product provider* who is in the same *immediate group*; and

(b) *commission equivalent* in respect of its own products;

must ensure that the costs and benefits attributed to these products do not exceed the amounts that can be financed from that *commission*.

#### Construction of commission equivalent scales

10. The total costs of cash payments, benefits and services should be assessed and the normal approach is to split them into new business costs and after sale servicing costs. The costs of each of these functions should be assessed directly in relation to the work carried out by the *representatives*.

11. (a) The total *commission equivalent* costs identified in 10 should be spread across the business using a new business *commission equivalent* scale and a servicing *commission equivalent* scale respectively.

(b) The *commission equivalent* scales should distinguish between products for which the *commission equivalent* of *representatives* is likely to be different.

12. If the *representative's commission equivalent* includes a cash payment related to volume and/or value of the transactions sold (which payment must be in accordance with the *client's best interest rule*), the following method would be appropriate:

(a) The payment scales should be grossed up by new business uplift factors or servicing uplift factors as appropriate to reflect the cost of benefits and services. The grossed up scales represent the new business and servicing *commission equivalent* scales, and are applied to each contract to derive the *commission equivalent* to be disclosed.

(b) If servicing costs are expected to be incurred in any year in which no servicing payments are to be made on a contract, disclosure should still be made, for example by using a technique similar to that described in 14.

13. (a) When a *representative* receives a salary, or other payment unrelated to volume or sales:

(i) this should be amalgamated with the cost of benefits and services; and

(ii) the total costs should be apportioned over individual transactions in a way that reflects the value of a contract to a *firm* or the *firm's immediate group*.

(b) If a *firm* is a distributor for a *product provider* within the same *immediate group*, the *firm* must apportion total costs over individual transactions in a way that reflects the value of the contract to the *firm's immediate group*.

14. If a *representative* agrees to forgo part of his or her normal payment to improve the terms of the contract, the disclosure may be reduced in such a way that fairly reflects the overall effect of the amount foregone.

### Calculating commission equivalent

15. The *firm* should review the *commission equivalent* scales if at any time it becomes aware that the *commission equivalent* figures have become misleading. A review should take place at least annually.
- Payments to associates
16. If a *firm* pays *commission equivalent* to another *firm* in the same *immediate group*, or an *appointed representative* or, where applicable *tied agent*, which is an *associate* of the *firm*, it should ensure that the calculation of the sum to be disclosed is the higher of:
- (a) all payments, benefits and services provided to the *firm* or *appointed representative* or *tied agent*, from whatever source, plus an additional allowance for profit of 15% - unless the *firm* can demonstrate that another figure (higher or lower) is more appropriate; and
  - (b) the cash payments actually paid by the *firm*, plus the value of services provided.



## Chapter 7

# Insurance mediation





## 7.1 Application

7.1.1

FCA

R

This chapter applies to a *firm* carrying on *insurance mediation* in relation to a *life policy*, but only if the *State of the commitment* is an *EEA State*.

[Note: articles 1 and 12 (4) and (5) of the *Insurance Mediation Directive*]

## 7.2 Information to be provided by the insurance intermediary

7.2.1

FCA

R

- (1) Prior to the conclusion of any initial *life policy* and, if necessary, on amendment or renewal, a *firm* must provide a *client* with at least the following information:
  - (a) its name and address;
  - (b) the fact that it is registered on the *Financial Services Register* and its *Financial Services Register* number (or, if it is not on the *Financial Services Register*, the register in which it has been included and the means for verifying that it has been registered);
  - (c) whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);
  - (d) whether a given *insurance undertaking* (other than a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing more than 10% of the voting rights or capital in the *firm*; and
  - (e) the procedures which allow a *client* and other interested parties to register complaints about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *clients*.
- (2) In addition, a *firm* must inform a *client*, concerning the *life policy* that is provided, whether:
  - (a) it gives advice on the basis of a fair analysis of the market; or
  - (b) it is contractually obliged to conduct its *insurance mediation* business exclusively with one or more *insurance undertakings* and, if that is the case, that the *client* can request the names of those *insurance undertakings*; or
  - (c) it is not contractually obliged to conduct its *insurance mediation* business exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair

analysis of the market and, if that is the case, that the *client* can request the names of the *insurance undertakings* with which the *firm* may and does conduct business.

- (3) If a *client* asks a *firm* to provide the names of the *insurance undertakings* with which the *firm* conducts, or may conduct, business (■ COBS 7.2.1 R (2)), the *firm* must provide it.

[Note: article 12(1) of the *Insurance Mediation Directive*]

#### Interface with the services and costs disclosure document

7.2.2

FCA

G

A *firm* will satisfy elements of the requirement immediately above if it provides a *services and costs disclosure document* or a *combined initial disclosure document* to a *client* (see ■ COBS 6.3).

7.2.2A

R

[deleted]

7.2.2B

FCA

G

A *firm* may provide a *services and costs disclosure document* or a *combined disclosure document* to a *client* who buys a non-advised *life policy*.

#### Fair analysis for advised sales

7.2.3

FCA

R

When a *firm* informs a *client* that it gives advice on the basis of a fair analysis of the market, it must give that advice on the basis of an analysis of a sufficiently large number of *life policies* available on the market to enable the *firm* to make a recommendation, in accordance with professional criteria, regarding which *life policy* would be adequate to meet the *client's* needs.

[Note: article 12(2) of the *Insurance Mediation Directive*]

#### Specifying demands and needs

7.2.4

FCA

R

- (1) Prior to the conclusion of any specific *life policy*, a *firm* must at least specify, in particular on the basis of the information provided by the *client*, the demands and needs of that *client*. Those demands and needs must be modulated according to the complexity of the relevant *policy*.
- (2) This *rule* does not apply when a *firm* makes a *personal recommendation* in relation to a *life policy*.

[Note: article 12(3) of the *Insurance Mediation Directive*]

7.2.5

FCA

G

*Firms* are reminded that they are obliged to take reasonable steps to ensure that a *personal recommendation* is suitable for the *client* and that, whenever a *personal recommendation* relates to a *life policy*, a *suitability report* is required (■ COBS 9).

7.2.6

FCA

R

**Means of communication to clients**

All information to be provided to a *client* in accordance with the *rules* in this chapter must be communicated:

- (1) in a *durable medium* available and accessible to the *client*;
- (2) in a clear and accurate manner, comprehensible to the *client*; and
- (3) in an official language of the *State of the commitment* or in any other language agreed by the parties.

[Note: article 13(1) of the *Insurance Mediation Directive*]

**Additional requirement: telephone selling**

7.2.7

FCA

R

In the case of telephone selling, the prior information given to a *client* must be in accordance with the distance marketing disclosure *rules* (■ COBS 5.1). Moreover, information must be provided to the *client* in accordance with the means of communication to clients *rule* (■ COBS 7.2.6 R ) immediately after the conclusion of the *life policy*.

[Note: article 13(3) of the *Insurance Mediation Directive*]

**Exceptions: client request or immediate cover**

7.2.8

FCA

R

The information referred to in the means of communication to clients *rule* (■ COBS 7.2.6 R ) may be provided orally where the *client* requests it, or where immediate cover is necessary. In those cases, the information must be provided to the *client* in accordance with that *rule* immediately after the conclusion of the *life policy*.

[Note: article 13(2) of the *Insurance Mediation Directive*]



## Chapter 8

# Client agreements

## 8.1 Client agreements: designated investment business

### Providing a client agreement

8.1.1  
FCA

R

- (1) This chapter applies to a *firm* in relation to *designated investment business* carried on for:
  - (a) a *retail client*; and
  - (b) in relation to *MiFID or equivalent third country business*, a *professional client*.
- (2) If expressly provided, this chapter also applies to a *firm* in relation to other *ancillary services* carried on for a *client*, but only in relation to its *MiFID or equivalent third country business*.
- (3) But this chapter does not apply to a *firm* to the extent that it is *effecting contracts of insurance* in relation to a *life policy* issued or to be issued by the *firm* as principal.

8.1.2  
FCA

R

If a *firm* carries on *designated investment business*, other than *advising on investments*, with or for a new *retail client*, the *firm* must enter into a written basic agreement, on paper or other *durable medium*, with the *client* setting out the essential rights and obligations of the *firm* and the *client*.

[Note: article 39 of the *MiFID implementing Directive*]

8.1.3  
FCA

R

- (1) A *firm* must, in good time before a *retail client* is bound by any agreement relating to *designated investment business* or *ancillary services* or before the provision of those services, whichever is the earlier, provide that *client* with:
  - (a) the terms of any such agreement; and
  - (b) the information about the *firm* and its services relating to that agreement or to those services required by
    - COBS 6.1.4 R, including information on communications, conflicts of interest and authorised status.

- (2) A *firm* must provide the agreement and information in a *durable medium* or, where the *website conditions* are satisfied, otherwise via a website.
- (3) A *firm* may provide the agreement and the information immediately after the *client* is bound by any such agreement if:
  - (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from doing so; and
  - (b) if the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if he were a *consumer*.
- (4) (a) A *firm* must notify a *client* in good time about any material change to the information provided under this *rule* which is relevant to a service that the *firm* is providing to that *client*.
  - (b) A *firm* must provide the notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

[Note: article 29(1), (4), (5) and (6) of the *MiFID implementing Directive*]

#### Record keeping: client agreements

8.1.4

FCA

R

- (1) A *firm* must establish a record that includes the document or documents agreed between it and a *client* which set out the rights and obligations of the parties, and the other terms on which it will provide services to the *client*.
- (2) The record must be maintained for at least whichever is the longer of:
  - (a) 5 years; or
  - (b) the duration of the relationship with the *client*; or
  - (c) in the case of a record relating to a *pension transfer*, *pension opt-out* or *FSAVC*, indefinitely.

[Note: article 19(7) of *MiFID* and article 51(1) of the *MiFID implementing Directive*. See article 51(3) of the *MiFID implementing Directive*]

8.1.5

FCA

R

For the purposes of this chapter, a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.

[Note: article 19(7) of *MiFID* and article 39 of the *MiFID implementing Directive*]



8.1.6

FCA

G

When considering its approach to client agreements, a *firm* should be aware of other obligations in the *Handbook* which may be relevant. These include the *fair, clear and not misleading rule* and the *rules* on disclosure of information to a *client* before providing services and the *rules* on distance communications (principally in ■ COBS 2.2, ■ 5, ■ 6 and ■ 13).

## Chapter 9

# Suitability (including basic advice)

## 9.1 Application and purpose provisions

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on certain aspects of the MiFID suitability requirements. See <http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-suitability-requirements>.]

### Making personal recommendations

9.1.1

FCA

R

This chapter applies to a *firm* which makes a *personal recommendation* in relation to a *designated investment*.

### Providing basic advice on a stakeholder product

9.1.2

FCA

R

If a *firm* makes a *personal recommendation* in relation to a *stakeholder product*, other than in the course of *MiFID or equivalent third country business*, it may choose to give *basic advice* under the *rules* in section 9.6 of this chapter instead of the *rules* in the remainder of this chapter.

### Managing investments

9.1.3

FCA

R

This chapter applies to a *firm* which *manages investments*.

### Business which is not MiFID or equivalent third country business

9.1.4

FCA

R

In respect of the business of a *firm* which is not *MiFID or equivalent third country business*, this chapter applies only if:

- (1) the *client* is a *retail client*; or
- (2) the *firm* is managing the assets of an *occupational pension scheme, stakeholder pension scheme or personal pension scheme*.

### Life policies for professional clients

9.1.5

FCA

R

If the *firm* makes a *personal recommendation* to a *professional client* to take out a *life policy*, this chapter applies only those *rules* which implement the requirements of the *Insurance Mediation Directive*.

9.1.6

FCA

G

If a *rule* implements a requirement of the *Insurance Mediation Directive*, a Note follows the *rule* indicating which provision is being implemented. ■ COBS 7 (Insurance mediation) contains further *rules* implementing the *Insurance Mediation Directive*.

9.1.7

FCA

G

The effect of these application *rules* and the fact that the *Insurance Mediation Directive* does not apply to an *insurer* (unless it is involved in mediation activities) is that this chapter does not apply to an *insurer* when it is making a *personal recommendation* to a *professional client* to take out a *life policy*.

**Related rules**

---

9.1.8

FCA

G

For a *firm* making *personal recommendations* in relation to pensions, ■ COBS 19 contains additional provisions relevant to assessing suitability and the contents of *suitability reports*.

9.1.9

FCA

G

■ COBS 7 (Insurance mediation) contains requirements relating to the basis on which certain recommendations may be made, including requirements relating to fair analysis and range and scope.



## 9.2 Assessing suitability

### Assessing suitability: the obligations

9.2.1

FCA

R

- (1) A *firm* must take reasonable steps to ensure that a *personal recommendation*, or a decision to trade, is suitable for its *client*.
- (2) When making the *personal recommendation* or *managing his investments*, the *firm* must obtain the necessary information regarding the *client's*:
  - (a) knowledge and experience in the investment field relevant to the specific type of *designated investment* or service;
  - (b) financial situation; and
  - (c) investment objectives;
 so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for him.

[Note: article 19(4) of *MiFID*, article 12(2) of the *Insurance Mediation Directive*]

9.2.2

FCA

R

- (1) A *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:
  - (a) meets his investment objectives;
  - (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
  - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a *client* must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences

regarding risk taking, his risk profile, and the purposes of the investment.

- (3) The information regarding the financial situation of a *client* must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

[Note: articles 35(1), (3) and (4) of the *MiFID implementing Directive*]

9.2.3

FCA

R

The information regarding a *client's* knowledge and experience in the investment field includes, 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:

- (1) the types of service, transaction and *designated investment* with which the *client* is familiar;
- (2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the *client*.

[Note: article 37(1) of the *MiFID implementing Directive*]

9.2.4

FCA

R

A *firm* must not encourage a *client* not to provide information for the purposes of its assessment of suitability.

[Note: article 37(2) of the *MiFID implementing Directive*]

#### Reliance on information

9.2.5

FCA

R

A *firm* is entitled to rely on the information provided by its *clients* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 37(3) of the *MiFID implementing Directive*]

#### Insufficient information

9.2.6

FCA

R

If a *firm* does not obtain the necessary information to assess suitability, it must not make a *personal recommendation* to the *client* or take a decision to trade for him.

[Note: article 35(5) of the *MiFID implementing Directive*]

9.2.7

FCA

G

Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *client's best interests*

*rule* and any obligation it may have under the *rules* relating to appropriateness when providing the different service (see ■ COBS 10, Appropriateness (for non-advised services)).

**Professional clients (MiFID and equivalent third country business)**

9.2.8

FCA

R

- (1) If a *firm* makes a *personal recommendation* or *manages investments* for a *professional client* in the course of *MiFID* or *equivalent third country business*, it is entitled to assume that, in relation to the products, transactions and services for which the *professional client* is so classified, the *client* has the necessary level of experience and knowledge for the purposes of ■ COBS 9.2.2 R (1)(c).
- (2) If the service consists of making a *personal recommendation* to a *per se professional client*, the *firm* is entitled to assume that the *client* is able financially to bear any related investment risks consistent with his investment objectives for the purposes of ■ COBS 9.2.2 R (1)(b).

[Note: article 35(2) of the *MiFID implementing Directive*]

**Friendly society life policies**

9.2.9

FCA

R

- (1) When recommending a small *friendly society life policy*, a *firm*, for the purpose of assessing suitability, need only obtain details of the net income and expenditure of the *client* and his dependants.
- (2) A *friendly society life policy* is small if the *premium*:
  - (a) does not exceed £50 a year; or
  - (b) if payable weekly, £1 a week.
- (3) The *firm* must keep for five years a record of the reasons why the recommendation is considered suitable.

## 9.3 Guidance on assessing suitability

9.3.1

FCA

G

- (1) A transaction may be unsuitable for a *client* because of the risks of the *designated investments* involved, the type of transaction, the characteristics of the order or the frequency of the trading.
- (2) In the case of *managing investments*, a transaction might also be unsuitable if it would result in an unsuitable portfolio.

[Note: recital 57 to the *MiFID implementing Directive*]

### Churning and switching

9.3.2

FCA

G

- (1) A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.
- (2) A *firm* should have regard to the *client's* agreed investment strategy in determining the frequency of transactions. This would include, for example, the need to switch a *client* within or between *packaged products*.

[Note: recital 57 to the *MiFID implementing Directive*]

### Income withdrawals and short-term annuities

9.3.3

FCA

G

When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals* or purchase of *short-term annuities*, it should consider all the relevant circumstances including:

- (1) the *client's investment* objectives, need for tax-free cash and state of health;
- (2) current and future income requirements, existing pension assets and the relative importance of the plan, given the *client's* financial circumstances;
- (3) the *client's* attitude to risk, ensuring that any discrepancy is clearly explained between his attitude to an *income withdrawal* or purchase of a *short-term annuity* and other *investments*.

### Loans and mortgages

9.3.4

FCA

G

When considering the suitability of a particular *investment* product which is linked directly or indirectly to any form of loan, mortgage or *home reversion plan*, a *firm* should take account of the suitability of the overall transaction. The *firm* should also have regard to any applicable suitability *rules* in *MCOB*.





## 9.4 Suitability reports

### Providing a suitability report

9.4.1

FCA

R

A *firm* must provide a *suitability report* to a *retail client* if the *firm* makes a *personal recommendation* to the *client* and the *client*:

- (1) acquires a holding in, or *sells* all or part of a holding in:
  - (a) a *regulated collective investment scheme*;
  - (b) an *investment trust* where the relevant *shares* have been or are to be acquired through an *investment trust savings scheme*;
  - (c) an *investment trust* where the relevant *shares* are to be held within an *ISA* which has been promoted as the means for investing in one or more specific *investment trusts*; or
- (2) *buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme*; or
- (3) elects to make *income withdrawals* or purchase a *short-term annuity*; or
- (4) enters into a *pension transfer* or *pension opt-out*.

[Note: article 19(8) of *MiFID*]

9.4.2

FCA

R

If a *firm* makes a *personal recommendation* in relation to a *life policy*, it must provide the *client* with a *suitability report*.

[Note: article 12(3) of the *Insurance Mediation Directive*]

9.4.3

FCA

R

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

- (1) if the *firm*, acting as an *investment manager* for a *retail client*, makes a *personal recommendation* relating to a *regulated collective investment scheme*;

- (2) if the *client* is habitually resident outside the *EEA* and the *client* is not present in the *United Kingdom* at the time of acknowledging consent to the proposal form to which the *personal recommendation* relates;
- (3) to any *personal recommendation* by a *friendly society* for a small *life policy* sold by it with a *premium* not exceeding £50 a year or, if payable weekly, £1 a week;
- (4) if the *personal recommendation* is to increase a regular *premium* to an existing contract;
- (5) if the *personal recommendation* is to invest additional single *premiums* or single contributions to an existing *packaged product* to which a single *premium* or single contribution has previously been paid.

#### Timing

9.4.4

FCA

R

A *firm* must provide the *suitability report* to the *client*:

- (1) in the case of a *life policy*, before the contract is concluded unless the necessary information is provided orally or immediate cover is necessary; or
- (2) in the case of a *personal pension scheme* or *stakeholder pension scheme*, where the *rules* on cancellation (■ COBS 15) require notification of the right to cancel, no later than the fourteenth day after the contract is concluded; or
- (3) in any other case, when or as soon as possible after the transaction is effected or executed.

[Note: article 12(3) of the *Insurance Mediation Directive*]

9.4.5

FCA

R

If, in respect of a *life policy*, the *firm* gives necessary information orally or gives immediate cover, it must provide a *suitability report* to the *client* in a *durable medium* immediately after the contract is concluded.

[Note: article 13(2) of the *Insurance Mediation Directive*]

9.4.6

FCA

R

In the case of telephone selling of a *life policy*, when the only contact between a *firm* and its *client* before conclusion of a contract is by telephone, the *suitability report* must:

- (1) comply with the distance marketing disclosure *rules* (■ COBS 5.1);
- (2) be provided immediately after the conclusion of the contract; and
- (3) be in a *durable medium*.

[Note: article 13(3) of the *Insurance Mediation Directive*]

### Contents

9.4.7

FCA

R

The *suitability report* must, at least:

- (1) specify the *client's* demands and needs;
- (2) explain why the *firm* has concluded that the recommended transaction is suitable for the *client* having regard to the information provided by the *client*; and
- (3) explain any possible disadvantages of the transaction for the *client*.

[Note: article 12(3) of the *Insurance Mediation Directive*]

9.4.8

FCA

G

A *firm* should give the *client* such details as are appropriate according to the complexity of the transaction.

[Note: article 12(3) of the *Insurance Mediation Directive*]

9.4.9

FCA

R

If a *firm* is providing a *suitability report* in the course of *insurance mediation activity*, the information must be provided:

- (1) in a *durable medium* which is available and accessible to the *client*;
- (2) in a clear and accurate manner, comprehensible to the *client*; and
- (3) in an official language of the *State of the commitment* in which the *contract of insurance* is made or in any other language agreed by the parties.

[Note: article 13 of the *Insurance Mediation Directive*]

### Additional content for income withdrawals

9.4.10

FCA

G

When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals* or purchase of *short-term annuities*, explanation of possible disadvantages in the *suitability report* should include the risk factors involved in entering into an *income withdrawal* or purchase of a *short-term annuity*. These may include:

- (1) the capital value of the fund may be eroded;
- (2) the *investment* returns may be less than those shown in the illustrations;
- (3) annuity or *scheme pension* rates may be at a worse level in the future;
- (4) when maximum withdrawals are taken or the maximum *short-term annuity* is purchased, high levels of income may not be sustainable;
- (5) [deleted]

## 9.5 Record keeping and retention periods for suitability records

### 9.5.1

FCA

G

A *firm* to which ■ SYSC 9 applies is required to keep orderly records of its business and internal organisation (see ■ SYSC 9, General rules on record-keeping). Other *firms* are required to take reasonable care to establish and maintain such systems and controls as are appropriate to their business (see ■ SYSC 3, Systems and controls). The records may be expected to reflect the different effect of the *rules* in this chapter depending on whether the *client* is a *retail client* or a *professional client*: for example, in respect of the information about the *client* which the *firm* must obtain and whether the *firm* is required to provide a *suitability report*.

### 9.5.2

FCA

R

A *firm* must retain its records relating to suitability for a minimum of the following periods:

- (1) if relating to a *pension transfer, pension opt-out* or *FSAVC*, indefinitely;
- (2) if relating to a *life policy, personal pension scheme* or *stakeholder pension scheme*, five years;
- (3) if relating to *MiFID* or *equivalent third country business*, five years; and
- (4) in any other case, three years.

### 9.5.3

FCA

R

A *firm* need not retain its records relating to suitability if:

- (1) the *client* does not proceed with the recommendation; and
- (2) they do not relate to *MiFID* or *equivalent third country business*.



## 9.6 Special rules for giving basic advice on a stakeholder product

9.6.1  
FCA

**G** This section applies to a *firm* giving *basic advice*, which has chosen to comply with the *rules* in this section instead of the other *rules* in this chapter (see ■ COBS 9.1.2 R).

### Range

9.6.2  
FCA

**R** A *firm* is permitted to maintain more than one *range of stakeholder products*.

9.6.3  
FCA

**R** A *range of stakeholder products*:

- (1) may include more than one *deposit-based stakeholder product*;
- (2) may include the *stakeholder products* of more than one *stakeholder product provider*;
- (3) must not include any more than one:
  - (a) *CIS stakeholder product* or *linked life stakeholder product*;
  - or
  - (b) *stakeholder CTF*; or
  - (c) *stakeholder pension scheme*.

9.6.4  
FCA

**R** When a *firm* provides *basic advice* it must:

- (1) explain why it chose the *stakeholder products* and *stakeholder product providers* that appear in the relevant *range*; and
- (2) give the *client* a list of the *stakeholder products* and *stakeholder product providers* that appear in that *range*;

if the *client* asks it do so.

**Requirements on first contact**

9.6.5

FCA

R

When a *firm* first has contact with a retail client with a view to giving *basic advice* on a *stakeholder product*, it must give the *retail client*:

- (1) the *basic advice* initial disclosure information (■ COBS 9 Annex 1 R), in a *durable medium*, together with an explanation of that information, unless:
  - (a) it has already done so and the *basic advice* initial disclosure information is likely still to be accurate and appropriate; or
  - (b) the contact is not face to face and is using a means of communication which makes it not practicable to provide the *basic advice* initial disclosure information in a *durable medium*; and
- (2) an explanation of how the advice will be paid for and the fact that any commission will be disclosed.

9.6.6

FCA

G

- (1) A *firm* may give a *retail client* the *basic advice* initial disclosure information (■ COBS 9 Annex 1 R) as part of :
  - (a) a *services and costs disclosure document*; or
  - (b) a *combined initial disclosure document* if it has reasonable grounds to believe that it will provide services relating to a *stakeholder product* and a *non-investment insurance contract*, a *regulated mortgage contract*, an *equity release transaction* or a *home purchase plan*.
- (2) If a *firm* provides a *services and costs disclosure document* or *combined initial disclosure document* to a *retail client* it will comply with the requirements under:
  - (a) ■ COBS 2.2.1 R (1)(a) and ■ COBS 2.2.1 R (1)(d);
  - (b) ■ COBS 9.6.5 R (1) and ■ COBS 9 Annex 1 R;
  - (c) the items of distance marketing information set out in paragraphs (1), (2), (4), (5) (19) and (20) of ■ COBS 5 Annex 1 R; and
  - (d) any duties that apply to it under the *rule* on information to be provided by the insurance intermediary (■ COBS 7.2.1 R (1) and ■ (2)).

9.6.6A

FCA

G

A *firm* will meet the requirements in respect of its obligation to provide written disclosure in the *rules* on describing the breadth of advice (■ COBS 6.2A.5 R) and content and wording of disclosure (■ COBS 6.2A.6 R) by providing its *basic advice* initial disclosure information (in ■ COBS 9 Annex 1 R).

9.6.7

FCA

R

For the purposes of ■ GEN 5, a *firm* may not use the keyfacts logo in relation to any *document* that is designed to comply with *rules* in ■ COBS 9.6 or ■ COBS 7 unless it is a *services and costs disclosure document* or a *combined initial disclosure document* produced in accordance with the templates and notes in the annexes to ■ COBS 6.

9.6.8

FCA

**R** If a *firm's* first contact with a *retail client* is not face to face, it must:

- (1) inform the *client* at the outset:
  - (a) (if the communication is initiated by or on behalf of a *firm*), of the name of the *firm* and the commercial purpose of the communication;
  - (b) [deleted]
  - (c) that the *firm* will provide the *retail client* with *basic advice* without carrying out a full assessment of the *retail client's* needs and circumstances; and
  - (d) that such information will be confirmed in writing; and
- (2) (if not provided at first contact) send the *client* the *basic advice* initial disclosure information (■ COBS 9 Annex 1 R) in a *durable medium* as soon as reasonably practicable following the conclusion of the first contact;
- (3) (unless the relevant product is a *deposit-based stakeholder product*) if the contact is by spoken interaction, provide the *client* with the disclosure required by the *rules* on additional oral disclosure for firms providing restricted advice (■ COBS 6.2A.9 R).

**Sales process**

9.6.9

FCA

**R** When a *firm* gives *basic advice*, it must do so using:

- (1) a single range of *stakeholder products*; and
- (2) a sales process that includes putting pre-scripted questions to the *client*.

9.6.10

FCA

**R** When a *firm* gives *basic advice* it must not:

- (1) describe or recommend a *stakeholder product* outside the *firm's* range; or
- (2) describe or recommend a *smoothed linked long term stakeholder product*; or
- (3) describe fund choice, or recommend a particular fund, if a *stakeholder product* offers a choice of funds; or
- (4) recommend the level of contributions required to be made to a *stakeholder pension scheme* to achieve a specific income in retirement; or

9.6.11

FCA

R

(5) recommend or agree that a *client* makes a contribution to an *ISA* which exceeds the HM Revenue & Customs *ISA* limits.

(1) If a *firm* starts the sales process for a *stakeholder product* that is not a *deposit-based stakeholder product*, it must not depart from that process unless it has advised the *retail client* that it will not provide *basic advice* on *stakeholder products* during the period of departure. A *firm* that does that must not provide *basic advice* during the departure period.

(2) Before a *firm* returns to the sales process for *stakeholder products*, it must tell the *retail client* that that process is about to recommence.

#### Suitability of recommendations

9.6.12

FCA

R

A *firm* must only recommend a *stakeholder product* to a *retail client* if:

(1) it has taken reasonable steps to assess the *client's* answers to the scripted questions and any other facts, circumstances or information disclosed by the *client* during the sales process;

(2) (unless the relevant product is a *deposit-based stakeholder product*) having done so, it has reasonable grounds for believing that the *stakeholder product* is suitable for the *client*; and

(3) the *firm* reasonably believes that the *client* understands the *firm's* advice and the basis on which it was provided.

9.6.13

FCA

G

■ COBS 9 Annex 2 G gives *guidance* on the steps a *firm* could take to help it meet these suitability obligations.

9.6.14

FCA

R

If a *firm* giving *basic advice* recommends to a *retail client* to acquire a *stakeholder product*, it must ensure that, before the conclusion of the contract, its *representative*:

(1) (unless the relevant product is a *deposit-based stakeholder product*) explains to the *client*, if necessary in summary form, but always in a way that will allow the *client* to make an informed decision about the *firm's* recommendation:

(a) the nature of the *stakeholder product*; and

(b) the "aims", "commitment" and "risks" sections of the appropriate *key features document*;

(2) provides the *client* with a summary sheet, which is in a *durable medium* and sets out, for each product it recommends:

(a) the specific amount the *client* wishes to pay into the product; and



- (b) the reasons for the recommendation, including the *client's* attitude to risk and any information provided by the *client* on which the recommendation is based; and
- (3) informs the *client* that in determining any subsequent complaint, the *Ombudsman* may take into account the limited information on which the recommendation was based and the fact that it was not tailored to take account of those aspects of the *client's* financial needs and circumstances not covered by the *firm's* sales process.

9.6.15  
FCA

**R**

Notwithstanding ■ COBS 9.6.14 R (2) a *firm* may provide the summary sheet (■ COBS 9.6.14 R (2)) as soon as reasonably practicable after the conclusion of the contract if the *client* asks it to do so, or the contract will be concluded using a means of distance communication that does not enable the provision of the summary sheet in a *durable medium* before the conclusion of the contract, but only if the *firm*:

- (1) reads the summary sheet to the *client* before it concludes the contract; and
- (2) sends the summary sheet to the *client* as soon as practicable after the conclusion of the contract.

**Concluding the contract**

9.6.16  
FCA

**R**

If a *firm* concludes a contract for a *stakeholder product* with or for a *retail client* it must provide a copy of the completed questions and answers to the *client* in a *durable medium* as soon as reasonably practicable afterwards.

**Basic advice on stakeholder products: other issues**

9.6.17  
FCA

**R**

- (1) [deleted]
- (2) When a *firm* provides *basic advice* on a *stakeholder product*, it may use the facilities and stationery it uses for other business in respect of which it does hold itself out as acting or advising independently.

9.6.18  
FCA

**R**

A *firm* must ensure that none of its *representatives*:

- (1) is likely to be influenced by the structure of his or her *remuneration* to give unsuitable *basic advice* on *stakeholder products* to a *retail client*; or
- (2) refers a *retail client* to another *firm* in circumstances which would amount to the provision of any fee, commission or non-monetary benefit.

**Records**

9.6.19

FCA

**R**

A *firm* must record that it has chosen to give *basic advice* to a *retail client* and make a record of the *range* used and the summary sheet (■ COBS 9.6.14 R (2)) prepared for each *retail client*. That record must be retained for at least five years from the date of the relevant *basic advice*.

9.6.20

FCA

**R**

- (1) A *firm* must make an up-to-date record of:
  - (a) its *scope of basic advice*, and the *scope of basic advice* used by its *appointed representatives* (if any); and
  - (b) its *range* (or *ranges*) of *stakeholder products*, and the *range* (or *ranges*) used by its *appointed representatives* (if any).
- (2) Those records must be retained for five years from the date on which they are replaced by a more up-to-date record.



**Basic advice initial disclosure information****FCA**

This Annex belongs to ■ COBS 9.6.5 R (1)

**Information that comprises the following:**

1. the name and address (head office or principal place of business if more appropriate) of the *firm*;
2. [deleted]
3. a statement that the service being offered is *basic advice* on a limited range of *stakeholder products* by asking questions about income, savings and other circumstances but without carrying out a full assessment of the *retail client's* needs and without offering advice on whether a non-stakeholder product may be more suitable;
4. a statement, in accordance with GEN 4 that the *firm* is regulated by the *FCA* (or if an *appointed representative*, a statement of whom it is an *appointed representative* and that that *firm* is regulated by the *FCA*) to give basic advice, together with the registration number of the firm and the fact that the *firm's* status can be checked with the *FCA* on 0845 730 0104 or on the *FCA* website at <http://www.fca.org.uk>;
5. a statement disclosing any product provider loans (where such credit exceeds 10% of share and loan capital) and direct or indirect ownership (where that ownership exceeds 10% of share capital or voting power) either by, or of, a single *product provider* or *operator*; (See also notes 32-35 in COBS 6 Annex 1 G and notes 45-50 of COBS 6 Annex 2)
6. a description of the arrangements concerning complaints and the circumstances in which the *retail client* can refer the matter to the *Financial Ombudsman Service*; (See also notes 36-37 in COBS 6 Annex 1 G and notes 51-54 of COBS 6 Annex 2)
7. a description of the circumstances and the extent to which the *firm* is covered by the *compensation scheme* and the *retail client* will be entitled to compensation from the *compensation scheme*; (See also notes 38-39 of COBS 6 Annex 1 G and notes 55-58 of COBS 6 Annex 2)
8. any relevant disclosure required by the *rules* on describing the breadth of advice (COBS 6.2A.5 R) and content and wording of disclosure (COBS 6.2A.6 R).

[Note: in respect of 1, 2, 4, 5, and 6, Articles 12 and 13 of the *Insurance mediation directive* and in respect of 7, Article 10 of the *Investors compensation directive*]



## Sales processes for stakeholder products

**FCA**

This Annex gives *guidance* on the standards and requirements to which a *firm* may have regard in designing a sales process for *stakeholder products* and assumes that *firms* will provide *basic advice* to *retail clients* who have no practical knowledge of investing in *stakeholder products* or *investments*.

General Standards - all sales

1. A sales process for *stakeholder products* may allow the *representative* administering it to depart from scripted questions where this is desirable to enable the *retail client* to better understand the points that need to be made provided this is compatible with the *representative's* competence and the degree of support offered by the *firm's* software and other systems. A software-based system is more likely to provide an adaptable means of providing prompts and support for *representatives* which may accordingly support a more flexible sales process.
2. Questions, statements and warnings provided should be short, simple and in plain language. Questions should address one issue at a time.
3. The sales process should enable the *retail client* to exit freely and without pressure at any stage. It should also allow the *representative* to terminate the process at any stage if it appears unlikely (for affordability, mis-match, risk or other reasons) that there is a suitable product for the *retail client*.
4. Where necessary the sales process should incorporate procedures to allow uncertainties in the *retail client's* answers to be addressed before proceeding and should generally reflect caution about proceeding if clarification or further information cannot be obtained during the process (for example if a *retail client* cannot confirm whether he or she is eligible for membership of an *occupational pension scheme*).

Preliminary - all sales

5. The *retail client* should be given the following preliminary information:
  - (a) the *retail client* will only be given *basic advice* about *stakeholder products*;
  - (b) *stakeholder products* are intended to provide a relatively simple and low-cost way of investing and saving;
  - (c) the *range of stakeholder products* on which the *representative* will give advice to that *retail client*;
  - (d) the *retail client* will be asked a series of questions about his or her needs and circumstances and, at the end of the procedure, he or she may be recommended to acquire a *stakeholder product*;
  - (e) the assessment of whether a *stakeholder product* is suitable will be made without a detailed assessment of the *retail client's* needs but will be based only on the infor-

(f)

mation disclosed during the questioning process; and

the *retail client's* answers will be noted and, at the end of the process, if a recommendation to acquire a *stakeholder product* is made, the *retail client* will be provided with a copy of the completed questionnaire.

6. Following 5, the *retail client* should be asked if he or she wishes to proceed and, if not, the sales process should cease.

Affordability - all sales

7. If it appears that the *retail client* is unlikely to be able to afford a *stakeholder product*, the sale should be terminated and the *retail client* given an explanation together with a copy of the questions and answers completed to that point.

Financial Priorities and Debt - all sales

8. A *retail client* should be assessed to ascertain other possible financial priorities - for example, does the *retail client* need (a) insurance protection; (b) access to liquid cash to meet an emergency; or (c) to reduce existing debts? If appropriate, the *retail client* should be given an unambiguous warning about the desirability of meeting those priorities before acquiring a *stakeholder product*.

9. A stronger warning about the desirability of addressing debt as a priority should be given if it appears that the *retail client* is significantly indebted, especially if there is a strong indication that the debt commitments may render any new commitment unaffordable in the short-term. For this purpose a *firm* should consider using a threshold or indicator to decide whether a *retail client* should be excluded on the basis of affordability. Examples may include where the *retail client* has (a) annual unsecured debt repayments in excess of 20% of gross annual income or (b) four or more active forms of unsecured debt or (c) has consistently reached his overdraft limit. A *firm* should review its chosen indicator or threshold regularly to ensure that it reflects prevailing economic conditions and takes account of industry best practice.

10. A *firm* should clearly explain what it needs to know about a *retail client's* debt and consider using a range of alternative words (eg 'loans', 'student loans', 'borrowing' and 'other forms of credit') to ensure all relevant information is obtained. A *firm* may use a simple reckoner to assess *retail client* debt, but should be conscious of the nature of, and not give the impression that it is providing more than, *basic advice*.

11. If a *firm* gives a warning about the desirability of meeting other priorities before acquiring a *stakeholder product*, or about affordability, it should also invite the *retail client* to consider terminating the sales process.

Saving and investment objectives - all sales (except establishing a stakeholder CTF)

12. A *retail client's* savings and investment objectives, including the period over which the *retail client* wishes to save or invest, should be ascertained including whether the *retail client*:

- (a) may need early access to some or all of the amount saved or invested; or
- (b) wishes to save or invest for retirement; or
- (c) wants to accumulate a specific sum by a specific date.

13. If that information indicates that the *retail client's* objective is:

- (a) to accumulate a specific sum by a specific date; or
- (b) to save or invest only for the short term; or
- (c) early access may be required to the whole of the sum saved or invested;

the *firm* should not normally recommend a *CIS stakeholder product*, a *linked life stakeholder product*, a *stakeholder pension scheme* or topping up of a *stakeholder CTF*.

Tolerance of risk - all sales

14. If a *retail client* is not willing to accept any risk of the capital value of an investment being reduced then *CIS stakeholder products*, *linked life stakeholder products* and *stakeholder CTFs* should not usually be recommended. However, a *firm* may, if appropriate, explain the effect of inflation on long-term savings especially in relation to pensions and invite the *retail client* to consider his attitude to risk in the light of that explanation.

15. If a *retail client* is willing to accept the risk of capital reduction in some circumstances but not others then, before any recommendation to acquire a *CIS stakeholder product* or *linked life stakeholder product* is made, the *retail client* should be reminded of the other circumstances in which he or she is unwilling to accept risk to capital.

Stakeholder pensions

16. A *stakeholder pension scheme* should not be recommended, and the *retail client* should be advised to seek alternative or further advice, if it appears that the *retail client*:

- (a) has or will have access to an *occupational pension scheme*; or
- (b) is likely to view income in retirement from state benefits as sufficient; or
- (c) already has a pension to which he or she could make further contributions; or
- (d) wishes to retire within five years.

17. It may also be appropriate to advise the *retail client* that other courses of action may be more beneficial than buying a *stakeholder pension scheme* (for example joining an *occupational pension scheme*).

18. A *firm* designing a sales process for use in the workplace may take account of the benefits offered by the employer. If a *firm* recommends a *stakeholder pension scheme* on the basis of benefits provided by an employer, then it should explain the basis of the recommendation to the *retail client* and suggest that the *retail client* seek *advice* if he or she has any concerns.

19. A *firm* should design its processes with a view to addressing the risk that *retail clients* will fail to appreciate the significance of questions about their pension provision and should accordingly incorporate a range of questions and information designed to foster the *retail client's* understanding of the issues and to elicit appropriate information.

20. *Retail client* should be told that a *stakeholder pension scheme* is life-styled and what this means.



21. A *firm* may provide a copy of the table setting out initial monthly pension amounts, found within the "Stakeholder pension decision tree" factsheet, available on [www.moneyadvice.service.org.uk](http://www.moneyadvice.service.org.uk) in accordance with COBS 13 Annex 2 1.8R, but in doing so should also provide and explain the caveats and assumptions behind the table. A *firm* should make it clear that the decision on how much to invest is the *retail client's* responsibility and that he should get further advice if has any concerns.

ISAs

22. A *firm* should ascertain whether the *retail client* has already opened a mini or maxi *ISA* and, if so, whether it would be appropriate for the *retail client* to open a non-*ISA* version of the same product.

## Chapter 10

# Appropriateness (for non-advised services)



## 10.1 Application and purpose provisions

**10.1.1** FCA R This chapter applies to a *firm* which provides *investment services* in the course of *MiFID* or *equivalent third country business* other than making a *personal recommendation* and *managing investments*.

**10.1.2** FCA R This chapter applies to a *firm* which *arranges* or *deals* in relation to a *derivative* or a *warrant* with or for a *retail client* and the *firm* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*.

**10.1.3** FCA R This chapter applies to a *firm* which assesses appropriateness on behalf of another *MiFID investment firm* so that the other *firm* may rely on the assessment under ■ COBS 2.4.4 R (Reliance on other investment firms: MiFID and equivalent business).

### Related rules

**10.1.4** FCA G A *firm* that is carrying on a *regulated activity* on a non-advised basis, whether or not the *rules* in this chapter apply to its activities, should also consider whether other *rules* in COBS apply. For example, a *firm* carrying on *insurance mediation activity* in relation to a *life policy* that does not involve the provision of advice, should have regard to ■ COBS 7 (Insurance mediation).

## 10.2 Assessing appropriateness: the obligations

### 10.2.1

FCA

R

- (1) When providing a service to which this chapter applies, a *firm* must ask the *client* to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the *firm* to assess whether the service or product envisaged is appropriate for the *client*.
- (2) When assessing appropriateness, a *firm*:
  - (a) must determine whether the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded;
  - (b) may assume that a *professional client* has the necessary experience and knowledge in order to understand the risks involved in relation to those particular *investment services* or transactions, or types of transaction or product, for which the *client* is classified as a *professional client*.

[Note: article 19(5) of *MiFID* and article 36 of the *MiFID implementing Directive*]

### 10.2.2

FCA

R

The information regarding a *client's* knowledge and experience in the investment field includes, 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:

- (1) the types of service, transaction and *designated investment* with which the *client* is familiar;
- (2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the *client*.

[Note: article 37(1) of the *MiFID implementing Directive*]

10.2.3 **R** A *firm* must not encourage a *client* not to provide information required for the purposes of its assessment of appropriateness.

FCA

[Note: article 37(2) of the *MiFID implementing Directive*]

**Reliance on information**

10.2.4 **R** A *firm* is entitled to rely on the information provided by a *client* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

FCA

[Note: article 37(3) of the *MiFID implementing Directive*]

**Use of existing information**

10.2.5 **G** When assessing appropriateness, a *firm* may use information it already has in its possession.

FCA

**Knowledge and experience**

10.2.6 **G** Depending on the circumstances, a *firm* may be satisfied that the *client's* knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a *firm* may infer knowledge from experience.

FCA

**Increasing the client's understanding**

10.2.7 **G** If, before assessing appropriateness, a *firm* seeks to increase the *client's* level of understanding of a service or product by providing information to him, relevant considerations are likely to include the nature and complexity of the information and the *client's* existing level of understanding.

FCA

**No duty to communicate firm's assessment of knowledge and experience**

10.2.8 **G** If a *firm* is satisfied that the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in ■ COBS 9 on suitability.

FCA



## 10.3 Warning the client

10.3.1

FCA

R

(1) If a *firm* considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the *client*, the *firm* must warn the *client*.

(2) This warning may be provided in a standardised format.

[Note: article 19(5) of *MiFID*]

10.3.2

FCA

R

(1) If the *client* elects not to provide the information to enable the *firm* to assess appropriateness, or if he provides insufficient information regarding his knowledge and experience, the *firm* must warn the *client* that such a decision will not allow the *firm* to determine whether the service or product envisaged is appropriate for him.

(2) This warning may be provided in a standardised format.

[Note: article 19(5) of *MiFID*]

10.3.3

FCA

G

If a *client* asks a *firm* to go ahead with a transaction, despite being given a warning by the *firm*, it is for the *firm* to consider whether to do so having regard to the circumstances.

## 10.4 Assessing appropriateness: when it need not be done

10.4.1

FCA

R

- (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if:
  - (a) the service only consists of execution and/or the reception and transmission of *client* orders, with or without *ancillary services*, it relates to particular *financial instruments* and is provided at the initiative of the *client*;
  - (b) the *client* has been clearly informed (whether the warning is given in a standardised format or not) that in the provision of this service the *firm* is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the protection of the *rules* on assessing suitability; and
  - (c) the *firm* complies with its obligations in relation to conflicts of interest.
- (2) The *financial instruments* are:
  - (a) shares admitted to trading on a *regulated market* or an equivalent third country market (that is, one which is included in the list which is published by the European Commission and updated periodically); or
  - (b) money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a *derivative*); or
  - (c) *units* in a *scheme* authorised under the *UCITS directive*; or
  - (d) other non-complex *financial instruments*.
- (3) A *financial instrument* is non-complex if it satisfies the following criteria:
  - (a) it is not a *derivative* or other security giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities,

currencies, interest rates or yields, commodities or other indices or measures;

- (b) there are frequent opportunities to dispose of, redeem, or otherwise realise the instrument at prices that are publicly available to the market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;
- (c) it does not involve any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument; and
- (d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average *retail client* to make an informed judgment as to whether to enter into a transaction in that instrument.

[Note: article 19(6) of *MiFID* and article 38 of the *MiFID implementing Directive*]

10.4.2

FCA

R

If a *client* engages in a course of dealings involving a specific type of product or service through the services of a *firm*, the *firm* is not required to make a new assessment on the occasion of each separate transaction. A *firm* complies with the *rules* in this chapter provided that it makes the necessary appropriateness assessment before beginning that service.

[Note: recital 59 to the *MiFID implementing Directive*]

10.4.3

FCA

R

A *client* who has engaged in a course of dealings involving a specific type of product or service beginning before 1 November 2007 is presumed to have the necessary experience and knowledge in order to understand the risks involved in relation to that specific type of product or service.

[Note: recital 59 of the *MiFID implementing Directive*]



## 10.5 Assessing appropriateness: guidance

### The initiative of the client

10.5.1

FCA

G

A service should be considered to be provided at the initiative of a *client* (see ■ COBS 10.4.1 R (1)(a) ) unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that particular *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument* or specific transaction.

[Note: recital 30 to *MiFID*]

10.5.2

FCA

G

A service can be considered to be provided at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion or offer of *financial instruments* made by any means that by its very nature is general and addressed to the public or a larger group or category of *clients*.

[Note: recital 30 to *MiFID*]

### Personalised communications

10.5.3

FCA

G

- (1) Communications to the world at large, such as those in newspapers or on billboards, are likely to be by their very nature general and therefore not personalised communications.
- (2) Communications addressed to a *client* (such as, for example, an email, a telephone call or a letter), may or may not be personalised depending on the content.
- (3) A communication is not personalised solely because it contains the name and address of the *client* or because a mailing list has been filtered.
- (4) If a *firm* is satisfied that a communication does not contain any personalised content, it may wish to make clear that it does not intend the communication to be personalised and that the personal circumstances of the recipient have not been taken into account.

### Equivalent third country markets

10.5.4

FCA

G

[to insert the reference or hypertext link to the list of equivalent third country markets when available]

[Note: article 19(6) of *MiFID*]

10.5.5

FCA

G

**Independent valuation systems**

The circumstances in which valuation systems will be independent of the issuer (see ■ COBS 10.4.1 R (3)(b) ) include where they are overseen by a depositary that is regulated as a provider of depositary services in a *EEA State*.

[Note: recital 61 to the *MiFID implementing Directive*]



## 10.6 When a firm need not assess appropriateness

10.6.1

FCA

G

A *firm* need not assess appropriateness if it is receiving or transmitting an order in relation to which it has assessed suitability under ■ COBS 9 (Suitability (including basic advice)).

10.6.2

FCA

G

A *firm* may not need to assess appropriateness if it is able to rely on a recommendation made by an *investment firm* (see ■ COBS 2.4.5 G (Reliance on other investment firms: MiFID and equivalent business)).



## 10.7 Record keeping and retention periods for appropriateness records

### 10.7.1

FCA

G

A *firm* is required to keep orderly records of its business and internal organisation , including all services and transactions undertaken by it. The records may be expected to include the *client* information a *firm* obtains to assess appropriateness and should be adequate to indicate what the assessment was.

### 10.7.2

FCA

R

The *firm* must retain its records relating to appropriateness for a minimum of five years.



# Chapter 11

## Dealing and managing

## 11.1 Application

### General application

11.1.1

FCA

R

This chapter applies to a *firm*.

(1) [deleted]

(2) [deleted]

11.1.2

FCA

R

In this chapter, provisions marked "EU" apply to a *firm* which is not a *MiFID investment firm* as if they were rules.

### Application to section on the use of dealing commission

11.1.3

FCA

R

The section on the use of dealing commission applies to a *firm* that acts as an *investment manager*.

### Application of section on personal account dealing

11.1.4

FCA

R

The section on personal account dealing applies to the *designated investment business* of a *firm* in relation to activities carried on from an *establishment* in the *United Kingdom*.

11.1.5

FCA

G

The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see ■ COBS 11.7) to the extent necessary to be compatible with European law (see paragraph 1.1G of Part 3 of ■ COBS 1 Annex 1). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment firm* or a *UK UCITS management company* from a *branch* in another *EEA state*, but does not apply to the *UK branch* of an *EEA MiFID investment firm* in relation to its *MiFID business* or of an *EEA UCITS management company* in relation to activities it is entitled to carry on in the *United Kingdom* under the *UCITS Directive*.

### Disapplication of best execution for non-financial spreads

11.1.6

FCA

R

The section on best execution (■ COBS 11.2) does not apply to a *firm* when:

(1) executing orders: or

(2) placing orders with other entities for execution: or

(3) transmitting orders to other entities for execution;

in relation to a *spread-bet* which is not a *financial instrument*, where the *firm* has not made a *personal recommendation* in relation to that *spread-bet*.

**Disapplication of best execution to CIS operators purchasing or selling own units**

11.1.7

FCA

R

The section on best execution (■ COBS 11.2) does not apply to a *firm* when, acting in the capacity of *operator* of a *regulated collective investment scheme*, it purchases or sells *units* in that *scheme*.



## 11.2 Best execution

### Obligation to execute orders on terms most favourable to the client

11.2.1

FCA

R

A *firm* must take all reasonable steps to obtain, when executing orders, the best possible result for its *clients* taking into account the *execution factors*.

[Note: article 21(1) of *MiFID* and article 25(2) first sentence of the *UCITS implementing Directive*]

[Note: The Committee of European Securities Regulators (**CESR**) has issued a Question and Answer paper on best execution under *MiFID*. This paper also incorporates the European Commission's response to CESR's questions regarding the scope of the best execution obligations under *MiFID*. The paper can be found at: <http://www.cesr.eu/index.php?docid=4606> ]

### Execution of decisions by UCITS management companies to deal on behalf of the schemes they manage

11.2.1A

FCA

R

A *management company* must, in relation to each *UCITS scheme* or *EEA UCITS scheme* it manages, act in the best interests of the *scheme* when *executing* decisions to deal on its behalf in the context of the management of its portfolio, and ■ COBS 11.2.1 R applies in relation to all such decisions.

[Note: article 25(1) of the *UCITS implementing Directive*]

### Application of best execution obligation

11.2.2

FCA

G

The obligation to take all reasonable steps to obtain the best possible result for its *clients* (see ■ COBS 11.2.1 R ) should apply to a *firm* which owes contractual or agency obligations to the *client*.

[Note: recital 33 to *MiFID*]

11.2.3

FCA

G

Dealing on own account with *clients* by a *firm* should be considered as the execution of *client* orders, and therefore subject to the requirements under *MiFID*, in particular, those obligations in relation to best execution.

[Note: first sentence of recital 69 to the *MiFID implementing Directive*]

11.2.4

FCA

G

If a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all reasonable steps to obtain the best possible result for its *clients* if the *firm* executed that quote at the time the quote was provided, the *firm* will meet those same

obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

[Note: second sentence of recital 69 to the *MiFID implementing Directive*]

11.2.5

FCA

G

The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures or the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of *financial instruments*. For example, transactions involving a customised OTC *financial instrument* that involve a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving shares traded on centralised *execution venues*.

[Note: recital 70 to the *MiFID implementing Directive*]

#### Management companies: execution and transmission of orders

11.2.5A

FCA

G

- (1) A *management company* should, for each *UCITS scheme* or *EEA UCITS scheme* it manages, act in the best interests of the *scheme* when directly executing orders to deal on its behalf or when transmitting those orders to third parties.
- (2) When executing orders on behalf of any such *scheme* it manages, a *management company* is expected to take all reasonable steps to obtain the best possible result for the *scheme* on a consistent basis, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order.

[Note: recital (19) to the *UCITS implementing Directive*]

#### Best execution criteria

11.2.6

FCA

R

When executing a *client* order, a *firm* must take into account the following criteria for determining the relative importance of the *execution factors*:

- (1) the characteristics of the *client* including the categorisation of the *client* as retail or professional;
- (2) the characteristics of the *client* order;
- (3) the characteristics of *financial instruments* that are the subject of that order;
- (4) the characteristics of the *execution venues* to which that order can be directed; and
- (5) for a *management company*, the objectives, investment policy and risks specific to the *UCITS scheme* or *EEA UCITS scheme*, as indicated in its *prospectus* or *instrument constituting the scheme*.

[Note: article 44(1) of the *MiFID implementing Directive* and article 25(2) second sentence of the *UCITS implementing Directive*]

### Role of price

11.2.7

FCA

R

Where a *firm* executes an order on behalf of a *retail client*, the best possible result must be determined in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution, which must include all expenses incurred by the *client* which are directly related to the execution of the order, including *execution venue* fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

[Note: paragraph 1 of article 44(3) of the *MiFID implementing Directive*]

11.2.8

FCA

G

For the purposes of ensuring that a *firm* obtains the best possible result for the *client* when executing a *retail client* order in the absence of specific *client* instructions, the *firm* should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution. Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.

[Note: recital 67 to the *MiFID implementing Directive*]

11.2.9

FCA

G

A *firm's* execution policy should determine the relative importance of each of the *execution factors* or establish a process by which the *firm* will determine the relative importance of the *execution factors*. The relative importance that the *firm* gives to those *execution factors* must be designed to obtain the best possible result for the execution of its *client* orders. Ordinarily, the FCA would expect that price will merit a high relative importance in obtaining the best possible result for *professional clients*. However, in some circumstances for some *clients*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible execution result.

### Delivering best execution where there are competing execution venues

11.2.10

FCA

R

For the purposes of delivering best execution for a *retail client* where there is more than one competing venue to execute an order for a *financial instrument*, in order to assess and compare the results for the *client* that would be achieved by executing the order on each of the *execution venues* listed in the *firm's* order execution policy that is capable of executing that order, the *firm's* own commissions and costs for executing the order on each of the eligible *execution venues* must be taken into account in that assessment.

[Note: article 44(3) of paragraph 2 of the *MiFID implementing Directive*]

11.2.11

FCA

G

The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of

commissions or fees. Nor is it intended to require a *firm* to compare the differences in its own commissions which are attributable to differences in the nature of the services that the *firm* provides to *clients*.

[Note: recital 71 to the *MiFID implementing Directive*]

11.2.12

FCA

R

A *firm* must not structure or charge its commissions in such a way as to discriminate unfairly between *execution venues*.

[Note: article 44(4) of the *MiFID implementing Directive*]

11.2.13

FCA

G

A *firm* would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charges a different commission or spread to *clients* for execution on different *execution venues* and that difference does not reflect actual differences in the cost to the *firm* of executing on those venues.

[Note: recital 73 to the *MiFID implementing Directive*]

#### Requirement for order execution arrangements including an order execution policy

11.2.14

FCA

R

A *firm* must establish and implement effective arrangements for complying with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, for its *client* orders, the best possible result in accordance with that obligation.

[Note: article 21(2) of *MiFID* and article 25(3) first paragraph of the *UCITS implementing Directive*]

11.2.15

FCA

R

The order execution policy must include, in respect of each class of *financial instruments*, information on the different *execution venues* where the *firm* executes its *client* orders and the factors affecting the choice of *execution venue*. It must at least include those *execution venues* that enable the *firm* to obtain on a consistent basis the best possible result for the execution of *client* orders.

[Note: paragraph 1 of article 21(3) of *MiFID*]

11.2.16

FCA

G

- (1) When establishing its execution policy, a *firm* should determine the relative importance of the *execution factors*, or at least establish the process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its *clients*.
- (2) In order to give effect to that policy, a *firm* should select the *execution venues* that enable it to obtain on a consistent basis the best possible result for the execution of *client* orders.
- (3) A *firm* should apply its execution policy to each *client* order that it executes with a view to obtaining the best possible result for the *client* in accordance with that policy.
- (4) The obligation to take all reasonable steps to obtain the best possible result for the *client* should not be treated as requiring a *firm* to include in its execution policy all available *execution venues*.

11.2.17

FCA

G

[Note: recital 66 to the MiFID implementing Directive]

The provisions of this section which provide that costs of execution include a *firm's* own commissions or fees charged to the *client* for the provision of an *investment service* should not apply for the purpose of determining what *execution venues* must be included in the *firm's* execution policy.

11.2.18

FCA

G

[Note: recital 72 to the MiFID implementing Directive]

The provisions of this section as to execution policy are without prejudice to the general obligation of a *firm* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

[Note: recital 74 to the MiFID implementing Directive]

### Following specific instructions from a client

11.2.19

FCA

R

- (1) Whenever there is a specific instruction from the *client*, the *firm* must execute the order following the specific instruction.

[Note: article 21(1) of MiFID]

- (2) A *firm* satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a *client* to the extent that it executes an order, or a specific aspect of an order, following specific instructions from the *client* relating to the order or the specific aspect of the order.

[Note: article 44(2) of the MiFID implementing Directive]

11.2.20

FCA

G

When a *firm* executes an order following specific instructions from the *client*, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the *client* instructions relate. The fact that the *client* has given specific instructions which cover one part or aspect of the order should not be treated as releasing the *firm* from its best execution obligations in respect of any other parts or aspects of the *client* order that are not covered by such instructions.

[Note: recital 68 to the MiFID implementing Directive]

11.2.21

FCA

G

A *firm* should not induce a *client* to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the *client*, when the *firm* ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that *client*. However, this should not prevent a *firm* inviting a *client* to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the *firm*.

[Note: recital 68 to the MiFID implementing Directive]

### Information about the order execution policy

11.2.22

FCA

R

A *firm* must provide appropriate information to its *clients* on its order execution policy.

[Note: paragraph 2 of article 21(3) of *MiFID*]

11.2.23

R

FCA

- (1) A *firm* must provide a *retail client* with the following details on its execution policy in good time prior to the provision of the service:
  - (a) an account of the relative importance the *firm* assigns, in accordance with the *execution criteria*, to the *execution factors*, or the process by which the *firm* determines the relative importance of those factors;
  - (b) a list of the *execution venues* on which the *firm* places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of *client* orders;
  - (c) a clear and prominent warning that any specific instructions from a *client* may prevent the *firm* from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.
- (2) This information must be provided in a *durable medium*, or by means of a website (where that does not constitute a *durable medium*) provided that the *website conditions* are satisfied.

[Note: article 46(2) of the *MiFID implementing Directive*]

11.2.23A

R

FCA

A *management company* must make available appropriate information on its execution policy and on any material changes to that policy to the *unitholders* of each *scheme* it manages.

[Note: article 25(3) second part of the second paragraph of the *UCITS implementing Directive*]

11.2.24

R

FCA

Where the order execution policy provides for the possibility that *client* orders may be executed outside a *regulated market* or an *MTF*, the *firm* must, in particular, inform its *clients* about this possibility.

[Note: paragraph 3 of article 21(3) of *MiFID*]

#### Client consent to execution policy and execution of orders outside a regulated market or MTF

11.2.25

R

FCA

- (1) A *firm* (other than a *management company* providing *collective portfolio management* services for a *UCITS scheme* or an *EEA UCITS scheme*) must obtain the prior consent of its *clients* to the execution policy.
- (2) In the case of a *management company* providing *collective portfolio management* services for an *ICVC* that is a *UCITS scheme*, or for an *EEA UCITS scheme* that is structured as an investment company, the *management company* must obtain the



prior consent of the *ICVC* or investment company to the execution policy.

- (3) In the case of a *management company* that is the *ACD* of an *ICVC* that is a *UCITS scheme*, (2) does not apply where the *ACD* is the sole *director* of the *ICVC*.

[Note: paragraph 2 of article 21(3) of *MiFID* and article 25(3) first part of the second paragraph of the *UCITS implementing Directive*]

11.2.26

FCA

R

A *firm* must obtain the prior express consent of its *clients* before proceeding to execute their orders outside a *regulated market* or an *MTF*. The *firm* may obtain this consent either in the form of a general agreement or in respect of individual transactions.

[Note: paragraph 3 of article 21(3) of *MiFID*]

#### Monitoring the effectiveness of execution arrangements and policy

11.2.27

FCA

R

A *firm* must monitor the effectiveness of its order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements. The *firm* must notify *clients* of any material changes to their order execution arrangements or execution policy.

[Note: article 21(4) of *MiFID* and article 25(4) first paragraph of the *UCITS implementing Directive*]

#### Review of the order execution policy

11.2.28

FCA

R

- (1) A *firm* must review annually its execution policy, as well as its order execution arrangements.
- (2) This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for the execution of its *client* orders on a consistent basis using the venues included in its execution policy.

[Note: article 46(1) of the *MiFID implementing Directive* and article 25(4) second paragraph of the *UCITS implementing Directive*]

#### Demonstration of execution of orders in accordance with execution policy

11.2.29

FCA

R

- (1) A *firm* other than a *management company* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.
- (2) A *management company* must be able to demonstrate that it has executed orders on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages in accordance with its execution policy.

[Note: article 21(5) of *MiFID* and article 25(5) of the *UCITS implementing Directive*]

### Duty of portfolio managers, receivers and transmitters and management companies to act in clients' best interests

11.2.30

FCA

R

A *firm* must, when providing the service of *portfolio management* or, for a *management company*, *collective portfolio management*, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

[Note: article 45(1) of *MiFID implementing Directive* and article 26(1) of the *UCITS implementing Directive*]

11.2.31

FCA

R

A *firm* must, when providing the service of reception and transmission of orders, comply with the obligation to act in accordance with the best interests of its *clients* when transmitting *client* orders to other entities for execution.

[Note: article 45(2) of the *MiFID implementing Directive*]

11.2.32

FCA

R

In order to comply with the obligation to act in accordance with the best interests of its *clients* when it places an order with, or transmits an order to, another entity for execution, a *firm* must:

[Note: article 45(3) of the *MiFID implementing Directive* and article 26(1) of the *UCITS implementing Directive*]

- (1) take all reasonable steps to obtain the best possible result for its *clients* taking into account the *execution factors*. The relative importance of these factors must be determined by reference to the *execution criteria* and, for *retail clients*, to the requirement to determine the best possible result in terms of the total consideration (see ■ COBS 11.2.7 R ).

A *firm* satisfies its obligation to act in accordance with the best interests of its *clients*, and is not required to take the steps mentioned above, to the extent that it follows specific instructions from its *client* when placing an order with, or transmitting an order to, another entity for execution;

[Note: paragraph 1 and 2 of article 45(4) of the *MiFID implementing Directive* and article 26(2) first paragraph of the *UCITS implementing Directive*]

- (2) establish and implement a policy to enable it to comply with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. The policy must identify, in respect of each class of instruments, the entities with which the orders are placed or to which the *firm* transmits orders for execution. The entities identified must have execution arrangements that enable the *firm* to comply with its obligations under this section or, for a



*management company*, must only enter into arrangements for execution where those arrangements are consistent with the requirements of this section, when it places an order with, or transmits an order to, that entity for execution;

[Note: paragraph 1 of article 45(5) of the *MiFID implementing Directive* and article 26(2) second paragraph of the *UCITS implementing Directive*]

- (3) provide appropriate information to its *clients* on the policy established in accordance with ■ COBS 11.2.32 R (2) or, for a *management company*, make available to *unitholders* appropriate information on that policy and on any material changes to it;

[Note: paragraph 2 of article 45(5) of the *MiFID implementing Directive* and article 26(2) second paragraph last sentence of the *UCITS implementing Directive*]

- (4) monitor on a regular basis the effectiveness of the policy and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies; and

[Note: first paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) first paragraph of the *UCITS implementing Directive*]

- (5) review the policy annually. This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for its *clients*.

[Note: second paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) second paragraph of the *UCITS implementing Directive*]

11.2.32A

FCA

R

A *management company* must be able to demonstrate that it has placed orders on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages in accordance with the policy referred to in ■ COBS 11.2.32 R (2) .

[Note: article 26(4) of the *UCITS implementing Directive*]

11.2.33

FCA

G

This section is not intended to require a duplication of effort as to best execution between a *firm* which provides the service of reception and transmission of orders or *portfolio management* and any *firm* to which that *firm* transmits its orders for execution.

[Note: recital 75 to the *MiFID implementing Directive*]

11.2.34

FCA

R

The provisions applying to a *firm* which places orders with, or transmits orders to, other entities for execution (see ■ COBS 11.2.30 R to ■ COBS 11.2.33 G ) will not apply when the *firm* which provides the service of *portfolio management* or *collective portfolio management* and/or service of 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 the requirements of this section for *firms* who execute orders apply (see ■ COBS 11.2.1 R to ■ COBS 11.2.29 R).

[Note: article 45(7) of the *MiFID implementing Directive* and article 25 of the *UCITS implementing Directive*]

## 11.3 Client order handling

### General principles

11.3.1

FCA

R

- (1) A *firm* (other than a *management company* providing *collective portfolio management* services) which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client* orders, relative to other orders or the trading interests of the *firm*.

[Note: paragraph 1 of article 22(1) of *MiFID*]

- (2) These procedures or arrangements must allow for the execution of otherwise comparable orders in accordance with the time of their reception by the *firm*.

[Note: paragraph 2 of article 22(1) of *MiFID*]

- (3) A *management company* providing *collective portfolio management* services, must establish and implement procedures and arrangements in respect of all *client* orders it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the *UCITS scheme* or *EEA UCITS scheme* it manages.

[Note: article 27(1) first paragraph of the *UCITS implementing Directive*]

11.3.2

FCA

R

A *firm* must satisfy the following conditions when carrying out *client* orders:

- (1) it must ensure that orders executed on behalf of *clients* are promptly and accurately recorded and allocated;
- (2) it must carry out otherwise comparable orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the *client* require otherwise; and

- (3) it must inform a *retail client* about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

[Note: article 47(1) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 27(1) second paragraph of the *UCITS implementing Directive*]

11.3.3

FCA

G

For the purposes of the provisions of this section, orders should not be treated as otherwise comparable if they are received by different media and it would not be practicable for them to be treated sequentially.

[Note: recital 78 to the *MiFID implementing Directive*]

11.3.4

FCA

R

Where a *firm* is responsible for overseeing or arranging the settlement of an executed order or executes the order itself in the course of providing *collective portfolio management* services, it must take all reasonable steps to ensure that any *client financial instruments* or *client* funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate *client*.

[Note: article 47(2) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 27(1) third paragraph of the *UCITS implementing Directive*]

11.3.5

FCA

R

A *firm* must not misuse information relating to pending *client* orders, and shall take all reasonable steps to prevent the misuse of such information by any of its *relevant persons*.

[Note: article 47(3) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 27(2) of the *UCITS implementing Directive*]

11.3.6

FCA

G

Without prejudice to the *Market Abuse Directive*, for the purposes of the *rule* on the misuse of information (see ■ COBS 11.3.5 R), any use by a *firm* of information relating to a pending *client* order in order to deal on own account in the *financial instruments* to which the *client* order relates, or in related *financial instruments*, should be considered a misuse of that information. However, the mere fact that *market makers* or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling *financial instruments*, or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.

[Note: recital 78 to the *MiFID implementing Directive*]

#### Aggregation and allocation of orders

11.3.7

FCA

R

A *firm* is not permitted to carry out a *client* order or a transaction for own account in aggregation with another *client* order unless the following conditions are met:

- (1) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any *client* whose order is to be aggregated;

- (2) it must be disclosed to each *client* whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
- (3) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

[Note: article 48(1) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 28(1) of the *UCITS implementing Directive*]

11.3.8

FCA

R

If a *firm* aggregates a *client* order with one or more other orders and the aggregated order is partially executed, it must allocate the related trades in accordance with its order allocation policy.

[Note: article 48(2) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 28(2) of the *UCITS implementing Directive*]

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

11.3.9

FCA

R

A *firm* which has aggregated transactions for own account with one or more *client* orders must not allocate the related trades in a way which is detrimental to a *client*.

[Note: article 49(1) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 28(3) of the *UCITS implementing Directive*]

11.3.10

FCA

R

- (1) If a *firm* aggregates a *client* order with a transaction for own account and the aggregated order is partially executed, it must allocate the related trades to the *client* in priority to the *firm*.
- (2) However, if the *firm* is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy.

[Note: article 49(2) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 28(4) of the *UCITS implementing Directive*]

11.3.11

FCA

R

A *firm* must, as part of its order allocation policy, put in place procedures to prevent the reallocation, in a way that is detrimental to the *client*, of transactions for own account which are executed in combination with *client* orders.

[Note: article 49(3) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

11.3.12

FCA

G

For the purposes of the provisions of this section, the reallocation of transactions should be considered as detrimental to a *client* if, as an effect of that reallocation, unfair precedence is given to the *firm* or to any particular person.

[Note: recital 77 to the *MiFID implementing Directive*]

11.3.13

G

In this section, carrying out *client* orders includes:

FCA

- (1) the *execution of orders on behalf of clients*;
- (2) the placing of orders with other entities for execution that result from decisions to deal in *financial instruments* on behalf of *clients* when providing the service of *portfolio management* or *collective portfolio management*;
- (3) the transmission of *client* orders to other entities for execution when providing the service of reception and transmission of orders.

## 11.4 Client limit orders

### Obligation to make unexecuted client limit orders public

11.4.1  
FCA

R

Unless a *client* expressly instructs otherwise, a *firm* must, in the case of a *client limit order* in respect of shares admitted to trading on a *regulated market* which is not immediately executed under prevailing market conditions, take measures to facilitate the earliest possible execution of that order by making public immediately that *client limit order* in a manner which is easily accessible to other market participants.

[Note: article 22(2) of *MiFID*]

11.4.2  
FCA

G

In respect of transactions executed between *eligible counterparties*, the obligation to disclose *client limit orders* should only apply where the counterparty is explicitly sending a *limit order* to a *firm* for its execution.

[Note: recital 42 to *MiFID*]

### How client limit orders may be made public

11.4.3  
FCA

EU

An *investment firm* shall be considered to disclose *client limit orders* that are not immediately executable if it transmits the order to a *regulated market* or *MTF* that operates an order book trading system, or ensures that the order is made public and can be easily executed as soon as market conditions allow.

[Note: article 31 of *MiFID Regulation*]

11.4.4  
FCA

G

■ MAR 5.8.2 EU sets out the conditions required for an arrangement to make *client limit orders* public under this section. ■ MAR 5.8.3 G and ■ MAR 5.8.4 G provide guidance on these conditions.

### Orders that are large in scale

11.4.5  
FCA

R

The obligation to make public a *limit order* will not apply to a *limit order* that is large in scale compared with normal market size.

[Note: article 22(2) of *MiFID*]

11.4.6  
FCA

G

■ MAR 5.7.10 EU and ■ MAR 5.7.11 EU set out when an order shall be considered large in scale compared with normal market size.

## 11.5 Record keeping: client orders and transactions

### Record keeping of client orders and decisions to deal

11.5.1

FCA



An *investment firm* shall, in relation to every order received from a *client*, and in relation to every decision to deal taken in providing the service of *portfolio management*, immediately make a record of the following details, to the extent they are applicable to the order or decision to deal in question:

- (1) the name or other designation of the *client*;
- (2) the name or other designation of any relevant person acting on behalf of the *client*;
- (3) the details specified in point 4, 6, and in points 16 to 19, of Table 1 of Annex I;
- (4) the nature of the order if other than buy or sell;
- (5) the type of the order;
- (6) any other details, conditions and particular instructions from the *client* that specify how the order must be carried out;
- (7) the date and exact time of the receipt of the order, or of the decision to deal, by the *investment firm*.

[Note: article 7 of *MiFID Regulation*]

### Record-keeping of transactions

11.5.2

FCA



Immediately after executing a *client* order, or, in the case of *investment firms* that transmit orders to another person for execution, immediately after receiving confirmation that an order has been executed, *investment firms* shall record the following details of the transaction in question:

- (1) the name or other designation of the *client*;
- (2) the details specified in points 2, 3, 4, 6, and in points 16 to 21, of Table 1 of Annex I;



- (3) the total price, being the product of the unit price and the quantity;
- (4) the nature of the transaction if other than buy or sell;
- (5) the natural person who executed the transaction or who is responsible for the execution.

[Note: article 8(1) of *MiFID Regulation*]

11.5.3

FCA



If an *investment firm* transmits an order to another person for execution, the *investment firm* shall immediately record the following details after making the transmission:

- (1) the name or other designation of the *client* whose order has been transmitted;
- (2) the name or other designation of the person to whom the order was transmitted;
- (3) the terms of the order transmitted;
- (4) the date and exact time of transmission.

[Note: article 8(2) of *MiFID Regulation*]

11.5.4

FCA



Points 2, 3, 4, 6, 16 - 21 of Table 1 of Annex 1 of the MiFID Regulation

|    |                           |   |
|----|---------------------------|---|
| 2. | <b>Trading day</b>        | The trading day on which the transaction was executed.  |
| 3. | <b>Trading time</b>       | 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. |
| 4. | <b>Buy/sell indicator</b> | Identifies whether the transaction was a buy or sell from the perspective of the reporting investment firm or, in the case of a report to a <i>client</i> , of the <i>client</i> .  |

|     |                                  |  |
|-----|----------------------------------|--|
| 6.  | <b>Instrument identification</b> | This shall consist of:<br>- a unique code to be decided by the competent authority (if any) to which the report is made identifying the <i>financial instrument</i> which is the subject of the transaction;<br>- if the <i>financial instrument</i> in question does not have a unique identification code, the report must include the name of the instrument or, in the case of a derivative contract, the characteristics of the contract. |
| 16. | <b>Unit price</b>                | The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.   |
| 17. | <b>Price notation</b>            | The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included.  |
| 18. | <b>Quantity</b>                  | The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of derivative contracts included in the transaction.   |
| 19. | <b>Quantity notation</b>         | An indication as to whether the quantity is the number of units of financial instruments,  |

20.

**Counterparty**

the nominal value of bonds or the number of derivative contracts.

Identification of the counterparty to the transaction. That identification shall consist of:

- where the counterparty is an *investment firm*, a unique code for that firm, to be determined by the competent authority (if any) to which the report is made;
- where the counterparty is a *regulated market* or *MTF* or an entity acting as its central counterparty, the unique harmonised identification code for that market, *MTF* or entity acting as central counterparty, as specified in the list published by the competent authority of the home Member State of that entity in accordance with Article 13(2);
- where the counterparty is not an *investment firm*, a *regulated market*, an *MTF* or an entity acting as central counterparty, it should be identified as 'customer/client' of the *investment firm* which executed the transaction.

21.

**Venue identification**

Identification of the venue where the transaction was executed. That identification shall consist in:

- where the venue is a trading venue: its unique harmonised identification code;
- otherwise: the code 'OTC'.

## 11.6 Use of dealing commission

11.6.1

FCA

G

This section deals with the acceptance of certain inducements by *investment managers* and builds upon the *rule* on inducements (■ COBS 2.3.1 R). *Investment managers* should ensure they comply with both this section and the *rule* on inducements.

### Application

11.6.2

FCA

R

This section applies to a *firm* that acts as an *investment manager* when it *executes customer orders* that relate to:

- (1) *shares*; and
- (2) (a) *warrants*;  
 (b) *certificates representing certain securities*;  
 (c) *options*; and  
 (d) *rights to or interests in investments* of the nature referred to in (a) to (c);

to the extent that they relate to *shares*.

### Use of dealing commission to purchase goods or services

11.6.3

FCA

R

- (1) An *investment manager* must not accept goods or services in addition to the *execution* of its *customer orders* if it:
  - (a) *executes its customer orders* through a broker or another *person*;
  - (b) passes on the broker's or other *person's charges* to its *customers*; and
  - (c) is offered goods or services in return for the *charges* referred to in (b).
- (2) This prohibition does not apply if the *investment manager* has reasonable grounds to be satisfied that the goods or services received in return for the *charges*:

- (a) (i) are related to the *execution* of trades on behalf of the *investment manager's customers*; or
- (ii) comprise the provision of research; and
- (b) will reasonably assist the *investment manager* in the provision of its services to its *customers* on whose behalf the orders are being *executed* and do not, and are not likely to, impair compliance with the duty of the *investment manager* to act in the best interests of its *customers*.

## 11.6.4



FCA

- (1) Where the goods or services relate to the *execution* of trades, an *investment manager* should have reasonable grounds to be satisfied that the requirements of the *rule* on use of dealing commission (■ COBS 11.6.3 R) are met if the goods or services are:
  - (a) linked to the arranging and conclusion of a specific investment transaction (or series of related transactions); and
  - (b) provided between the point at which the *investment manager* makes an investment or trading decision and the point at which the investment transaction (or series of related transactions) is concluded.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on use of dealing commission (■ COBS 11.6.3 R)

## 11.6.5



FCA

- (1) Where the goods or services relate to the provision of research, an *investment manager* will have reasonable grounds to be satisfied that the requirements of the *rule* on use of dealing commission (■ COBS 11.6.3 R) are met if the research:
  - (a) is capable of adding value to the investment or trading decisions by providing new insights that inform the *investment manager* when making such decisions about its *customers'* portfolios;
  - (b) whatever form its output takes, represents original thought, in the critical and careful consideration and assessment of new and existing facts, and does not merely repeat or repackage what has been presented before;
  - (c) has intellectual rigour and does not merely state what is commonplace or self-evident; and
  - (d) involves analysis or manipulation of data to reach meaningful conclusions.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on use of dealing commission (■ COBS 11.6.3 R).

11.6.6

FCA

G

An example of goods or services relating to the *execution* of trades that the *FCA* does not regard as meeting the requirements of the *rule* on use of dealing commission (■ COBS 11.6.3 R) is post-trade analytics.

11.6.7

FCA

G

Examples of goods or services that relate to the provision of research that the *FCA* does not regard as meeting the requirements of the *rule* on use of dealing commission (■ COBS 11.6.3 R) include price feeds or historical price data that have not been analysed or manipulated to reach meaningful conclusions.

11.6.8

FCA

G

Examples of goods or services that relate to the *execution* of trades or the provision of research that the *FCA* does not regard as meeting the requirements of either evidential provisions ■ COBS 11.6.4 E or ■ COBS 11.6.5 E include:

- (1) services relating to the valuation or performance measurement of portfolios;
- (2) computer hardware;
- (3) connectivity services such as electronic networks and dedicated telephone lines;
- (4) seminar fees;
- (5) subscriptions for publications;
- (6) travel, accommodation or entertainment costs;
- (7) order and execution management systems;
- (8) office administrative computer software, such as word processing or accounting programmes;
- (9) membership fees to professional associations;
- (10) purchase or rental of standard office equipment or ancillary facilities;
- (11) employees' salaries;
- (12) direct money payments;
- (13) publicly available information; and
- (14) *custody* services relating to *designated investments* belonging to, or managed for, *customers* other than those services that are incidental to the *execution* of trades.

11.6.9

FCA

G

The reference to research in the *rule* on use of dealing commission (■ COBS 11.6.3 R) is not confined to *investment research* as defined in the *Glossary*. The *FCA*'s view is that research can include, for example, the goods or services encompassed by *investment research*, provided that they are directly relevant to and are used to assist in the management of investments on behalf of *customers*. In addition, any goods or services that relate to the provision of research that the *FCA* regards as not acceptable under

■ COBS 11.6.6 G or ■ COBS 11.7.6 R should be viewed as not meeting the requirements of ■ COBS 11.6.3 R (2), notwithstanding that their content might qualify as *investment research*.

11.6.10

FCA

G

This section applies only to arrangements under which an *investment manager* receives from brokers or other *persons* goods or services that relate to the *execution* of trades or the provision of research. It has no application in relation to *execution* and research generated internally by an *investment manager* itself.

11.6.11

FCA

G

An *investment manager* should not enter into any arrangements that could compromise its ability to comply with its best execution obligations ( ■ COBS 11.2).

### Rule on prior disclosure

11.6.12

FCA

R

**An *investment manager* that enters into arrangements under this section must make adequate prior disclosure to *customers* concerning the receipt of goods or services that relate to the *execution* of trades or the provision of research. This prior disclosure should form part of the summary form disclosure under the *rule* on inducements ( ■ COBS 2.3.1 R).**

### Guidance on prior disclosure

11.6.13

FCA

G

The *rule* on prior disclosure of goods and services under this section complements the requirements on the disclosure of inducements ( ■ COBS 2.3.1 R (2)(b)). *Investment managers* should ensure they comply with both requirements where relevant.

11.6.14

FCA

G

- (1) The prior disclosure required by this section should include an adequate disclosure of the *firm's* policy relating to the receipt of goods or services that relate to the *execution* of trades or the provision of research in accordance with the *rule* on use of dealing commission ( ■ COBS 11.6.3 R).
- (2) The prior disclosure should explain generally why the *firm* might find it necessary or desirable to use dealing commission to purchase goods or services, bearing in mind the practices in the markets in which it does business on behalf of its *customers*. While the appropriate method of making such a disclosure is for the *firm* to decide, this could, for example, be achieved in a client agreement.

### Rule on periodic disclosure

11.6.15

FCA

R

**If an *investment manager* enters into arrangements in accordance with the *rule* on use of dealing commission ( ■ COBS 11.6.3 R ), it must in a timely manner make adequate periodic disclosure to its *customers* of the arrangements entered into.**

### Adequate prior and periodic disclosure

11.6.16

FCA

R

**Adequate prior and periodic disclosure under this section must include details of the goods or services that relate to the *execution* of trades and, wherever appropriate, separately identify the details of the goods or services that are attributable to the provision of research.**



11.6.17

FCA

G

In assessing the adequacy of prior and periodic disclosures made by an *investment manager* under this section, the *FCA* will have regard to the extent to which the *investment manager* adopts disclosure standards developed by industry associations such as the Association for Financial Markets in Europe.

11.6.18

FCA

A

#### **Making periodic disclosures in a timely manner**

- (1) A *firm* will make periodic disclosure to its customers under this section in a timely manner if it is made at least once a year.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on periodic disclosure (■ COBS 11.6.16 R).

11.6.19

FCA

R

#### **Record keeping**

An *investment manager* must make a record of each prior and periodic disclosure it makes to its *customers* in accordance with this section and must maintain each such record for at least five years from the date on which it is provided.

## 11.7 Personal account dealing

### Rule on personal account dealing

11.7.1

FCA

R

A *firm* that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the *Market Abuse Directive* or to other confidential information relating to *clients* or transactions with or for *clients* by virtue of an activity carried out by him on behalf of the *firm*:

- (1) entering into a *personal transaction* which meets at least one of the following criteria:
  - (a) that *person* is prohibited from entering into it under the *Market Abuse Directive*;
  - (b) it involves the misuse or improper disclosure of that confidential information;
  - (c) it conflicts or is likely to conflict with an obligation of the *firm* to a *customer* under the *regulatory system* or any other obligation of the *firm* under *MiFID* or the *UCITS Directive*;
- (2) advising or procuring, other than in the proper course of his employment or contract for services, any other *person* to enter into a transaction in *designated investments* which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;
- (3) disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other *person* if the *relevant person* knows, or reasonably ought to know, that as a result of that disclosure that other *person* will or would be likely to take either of the following steps:
  - (a) to enter into a transaction in designated investments which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;

- (b) to advise or procure another *person* to enter into such a transaction.

[Note: article 12(1) of *MiFID implementing Directive* and article 13(1) of the *UCITS implementing Directive*]

11.7.2

FCA

R

For the purposes of this section, the relevant provisions are:

- (1) the *rules* on *personal transactions* undertaken by *financial analysts* in ■ COBS 12.2.5 R (1) and ■ (2);
- (2) the *rule* on the misuse of information relating to pending *client orders* in ■ COBS 11.3.5 R .

11.7.2A

FCA

G

The requirements of this section are without prejudice to article 3(a) of the *Market Abuse Directive* which prohibits any *person* who possesses inside information under article 2 of that directive from disclosing that information to any other *person* unless that disclosure is made in the normal course of the exercise of his employment, profession or duties.

11.7.3

FCA

G

For the purposes of ■ COBS 11.7.1 R (1)(c) , any other obligation of the *firm* under *MiFID* refers to a *firm's* obligations under the *regulatory system* that are not owed to a *customer* and any of the *firm's* obligations under another *EEA States'* implementation of *MiFID* where it operates a *branch* in the *EEA*.

11.7.4

FCA

R

The arrangements required under this section must in particular be designed to ensure that:

- (1) each *relevant person* covered by this section is aware of the restrictions on *personal transactions*, and of the measures established by the *firm* in connection with *personal transactions* and disclosure, in accordance with this section;
- (2) the *firm*:
  - (a) is informed promptly of any *personal transaction* entered into by a *relevant person*, either by notification of that transaction or by other procedures enabling the *firm* to identify such transactions; or
  - (b) in the case of *outsourcing* arrangements, ensures that the *service provider* to which the activity is *outsourced* maintains a record of *personal transactions* entered into by any *relevant person* and provides that information to the *firm* promptly on request;
- (3) a record is kept of the *personal transaction* notified to the *firm* or identified by it, including any authorisation or prohibition in connection with such a transaction.

[Note: article 12(2) of MiFID implementing Directive and article 13(2) of the UCITS implementing Directive]

#### Disapplication of rule on personal account dealing

11.7.5

FCA

R

This section does not apply to the following kinds of *personal transaction*:

- (1) *personal transactions* effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the *relevant person* or other *person* for whose account the transaction is executed;
- (2) *personal transactions* in *units* or *shares* in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the *UCITS Directive* or are subject to supervision under the law of an *EEA State* which requires an equivalent level of risk spreading in their assets, where the *relevant person* and any other *person* for whose account the transactions are effected, are not involved in the management of that undertaking;
- (3) *personal transactions* in *life policies*.

[Note: article 12(3) of MiFID implementing Directive and article 13(3) of the UCITS implementing Directive]

11.7.6

FCA

R

For the purposes of this section, a *person* who is not:

- (1) a director, partner or equivalent, manager or *appointed representative* (or, where applicable, a *tied agent*) of the *firm*; or
- (2) a director, partner or equivalent, or manager of any *appointed representative* (or where applicable, a *tied agent*) of the *firm*;

will only be a *relevant person* to the extent that they are involved in the provision of *designated investment business* or *collective portfolio management* services.

#### Successive personal transactions

11.7.7

FCA

R

Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this section do not apply:

- (1) separately to each successive transaction if those instructions remain in force and unchanged; or
- (2) to the termination or withdrawal of such instructions, provided that any *financial instruments* which had previously been acquired pursuant to the instructions are not disposed of at the same time as the instructions terminate or are withdrawn.

Obligations under this section do apply in relation to a *personal transaction*, or the commencement of successive *personal transactions*, that are carried out on behalf of the same *person* if those instructions are changed or if new instructions are issued.

[Note: recital 17 to *MiFID implementing Directive*]

## 11.8 Recording telephone conversations and electronic communications

### Application - Who?

11.8.1

FCA

R

This section applies to a *firm*:

- (1) which carries out any of the following activities:
  - (a) receiving *client* orders;
  - (b) executing *client* orders;
  - (c) arranging for *client* orders to be executed;
  - (d) carrying out transactions on behalf of the *firm*, or another person in the *firm's* group, and which are part of the *firm's* trading activities or the trading activities of another person in the *firm's* group;
  - (e) executing orders that result from decisions by the *firm* to deal on behalf of its *client*;
  - (f) placing orders with other entities for execution that result from decisions by the *firm* to deal on behalf of its *client*;
- (2) to the extent that the activities referred to in (1) relate to:
  - (a) *qualifying investments* admitted to trading on a *prescribed market*;
  - (b) *qualifying investments* in respect of which a request for admission to trading on such a market has been made;
  - (c) investments which are *related investments* in relation to such *qualifying investments*.

11.8.2

FCA

R

This section does not apply to the carrying on of the following activities:

- (1) activities carried on between operators, or between operators and depositories, of the same *collective investment scheme* (when acting in that capacity);
- (2) *corporate finance business*;

11.8.3

FCA

R

This section does not apply to the following *firms* or *persons*:

- (1) a *service company*;
- (2) a *non-directive friendly society*;
- (3) a *non-directive insurer*;
- (4) a *UCITS qualifier*.

#### Application - Where?

11.8.4

FCA

R

This section applies only with respect to a *firm's* activities carried on from an establishment maintained by the *firm* in the *United Kingdom*.

#### Recording telephone conversations, etc

11.8.5

FCA

R

A *firm* must take reasonable steps to record relevant telephone conversations, and keep a copy of relevant electronic communications, made with, sent from or received on equipment:

- (1) provided by the *firm* to an employee or contractor; or
- (2) the use of which by an employee or contractor has been sanctioned or permitted by the *firm*;

to enable that employee or contractor to carry out any of the activities referred to in ■ COBS 11.8.1 R.

11.8.5A

FCA

R

A *firm* must take reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the *firm* is unable to record or copy.

11.8.6

FCA

R

The obligation in ■ COBS 11.8.5 R and ■ COBS 11.8.5A R does not apply to:

- (1) [deleted]
- (2) a *discretionary investment manager*, in respect of telephone conversations or electronic communications made with, sent to or received from a *firm* which the *discretionary investment manager* reasonably believes is subject to the recording obligation in ■ COBS 11.8.5 R in respect of that conversation or communication; or
- (3) a *discretionary investment manager*, in respect of telephone conversations or electronic communications made with, sent to or received from a *person* who is not subject to the recording

obligation in ■ COBS 11.8.5 R, provided that such telephone conversations or electronic communications are made with, sent to or received from such *persons* on an infrequent basis, and represent a small proportion of the total telephone conversations and electronic communications made, sent or received by the *discretionary investment manager* to which ■ COBS 11.8.5 R apply.

11.8.7

FCA

G

Electronic communications includes communications made by way of facsimile, email and instant messaging devices.

11.8.8

FCA

R

For the purposes of ■ COBS 11.8.5 R and ■ COBS 11.8.5A R a relevant conversation or communication is any one of the following:

- (1) a conversation or communication between an employee or contractor of the *firm* with a *client*, or when acting on behalf of a *client*, with another *person*, which concludes an agreement by the *firm* to carry out the activities referred to in ■ COBS 11.8.1 R as principal or as agent;
- (2) a conversation or communication between an employee or contractor of the *firm* with a *professional client* or an *eligible counterparty*, or when acting on behalf of a *professional client* or an *eligible counterparty*, with another *person*, which is carried on with a view to the conclusion of an agreement referred to in (1) above, and whether or not it is part of the same conversation or communication as in (1).

11.8.9

FCA

G

- (1) ■ COBS 11.8.8 R (2) includes conversations and communications relating to specific transactions which are intended to lead to the conclusion of an agreement by the *firm* to deal with or on behalf of the *client* as principal or agent, even if those conversations or communications do not lead to the conclusion of such an agreement. It does not include conversations or communications which are not intended to lead to the conclusion of such an agreement, such as general conversations or communications about market conditions.
- (2) The *FCA* would not usually expect the obligation in ■ COBS 11.8.5 R to include conversations or communications made by investment analysts, retail financial advisers, and persons carrying on back office functions, as such persons will not normally make relevant conversations or communications when acting in those capacities.

### Retention of records

11.8.10

FCA

R

A *firm* must take reasonable steps to retain all records made by it under ■ COBS 11.8.5 R:

- (1) for a period of at least 6 *months* from the date the record was created;



- 
- (2) in a medium that allows the storage of the information in a way accessible for future reference by the *FCA*, and so that the following conditions are met:
- (a) the *FCA* must be able to access the records readily;
  - (b) 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;
  - (c) it must not be possible for the records to be otherwise manipulated or altered.

# Chapter 12

## Investment research

## 12.1 Purpose and application

### Purpose

12.1.1

FCA

G

The purpose of this chapter is to:

- (1) set out specific requirements relating to the production and dissemination of *investment research* and *non-independent research*; and
- (2) implementing the provisions of the *Market Abuse Directive* relating to the disclosures to be made in, and about, *research recommendations*.

### Application: Who?

12.1.2

FCA

R

This chapter applies to a firm.

- (1) [deleted]
- (2) [deleted]

### Application: Where?

12.1.3

FCA

G

The *EEA territorial scope rule* modifies the general *rule* of application to the extent necessary to be compatible with European law (see paragraph 1.1 of Part 2 of ■ COBS 1 Annex 1). This means that ■ COBS 12.2 and ■ COBS 12.3.4 G also apply to *passport activities* carried on by a *UK MiFID investment firm* from a *branch* in another *EEA state*, but do not apply to the *United Kingdom branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*.

## 12.2 Investment research

### Application

12.2.1

FCA

R

This section applies to a *firm* which produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, under its own responsibility or that of a member of its *group*.

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

12.2.2

FCA

G

The concept of dissemination of *investment research* to *clients* or to the public is not intended to include dissemination exclusively to *persons* within the *group* of the *firm*.

[Note: recital 33 of the *MiFID implementing Directive*]

### Measures and arrangements required for investment research

12.2.3

FCA

R

A *firm* must ensure the implementation of all of the measures for managing conflicts of interest in ■ SYSC 10.1.11 R in relation to the *financial analysts* involved in the production of *investment research* and other *relevant persons* whose responsibilities or business interests may conflict with the interests of the *persons* to whom *investment research* is disseminated.

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

12.2.4

FCA

G

*Persons* whose responsibilities or business interests may reasonably be considered to conflict with the interests of the *persons* to whom *investment research* is disseminated include corporate finance personnel and *persons* involved in sales and trading on behalf of *clients* or the *firm*.

[Note: recital 30 of the *MiFID implementing Directive*]

12.2.5

FCA

R

A *firm* must have in place arrangements designed to ensure that the following conditions are satisfied:

- (1) if a *financial analyst* or other *relevant person* has knowledge of the likely timing or content of *investment research* which is not publicly available or available to *clients* and cannot readily be inferred from information that is so available, that *financial analyst* or other *relevant person* must not undertake *personal transactions* or trade on behalf of any other *person*, including the *firm*, other

than as *market maker* acting in good faith and in the ordinary course of market making or in the execution of an unsolicited *client* order, in *financial instruments* to which the *investment research* relates, or in any *related financial instruments*, until the recipients of the *investment research* have had a reasonable opportunity to act on it;

[Note: article 25(2)(a) of the *MiFID implementing Directive*]

- (2) in circumstances not covered by (1), *financial analyst* and any other *relevant persons* involved in the production of *investment research* must not undertake *personal transactions* in *financial instruments* to which the *investment research* relates, or in any *related financial instrument*, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the *firm's* legal or compliance function;

[Note: article 25(2)(b) of the *MiFID implementing Directive*]

- (3) the *firm* itself, *financial analysts*, and other *relevant persons* involved in the production of *investment research* must not accept inducements from those with a material interest in the subject matter of the *investment research*;

[Note: article 25(2)(c) of the *MiFID implementing Directive*]

- (4) the *firm* itself, *financial analysts*, and other *relevant persons* involved in the production of *investment research* must not promise issuers favourable research coverage; and

[Note: article 25(2)(d) of the *MiFID implementing Directive*]

- (5) issuers, *relevant persons* other than *financial analysts*, and any other *persons* must not, before the dissemination of *investment research*, be permitted to review a draft of the *investment research* for the purpose of verifying the accuracy of factual statements made in that *investment research*, or for any other purpose other than verifying compliance with the *firm's* legal obligations, if the draft includes a recommendation or a target price.

[Note: article 25(2)(e) of the *MiFID implementing Directive*]

#### 12.2.5A

FCA

G

*Firms* are reminded that they must also comply with ■ COBS 11.7 (Rule on personal account dealing).

#### 12.2.6

FCA

G

Knowledge by a *financial analyst* or other *relevant person* that the *firm* intends to produce or disseminate *investment research* to its *clients* or to the public (including in

circumstances where research material has not yet been written) could constitute knowledge of the likely timing and content of *investment research* under ■ COBS 12.2.5 R (1).

## 12.2.7

FCA

G

For the purposes of ■ COBS 12.2.5 R (2):

- (1) current recommendations should be considered to be those recommendations contained in *investment research* which have not been withdrawn and which have not lapsed; and

[Note: recital 34 of the *MiFID implementing Directive*]

- (2) exceptional circumstances in which *financial analysts* and other *relevant persons* may, with prior written approval, undertake *personal transactions* in *financial instruments* to which *investment research* relates should include those circumstances where, for personal reasons relating to financial hardship, the *financial analyst* or other *relevant person* is required to liquidate a position.

[Note: recital 31 of the *MiFID implementing Directive*]

## 12.2.8

FCA

G

Small gifts or minor hospitality below a level specified in the *firm's conflicts of interest policy* and mentioned in the description of that policy that is made available to *clients* in accordance with ■ COBS 6.1.4 R (8) should not be considered as inducements for the purposes of ■ COBS 12.2.5 R (3).

[Note: recital 32 of the *MiFID implementing Directive*]

## 12.2.9

FCA

G

A *financial analyst* should not become involved in activities other than the preparation of *investment research* where such involvement is inconsistent with the maintenance of the *financial analysts* objectivity. The following should ordinarily be considered as inconsistent with the maintenance of a *financial analyst's* objectivity:

- (1) participating in investment banking activities such as corporate finance business and underwriting; or
- (2) participating in 'pitches' for new business or 'road shows' for new issues of *financial instruments*; or
- (3) being otherwise involved in the preparation of issuer marketing.

[Note: recital 36 of the *MiFID implementing Directive*]

#### Exemption from investment research measures and arrangements

## 12.2.10

FCA

R

A *firm* which disseminates *investment research* produced by another *person* to the public or to *clients* is exempt from complying with the requirements in ■ COBS 12.2.3 R and ■ COBS 12.2.5 R if the following criteria are met:

- (1) the *person* that produces the *investment research* is not a member of the *group* to which the *firm* belongs;
- (2) the *firm* does not substantially alter the recommendations within the *investment research*;

- (3) the *firm* does not present the *investment research* as having been produced by it; and
- (4) the *firm* verifies that the producer of the *investment research* is subject to requirements equivalent to those in ■ COBS 12.2.3 R and ■ COBS 12.2.5 R in relation to the production of that *investment research*, or has established a policy setting such requirements.

[Note: article 25(3) of the *MiFID implementing Directive*]

### Means and timing of publication of investment research

12.2.11

FCA

G

The FCA would expect a *firm's conflicts of interest policy* to provide for *investment research* to be published or distributed to its *clients* in an appropriate manner. For example, the FCA considers it will be:

- (1) appropriate for a *firm* to take reasonable steps to ensure that its *investment research* is published or distributed only through its usual *distribution channels*; and
- (2) inappropriate for an *employee* (whether or not a *financial analyst*) to communicate the substance of any *investment research*, except as set out in the *firm's conflicts of interest policy*.

12.2.12

FCA

G

The FCA would expect a *firm* to consider whether or not other business activities of the *firm* could create the reasonable perception that its *investment research* may not be an impartial analysis of the market in, or the value or prospects of, a *financial instrument*. A *firm* would therefore be expected to consider whether its *conflicts of interest policy* should contain any restrictions on the timing of the publication of *investment research*. For example, a *firm* might consider whether it should restrict publication of relevant *investment research* around the time of an investment offering.

### Investment research for internal use

12.2.13

FCA

G

The FCA considers that the significant conflicts of interest which could arise are likely to mean it is inappropriate for a *financial analyst* or other *relevant person* to prepare *investment research* which is intended firstly for internal use for the *firm's* own advantage, and then for later publication to its *clients* (in circumstances in which it might reasonably be expected to have a material influence on its *clients'* investment decisions).

## 12.3 Non-independent research

### Application

12.3.1

FCA

R

This section applies to a *firm* that produces or disseminates *non-independent research*.

[Note: article 24(2) of the *MiFID implementing Directive*]

### Labelling of non-independent research

12.3.2

FCA

R

A *firm* which produces or disseminates *non-independent research* must ensure that it:

- (1) is clearly identified as a marketing communication; and
- (2) contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it:
  - (a) has not been prepared in accordance with legal requirements designed to promote the independence of *investment research*; and
  - (b) is not subject to any prohibition on dealing ahead of the dissemination of *investment research*.

[Note: article 24(2) of the *MiFID implementing Directive*]

12.3.3

FCA

R

The *financial promotion rules* apply to *non-independent research* as though it were a marketing communication.

[Note: article 24(2) of the *MiFID implementing Directive*]

### Management of conflicts of interest in area of non-independent research

12.3.4

FCA

G

In accordance with ■ SYSC 10, a *firm* will be expected to take reasonable steps to identify and manage conflicts of interest which may arise in the production of *non-independent research*. Situations where conflicts of interest can arise include:

- (1) *relevant persons* trading in *financial instruments* that are the subject of *non-independent research* which they know the *firm* has published or intends to publish before *clients* have had a reasonable opportunity to act on it (other than when the *firm* is acting as *market maker* in good faith and in the ordinary course of market making, or in the execution of an unsolicited *client* order); and



- 
- (2) preparation of *non-independent research* which is intended firstly for internal use by the *firm* and then for later publication to *clients*.

## 12.4 Research recommendations: required disclosures

### Application

12.4.1  
FCA

R

- (1) This section applies to a *firm* that prepares or disseminates *research recommendations*.
- (2) This section does not apply to the extent that the Investment Recommendation (Media) Regulations 2005 apply to a *firm*.
- (3) If a *firm* is a *media firm* subject to equivalent appropriate regulation, only ■ COBS 12.4.2 G, ■ COBS 12.4.4 R, ■ COBS 12.4.15 R and ■ COBS 12.4.16 R apply.

[Note: articles 2(4), 3(4), 5(5) of the *MAD Investment Recommendations Directive*]

12.4.2  
FCA

G

Appropriate regulatory or self-regulatory arrangements are sufficient to meet the condition in ■ COBS 12.4.1 R (3). Examples include those listed in regulation 3(5) of the Investment Recommendation (Media) Regulations 2005, that is the Code of Practice issued by the Press Complaints Commission, the Producers' Guidelines issued by the British Broadcasting Corporation, and any code published by the Office of Communications pursuant to section 324 of the Communications Act 2003.

### Use of information barriers

12.4.3  
FCA

G

Obligations to disclose information do not require those producing *research recommendations* to breach effective information barriers put in place to prevent and avoid conflicts of interest.

[Note: recital 7 of the *MAD Investment Recommendations Directive*]

### Fair presentation and disclosure

12.4.4  
FCA

R

A *firm* must take reasonable care:

- (1) to ensure that a *research recommendation* produced or disseminated by it is fairly presented; and
- (2) to disclose its interests or indicate conflicts of interest concerning *relevant investments*.

[Note: article 6(5) of the *Market Abuse Directive*]

12.4.5

FCA

R

**Identity of producers of recommendations**

- (1) A *firm* must, in a *research recommendation* produced by it:
  - (a) disclose clearly and prominently the identity of the *person* responsible for its production, and in particular:
    - (i) the name and job title of the individual who prepared the *research recommendation*; and
    - (ii) the name of the *firm*; and
  - (b) (where the *firm* is an *investment firm* or a *credit institution*) disclose the identity of the *competent authority* of the *firm*.
- (2) The requirements in (1) may be met for non-written *research recommendations* by referring to a place where the disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the *firm*.

[Note: article 2 of the *MAD Investment Recommendations Directive*]

**General standard for fair presentation of recommendations**

12.4.6

FCA

R

- (1) A *firm* must take reasonable care to ensure that:
  - (a) facts in a *research recommendation* are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;
  - (b) its sources for a *research recommendation* are reliable or if there is any doubt as to whether a source is reliable, this is clearly indicated;
  - (c) all projections, forecasts and price targets in a *research recommendation* are clearly labelled as such and the material assumptions made in producing or using them are indicated; and
  - (d) the substance of its *research recommendations* can be substantiated as reasonable, upon request by the *FCA*.
- (2) The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they would be disproportionate.
- (3) A *firm* must make and retain sufficient records to disclose the basis of the substantiation required in (1)(d).

[Note: article 3 of the *MAD Investment Recommendations Directive*]

**Additional obligations in relation to fair presentation of recommendations**

12.4.7

FCA

R

- (1) In addition a *firm* must take reasonable care to ensure that, in a *research recommendation*, at least:

- (a) all substantially material sources are indicated, including, if appropriate, the *issuer*, and in particular the *research recommendation* indicates whether the *research recommendation* has been disclosed to that *issuer* and amended following this disclosure before its dissemination;
  - (b) any basis of valuation or methodology used to evaluate a *security*, a *derivative* or an *issuer*, or to set a price target for a *security* or a *derivative*, is adequately summarised;
  - (c) the meaning of any recommendation made, such as "buy", "sell" or "hold", which may include the time horizon of the *security* or *derivative* to which the *research recommendation* relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;
  - (d) reference is made to the planned frequency, if any, of updates of the *research recommendation* and to any major changes in the coverage policy previously announced;
  - (e) the date at which the *research recommendation* was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any *security* or *derivative* price mentioned; and
  - (f) if the substance of a *research recommendation* differs from the substance of an earlier *research recommendation*, concerning the same *security*, *derivative* or *issuer* issued during the 12-month period immediately preceding its release, this change and the date of the earlier *research recommendation* are indicated clearly and prominently.
- (2) If the requirements in (1)(a), (b) or (c) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where the required information can be directly and easily accessed by the public (such as a hyperlink to that information on an appropriate internet site of the *firm*) provided that there has been no change in the methodology or basis of valuation used.
  - (3) In the case of a non-written *research recommendation*, the requirements of (1) do not apply to the extent that they would be disproportionate.

[Note: article 4 of the *MAD Investment Recommendations Directive*]

The disclosures required under ■ COBS 12.4.7 R (1)(e) and ■ COBS 12.4.7R (1)(f) may, if the *firm* so chooses, be made by graphical means (for example by use of a line graph).

12.4.9

FCA

R

**General standard for disclosure of interests and conflicts of interest**

- (1) A *firm* must disclose, in a *research recommendation*:
- (a) all of its relationships and circumstances that may reasonably be expected to impair the objectivity of the *research recommendation*, in particular a significant financial interest in any *relevant investment* which is the subject of the *research recommendation*, or a significant conflict of interest with respect to a *relevant issuer*; and
  - (b) relationships and circumstances, of the sort referred to in (a), of each legal or natural person working for the *firm* who was involved in preparing the substance of the *research recommendation*, including, in particular, for a *firm* which is an *investment firm*, disclosure of whether his remuneration is tied to investment banking transactions performed by the *firm* or any *affiliated company*.
- (2) If the *firm* is a legal person, the information to be disclosed in accordance with (1) must at least include the following:
- (a) any interests or conflicts of interest of the *firm* or of an *affiliated company* that are accessible, or reasonably expected to be accessible, to the *persons* involved in the preparation of the substance of the *research recommendation*; and
  - (b) any interests or conflicts of interest of the *firm* or of *affiliated companies* known to *persons* who, although not involved in the preparation of the substance of the *research recommendation*, had or could reasonably be expected to have access to the substance of the *research recommendation* prior to its dissemination, other than *persons* whose only access to the *research recommendation* is to ensure compliance with relevant regulatory or statutory obligations, including the disclosures required under this section.
- (3) If the disclosures required under (1) and (2) would be disproportionate in relation to the length of the *research recommendation* distributed, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosures can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*).
- (4) The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they are disproportionate.

[Note: article 5 of the *MAD Investment Recommendations Directive*]

**Additional obligations for producers of research recommendations in relation to disclosure of interests or conflicts of interest**

12.4.10

**R**

FCA

- (1) A *research recommendation* produced by a *firm* must disclose clearly and prominently the following information on its interests and conflicts of interest:
- (a) major shareholdings that exist between it or any *affiliated company* on the one hand and the *relevant issuer* on the other hand, including at least:
    - (i) shareholdings exceeding 5% of the total issued share capital in the *relevant issuer* held by the *firm* or any *affiliated company*; or
    - (ii) shareholdings exceeding 5% of the total issued share capital of the *firm* or any *affiliated company* held by the *relevant issuer*;
  - (b) any other financial interests held by the *firm* or any *affiliated company* in relation to the *relevant issuer* which are significant in relation to the *research recommendation*;
  - (c) if applicable, a statement that the *firm* or any *affiliated company* is a *market maker* or liquidity provider in the securities of the *relevant issuer* or in any related *derivatives*;
  - (d) if applicable, a statement that the *firm* or any *affiliated company* has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of securities of the *relevant issuer* or in any related *derivatives*;
  - (e) if applicable, a statement that the *firm* or any *affiliated company* is party to any other agreement with the *relevant issuer* relating to the provision of investment banking services, provided that:
    - (i) this would not entail the disclosure of any confidential commercial information; and
    - (ii) the agreement has been in effect over the previous 12 months or has given rise during the same period to a payment or to the promise of payment; and
  - (f) if applicable, a statement that the *firm* or any *affiliated company* is party to an agreement with the *relevant issuer* relating to the production of the *research recommendation*.
- (2) A *firm* must disclose, in general terms, in the *research recommendation* the effective organisational and administrative arrangements set up within the *firm* for the prevention and avoidance of conflicts of interest with respect to *research recommendations*, including information barriers.

- (3) In the case of an *investment firm* or a *credit institution*, if a legal or natural *person* working for the *firm* who is involved in the preparation of a *research recommendation*, receives or purchases *shares* of the *relevant issuer* prior to a public offering of those *shares*, the price at which the *shares* were acquired and the date of acquisition must also be disclosed in the *research recommendation*.
- (4) A *firm*, which is an *investment firm* or a *credit institution*, must publish the following information on a quarterly basis, and must disclose it in its *research recommendations*:
- (a) the proportion of all *research recommendations* published during the relevant quarter that are "buy", "hold", "sell" or equivalent terms; and
  - (b) the proportion of *relevant investments* in each of these categories, issued by *issuers* to which the *firm* supplied material investment banking services during the previous 12 months.
- (5) If the requirements under (1) to (4) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosure can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*, or, if relevant, to the *firm's conflicts of interest policy*).
- (6) In the case of non-written *research recommendations*, the requirements of (1) do not apply to the extent that they are disproportionate.

[Note: article 6 of the *MAD Investment Recommendations Directive*]

12.4.11  
FCA

G

Nothing in ■ COBS 12.4.10 R (1)(a) prevents a *firm* from choosing to disclose significant shareholdings above a lower threshold (for example, 1%) than is required by ■ COBS 12.4.10 R (1)(a).

12.4.12  
FCA

G

■ COBS 12.4.10 R (1)(a) and ■ COBS 12.4.10 R (1)(b) only require a *firm* to aggregate its shareholdings with those of *affiliated companies* if they act in concert in relation to those shareholdings.

12.4.13  
FCA

G

In relation to companies limited by shares and incorporated in Great Britain, the most meaningful measure of "total issued share capital" is likely to be the concept of "paid up and issued share capital" under the Companies Act 1985 or Companies Act 2006 (as applicable) .



**12.4.14** **G** The FCA considers that it is important for the proportions published in compliance with **■ COBS 12.4.10 R (4)** to be consistent and meaningful to the recipients of the *research recommendations*. Accordingly for non-equity material, the relevant categories should be meaningful to the recipients in terms of the course of action being recommended.

**FCA**

#### **Identity of disseminators of recommendations**

**12.4.15** **R** If a *firm* disseminates a *research recommendation* produced by a third party, the *research recommendation* must identify the *firm* clearly and prominently.

**FCA**

[Note: article 7 of the *MAD Investment Recommendations Directive*]

#### **General standard for dissemination of third party recommendations**

- 12.4.16** **R**
- FCA**
- (1) If a *research recommendation* produced by a third party is substantially altered before dissemination by a *firm*:
    - (a) the disseminated material must clearly describe that alteration in detail; and
    - (b) if the substantial alteration consists of a change of the direction of the recommendation (such as changing a "buy" recommendation into a "hold" or "sell" recommendation or vice versa), the requirements laid down in **■ COBS 12.4.5 R** to **■ COBS 12.4.11 G** on producers must be met by the *firm*, to the extent of the substantial alteration.
  - (2) A *firm* which disseminates a substantially altered *research recommendation* must have a formal written policy so that the *persons* receiving the information may be directed to where they can have access to the identity of the producer of the *research recommendation*, the *research recommendation* itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.
  - (3) If a *firm* disseminates a summary of a *research recommendation* produced by a third party, it must:
    - (a) ensure that the summary is fair, clear and not misleading;
    - (b) identify the source *research recommendation*; and
    - (c) identify where (to the extent that they are publicly available) the third party's disclosures relating to the source *research recommendation* can be directly and easily accessed by the public.
  - (4) Paragraphs (1) and (2) do not apply to news reporting on *research recommendations* produced by a third party where the substance of the *research recommendation* is not altered.

[Note: article 8 of the *MAD Investment Recommendations Directive*]



12.4.17

FCA

R

**Additional obligations for investment firms and credit institutions disseminating third party recommendations**

If a *firm*, which is an *investment firm* or a *credit institution*, disseminates a *research recommendation* produced by a third party:

- (1) the name of the *competent authority* of the *firm* must be clearly and prominently indicated on the disseminated material;
- (2) if the producer of the *research recommendation* has not already disseminated it, the requirements in ■ COBS 12.4.10 R must be met by the *firm* as if it had produced the *research recommendation* itself; and
- (3) if the *firm* has substantially altered the *research recommendation*, the requirements laid down in ■ COBS 12.4.4 R to ■ COBS 12.4.10 R must be met by the *firm* as if it had produced the *research recommendation* itself.

[Note: article 9 of the *MAD Investment Recommendations Directive*]

# Chapter 13

## Preparing product information

## 13.1 The obligation to prepare product information

13.1.1

FCA

**R** A *firm* must prepare:

- (1) a *key features document* for each *packaged product, cash-deposit ISA and cash-deposit CTF* it produces; and
- (2) a *key features illustration* for each *packaged product* it produces;

in good time before those *documents* have to be provided.

### Information on life policies

13.1.2

FCA

**R** A *firm* must prepare the *Consolidated Life Directive information* for each *life policy* it effects, in good time before that information has to be provided.

[Note: article 36(1) of, and Annex III to, the *Consolidated Life Directive*]

### Exceptions

13.1.3

FCA

**R** A *firm* is not required to prepare:

- (1) a *document*, if another *firm* has agreed to prepare it; or
- (2) a *key features document* for:
  - (a) a *unit* in a *UCITS scheme* or a *simplified prospectus scheme*; or
  - (b) a *unit* in an *EEA UCITS scheme* which is a *recognised scheme*; or
  - (c) a *unit* in a *key features scheme*, if it prepares a *simplified prospectus*, or the information appears with due prominence in another *document*, instead; or
  - (d) a *stakeholder pension scheme*, or *personal pension scheme* that is not a *personal pension policy*, if the information appears with due prominence in another *document*; or
- (3) a *key features illustration*:

- (a) for a *unit* in a *UCITS scheme* or a *simplified prospectus scheme*; or
  - (b) for a *unit* in an *EEA UCITS scheme* which is a *recognised scheme*; or
  - (c) if it includes the information from the *key features illustration* in a *key features document*; or
  - (d) for a *packaged product* which, at the end of its fixed term, provides for the return of the initial capital invested and a specified level of growth linked by a pre-set formula to the performance of a specified asset or index or a combination of assets or indices; or
- (4) the *Consolidated Life Directive information*, if the *policy* is a *reinsurance contract* or a *pure protection contract*.

13.1.4

FCA

R

A single *document* prepared for more than one *key features scheme* or *simplified prospectus scheme* may combine more than one *key features document*, *simplified prospectus* or *EEA simplified prospectus* or any combination of them, if the *schemes* are offered through a *platform service* and the *document* clearly describes the difference between the *schemes*.



## 13.2 Product information: production standards, form and contents

13.2.1  
FCA

G

When a *firm* prepares *documents* or information in accordance with this chapter, the *firm* should consider the *rules* on providing product information (■ COBS 14). Those *rules* require a *firm* to provide the product information in a *durable medium* or via a website that meets the *website conditions* (if the website is not a *durable medium*).

[Note: article 29(4) of the *MiFID implementing Directive*]

13.2.2  
FCA

R

A *key features document* and a *key features illustration* must also:

- (1) (if it is a *key features document*) be produced and presented to at least the same quality and standard as the sales or marketing material used to promote the relevant product;
- (2) (if it is a *key features document*) display the *firm's* brand at least as prominently as any other;
- (3) (if it is a *key features document* or a *key features illustration* which does not form an integral part of the *key features document*) include the 'keyfacts' logo in a prominent position at the top of the *document*; and
- (4) (if it is a *key features document* or a *key features illustration* which does not form an integral part of the *key features document*) include the following statement in a prominent position:

"The Financial Conduct Authority is a financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future reference".

13.2.3  
FCA

G

The *Consolidated Life Directive information* can be included in a *key features document*, a *key features illustration* or any other *document*.

13.2.4

FCA

R

The *documents* and information prepared in accordance with the *rules* in this chapter must not include anything that might reasonably cause a *retail client* to be mistaken about the identity of the *firm* that produced, or will produce, the product.



## 13.3 Contents of a key features document

### General requirements

13.3.1

FCA

R

*A key features document must:*

- (1) include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a *retail client* to be able to make an informed decision about whether to proceed; and
- (2) explain:
  - (a) the arrangements for handling complaints about the product;
  - (b) that compensation might be available from the *FSCS* if the *firm* cannot meet its liabilities in respect of the product (if applicable);
  - (c) that a right to cancel or withdraw exists, or does not exist, and, if it does exist, its duration and the conditions for exercising it, including information about the amount a *client* may have to pay if the right is exercised, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which any notice must be sent;
  - (d) (for a *CTF*) that *stakeholder CTFs*, *cash-deposit CTFs* and *security-based CTFs* are available and which type the *firm* is offering; and
  - (e) (for a *personal pension scheme* that is not an *automatic enrolment scheme*) clearly and prominently, that *stakeholder pension schemes* are generally available and might meet the *client's* needs as well as the scheme on offer.

### Additional requirements for packaged products

13.3.2

FCA

R

Table

*A key features document for a packaged product must:*

|  |  |                |                                |            |   |  |   |         |   |                         |  |
|--|--|----------------|--------------------------------|------------|---|--|---|---------|---|-------------------------|--|
| (1)                                    | Include the title: 'key features of the [name of product]';  |                |                                |            |   |  |   |         |   |                         |  |
| (2)                                    | describe the product in the order of the following headings, and by giving the following information under those headings:   |                |                                |            |   |  |   |         |   |                         |  |
|  | <table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Heading</b></td> <td><b>Information to be given</b></td> </tr> <tr> <td>'Its aims'</td> <td>A brief description of the product's aims</td> </tr> <tr> <td>'Your commitment' or 'Your investment'</td> <td>What a <i>retail client</i> is committing to or investing in and any consequences of failing to maintain the commitment or investment</td> </tr> <tr> <td>'Risks'</td> <td>The material risks associated with the product, including a description of the factors that may have an adverse effect on performance or are material to the decision to invest</td> </tr> <tr> <td>'Questions and Answers'</td> <td>(in the form of questions and answers) the principle terms of the product, what it will do for a <i>retail client</i> and any other information necessary to enable a <i>retail client</i> to make an informed decision.</td> </tr> </table> | <b>Heading</b> | <b>Information to be given</b> | 'Its aims' | A brief description of the product's aims | 'Your commitment' or 'Your investment' | What a <i>retail client</i> is committing to or investing in and any consequences of failing to maintain the commitment or investment | 'Risks' | The material risks associated with the product, including a description of the factors that may have an adverse effect on performance or are material to the decision to invest | 'Questions and Answers' | (in the form of questions and answers) the principle terms of the product, what it will do for a <i>retail client</i> and any other information necessary to enable a <i>retail client</i> to make an informed decision. |
| <b>Heading</b>                         | <b>Information to be given</b>   |                |                                |            |   |  |   |         |   |                         |  |
| 'Its aims'                             | A brief description of the product's aims  |                |                                |            |   |  |   |         |   |                         |  |
| 'Your commitment' or 'Your investment' | What a <i>retail client</i> is committing to or investing in and any consequences of failing to maintain the commitment or investment  |                |                                |            |   |  |   |         |   |                         |  |
| 'Risks'                                | The material risks associated with the product, including a description of the factors that may have an adverse effect on performance or are material to the decision to invest  |                |                                |            |   |  |   |         |   |                         |  |
| 'Questions and Answers'                | (in the form of questions and answers) the principle terms of the product, what it will do for a <i>retail client</i> and any other information necessary to enable a <i>retail client</i> to make an informed decision.   |                |                                |            |   |  |   |         |   |                         |  |

**Money market funds**

13.3.3

FCA

R

A *key features document* for a *short-term money market fund*, a *money market fund* or a *qualifying money market fund* must include a statement identifying it as such a fund and a statement that the *authorised fund's* investment objectives and policies will meet the conditions of the definition of *short-term money market fund*, *money market fund* or *qualifying money market fund*, as appropriate.

**Feeder NURS**

PAGE  
7

13.3.4

FCA

R

A *key features document* for a *feeder NURS* must include:

- (1) a statement identifying it as such a *scheme*;



- (2) information specific to the *feeder NURS* and its *qualifying master scheme* which enables investors to understand the *qualifying master scheme's* key particulars; and
- (3) a description and explanation of any material differences between the risk profile of the *feeder NURS* and that of the *qualifying master scheme*.

13.3.5

FCA

G

When producing the *key features document*, the *authorised fund manager* of the *feeder NURS* should have due regard to the provisions in ■ COLL 4.6.8 R (Contents of the simplified prospectus) in terms of additional information appropriate to a *feeder NURS* and its *qualifying master scheme*. In particular, the *appropriate charges information* required by ■ COBS 13.4.1 R and ■ COBS 13 Annex 3 (Charges) should represent the aggregate of the charges of the *feeder NURS* and its *qualifying master scheme* as disclosed in the *feeder NURS'* most up-to-date *prospectus*.

## 13.4 Contents of a key features illustration

### 13.4.1

FCA

R

A *key features illustration* must include *appropriate charges information*, information about any interest that will be paid to *clients* on money held within a *personal pension scheme* bank account and, if it is a *packaged product* which is not a *financial instrument*:

- (1) must include a *standardised deterministic projection*;
- (2) the projection and charges information must be consistent with each other;
- (3) it may also include *alternative projections* except that the most prominent *projection* must be a *standardised deterministic projection*.

#### Exceptions

### 13.4.2

FCA

R

When the *rules* in this chapter require a *key features illustration* to be prepared, it must not take the form of a *generic key features illustration*:

- (1) unless there are reasonable grounds for believing that it will be sufficient to enable a *retail client* to make an informed decision about whether to invest; or
- (2) if it is part of a *direct offer financial promotion* which contains a *personal recommendation*; or
- (3) if a *personal pension scheme* or a *stakeholder pension scheme* is facilitating the payment of an *adviser charge*; or
- (4) if a *group personal pension scheme* or a *group stakeholder pension scheme* is facilitating the payment of a *consultancy charge* and the combined effect of the *consultancy charges* facilitated by the product and the product charges is not consistent for all investors in the relevant group or sub-group; or
- (5) unless it is prepared for groups or sub-groups of employees in a *group personal pension scheme* or a *group stakeholder pension scheme* and it contains:

- (a) a *generic projection* which is prepared in accordance with ■ COBS 13 Annex 2 paragraph 1.3 and based on a default fund or other commonly selected fund;
- (b) an effect of charges table calculated in accordance with ■ COBS 13 Annex 4 R paragraph 2 and contains additional rows that show a range of typical periods to retirement age; and
- (c) reduction in yield information which is calculated in accordance with ■ COBS 13 Annex 4 R paragraph 3.3(2) and combines the product charge and, if applicable, the *consultancy charge*.

13.4.3  
FCA

G

A *generic key features illustration* is unlikely to be sufficient to enable a *retail client* to make an informed decision about whether to invest if the *premium* or investment returns on the product will be materially affected by the personal characteristics of the investor.

13.4.4  
FCA

R

There is no requirement under ■ COBS 13.4.1 R to include a *projection* in a *key features illustration*:

- (1) for a single *premium life policy* bought as a pure investment product, a product with benefits that do not depend on future investment returns or any other product if it is reasonable to believe that a *retail client* will not need one to be able to make an informed decision about whether to invest; or
- (2) if the product is a *life policy* that will be held in a *CTF* or sold with *basic advice* (unless the *policy* is a *stakeholder pension scheme*).

13.4.5  
FCA

G

Although there may be no obligation to include a *projection* in a *key features illustration*, where a *firm* chooses to include one, the *projection* must follow the appropriate requirements, as outlined in this section, or for *financial instruments* under ■ COBS 4.6.7 R.

## 13.5 Preparing product information: other projections

### Projections for in-force products

13.5.1  
FCA

R

A *firm* that communicates a *projection* for an in-force *packaged product* which is not a *financial instrument*:

- (1) must include a *standardised deterministic projection*;
- (2) may also include an *alternative projection* except that the most prominent *projection* must be a *standardised deterministic projection*; and

must follow the *projection rules* in ■ COBS 13 Annex 2.

### Projections: other situations

13.5.2  
FCA

R

A *firm* that communicates a *projection* for a *packaged product* which is not a *financial instrument*,

- (1) for which a *key feature illustration* is not required to be provided; and
- (2) which is not an in-force *packaged product*;

must ensure that such a *projection* is either a *standardised deterministic projection* or an *alternative projection* in accordance with ■ COBS 13 Annex 2.

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

13.5.3  
FCA

R

A *firm* that communicates a *projection* of benefits for a *packaged product* which is not a *financial instrument*, as part of a combined *projection* where other benefits being projected include those for a *financial instrument* or *structured deposit*, is not required to comply with the projection rules in ■ COBS 13.4, ■ COBS 13.5 and ■ COBS 13 Annex 2 to the extent that it complies with the future performance *rule* (■ COBS 4.6.7 R).

13.5.4  
FCA

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 4.6.7 R will need to explain how the combined *projection* differs from other

---

information that has been or could be provided to the client, including a *projection* provided under the *projection rules* in ■ COBS 13.4, ■ COBS 13.5 and ■ COBS 13 Annex 2.



## 13.6 Preparing product information: changes to adviser and consultancy charges

13.6.1

FCA

R

A *firm* that agrees to start facilitating the payment of an *adviser charge* or *consultancy charge*, or an increase in such a charge, from an in-force *packaged product*, must prepare sufficient information for the *retail client* to be able to understand the likely effect of that facilitation, in good time before that information has to be provided .



## The Consolidated Life Directive Information

**FCA**

This annex belongs to **■ COBS 13.1.2 R** (The Consolidated Life Directive Information)

### Information about the firm

- (1) The *firm's* name and its legal form;
- (2) The name of the *EEA State* in which the head office and, where appropriate, agency or branch concluding the contract is situated; and
- (3) The address of the head office and, where appropriate, agency or branch concluding the contract.

### Information about the commitment

- (4) Definition of each benefit and each option;
- (5) Term of the contract;
- (6) Means of terminating the contract;
- (7) Means of payment of *premiums* and duration of payments;
- (8) Means of calculation and distribution of bonuses;
- (9) Indication of surrender and paid-up values and the extent to which they are guaranteed;
- (10) Information on the *premiums* for each benefit, both main benefits and supplementary benefits, where appropriate;
- (11) For unit-linked *policies*, definition of the units to which the benefits are linked;
- (12) Indication of the nature of the underlying assets for unit-linked *policies*;
- (13) Arrangements for application of the cooling-off period;
- (14) General information on the tax arrangements applicable to the type of *policy*;
- (15) The arrangements for handling complaints concerning contracts by *policyholders*, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints



(16)

body, without prejudice to the right to take legal proceedings; and

Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the *insurer* proposes to choose.

[Note: article 36(1) of, and Annex III to, the *Consolidated Life Directive*]

## Projections

This annex belongs to ■ COBS 13.4.1 R (Contents of a key features illustration), ■ COBS 13.5.1 R (Projections for in-force products) and ■ COBS 13.5.2 R (Projections: other situations).

FCA

R

### Projections

#### 1 Calculating standardised deterministic projections

##### 1.1 A *standardised deterministic projection* must:

- (1) include a *projection* of benefits at the *lower, intermediate* and *higher rates of return*;
- (2) be rounded down; and
- (3) show no more than three significant figures.

FCA

R

#### 1.2 Calculating projections: additional requirements for a pension scheme

- (1) A *standardised deterministic projection* within a *key features illustration* for a *personal pension scheme* or *stakeholder pension scheme* must include or be accompanied by information explaining the impact of inflation on those benefits.
- (2) Where a *firm* chooses to provide that information required in (1) in the form of one or more *projections* of benefits, it must include a *projection* in real terms, so long as it is either:
  - (a) calculated using:
    - (i) the appropriate *intermediate rate of return*;
    - (ii) the intermediate rate of price inflation, in accordance with COBS 13 Annex 2 2.5R; and
    - (iii) an annuity calculated in accordance with COBS 13 Annex 2 3.1R ; or
  - (b) consistent with the *statutory money purchase illustration* assumptions, with any material differences between the assumptions used and those otherwise required for accompanying *standardised deterministic projections* explained.

FCA

R

- 1.3 (1) If a *generic projection* is prepared for a *stakeholder pension scheme* or *personal pension scheme* in circumstances where a *generic key features illustration* is permitted under COBS 13.4.2 R, sufficient separate *projections*, covering a range of different contractual

periods and contributions, must be included for a *retail client* to be able to make an informed decision about whether to invest.

- (2) A *projection* prepared on that basis may omit benefits in nominal terms and only show a range of figures at the *intermediate rate of return*, of benefits in real terms.

FCA

G

- 1.4 A *firm* will provide sufficient separate *projections* if it prepares a table that shows *projections* in real terms for a variety of periods to maturity and a variety of contribution levels, taking into account the *charges* and other material terms that apply to the *stakeholder pension scheme* or *personal pension scheme*. Such a table could be laid out like a specimen benefits table (see COBS 13 Annex 2 1.8).

FCA

R

#### Calculating an alternative projection

- 1.5 An *alternative projection* must:

- (1) (if the *alternative projection* is not a *stochastic projection*) not exceed the *higher rate of return*;
- (2) (if the *alternative projection* is not a *stochastic projection*), use assumptions consistent with the assumptions which apply to *standardised deterministic projections* in this Annex, unless the reasons for any inconsistency are:
  - (a) reasonable;
  - (b) explained to a *retail client*, with enough information for the *retail client* to be able to understand the difference between the *alternative projection* and any *standardised deterministic projection* being provided; and
- (3) (if the *alternative projection* is a *stochastic projection*) only be used if:
  - (a) there are reasonable grounds for believing that a *retail client* will be able to understand it;
  - (b) it is based on a reasonable number of simulations and assumptions which are reasonable and supported by objective data; and
  - (c) the *alternative projection* is accompanied by enough information for the *retail client* to be able to understand the difference between the *alternative projection* and any *standardised deterministic projection* being provided.

G

- 1.6 An *alternative projection* may be used either as part of a *key features illustration* or separately. However, it must not detract from any *standardised deterministic projection* required by COBS 13.4.1 R or COBS 13.5.1 R.

FCA

R

**Exceptions**

**1.7 A projection:**

- (1) for a product that will mature in six *months* or less; or
- (2) prepared in order to determine the maximum level of contributions permitted to be made to a *personal pension scheme*,

may be prepared and presented on any reasonable basis but only if, in the case of (2), the assumptions used to calculate the *projection* and contributions are disclosed with the relevant *projection*.

**FCA**

**R**

**1.8** In the case of a *stakeholder pension scheme* in circumstances where a *generic key features illustration* is permitted under **COBS 13.4.2 R**, the specimen benefits table, contained within the "Stakeholder pension decision tree" factsheet available on [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.org.uk) and headed "Pension Table...How much should I save towards a pension?" which sets out initial monthly pension amounts, may be used instead of a *standardised deterministic projection* but only if it is accompanied by an explanation of the caveats and assumptions behind the table.

**FCA**

**R**

**1.9** The rules in this Annex do not apply to a *projection* which is consistent with the *statutory money purchase illustration* requirements.

**FCA**

**R**

**1.10** A *standardised deterministic projection* for existing business may omit the *projection* at the *intermediate rate of return*.

**FCA**

**R**

**2 Assumptions to follow when calculating projections.**

**Assumptions: projection date**

**2.1** A *standardised deterministic projection* must be calculated to the *projection date* described below:

**Product**

**Projection date**

|   |   |
|---|---|
| <p>(1) A contract which is a <i>whole life assurance</i> the <i>premiums</i> under which are regular <i>premiums</i></p>  | <p>The anniversary of the commencement date:</p> <p>(a) which first falls after the seventy-fifth birthday of the life assured; or</p> <p>(b) (if there is more than one life assured) the anniversary of the commencement date which falls after the seventy fifth birthday of:</p> <p>(i) (if benefits are payable on the first death) the oldest life assured; or</p> <p>(ii) (in all other cases) the youngest life assured;</p> <p>subject to a minimum <i>projection date</i> of ten years.</p> |
| <p>(2) A contract that is not in (1):</p> <p>(a) where the relevant marketing refers to a surrender value or an option to take benefits before they would otherwise be paid; or</p> <p>(b) that is open-ended, or linked to one or more lives, which is not a <i>personal pension scheme</i> or <i>stakeholder pension scheme</i></p> | <p>An appropriate date which highlights the features of the product</p>   |
| <p>(3) A contract that is not in (1) or (2) and has a specified maturity date</p>   | <p>The maturity date specified in the contract</p>  |
| <p>(4) A contract that is not in (1) or (2) or (3)</p>  | <p>The tenth anniversary of the commencement date</p>   |

**FCA**

**R**

**Assumptions: contributions**

**2.2 A standardised deterministic projection must:**

- (1) take account of all contributions due during the *projection period*;
- (2) be calculated on the basis that contributions are accumulated, net of *charges*, at the appropriate rate of return compounded on an annual basis;
- (3) (if it includes assumptions about contribution increases in line with an index) be based on an assumption that contribution increases are consistent with any assumptions regarding that index in this annex; and
- (4) deduct from contributions any rider benefits or extra *premium* which may be charged for an increased underwriting risk.

**FCA**

**R**

**Assumptions: rates of return**

**2.3 A standardised deterministic projection must be calculated using the following rates of return:**

| Nominal rates   | Lower rate | Inter-mediate rate | Higher rate |
|---|------------|--------------------|-------------|
| tax-exempt business held in a wrapper or by a friendly society                        | 5%         | 7%                 | 9%          |
| personal pension schemes, stakeholder pension schemes and investment-linked annuities |            |                    |             |
| all other products  | 4%         | 6%                 | 8%          |

**FCA**

**R**

**Exception**

**2.4 A standardised deterministic projection:**

- (1) must be calculated using lower rates of return, if the rates described in this section overstate the investment potential of the product;
- (2) may be calculated using a lower rate of return if a *retail client* requests it.

**FCA**

**R**

**Assumptions: inflation**

**2.5 If inflation is taken into account, the standardised deterministic projection must be calculated using the following rates:**

|                    | Lower rate | Inter-mediate rate | Higher rate |
|--------------------|------------|--------------------|-------------|
| Price inflation    | 0.50%      | 2.50%              | 4.50%       |
| Earnings inflation | 2%         | 4%                 | 6%          |

**FCA**

**R**

**Assumptions: charges**

**2.6 The charges allowed for in a standardised deterministic projection:**

- (1) must properly reflect:**
  - (a) all of the charges, expenses and deductions a *client* will, or may expect to be taken after investment into the product;**
  - (b) the tax relief available to the *firm* in respect of so much of the *firm's* gross expenses as can properly be attributed to the contract; and**
  - (c) the fact that certain *charges* will be fully or partially off-set, but only to the extent that the *firm* can show that the off-set funds will be available when the relevant *charges* arise; and**
- (2) must not include the *firm's* dealing costs incurred on the underlying portfolio.**

**FCA****G**

- 2.7**
- (1) Development and capital costs should normally be written off in the year in which they are incurred. However, some costs (for example, exceptional new business expenses) may be amortised and previous years' costs may then be brought into account.**
  - (2) If it is reasonable to assume that higher expenses will be incurred in the future, appropriate allowances should be made, and any inflation assumptions should be consistent with those prescribed in these rules.**
  - (3) Expenses should be apportioned appropriately between products so that scales of expenses can be calculated and applied.**
  - (4) Where appropriate, mortality and morbidity should be allowed for on a best estimate basis. The basis for annuities should allow for future improvements in mortality.**
  - (5) A projection should not assume that *charges* will fall over time to a rate that is lower than the rate currently being charged on the relevant product (or, if there is no such charge, on a similar product).**
  - (6) A projection of surrender value, cash-in value or transfer value should take into account any specific current surrender value basis and penalties which may be applied.**
  - (7) If a *personal pension scheme* is invested in assets that are volatile or difficult to value, the *standardised deterministic projection* should be prepared using the best available reasonable assumptions.**

**FCA****R****Additional requirements: with-profits policies**

- 2.8**
- (1) A *standardised deterministic projection* for a *with-profits policy* must properly reflect the deductions from asset share which a *firm* expects to make in accordance with its *deductions plan*.**

- (2) **A standardised deterministic projection for a *with-profits* policy where bonus rates apply must assume that the bonus rates supported by the relevant premium and rate of return apply throughout the term of the contract.**

**FCA**

**R**

**Additional requirements: drawdown pensions**

- 2.9 (1) **A standardised deterministic projection for a *drawdown pension* must be based on the requirements contained in (2) to the extent that they impose additional or conflicting requirements to the balance of the *rules* in this section.**
- (2) **A standardised deterministic projection for a *drawdown pension* must be based on an assumption that the current gilt-index yield will continue to apply throughout the relevant term and include:**
- (a) **where relevant the maximum initial income specified in the tables published by the Government Actuaries Department for a *drawdown pension*;**
  - (b) **the assumed level of income;**
  - (c) **for a *short-term annuity*, where subsequent *short-term annuities* are assumed, a statement reflecting that fact;**
  - (d) **(under the heading 'What the benefits might be' ), the amount of income and the projected value of the fund at each fifth anniversary for the *lower, intermediate* and *higher rate of return* for as long as the fund is projected to exist at the *higher rate of return*;**
  - (e) **the projected open market values and the amounts of annuity that might be purchased after 10 years; and**
  - (f) **the amount of annuity that could be secured using an immediate annuity rate available in the market.**

**FCA**

**R**

**3 How to calculate a projection for a future annuity**

**3.1 A *projection* for a future annuity must:**

- (1) **be calculated by rounding all factors to three decimal places before applying them to the relevant retirement fund;**
- (2) **use a mortality rate based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables PCMA00 and PCFA00 and including mortality improvements derived from each of the male and female annual mortality projection models, in equal parts;**
- (3) **[deleted]**
- (4) **(for an annuity where two lives are concerned):**
  - (a) **reflect the age difference between the two lives; or**



- (b) be based on the assumption that the male life is three years older than the female (if the genders differ) or the two lives have the same age (if the genders are the same);
- (5) include an expenses allowance of 4%;
- (6) be based on the following rates of return as appropriate:

**FCA**

**R**

|   | Lower rate | Intermediate rate | Higher rate |
|---|------------|-------------------|-------------|
| Level or fixed rate of increase annuities | Y+1.5%     | Y+3.5%            | Y+5.5%      |
| RPI or LPI linked annuities               | Y-1%       | Y                 | Y+1%        |

**FCA**

**R**

where:

'Y' is  $0.5 * (ILG0 + ILG5) - 0.5$  rounded to the nearest 0.2%, with an exact 0.1% rounded down; and

'ILG0' and 'ILG5' are the real yield on the FTSE Actuaries Government Securities Index-linked Real Yields over 5 years, assuming 0% and 5% inflation respectively, updated every 6 April to use the ILG0 and ILG5 which applied on or, if necessary, the *business day* immediately before, the preceding 15 February; and

- (7) (in the case of a future annuity with less than one year to maturity) be calculated using annuity rates that are no more favourable than the *firm's* relevant current immediate annuity rate or (if there is no such rate) the relevant immediate annuity rate available in the market; and
- (8) be assumed to be payable monthly in advance with a guaranteed period of 5 years, unless it is unreasonable to do so.

**FCA**

**E**

**3.1A** For any year commencing 6 April, the use of the male and female annual CMI Mortality Projections Models in the series CMI(20YY-1)\_M\_[1.25%] and CMI(20YY-1)\_F\_[1.25%], where YY-1 is the year of the Model used, will tend to show compliance with COBS 13 Annex 2 3.1 R (2).

**FCA**

**R**

**3.2** A *projection* for a future annuity:

- (1) must be calculated using lower rates of return, if the rates described in this section overstate the investment potential of the product;
- (2) may be calculated using a lower rate of return if a *retail client* requests it.

**4** [deleted]

**FCA**

**R**

**5** How to present a projection

**5.1** A *standardised deterministic projection* must be accompanied by:

- (1) appropriate risk warnings, including warnings about volatility, the relationship between figures in real terms and those in nominal terms, and the degree to which any figures can be relied upon; and
- (2) a statement:
  - (a) that *projection* rates are standardised or an explanation that *projection* rates that are lower than the standard rates have been used and why;
  - (b) that *charges* may vary;
  - (c) of the contributions that have been assumed;
  - (d) that increases in contributions have been assumed (if that is the case), together with sufficient information for a *retail client* to be able to understand the nature and magnitude of the assumed increases; and
  - (e) of the sum of any actual *premiums* charged for any rider benefits or increased underwriting risks (where these have been charged).

**FCA**

**R**

**Additional requirements: pension schemes and products linked to other products**

**5.2** A *standardised deterministic projection* for a product where the benefits illustrated depend on a link to a separate product must include an appropriate description of the material factors that might influence the returns available overall and any restrictions assumed in providing an illustration of benefits in relation to that separate product.



## Charges information for a packaged product

(except for a personal pension scheme and a stakeholder pension scheme where adviser charges or consultancy charges are to be facilitated by the product)

This annex belongs to ■ COBS 13.4.1 R (Contents of a key features illustration)

FCA

R

### Charges

#### 1 Appropriate charges information

##### 1.1 *Appropriate charges information* comprises:

- (1) (a) a description of the nature and amount of the *charges* a *client* will or may be expected to bear in relation to the product and, if applicable, any investments within the product;
- (b) if applicable, a description of the nature and amount of the *adviser charges* a *retail client* has agreed may be taken, including whether it is taken before or after investment into the product;
- (2) an 'effect of charges' table;
- (3) 'reduction in yield' information ; and
- (4) in relation to a *personal pension scheme*, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated), if any, which a *personal pension scheme operator* or *pension scheme trustee* will receive as retained interest in relation to money held within the *personal pension scheme*.

1.2 Where a *firm* does not include a *projection* within its *key features illustration* the charges information can be on a generic basis.

1.2A The information described in 1.1(4) must be disclosed alongside information about any other *charges* the *client* will be expected to bear, and information about any interest that will be paid to *clients* on money held within a *personal pension scheme* bank account.

### Exceptions

1.3 An effect of charges table and reduction in yield information are not required for:

- (1) a *life policy* without a *surrender value*, but an appropriate warning must be included to make it clear that the *policy* has no cash-in value at any time;
- (2) [deleted] ;
- (3) [deleted]

- (4) a *stakeholder product* or a product that will be held in a *CTF* where the relevant product and the *CTF* levy their *charges* annually, if the following is included instead:

"There is an annual charge of  $y\%$  of the value of the funds you accumulate. If your fund is valued at £250 throughout the year, this means we deduct  $[\text{£}250 \times y/100]$  that year. If your fund is valued at £500 throughout the year, this means we deduct  $[\text{£}500 \times y/100]$  that year. [After ten years these deductions reduce to  $[\text{£}250 \times r/100]$  and  $[\text{£}500 \times r/100]$  respectively.]"

where 'y' is the annual charge and 'r' is the reduced annual charge (if any).

- 1.4 Reduction in yield information is not required for a without profits *life policy* with guaranteed benefits (except on surrender or variation), a *life policy* with a term not exceeding five years or a *life policy* that will be held in a *CTF*.

**FCA**

R

2 Effect of charges table

2.1 Each 'effect of charges' table must be accompanied by, or refer to:

- (1) a statement that all relevant guarantees have been taken into account (if there are any);
- (2) a warning that one effect of the *charges* referred to is that a *retail client* could get back less than they invest (if that is the case); and
- (3) the rate of return used to calculate the figures in the table.

**FCA**

2.2 The effect of charges table:

(1) for a *life policy* must be in the following form unless the firm chooses to adopt the form of the effect of charges table in ■ COBS 13 Annex 4 :

R

| Note 1A        | Note 2                | Note 3       | Note 4                          | Note 5                       | Note 6                  |
|----------------|-----------------------|--------------|---------------------------------|------------------------------|-------------------------|
| At end of year | Total paid in to date | With-drawals | Total actual deductions to date | Effect of deductions to date | What you might get back |
|                | £                     | £            | £                               | £                            | £                       |
| 1              |                       |              |                                 |                              |                         |
| ...            |                       |              |                                 |                              |                         |
| 5              |                       |              |                                 |                              |                         |
| 10             |                       |              |                                 |                              |                         |
| ...            |                       |              |                                 |                              |                         |

(2) for any other *packaged product* must be in the following form:

| R   | Note 1B        | Note 2             | Note 3 | Note 5                       | Note 6                  |
|-----|----------------|--------------------|--------|------------------------------|-------------------------|
|     | At end of year | Investment to date | Income | Effect of deductions to date | What you might get back |
|     |                | £                  | £      | £                            | £                       |
| 1   |                |                    |        |                              |                         |
| 5   |                |                    |        |                              |                         |
| 10  |                |                    |        |                              |                         |
| ... |                |                    |        |                              |                         |

(3) must be completed in accordance with the following notes:

| R       |   |
|---------|---|
| Note 1A | <p>(a) This column must include the first five years, every subsequent fifth year and the final year of the <i>projection period</i>.</p> <p>(b) Figures may be shown for every subsequent tenth year rather than subsequent fifth year where the <i>projection period</i> exceeds 25 years, or for whole of life policies.</p> <p>(c) For whole of life policies, should the projected fund reach zero before the end of the <i>projection period</i> this must be highlighted.</p> <p>(d) [deleted]</p> <p>(e) If there is discontinuity in the trend of <i>surrender values</i>, the appropriate intervening years must also be included.</p> <p>(f) Figures for a longer term may be shown.</p> |
| Note 1B | <p>(a) This column must include the first year, the fifth year and every subsequent fifth year of the <i>projection period</i>.</p> <p>(b) [deleted]</p> <p>(c) Figures for a longer term may be shown.</p>   |
| Note 2  | This column must show the cumulative contributions paid to the end of each relevant year.   |
| Note 3  | This column must show the cumulative withdrawals taken or income paid to the end of each relevant year (if any). The column may be omitted if withdrawals or income are not anticipated or allowed.   |
| Note 4  | <p>This column is optional. If it is retained, it must show the total actual deductions to the end of each relevant year calculated using the following method:</p> <p>(a) apply the <i>intermediate rate of return</i> for the relevant product to the figure in the 'effect of deductions to date' column for the previous year;</p> <p>(b) subtract this figure from the figure in the 'effect of deductions to date' column for the year being shown; and</p> <p>(c) add the resulting figure to the figure in the 'total actual deductions to date' column for the previous year (if any).</p>   |

**Note 5** This column may be deleted if the product is a without profits *life policy* with benefits that are guaranteed except on surrender or variation, a *life policy* with a term not exceeding five years, or a *life policy* that will be held in a *CTF*.

If this column is not deleted, the 'effect of deductions to date' figure must be calculated by taking the accumulated value of the fund without reference to *charges* and then subtracting from this figure the figure in the 'what you might get back column' for the same year.

**Note 6** This column must show *standardised deterministic projection* of the surrender value, cash-in value or transfer value, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return* to the end of each relevant year.

**R**

**Exception**

**2.3** An effect of charges table may be amended, but only if and to the extent that is necessary to properly reflect the nature and effect of the *charges* inherent in a particular product.

**FCA**

**G**

**2.4** The effect of 2.3R is that, for example, the column labels and explanatory text may be adjusted to reflect the nature of the contract.

**FCA**

**R**

**3 Reduction in yield**

**3.1** Reduction in yield ('A') is 'B' less 'C' where:

- (1) 'B' is the *intermediate rate of return* for the relevant product; and
- (2) 'C' is determined by:
  - (a) carrying out a *standardised deterministic projection* to the *projection date*, using 'B'; and then
  - (b) calculating the annual rate of return ('C') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are left out of account.

**3.2** A *firm* must present reduction in yield as 'A%', as part of a statement which explains that 'charges and expenses have the effect of reducing your anticipated returns from 'B%' to 'C%', or in some other appropriate way.

**3.3** If contributions will be invested in more than one fund in a single designated investment or made by an initial lump sum payment that is followed by regular contributions, the reduction in yield must be:

- (1) calculated separately for each fund or for the single contribution and the regular contributions (as the case may be); and

**(2) presented:**

- (a) on a fund by fund, or single contribution and regular contribution, basis, together with a statement which explains the nature and effect of a reduction in yield, the reason for the inclusion of more than one reduction in yield figure and the reason for the differences between them; or**
- (b) (if the reduction in yield results are so similar that one figure could reasonably be regarded as representative of the others), as a single figure together with a statement which explains the nature and effect of a reduction in yield, and that the reduction in yield figure given is representative of the reduction in yield figures for each of the funds or for the single and regular contributions (as the case may be); or**
- (c) through a single figure combining the separate figures for each fund or contribution in a proportionate manner, with an appropriate description.**

**3.4 Where a *firm* is calculating reduction in yield information, it must:**

- (1) disregard charges related to mortality and morbidity risks; or**
- (2) (where the requirement in (1) produces figures that are misleading) include a statement with the reduction in yield information that it has been calculated taking into account charges related to mortality and morbidity risk.**





## Charges information for a personal pension scheme and a stakeholder pension scheme

(where adviser charges or consultancy charges are facilitated by the product)

This annex belongs to ■ COBS 13.4.1 R (Contents of a key features illustration)

FCA

### R

#### Charges

#### 1 Appropriate charges information

##### 1.1 *Appropriate charges information* comprises:

- (1)
  - (a) a description of the nature and amount of the *charges a client* will or may be expected to bear in relation to the product and, if applicable, any investments within the product;
  - (b) if applicable, a description of the nature and amount of the *adviser charges and consultancy charges a retail client* or employer has agreed may be taken before investment into the product;
  - (c) if applicable, a description of the nature and amount of the *adviser charges and consultancy charges a retail client* or employer has agreed may be taken after investment into the product;
- (2) an 'effect of charges' table;
- (3) 'reduction in yield' information ; and
- (4) in relation to a *personal pension scheme*, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated), if any, which a *personal pension scheme operator* or *pension scheme trustee* will receive as retained interest in relation to money held within the *personal pension scheme*.

#### Exception

- 1.2 An effect of charges table and reduction in yield information are not required for a *stakeholder pension scheme*, where *adviser charges* or *consultancy charges* are not being facilitated by the scheme, if the following is included instead:

"There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £500 throughout the year, this means we deduct [£500 x y/100] that year. If your fund is valued at £7500 throughout the year, we will deduct [£7500 x y/100] that year."

- 1.2A The information described in 1.1(4) must be disclosed alongside information about any other *charges the client* will be expected to bear, and information about any interest that will be paid to *clients* on money held within a *personal pension scheme bank account*.

FCA

R

2 Effect of charges table

2.1 Each effect of charges table must be accompanied by:

- (1) an explanation of what the table shows;
- (2) a statement that all relevant guarantees have been taken into account (if there are any);
- (3) a warning that one effect of the *charges* referred to is that a *retail client* could get back less than they invest (if that is the case); and
- (4) the rate of return used to calculate the figures in the table.

2.2 Subject to Note 2 below, an effect of charges table must be in the following form:

FCA

| Note 1         | Note 2                | Note 3      | Note 4                   | Note 5   | Note 6                      |
|----------------|-----------------------|-------------|--------------------------|--|-----------------------------|
| At end of year | Total paid in to date | Withdrawals | If there were no charges | If only product and investment charges are taken | After all charges are taken |
|                | £                     | £           | £                        | £  | £                           |
| 1              |                       |             |                          |  |                             |
| ...            |                       |             |                          |  |                             |
| 5              |                       |             |                          |  |                             |
| At age [xx]    |                       |             |                          |  |                             |

FCA

**Note 1** This column must include at least the first, third and fifth year and the intended date of retirement.

For a *drawdown pension*, figures must be included for each of the first ten years, or less if the value of the fund is projected at the higher rate of return to reach zero before then.

**Note 2** This column is optional. If it is retained it must show the cumulative contributions paid to the end of each relevant year.

**Note 3** This column must show the cumulative withdrawals intended to be taken to the end of each relevant year. The column may be omitted if withdrawals are not anticipated or allowed.

**Note 4** This column must show a *standardised deterministic projection* of the benefits, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return* to the end of each relevant year, but without taking any *charges* into account.

**Note 5** This column must show a *standardised deterministic projection* of the benefits, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return* to the end of each relevant year, but taking into account only the *charges* described in COBS 13 Annex 4 R paragraph 1.1(1)(a).

**Note 6** This column must show a *standardised deterministic projection* of the benefits, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return* to the end of each relevant year taking into account all charges described in COBS 13 Annex 4 R paragraph 1.1(1)(a) and (c).

Where both *adviser charges* and *consultancy charges* are being facilitated from a product this column should show the combined effect of those charges.

This column may be omitted if there are no *adviser charges* or *consultancy charges*.

**R**

**Exception**

**2.3** An effect of charges table may be amended, but only if and to the extent that it is necessary to properly reflect the nature and effect of, for example, the *adviser charges*, *consultancy charges* or the *charges* inherent in a particular product.

**FCA**

**G**

**2.4** The effect of COBS 13 Annex 4 paragraph 2.3R is that, for example, the column labels and explanatory text may be adjusted to reflect the nature of the contract or the terminology used.

**2.5** An effect of charges table must be appropriately titled, for example, 'How the charges reduce the value of your pension fund'.

**FCA**

**R**

**3 Reduction in yield**

**3.1** Product reduction in yield ('A') is 'B' less 'C' where:

- (1) 'B' is the *intermediate rate of return* for the relevant product; and
- (2) 'C' is determined by:
  - (a) carrying out a *standardised deterministic projection* to the *projection date*, but without taking any *adviser charges* or *consultancy charges* into account, using 'B'; and then
  - (b) calculating the annual rate of return ('C') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are excluded.

**3.2** Total reduction in yield ('D') is 'B' less 'E' where:

- (1) 'B' is the *intermediate rate of return* for the relevant product; and

- (2) 'E' is determined by:
    - (a) carrying out a *standardised deterministic projection* to the *projection date* taking all *charges* into account, using 'B'; and then
    - (b) calculating the annual rate of return ('E') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are excluded.
- 3.3 (1) A *firm* must present the product reduction in yield as 'A%', as part of a statement which explains that 'product charges reduce your anticipated rate of returns from 'B%' to 'C%', or in some other appropriate way.
- (2) If *adviser charges* or *consultancy charges*, or both *adviser charges* and *consultancy charges* are to be facilitated by the product, a *firm* must also present the reduction in yield as 'D%', as part of a statement which explains that 'all charges reduce your anticipated rate of returns from 'B%' to 'E%', or in some other appropriate way and explain the difference between the two reduction in yield figures.
- 3.4 If contributions will be invested in more than one fund in a single designated investment or made by an initial lump sum payment that is followed by regular contributions, the reduction in yield must be:
- (1) calculated separately for each fund or for the single contribution and the regular contributions, as applicable; and
  - (2) presented:
    - (a) on a fund-by-fund, or single contribution and regular contribution, basis, together with a statement which explains the nature and effect of a reduction in yield, the reason for the inclusion of more than one reduction in yield figure and the reason for the differences between them; or
    - (b) (if the reduction in yield results are so similar that one figure could reasonably be regarded as representative of the others) as a single figure together with a statement which explains the nature and effect of a reduction in yield, and that the reduction in yield figure given is representative of the reduction in yield figures for each of the funds or for the single and regular contributions, as applicable; or
    - (c) through a single figure combining the separate figures for each fund or contribution in a proportionate manner, with an appropriate description.

## Chapter 14

# Providing product information to clients

## 14.1 Interpretation

14.1.1

FCA

**R** In this chapter:

- (1) '*retail client*' includes the trustee or *operator* of a *stakeholder pension scheme* or *personal pension scheme* and the trustee of a *money-purchase occupational pension scheme*; and
- (2) 'sell' includes '*sell, personally recommend or arrange the sale of*' in relation to a *designated investment* and equivalent activities in relation to a *cash-deposit ISA* and *cash-deposit CTF*.



## 14.2 Providing product information to clients

### The provision rules

14.2.1

FCA

R

A *firm* that sells:

- (1) a *packaged product* to a *retail client*, must provide a *key features document* and a *key features illustration* to that *client* (unless the *packaged product* is a *unit* in a *UCITS scheme, simplified prospectus scheme* or an *EEA UCITS scheme* which is a *recognised scheme*);
- (2) a *life policy* that is not a *reinsurance contract* to a *client*, must provide the *Consolidated Life Directive information* to that *client*;
- (3) the variation of a *life policy* or *personal pension scheme* to a *retail client*, must provide that *client* with sufficient information about the variation for the *client* to be able to understand the consequences of the variation ;
- (3A) [deleted]
- (3B) the variation of a *personal pension scheme* to a *retail client*, which involves an election by the *client* to make *income withdrawals* or a purchase of a *short-term annuity*, must provide that *client* with such information as is necessary for the *client* to understand the consequences of the variation, including where relevant, the information required by ■ COBS 13 Annex 2.2.9 R (Additional requirements: drawdown pensions);
- (4) a *cash-deposit ISA* or *cash-deposit CTF* to a *retail client*, must provide a *key features document* to that *client*;
- (5) a *unit* in a *simplified prospectus scheme* to a *client*, must offer the *scheme's current simplified prospectus* to that *client*. In addition, if the *client* is a *retail client* present in the *EEA*, the *firm* must provide the *simplified prospectus* to the *client* together with:



- (a) enough information for the *client* to be able to make an informed decision about whether to hold the *units* in a *wrapper* (if the *units* will, or may, be held in that way); and
  - (b) information about the three types of *CTF* that are generally available (*stakeholder CTFs*, *cash-deposit CTFs* and *security-based CTFs*), and the type of *CTF* the *firm* is offering (if the *units* will, or may, be held in a *CTF*);
- (6) [deleted]
- (7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which is a *recognised scheme*, to a *client*, must:
- (a) provide a copy of the *scheme's key investor information document* or, as the case may be, *EEA key investor information document* to that *client*; and
  - (b) where the *client* is a *retail client*, provide separately (unless already provided) the information required by
    - COBS 13.3.1 R (2) (General requirements) and, if that *client* is present in the *EEA*, the information required by (5)(a) and (b);
- (8) where the *operator* of a *non-UCITS retail scheme* has a dispensation from the *FCA* in the form of a general *waiver* by consent under which it may market *units* of the *scheme* on the basis of a *key investor information document* (as modified by the general waiver direction, a "NURS KII document"), rather than on the basis of a *key features document* or *simplified prospectus*, a *firm* that sells *units* in the *scheme* must comply with its obligations under this *rule* by:
- (a) providing the *retail client* with the relevant NURS KII document; and
  - (b) offering any *client* that is not a *retail client* the relevant NURS KII document;

on condition that it complies with each of the other *rules* in this section in relation to the provision of the document, as if references in those *rules* to a "*key features document*" or "*simplified prospectus*" were a reference to the "NURS KII document".

[Note: in respect of (2) article 36(1) of, and Annex III to, the *Consolidated Life Directive*]

[Note: in respect of (7), articles 1 and 80 of the *UCITS Directive*]

**Provision of key investor information document**

14.2.1A

FCA

R

- (1) This rule applies to an *authorised fund manager* of a *UCITS scheme* that is either an *authorised unit trust* or an *ICVC*, and an *ICVC* that is a *UCITS scheme*.
- (2) An *authorised fund manager* and an *ICVC* in (1) that sells *units* in a *UCITS scheme* directly, or through another natural or legal *person* who acts on its behalf and under its full and unconditional responsibility, must ensure that investors are provided with the *key investor information document* for the *scheme*.
- (3) An *authorised fund manager* and an *ICVC* in (1) that does not sell *units* in a *UCITS scheme* directly, or through another natural or legal *person* who acts on its behalf and under its full and unconditional responsibility, must ensure that the *key investor information document* for the *scheme* is provided on request to product manufacturers and intermediaries selling, or advising investors on, potential *investments* in those *UCITS schemes* or in products offering exposure to them.
- (4) The *key investor information document* must be provided to investors free of charge.
- (5) An *authorised fund manager* and an *ICVC* in (1) may, instead of providing the *key investor information document* to investors in paper copy in accordance with (2), provide it in a *durable medium* other than paper or by means of a website that meets the *website conditions*, in which case the *authorised fund manager* and *ICVC* must:
  - (a) deliver a paper copy of the *key investor information document* to the investor on request and free of charge; and
  - (b) make available an up-to-date version of the *key investor information document* to investors on the website of the *ICVC* or *authorised fund manager*.

[Note: articles 80 and 81 of the *UCITS Directive*]

14.2.1B

FCA

R

When the *rules* in this chapter require the offer or provision of a *key features illustration*, a *firm* may provide a *generic key features illustration* if that *generic key features illustration* has been prepared in accordance with ■ COBS 13.4.2 R.

PAGE  
5

14.2.1C

FCA

R

A *firm* that arranges to start the facilitation of, or an increase in, an *adviser charge* or *consultancy charge* from an in-force *packaged product*, must provide to the *retail client* sufficient information for the *retail client* to be able to understand the likely effect of that facilitation.

14

14.2.2  
FCA

**R** The *documents* or information required to be provided or offered by ■ COBS 14.2.1 R and ■ COBS 14.2.1C R must be in a *durable medium* or made available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

14.2.3  
FCA

**R** (1) A *firm* that *personally recommends* that a *retail client* holds a particular asset in a *SIPP* must provide that *client* with sufficient information for the *client* to be able to make an informed decision about whether to buy or invest.

(2) This *rule* does not apply if the asset is described in ■ COBS 14.2.1 R.

**Firm not to cause confusion about the identity of the producer of a product**

14.2.4  
FCA

**R** When a *firm* provides a *document* or information in accordance with the *rules* in this section, it must not do anything that might reasonably cause a *retail client* to be mistaken about the identity of the *firm* that has produced, or will produce, the product.

**Exception to the provision rules: key features documents, simplified prospectuses and key investor information documents**

14.2.5  
FCA

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

(1) a *document*, if the *firm* produces the product and the *rules* in this section require another *firm* to provide the document;

(2) a *key features document* or *key features illustration* , if another *person* is required to provide the *distance marketing information* by the *rules* of another *EEA State*;

(3) the *Consolidated Life Directive information*, if another *person* is required to provide that information by the *rules* of another *EEA State*;

(4) a *simplified prospectus* if:

(a) [deleted]

(b) (i) the *client* is buying or investing in response to a *direct offer financial promotion* without receiving a *personal recommendation* to buy or invest; and

(ii) the *firm* offers an up-to-date copy of the *simplified prospectus* to the *client* and provides materially the same information to the *client* in some other way.

[Note: in respect of (3), article 36(4) of, and Annex III to, the *Consolidated Life Directive*]

14.2.6

FCA

**R**

**Exception: key features illustrations**

A *firm* is not required to provide a *key features illustration* for a product if the information that would have been included in that illustration is included in the *key features document* provided to the *client*.

14.2.7

FCA

**R**

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

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

- (1) a *key features scheme* if it provides a *simplified prospectus* instead;
- (2) a *life policy* that is not a *reinsurance contract* if:
  - (a) the *firm* is operating from an establishment in another *EEA State* and the sale is by *distance contract*; or
  - (b) the *client* is habitually resident outside the *United Kingdom* and the sale is not by *distance contract*.
- (3) a *traded life policy*.

[Note: in respect of (2), articles 4(1) and 16 of the *Distance Marketing Directive* and article 36 of the *Consolidated Life Directive*]

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

14.2.8

FCA

**R**

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

- (1) the *client* is buying or investing in response to a *direct offer financial promotion* without receiving a *personal recommendation* to buy or invest; and
- (2) the *firm* provides materially the same information in some other way.

**Exception to the provision rules: key features documents, key features illustrations , simplified prospectuses and key investor information documents**

14.2.9

FCA

**R**

A *firm* is not required to provide a *key features document* , a *key features illustration* or a *simplified prospectus* for a *key features scheme* or *simplified prospectus scheme* if:

- (1) the *client* is habitually resident outside the *EEA* and not present in the *EEA* when the relevant application is signed; or
- (2) the purchase is by a *discretionary investment manager* on behalf of a *retail client*; or

- (3) the sale is *arranged* or *personally recommended* by an *investment manager* and the *client* has agreed that a *key features document* or *simplified prospectus* is not required; or
- (4) a *retail client* is purchasing a holding in a *scheme* in which the *client* already has a holding, or the *client* is switching from one class of *shares* or *units* to another in the same *scheme*, and the relevant *document* has already been provided to that *client*.

14.2.9A  
FCA

R

For the purposes of the provision rules in relation to a *key investor information document*, a *firm*:

- (1) may satisfy the requirement to provide the document to the investor by providing it to a *person* who has written authority to make investment decisions on that investor's behalf; and
- (2) is not required to consider as a new transaction:
  - (a) a subscription to *units* in a *UCITS scheme* or an *EEA UCITS scheme* in which the *client* already holds *units*; or
  - (b) a series of connected transactions undertaken as the consequence of a single investment decision; or
  - (c) a decision by the *client* to switch from one class of *units* to another in the same *scheme*;

if an up-to-date version of the *key investor information document* for the *scheme* or the relevant class of *units* has already been provided to that *client*.

[Note: article 80 of the *UCITS Directive*]

14.2.10  
FCA

G

- (1) Although a *firm* is not always required to provide a *simplified prospectus* to a *client* (■ COBS 14.2.9 R), the obligation to offer the prospectus to the *client* (■ COBS 14.2.1R (5)) remains.
- (2) The *FCA* would regard a decision to subscribe to a regular monthly savings plan as a single investment decision for the purpose of ■ COBS 14.2.9A R (2)(a). However, a subsequent decision by the *client* to increase the amount of the regular contributions to be invested in *units* of a particular *scheme* or to direct the contributions to a different *scheme*, would in each case constitute a new transaction.

**Exception to the provision rules: aggregated scheme documents**

14.2.11  
FCA

R

A *firm* may provide a single *document*, which describes more than one *key features scheme* or *simplified prospectus scheme*, or any combination of those *schemes*, if:

- (1) the *schemes* are offered through a *platform service*;

- (2) the *document* clearly describes the difference between the relevant *schemes*; and
- (3) (in the case of a *simplified prospectus scheme*) the *firm* also offers a copy of the relevant *prospectus* to the *client*.

**Exception: successive operations**

14.2.12  
FCA

R

In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

14.2.13  
FCA

R

If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the *rules* in this section only apply:

- (1) when the first operation is performed; and
- (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

**The timing rules**

14.2.14  
FCA

R

When the *rules* in this section require a *firm* to:

- (1) offer a *simplified prospectus* to a *client*, that prospectus must be offered free of charge before the conclusion of the contract; or
- (2) provide a *key features document*, a *simplified prospectus*, or any other *document* or information to a *client*, the *document* or information must be provided free of charge and in good time before the *firm* carries on the relevant business; or
- (3) provide a *key investor information document* or *EEA key investor information document* to a *client*, it must be provided in good time before the *client's* proposed subscription for *units* in the *scheme*.

[Note: article 80 of the *UCITS Directive*]

**Exception to the timing rules: child trust funds**

14.2.15  
FCA

R

A *key features document* for an *HMRC allocated CTF* must be provided as soon as reasonably possible after the *CTF* has been opened.

**Exception to the timing rules: distance contracts and voice telephony communications**

14.2.16  
FCA

R

- (1) A *firm* may provide a *document*, or the information required to be provided by the *rules* in this section, in a *durable medium* immediately after the conclusion of a *distance contract*, if the

14.2.17

FCA

R

contract has been concluded at a *client's* request using a means of distance communication that does not enable the *document* or information to be provided in that form in good time before the *client* is bound by the contract.

(2) The exception in (1) does not apply in relation to the provision of an *EEA key investor information document* or a *key investor information document* required to be provided under ■ COBS 14.2.1 R and ■ COBS 14.2.1A R.

(1) Where the *rules* in this section require a *document* or information to be provided, in the case of a voice telephony communication, a *firm* must:

- (a) if the *client* gives explicit consent to receiving only limited information, provide the abbreviated distance marketing disclosure information ( ) orally to the *client*;
- (b) if the *client* does not give explicit consent to only receiving limited information, and the parties wish to proceed by voice telephony communication, provide the distance marketing information ( ) orally to the *client*;
- (c) in the case of (a) or (b), send the *documents* or information to the *client* in a *durable medium* immediately after the contract is concluded.

(2) The exception in (1) does not apply in relation to the provision of an *EEA key investor information document* or a *key investor information document* required to be provided under ■ COBS 14.2.1 R and ■ COBS 14.2.1A R.



**14.3 Information about designated investments**

**Application**

14.3.1

FCA

R

This section applies to a *firm* in relation to:

- (1) *MiFID or equivalent third country business*; and
- (2) the following *regulated activities* when carried on for a *retail client*:
  - (a) making a *personal recommendation* about a *designated investment*; or
  - (b) *managing investments* that are *designated investments*; or
  - (c) *arranging, (bringing about) or executing a deal* in a *warrant or derivative*; or
  - (d) *engaging in stock lending activity*.

**Providing a description of the nature and risks of designated investments**

14.3.2

FCA

R

A *firm* must provide a *client* with a general description of the nature and risks of *designated investments*, taking into account, in particular, the *client's* categorisation as a *retail client* or a *professional client*. That description must:

- (1) explain the nature of the specific type of *designated investment* concerned, as well as the risks particular to that specific type of *designated investment*, in sufficient detail to enable the *client* to take investment decisions on an informed basis; and
- (2) include, where relevant to the specific type of *designated investment* concerned and the status and level of knowledge of the *client*, the following elements:
  - (a) the risks associated with that type of *designated investment* including an explanation of leverage and its effects and the risk of losing the entire investment;
  - (b) the volatility of the price of *designated investments* and any limitations on the available market for such investments;



- (c) the fact that an investor might assume, as a result of transactions in such *designated investments*, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the *designated investments*; and
- (d) any margin requirements or similar obligations, applicable to *designated investments* of that type.

[Note: article 31(1) and (2) of the *MiFID implementing Directive*]

14.3.3  
FCA

**R** If a *firm* provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the *Prospectus Directive*, that *firm* must inform the *retail client* where that prospectus is made available to the public.

[Note: article 31(3) of the *MiFID implementing Directive*]

14.3.4  
FCA

**R** Where the risks associated with a *designated investment* composed of two or more different *designated investments* or services are likely to be greater than the risks associated with any of the components, a *firm* must provide an adequate description of the components of that *designated investment* and the way in which its interaction increases the risks.

[Note: article 31(4) of the *MiFID implementing Directive*]

14.3.5  
FCA

**R** In the case of a *designated investment* that incorporates a guarantee by a third party, the information about the guarantee must include sufficient detail about the guarantor and the guarantee to enable the *retail client* to make a fair assessment of the guarantee.

[Note: article 31(5) of the *MiFID implementing Directive*]

**Satisfying the provision rules**

14.3.6  
FCA

- G**
- (1) A *firm* need not treat each of several transactions in respect of the same type of *financial instrument* as a new or different service and so does not need to comply with the provision rules (■ COBS 14.3.2 R to ■ COBS 14.3.5 R) in relation to each transaction.
  - (2) But a *firm* should ensure that the *client* has received all relevant information in relation to a transaction, such as details of product charges that differ from those already disclosed.

[Note: in respect of (1), recital 50 to to the *MiFID implementing Directive*]

14.3.7  
FCA

**G** Providing a *key features document*, *key investor information document*, *EEA key investor information document* or *simplified prospectus* may satisfy the requirements of the *rules* in this section.

14.3.8

FCA

R

**Product information: form**

The *documents* and information provided in accordance with the *rules* in this section must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

[Note: article 29(4) of the *MiFID implementing Directive*]

**The timing rules**

14.3.9

FCA

R

- (1) The information to be provided in accordance with the *rules* in this section must be provided in good time before a *firm* carries on *designated investment business* or *ancillary services* with or for a *retail client*.
- (2) A *firm* may provide that information immediately after it begins to carry on that business if:
  - (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from complying with that *rule*; and
  - (b) in any case where the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* as if the *client* was a *consumer*.

[Note: article 29(2) and (5) of the *MiFID implementing Directive*]

**Keeping the client up-to-date**

14.3.10

FCA

R

A *firm* must notify a *client* in good time about any material change to the information provided under the *rules* in this section which is relevant to a service that the *firm* is providing to that *client*. That notification must be given in a *durable medium* if the information to which it relates is given in a *durable medium*.

[Note: article 29(6) of the *MiFID implementing Directive*]

**Information about UCITS schemes**

14.3.11

FCA

R

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

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

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

[Note: article 34 of the *MiFID implementing Directive*]

14.3.12

FCA

G

A *key investor information document* and *EEA key investor information document* provide sufficient information in relation to the costs and associated charges in respect of the *UCITS* itself. However, a *firm* distributing *units* in a *UCITS* should also inform a *client* about all of the other costs and associated charges related to the provision of its services in relation to *units* in the *UCITS*.

[Note: recital 55 to the *MiFID implementing Directive*]



**14.4**

**[Not yet in force]**



# Chapter 15

# Cancellation



## 15.1 Application

### 15.1.1

FCA

G

This chapter is relevant to a *firm* that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:

- (1) most providers of retail financial products that are based on *designated investments*; and
- (2) *firms* that enter into *distance contracts* with *consumers* that relate to *designated investment business*; and
- (3) *firms* that enter into *distance contracts* the making or performance of which by the *firm* constitutes, or is part of, the activity of *issuing electronic money*.

15.2 The right to cancel

**Cancellable contracts**

15.2.1

FCA

R

A consumer has a right to cancel any of the following contracts with a firm:

| Cancellable contract   | Cancellation period | Supplementary provisions  |
|--|---------------------|---|
| <b>Life and pensions:</b>  |                     |   |
| <ul style="list-style-type: none"> <li>a <i>life policy</i> (including a <i>pension annuity</i>, a <i>pension policy</i> or within a <i>wrapper</i>)</li> </ul>  | 30 calendar days    | For a <i>life policy</i> effected when opening or transferring a <i>wrapper</i> , the 30 calendar day right to cancel applies to the entire arrangement   |
| <ul style="list-style-type: none"> <li>a contract to join a <i>personal pension scheme</i> or a <i>stakeholder pension scheme</i></li> </ul>   |                     | For a contract to buy a <i>unit</i> in a <i>regulated collective investment scheme</i> within a <i>pension wrapper</i> , the cancellation right for 'non-life/pensions (advised but not at a distance)' below may apply |
| <ul style="list-style-type: none"> <li>a <i>pension contract</i></li> </ul>  |                     |   |
| <ul style="list-style-type: none"> <li>a contract for a <i>pension transfer</i></li> </ul>   |                     |   |
| <ul style="list-style-type: none"> <li>a contract to vary an existing <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> by exercising, for the first time, an option to make <i>income withdrawals</i>,</li> </ul> |                     | Exemptions may apply (see COBS 15 Annex 1 )   |
| <b>Cash deposit ISAs:</b>  |                     |   |
| <ul style="list-style-type: none"> <li>a contract for a <i>cash deposit ISA</i></li> </ul>   | 14 calendar days    | Exemptions may apply (see COBS 15 Annex 1 )   |
| <b>Non-life/pensions (advised but not at a distance): a non-distance contract</b>  |                     |   |
| ...  |                     |   |



| Cancellable contract   | Cancellation period | Supplementary provisions   |
|--|---------------------|--|
| <ul style="list-style-type: none"> <li>• to buy a unit in a regulated collective investment scheme (including within a wrapper or pension wrapper)</li> <li>• to open or transfer a child trust fund (CTF)</li> <li>• to open or transfer an ISA</li> <li>• for an Enterprise Investment Scheme</li> </ul> | 14 calendar days    | <p>These rights arise only following a <i>personal recommendation</i> of the contract (by the <i>firm</i> or any other person).</p> <p>For a unit bought when opening or transferring a wrapper or pension wrapper, the 14 calendar day right to cancel applies to the entire arrangement.</p> <p>Exemptions may apply (see COBS 15 Annex 1 ).</p> |
| <p>Non-life/pensions (at a distance): a <i>distance contract</i>, relating to ...</p> <ul style="list-style-type: none"> <li>• accepting deposits</li> <li>• designated investment business</li> <li>• issuing electronic money</li> </ul>   | 14 calendar days    | Exemptions may apply (see COBS 15 Annex 1 )  |

[Note: article 35 of the Consolidated Life Directive, article 6(1) of the Distance Marketing Directive]

15.2.2  
FCA

G

- (1) If the same transaction attracts more than one right to cancel, the *firm* should apply the longest cancellation period applicable.
- (2) A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *consumer* as those in this chapter, unless the differences are clearly explained.
- (3) If the right to cancel applies to a *wrapper* or *pension wrapper* and underlying investments, the *firm* may give the *consumer* the option of cancelling individual components separately if it wishes.

15.2.3  
FCA

R

**Start of cancellation period**

The cancellation period begins:

- (1) either from the day of the conclusion of the contract, except in respect of contracts relating to *life policies* where the time limit will begin from the time when the *consumer* is informed that the contract has been concluded; or

- (2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

[Note: article 35 of the *Consolidated Life Directive*, article 6(1) of the *Distance Marketing Directive*]

15.2.4

FCA

G

If a *firm* does not give a *consumer* the required information about the right to cancel and other matters, the contract remains cancellable and the *consumer* will not be liable for any *shortfall*.

### Disclosing a right to cancel or withdraw

15.2.5

FCA

R

- (1) The *firm* must disclose to the *consumer*:

- (a) in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract that attracts a right to cancel or withdraw; and
- (b) in a *durable medium*;

the existence of the right to cancel or withdraw, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it indicating the address to which the notification of cancellation or withdrawal should be sent.

- (1A) If the *firm* offers to facilitate, directly or through a third party, the payment of *adviser charges* or *consultancy charges*, it must disclose to the *consumer* at the same time as it makes the disclosure in (1):

- (a) whether any refund will include an *adviser charge* or *consultancy charge*; and
- (b) that the *consumer* may be liable to pay any outstanding *adviser charges* or *consultancy charges*.

- (2) This *rule* applies only where a *consumer* would not otherwise receive similar information under a *rule* in this sourcebook from the *firm* or another *authorised person* (such as under the distance marketing disclosure rules ( ■ COBS 5.1.1 R to ■ 5.1.4 R) or ■ COBS 14 (Providing product information)).

## 15.3 Exercising a right to cancel

### Notice of exercise

15.3.1

FCA

R

If a *consumer* exercises his right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a durable medium available and accessible to the recipient, is dispatched before the deadline expires.

[Note: article 6 (6) of the *Distance Marketing Directive*]

15.3.2

FCA

R

A *consumer* need not give any reason for exercising his right to cancel.

[Note: article 6(1) of the *Distance Marketing Directive*]

15.3.3

FCA

G

The *firm* should accept any indication that the *consumer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as the date when the notification was dispatched.

### Record keeping

15.3.4

FCA

R

The *firm* must make adequate records concerning the exercise of a right to cancel or withdraw and retain them:

- (1) indefinitely in relation to a *pension transfer, pension opt-out* or *FSAVC*;
- (2) for at least five years in relation to a *life policy, pension contract, personal pension scheme* or *stakeholder pension scheme*; and
- (3) for at least three years in any other case.

## 15.4 Effects of cancellation

### Termination of contract

15.4.1

FCA

R

By exercising a right to cancel, the *consumer* withdraws from the contract and the contract is terminated.

### Payment for the service provided before cancellation

15.4.2

FCA

R

- (1) This *rule* applies in relation to a *distance contract* that is not a *life policy, personal pension scheme, cash deposit ISA* or *CTF*.
- (2) When the *consumer* exercises his right to cancel he may be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The performance of the contract may only begin after the *consumer* has given his approval. The amount payable must not:
  - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;
  - (b) in any case be such that it could be construed as a penalty.
- (3) The *firm* may not require the *consumer* to pay any amount on the basis of this *rule* unless it can prove that the *consumer* was duly informed about the amount payable, in conformity with the distance marketing disclosure rules. However, in no case may the *firm* require such payment if it has commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive*]

### Shortfall

15.4.3

FCA

R

- (1) The *firm* may require the *consumer* to pay for any loss under a contract caused by market movements that the *firm* would reasonably incur in cancelling it. The period for calculating the loss shall end on the day on which the *firm* receives the notification of cancellation.

(2) This *rule*:

- (a) does not apply for a *distance contract* or for a contract established on a regular or recurring premium or payment basis; and
- (b) only applies if the *firm* has complied with its obligations to disclose information concerning the right to cancel.

#### Obligations on cancellation

15.4.4

FCA

R

The *firm* must, without any undue delay and no later than within 30 calendar days, return to the *consumer* any sums it has received from him in accordance with the contract, except for any amount that the *consumer* may be required to pay under this section. This period shall begin from the day on which the *firm* receives the notification of cancellation.

[Note: article 7(4) of the *Distance Marketing Directive*]

15.4.5

FCA

R

The *firm* is entitled to receive from the *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the *consumer* dispatches the notification of cancellation.

[Note: article 7(5) of the *Distance Marketing Directive*]

15.4.6

FCA

R

Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

## 15.5 Special situations

### Contracts with trustees and operators of pension schemes

15.5.1

FCA

R

In this chapter:

- (1) references to a *consumer* include the trustees of an *occupational pension scheme* and the trustees or *operator* of a *personal pension scheme* or *stakeholder pension scheme*; and
- (2) any contract with such *persons* is to be treated as a *non-distance contract*.

### Other legislation including for child trust funds and automatic enrolment into pensions

15.5.2

FCA

R

This chapter applies as modified to the extent necessary for it to be compatible with any enactment.

15.5.3

FCA

G

For example:

- (1) the *Child Trust Fund Regulations* contain provisions relevant to cancellation rights; in particular they provide that any uninvested sums held in connection with a *CTF* should be held in a designated bank account; and the effect of conditions 4(a) and (b) in regulation 5 of the *Child Trust Fund Regulations* (applicable to non-HMRC *allocated CTF*) is that a *CTF* opened by way of *distance contract* has a cancellable management agreement in all cases and the *CTF* cannot be opened until the cancellation period has expired, therefore the price fluctuation exemption is not engaged;
- (2) where legislation does not permit sums within a *personal pension scheme* or *CTF* to be returned to a *consumer*, the requirement to do so on cancellation is modified to permit payment to another provider on behalf of the *consumer*; the *firm* should notify him, where relevant, as soon as possible that it holds money awaiting re-investment instructions; if that money is held in a non-interest bearing account this should be drawn to his attention;
- (3) the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 contain provisions relevant to cancellation rights; in particular they provide rights of opt-out from an *automatic enrolment scheme*; the cancellation rights in this chapter are modified to permit a provider to adopt the opt-out process in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 in relation to all members of an *automatic enrolment scheme*; the cancellation rules will continue to apply for

any single premium contributions or transfers where these would normally attract this right.

#### Automatic cancellation of an attached distance contract

15.5.4

FCA

G

When a *consumer* cancels a *distance contract* under this chapter, his notice may also operate to cancel any attached contract which is also a distance financial services contract unless the *consumer* gives notice that cancellation of the main contract is not to operate to cancel the attached contract (see regulation 12 of the *Distance Marketing Regulations*). Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.

#### Appointed representatives

15.5.5

FCA

G

This chapter does not act to cancel *distance contracts* entered into by an *appointed representative* or where applicable, by a *tied agent*, as principal such as a *distance contract* to provide advisory services, but the *Distance Marketing Regulations* (regulations 9 to 13, see regulation 4(3)) may have this effect.

#### Maxi-ISAs

15.5.6

FCA

G

Where a *life policy* or *unit* bought on opening or transferring an *ISA* is cancellable, the right to cancel, or substitute right to withdraw, applies to the entire arrangement. For example, a maxi-ISA comprising a *life policy* in the stocks and shares component and a *cash component* would be cancellable as a whole with a cancellation period of 30 calendar days. However, a *firm* is free to give the *consumer* the option of cancelling individual components separately with the same cancellation period if it wishes.

## Exemptions from the right to cancel

FCA

## Exemptions for life policies and pension contracts (non-distance)

- 1.1 R There is no right to cancel a non-*distance contract* that is a *life policy* or a *pension contract*:
- (1) that is a *pension fund management policy*; or
  - (2) that relates to or is associated with securing benefits under a *defined benefits pension scheme*; or
  - (3) for a term of six months or less, unless it is a single *premium contract* where the designated retirement date is within six months of the date of the policy; or
  - (4) that is effected by the trustees of an *occupational pension scheme* or the employer, trustees or *operator* of a *stakeholder pension scheme* and that represents a:
    - (a) *pension buy-out contract*; or
    - (b) purchase of a without-profits deferred *pension annuity*; or
    - (c) *defined benefits pension scheme* or a single *premium* payment to any *occupational pension scheme* with a pooled fund (that is, underlying investments are not earmarked for individual scheme members); or
    - (d) purchase made to insure and secure members' pension benefits under a *money-purchase occupational scheme* or *stakeholder pension scheme* (unless it is the master, first or only policy); or
  - (5) if the *consumer*, at the time he signs the application, is *habitually resident*:
    - (a) in an *EEA State* other than the *UK* (but that state's rules may apply); or
    - (b) outside the *EEA* and is not present in the *UK*.
- 1.2 G There is no right to cancel a non-*distance contract* for a *traded life policy*. This is because the 30-day right to cancel a *life policy* (in COBS 15.2.1 R) applies at the point of conclusion of the *life policy* not on its assignment. However, there may be a 14-day right to cancel a *distance contract* for a *traded life policy* unless an exemption applies, since that *distance contract* relates to *designated investment business*.
- Exemption for SIPPs
- 1.3 R There is no right to cancel a contract to join a *SIPP* whose performance has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel.



**1.4 G** If a *consumer* requests that a *firm* complete a transaction to join a *SIPP* before the expiry of the cancellation period, the *firm* should, in having regard to the information needs of the *consumer*, make him aware that he will lose his right to cancel and satisfy itself on reasonable grounds that the customer understands the cost and other implications.

**Exemptions for certain pension arrangements (the 'cancellation substitute')**

**1.5 R** There is no right to cancel:

- (1) a contract for or funded (wholly or in part) from a *pension transfer*; or
- (2) a *pension annuity* due to commence within a year and a day of the contract or a variation of one with similar commencement; or
- (3) the exercise of an option to make *income withdrawals*;

to the extent that the right to cancel is replaced with a pre-contract right to withdraw the *consumer's* offer of at least 14 calendar days. The combined period of the right to withdraw and any residual right to cancel must be at least 30 calendar days.

**Exemption for pension compensation**

**1.6 R** There is no right to cancel a *pension annuity*, a *pension policy*, a *pension contract*, or a contract to join a *personal pension scheme* or *stakeholder pension scheme*, which in each case is funded (wholly or in part) from payments derived from compensation or redress following a review undertaken in relation to a complaint.

**Exemption for annuities after death of the life assured**

**1.7 R** A *firm* need not accept notification of cancellation of a *pension annuity* contract if the life (or any of the lives) assured under it has died before notice is given.

**Exemptions for units (non-distance)**

**1.8 R** There is no right to cancel a non-distance contract to buy a *unit* in a *regulated collective investment scheme*:

- (1) if the *unit* is not purchased from the scheme's *operator*, from the *operator's associate* acting as provider of a *wrapper*; or
- (2) if the *consumer* is not a *retail client*; or
- (3) if the contract represents an exchange of *units* between *sub-funds* of the same *umbrella*; or
- (4) if the contract relates to a change between *units* of one class and *units* of another class in the same *scheme*; or
- (5) if the contract relates to a *recognised scheme* and is with an *operator* who is not an *authorised person* or carrying on business in the *UK*; or
- (6) if the *consumer* is not *habitually resident* in the *UK* at the date of the offer of the contract; or

- (7) if the *firm* has reasonable grounds for assuming that no *personal recommendation* of the contract was provided by anyone carrying on *designated investment business* in the UK; or
- (8) for the second and subsequent purchases of *units* under recurring single payment *unit* savings plans, provided that:
  - (a) the intention or option to make a series of single payments is disclosed at the outset (for example in pre-contract disclosure documents); or
  - (b) the intention is evidenced (for example, by the establishment of a direct debit mandate).

#### Exemptions for ISAs, CTFs and EISs (non-distance)

1.9 R There is no right to cancel a *non-distance contract*:

- (1) to open or transfer an *ISA* (mini or maxi and including all components whatever the underlying investment, but not a *cash deposit ISA* or an *ISA* containing a *life policy*); or
- (2) to open or transfer a *CTF*; or
- (3) [deleted]
- (4) for an *EIS*;

provided that:

- (5) (for an *EIS* or *ISA*) the right to cancel is replaced with a seven calendar day, pre-contract right to withdraw the *consumer's* offer; or
- (6) the contract relates to an *EIS* or a *non-packaged product ISA* or *CTF* and is entered into following an explanation that neither a right to cancel nor a right to withdraw will apply given in accordance with the relevant rules on pre-contractual disclosure; or
- (7) (for an *ISA* or *EIS*) the contract entered into is a second or subsequent *ISA* or *EIS* on substantially the same terms (such as mini-to-mini *ISA* or maxi-to-maxi *ISA*) as an *ISA* or *EIS* purchased from the same *ISA manager* or *EIS manager* in the previous tax year.

#### Exemptions for distance contracts (all products and services)

1.10 R There is no right to cancel a *distance contract*:

- (1) whose price depends on fluctuations in the financial market outside the *firm's* control, which may occur during the cancellation period, such as:
  - (a) foreign exchange; or
  - (b) money market instruments; or
  - (c) transferable securities; or
  - (d) units in collective investment undertakings; or
  - (e) financial-futures contracts, including equivalent cash-settled instruments; or
  - (f) forward interest-rate agreements; or

- (g) interest-rate, currency and equity swaps; or
  - (h) options to acquire or dispose of any instruments referred to above including cash-settled instruments and options on currency and on interest rates; or
- (2) whose performance has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel; or
  - (3) to *deal as agent, advise or arrange* if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[Note: article 6(2) and recital 19 of the *Distance Marketing Directive*]

**1.11 R** In the case of *distance contracts* for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the right to cancel shall apply only to the initial agreement.

[Note: article 1(2) of the *Distance Marketing Directive*]

## Chapter 16

# Reporting information to clients



## 16.1 General client reporting requirement

16.1.1

FCA

R

A *firm* must ensure in relation to *MiFID* or *equivalent third country business* that a *client* receives adequate reports on the services provided to it by the *firm*. The reports must include, where applicable, the costs associated with the transactions and services undertaken by the *firm* on behalf of the *client*.

[Note: article 19(8) of *MiFID*]

## 16.2 Occasional reporting

### Execution of orders other than when managing investments

16.2.1

FCA

R

- (1) If a *firm* has carried out an order in the course of its *designated investment business* on behalf of a *client*, it must:
  - (a) promptly provide the *client*, in a *durable medium*, with the essential information concerning the execution of the order;
  - (b) in the case of a *retail client*, send the *client* a notice in a *durable medium* confirming the execution of the order and such of the *trade confirmation information* (■ COBS 16 Annex 1R) as is applicable:
    - (i) as soon as possible and no later than the first *business day* following that execution; or
    - (ii) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party; and
  - (c) supply a *client*, on request, with information about the status of his order.
- (2) Paragraph (1) does not apply to a *firm managing investments*.
- (3) Paragraph (1)(b) does not apply if the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *client* by another *person*.
- (4) Paragraphs (1)(a) and (b) do not apply to an order executed on behalf of a *client* that relates to a bond funding a mortgage loan agreement with the *client*. The report on the transaction must be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.
- (5) If a *firm* carries out an order for a *retail client* relating to *units* or *shares* in a collective investment undertaking that is part of a series of orders that are executed periodically, it must:

- (a) comply with paragraph (1)(b) in relation to that order; or
  - (b) provide the *client* at least once every six months with such of the *trade confirmation information* (■ COBS 16 Annex 1R) as is applicable in relation to each transaction in that series carried out in the relevant reporting period.
- (6) In relation to subscription and *redemption* orders for *units* in a *UCITS scheme* or *EEA UCITS scheme* executed by an *authorised fund manager*, paragraphs (1), (3) and (5) of this *rule* apply as if references to:
- (a) a *client* and to a *retail client* were references to a *unitholder* in the *scheme*; and
  - (b) *trade confirmation information* in paragraphs (1)(b) and (5)(b) were to the information in paragraph (7).
- (7) The notice referred to in paragraph (1)(b) must, where applicable, for subscription and *redemption* orders for *units* in a *UCITS scheme* or *EEA UCITS scheme* executed by an *authorised fund manager*, include the following information:
- (a) the identification of the *management company*;
  - (b) the name or other designation of the *unitholder*;
  - (c) the date and time of receipt of the order and method of payment;
  - (d) the date of execution;
  - (e) the identification of the *UCITS scheme* or *EEA UCITS scheme*;
  - (f) the nature of the order (subscription or *redemption*);
  - (g) the number of *units* involved;
  - (h) the *unit* price at which the *units* were subscribed or redeemed;
  - (i) the reference valuation date;
  - (j) the gross value of the order including charges for subscription or net amount after charges for *redemptions*; and
  - (k) the total sum of the commissions and expenses charged and where the investor so requests, an itemised breakdown.

[Note: article 40 paragraphs (1) to (4) of the *MiFID implementing Directive* and article 24 of the *UCITS implementing Directive*]

**16.2.2** **G** The requirement concerning orders relating to bonds funding a mortgage loan agreement is unlikely to be relevant to products in the *United Kingdom* market.

**FCA**

**16.2.3** **R** For the purposes of calculating the unit price in the *trade confirmation information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

**FCA**

[Note: article 40(4) of the *MiFID implementing Directive*]

**16.2.3A** **G** In determining what is essential information, a *firm* should consider including:

**FCA**

- (1) for transactions in a *derivative*:
  - (a) the maturity, delivery or expiry date of the derivative;
  - (b) in the case of an *option*, a reference to the last exercise date, whether it can be exercised before maturity and the strike price;
  - (c) if the transaction *closes out* an open *futures* position, all essential details required in respect of each contract comprised in the open position and each contract by which it was *closed out* and the profit or loss to the *client* arising out of *closing out* that position (a difference account);
- (2) for the exercise of an *option*:
  - (a) the date of exercise, and either the time of exercise or that the *client* will be notified of that time on request;
  - (b) whether the exercise creates a sale or purchase in the underlying asset; and
  - (c) the strike price of the *option* (for a currency *option*, the rate of exchange will be the same as the strike price) and, if applicable, the total consideration from or to the *client*; and
- (3) the fact that the transaction involves any dividend or capitalisation or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the *investment*, and under the terms of the transaction the benefit of which will not pass to the purchaser.

### Guidance on the requirements

**16.2.4** **G** Where a *firm* executes an order in tranches, the *firm* may, where appropriate, indicate the trading time and the execution venue in a way that is consistent with this, such as, "multiple". In accordance with the *client's best interests rule*, a *firm* should provide additional information at the *client's* request.

**FCA**

In accordance with **■** COBS 2.4.9 R, a *firm* may dispatch a confirmation to an agent, other than the *firm* or an *associate* of the *firm*, nominated by the *client* in writing.

**16.2.5**

**FCA**



16.2.6

FCA

R

**Special cases**

In relation to business that is not *MiFID or equivalent third country business*, a *firm* need not despatch a confirmation if:

- (1) the *firm* has agreed with the *client* (in the case of a *retail client*, in writing and with the *client's* informed consent) that confirmations need not be supplied, either generally or in specified circumstances; or
- (2) the *designated investment* is a *life policy*, *stakeholder pension scheme* or a *personal pension scheme* (other than a *SIPP*); or
- (3) the *designated investment* is held within a *CTF* and the statement provided under the *CTF Regulations* includes the information that would have been contained in a confirmation under this section (other than information that has since become irrelevant).

**Record keeping: occasional reporting**

16.2.7

FCA

R

A *firm* must retain a copy of any confirmation despatched to a *client* under this section:

- (1) for *MiFID or equivalent third country business*, for a period of at least five years; or
- (2) for business that is not *MiFID or equivalent third country business*, for a period of at least three years;

from the date of despatch.

[Note: see article 51(3) of the *MiFID implementing Directive*]

## 16.3 Periodic reporting

### Provision by the firm and contents

16.3.1

FCA

R

- (1) If a *firm* is *managing investments* on behalf of a *client*, it must provide the *client* with a *periodic statement* in a *durable medium* unless such a statement is provided by another *person*.
- (2) If the *client* is a *retail client*, the *periodic statement* must include such of the *periodic information* (■ COBS 16 Annex 2R R) as is applicable.

[Note: article 41(1) and (2) of the *MiFID implementing Directive*]

16.3.2

FCA

R

- (1) In the case of a *retail client*, the *periodic statement* must be provided once every six *months*, except in the following cases:
  - (a) if the *retail client* so requests, the *periodic statement* must be provided every three *months*;
  - (b) if the *retail client* elects to receive information about executed transactions on a transaction-by-transaction basis (■ COBS 16.3.3 R) and there are no transactions in *derivatives* or other securities giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures, the *periodic statement* must be provided at least once every twelve *months*;
  - (c) if the agreement between a *firm* and a *retail client* for the *managing of investments* authorises a leveraged portfolio, the *periodic statement* must be provided at least once a *month*.
- (2) A *firm* must inform a *retail client* that he has the right to request the provision of a *periodic statement* every three *months*.

[Note: article 41(3) of the *MiFID implementing Directive*]

16.3.3

FCA

R

- (1) If the *client* elects to receive information about executed transactions on a transaction-by-transaction basis, a *firm managing investments* must provide promptly to the *client*, on the execution

of a transaction, the essential information concerning that transaction in a *durable medium*.

- (2) If the *client* is a *retail client*, the *firm* must send him a notice confirming the transaction and containing such of the information identified in column (1) of the table in ■ COBS 16 Annex 1R R as is applicable:
- (a) no later than the first *business day* following that execution; or
  - (b) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party;

unless the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *retail client* by another *person*.

[Note: article 41(4) of the *MiFID implementing Directive*]

16.3.4  
FCA

G

In accordance with ■ COBS 2.4.9 R, a *firm* may dispatch a periodic statement to an agent, other than the *firm* or an *associate* of the *firm*, nominated by the *client* in writing.

16.3.5  
FCA

R

For the purposes of calculating the unit price in the *trade confirmation information* or *periodic information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

[Note: article 40(4) of the *MiFID implementing Directive*]

16.3.6  
FCA

R

- (1) If a *firm*:
- (a) *manages investments* for a *retail client*; or
  - (b) operates a *retail client* account that includes an uncovered open position in a contingent liability transaction,
- it must report to the *retail client* any losses exceeding any predetermined threshold, agreed between it and the *retail client*.
- (2) The *firm* must report:
- (a) no later than the end of the *business day* in which the threshold is exceeded; or
  - (b) if the threshold is exceeded on a non-*business day*, the close of the next *business day*.

[Note: article 42 of the *MiFID implementing Directive*]

16.3.7

FCA

R

For the purposes of this section, a contingent liability transaction is one that involves any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument.

[Note: recital 63 of the *MiFID implementing Directive*]

16.3.8

FCA

R

[intentionally blank]

### Guidance on contingent liability transaction

16.3.9

FCA

G

When providing a *periodic statement* to a *retail client*, a *firm* should consider whether to include:

- (1) the *collateral* value in respect of any contingent liability transaction in the *client's* portfolio during the relevant period; and
- (2) *option* account valuations in respect of each open *option* written by the *client* in the *client's* portfolio at the end of the relevant period; stating:
  - (a) the *share, future*, index or other *investment* involved;
  - (b) the trade price and date for the opening transaction, unless the valuation statement follows the statement for the period in which the option was opened;
  - (c) the market price of the contract; and
  - (d) the exercise price of the contract.
- (3) Option account valuations may show an average trade price and market price in respect of an *option* series if the *retail client* buys a number of contracts within the same series.

### Periodic reporting: special situations

16.3.10

FCA

R

In relation to business that is not *MiFID* or equivalent *third country business*, a *firm* need not provide a *periodic statement*:

- (1) to a *client* habitually resident outside the *United Kingdom* if the *client* concerned has so requested or the *firm* has taken reasonable steps to establish that he does not wish to receive it;
- (2) in respect of a *CTF*, if the statement provided under the *CTF Regulations* contains the *periodic information*.

### Record keeping: periodic reporting

16.3.11

FCA

R

A *firm* must make, and retain, a copy of any *periodic statement*:

- (1) for *MiFID* or equivalent *third country business*, for a period of at least five years; or
- (2) for business that is not *MiFID* or, for a period of at least three years;

from the date of despatch.

[Note: see article 51(3) of the *MiFID implementing Directive*]

## 16.4 Statements of client designated investments or client money

### 16.4.1

FCA

R

- (1) A *firm* that holds *client designated investments* or *client money* for a *client* must send that *client* at least once a year a statement in a *durable medium* of those *designated investments* or that *client money* unless such a statement has been provided in a *periodic statement*.
- (2) A *credit institution* need not send a statement in respect of *deposits* held by it.
- (3) This *rule* does not apply in relation to a *firm* holding *client designated investments* or *client money* under a *personal pension scheme* or a *stakeholder pension scheme* where doing so is not *MiFID* or *equivalent third country business*.
- (4) A *CTF* account provider holding *client designated investments* or *client money* under a *CTF* where doing so is not *MiFID* or *equivalent third country business* must provide a statement but need not do so more frequently than required by Regulation 10 of the *CTF Regulations*.

[Note: article 43(1) of the *MiFID implementing Directive*]

### 16.4.2

FCA

R

A *firm* must include in a statement of *client* assets referred to under this section the following information:

- (1) details of all the *designated investments* or *client money* held by the *firm* for the *client* at the end of the period covered by the statement;
- (2) the extent to which any *client designated investments* or *client money* have been the subject of *securities financing transactions*; and
- (3) the extent of any benefit that has accrued to the *client* by virtue of participation in any *securities financing transactions*, and the basis on which that benefit has accrued.

[Note: article 43(2) of the *MiFID implementing Directive*]

16.4.3  
FCA

R

In cases where the portfolio of a *client* includes the proceeds of one or more unsettled transactions, the information in a statement provided under this section may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

[Note: article 43(2) of the *MiFID implementing Directive*]

16.4.4  
FCA

R

A *firm* which holds *designated investments* or *client money* and is *managing investments* for a *client* may include the statement under this section in the *periodic statement* it provides to that *client*.

[Note: article 43(3) of the *MiFID implementing Directive*]

16.4.5  
FCA

G

In reporting to a *client* in accordance with this section, a *firm* should consider whether to provide details of any assets loaned or charged including:

- (1) which *investments* (if any) were at the end of the relevant period loaned to any third party and which *investments* (if any) were at that date charged to secure borrowings made on behalf of the portfolio; and
- (2) the aggregate of any interest payments made and income received during the period in respect of loans or borrowings made during that period

 16.5 Quotations for surrender values

## 16.5.1

FCA

R

When a *long-term insurer* receives any indication that a *retail client* wishes to surrender a *life policy* which is of the type that may be traded on an existing secondary market for *life policies*, it must, before accepting a surrender, make the *policyholder* aware that he may be able to sell his *policy* instead, how he may do so and that there may be financial benefits in doing so.





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

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

16.6.1  
FCA

**R**

- (1) This section applies to a *long-term insurer*, unless, at the time of application, the *client*, other than an *EEA ECA recipient*, was *habitually resident*:
  - (a) in an *EEA State* other than the *United Kingdom*; or
  - (b) outside the *EEA* and he was not present in the *United Kingdom*.
- (2) In addition, ■ COBS 16.6.8 R applies to an *operator* of a *personal pension scheme* or *stakeholder pension scheme* in relation to a *retail client* who elects to make *income withdrawals*.

16.6.2  
FCA

**R**

If during the term of a *life policy* entered into on or after 1 July 1994 there is any proposed change in the information referred to in paragraphs (1) to (12) of the Consolidated Life Directive information ( ■ COBS 13 Annex 1 R) the *long-term insurer* must inform the *policyholder* of the effect of the change before the change is made.

[Note: article 36(2) of the *Consolidated Life Directive*]

16.6.3  
FCA

**R**

If a *life policy* entered into on or after 1 July 1994 provides for the payment of bonuses and the amounts of bonuses are unspecified, the *long-term insurer* must, in every calendar year except the first, either:

- (1) notify the *policyholder* in writing of the amount of any bonus which has become payable under the contract, and which has not previously been notified under this *rule*; or
- (2) give the *policyholder* in writing sufficient information to enable him to determine the amount of any such bonus.

16.6.4  
FCA

**R**

- (1) When a *firm* provides information in accordance with this section, it must provide the information in a *durable medium*, unless (2) applies.

- (2) If the contract is being made by telephone, the *firm* may give the information orally to the *customer*. If the *customer* enters into the contract, a written version of the required information must be sent to the *customer* within five *business days* of the contract being entered into.

16.6.5

FCA

R

Where a *life policy* is effected jointly, the information required by this section may be sent to the first named *client*.

16.6.6

FCA

R

A *firm* must make an adequate record of information provided to a *customer* under this section and retain that record for a minimum period after the information is provided of five years.

#### Long term care insurance

16.6.7

FCA

R

At each anniversary of the date on which a *long-term care insurance contract* which is based on single premium investment bonds was entered into, the *insurer* must:

- (1) provide the *retail client* with a table based on the format of
  - COBS 13 Annex 3 2.2R containing at least the current fund value and projected future *policy* values (as in column "What you might get back");
- (2) where it is the case, inform the *retail client* of the possibility that future policy values may be insufficient to fulfil the original purpose of the contract; and
- (3) inform the *retail client* how to obtain advice on *investments* in respect of *long-term care insurance contracts*, and that it is in his best interest to do so.

#### Income withdrawals

16.6.8

FCA

R

At intervals no longer than 12 *months* from the date of an election by a *retail client* to make *income withdrawals*, the relevant *operator* of a *personal pension scheme* or *stakeholder pension scheme* must:

- (1) provide the *retail client* with such information as is necessary for the *retail client* to review the election, including where relevant the information required by ■ COBS 13 Annex 2 2.9R; and
- (2) inform the *retail client* how to obtain *advice on investments* in respect of his income withdrawals, and that it would be in his best interests to do so.



Trade confirmation and periodic information

**FCA**

This annex forms part of **■** COBS 16.2.1 R

|                | The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i> , in accordance with SUP 17 Annex 1 | (1) Trade confirmation information | (2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period) |
|----------------|--|------------------------------------|--|
| <b>General</b> |  |                                    |  |
| 1.             | <b>the reporting <i>firm</i> identification;</b>   | Y                                  |  |
| 2.             | <b>the name or other designation of the <i>client</i>;</b>   | Y                                  |  |
| 3.             | <b>the trading day;</b>  | Y                                  | Y  |
| 4.             | <b>the trading time;</b>   | Y                                  | Y  |
| 5.             | <b>the type of the order (for example, a limit order or a market order);</b>   | Y                                  | Y  |
| 6.             | <b>the venue identification;</b>   | Y                                  | Y  |
| 7.             | <b>the instrument identification;</b>  | Y                                  | Y  |
| 8.             | <b>the buy/sell indicator;</b>   | Y                                  | Y  |
| 9.             | <b>the nature of the order if other than buy/sell;</b>   | Y                                  | Y  |
| 10.            | <b>the quantity;</b>   | Y                                  | Y  |
| 11.            | <b>the unit price;</b>   | Y                                  | Y  |
| 12.            | <b>the total consideration;</b>  | Y                                  | Y  |

The information below must be provided, where relevant for the purposes of reporting to a *retail client*, in accordance with SUP 17 Annex 1

(1) Trade confirmation information

(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)

General

|     |  |   |   |
|-----|--|---|---|
| 13. | a total sum of the commissions and expenses charged (for a <i>CIS operator</i> , initial charges may be disclosed in cash or percentage terms) and, where the <i>retail client</i> so requests, an itemised breakdown, including, where relevant, the amount of any <i>mark-up</i> or <i>mark-down</i> imposed by the <i>firm</i> or its <i>associate</i> where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in executing the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i> ; | Y | Y |
| 14. | the rate of exchange obtained where the transaction involves a conversion of currency;   | Y | Y |
| 15. | [intentionally blank]  |   |   |
| 16. | [intentionally blank]  |   |   |
| 17. | the <i>client's</i> responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previ-  | Y |   |

|  |   |   |
|--|---|---|
| <p>The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i>, in accordance with SUP 17 Annex 1</p> | <p>(1) Trade confirmation information</p> | <p>(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)</p> |
|--|---|---|

General

|            |  |          |
|------------|--|----------|
| <p>18.</p> | <p>ously been notified to the <i>client</i>; and</p> <p>if the <i>client's</i> counterparty was the <i>firm</i> itself or any person in the <i>firm's group</i> or another <i>client</i> of the <i>firm</i>, the fact that this was the case unless the order was <i>executed</i> through a trading system that facilitates anonymous trading.</p> | <p>Y</p> |
|------------|--|----------|

[Note: article 40(4) and recital 64 to the *MiFID implementing Directive*]

A *firm* may provide the *client* with the information referred to in this Annex using standard codes if it also provides an explanation of the codes used.

[Note: article 40(5) of the *MiFID implementing Directive*]



Information to be included in a Periodic report

**FCA**

This annex forms part of **COBS 16.3.1 R**.

| Periodic information (all cases) |  |
|----------------------------------|--|
| 1.                               | the name of the <i>firm</i> ;  |
| 2.                               | the name or other designation of the <i>retail client's</i> account;   |
| 3.                               | a statement of the contents and the valuation of the portfolio, including details of: <ul style="list-style-type: none"> <li>(a) each <i>designated investment</i> held, its market value or fair value if market value is unavailable;</li> <li>(b) the cash balance at the beginning and at the end of the reporting period; and</li> <li>(c) the performance of the portfolio during the reporting period;</li> </ul> |
| 4.                               | the total amount of <i>fees</i> and charges incurred during the reporting period, itemising at least total management <i>fees</i> and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;  |
| 5.                               | a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the <i>firm</i> and the <i>client</i> ;   |
| 6.                               | the total amount of dividends, interest and other payments received during the reporting period in relation to the <i>client's</i> portfolio; and  |
| 7.                               | information about other corporate actions giving rights in relation to <i>designated investments</i> held in the portfolio.  |

[Note: article 41(2) of *MiFID implementing Directive*]





## Chapter 17

# Claims handling for long-term care insurance



## 17.1 Providing information to claimants and dealing with claims

17.1.1  
FCA

**R** When an *insurer* or *managing agent* receives a claim under a *long-term care insurance contract*, it must respond promptly by providing the *policyholder*, or the *person* acting on the *policyholder's* behalf, with:

- (1) a claim form (if it requires one to be completed);
- (2) a summary of its claims handling procedure; and
- (3) appropriate information about the medical criteria that must be met, and any waiting periods that apply, under the terms of the *policy*.

### Responding to a claim

---

17.1.2  
FCA

**R** As soon as reasonably practicable after receipt of a claim, the *insurer* or *managing agent* must tell the *policyholder*, or the *person* acting on the *policyholder's* behalf:

- (1) (for each part of the claim it accepts), whether the claim will be settled by paying the *policyholder*, providing goods or services to the *policyholder* or paying another *person* to provide those goods or services; and
- (2) (for each part of the claim it rejects), why the claim has been rejected and whether any future rights to claim exist.

### Rejecting a claim

---

17.1.3  
FCA

**R** An *insurer* and a *managing agent* must not:

- (1) unreasonably reject a claim; or
- (2) except where there is evidence of fraud, reject a claim for:
  - (a) non-disclosure of a fact material to the risk which the *policyholder* could not reasonably have been expected to disclose; or
  - (b) misrepresentation of a fact material to the risk, unless the misrepresentation is negligent; or

- 
- (c) **breach of warranty, unless the circumstances of the claim are connected to the breach, the warranty is material to the risk and was drawn to the *policyholder's* attention before the conclusion of the contract.**



# Chapter 18

## Specialist Regimes

## 18.1 Trustee Firms

### Application

18.1.1

FCA

R

- (1) This section applies to the *MiFID or equivalent third country business* carried on by a *trustee firm*.
- (2) It does not apply to a *trustee firm* when acting as:
- (a) a *depository*; or
  - (b) the trustee of a *personal pension scheme or stakeholder pension scheme*.

### Application of COBS to trustee firms

18.1.2

FCA

R

The provisions of COBS in the table do not apply to a *trustee firm* to which this section applies:

| COBS   | Description   |
|--------|---|
| 6.1A   | Adviser charging and remuneration   |
| 6.1B   | Retail investment product provider requirements relating to adviser charging and remuneration |
| 6.2A   | Describing advice services  |
| 6.3    | Disclosing information about services, fees and commission - packaged products                |
| 6.4    | Disclosure of charges, remuneration and commission  |
| 9.4    | Suitability reports   |
| 9.6    | Special rules for providing basic advice on a stakeholder product                             |
| 16.3.9 | Guidance on contingent liability transaction  |
| 16.5   | Quotations for surrender values   |
| 16.6   | Life insurance contracts - communications to clients  |

**16 Annex 1 R (1) 14****Information to be provided in accordance with COBS 16.2.1 R and 16.3**

18.1.3

FCA

G

The provisions of *COBS* in the table are unlikely to be relevant in relation to a *trustee firm* to which this section applies:

| COBS | Description                                    |
|------|--|
| 5    | Distance communications                        |
| 13   | Preparing product information                  |
| 14.2 | Providing product information                  |
| 15   | Cancellation                                   |
| 17   | Claims handling for long-term care insurance   |
| 18.2 | Energy market activity and oil market activity |
| 18.3 | Corporate finance business                     |
| 18.4 | Stock lending activity                         |
| 19   | Pensions - supplementary provisions            |
| 20   | With-profits                                   |

**Duties of trustee firms under the general law**

18.1.4

FCA

G

To the extent a *rule* in *COBS* applies to a *trustee firm*, that *rule*:

- (1) applies in addition to any duties or powers imposed or conferred upon a trustee by the general law; and
- (2) does not qualify or restrict the duties or powers that the general law imposes or confers upon a trustee; *trustee firms* will be under a duty to observe the provisions of their trust instrument; if its provisions conflict with any applicable *rule*, *trustee firms* will need to take advice in resolving the conflict.

**Considering and complying with applicable COBS rules**

18.1.5

FCA

G

In considering and reaching decisions as to how applicable rules in *COBS* apply in the context of a particular trust arrangement, a *trustee firm* should consider the nature of that arrangement and the provisions of the relevant trust instrument.

**References to "client" in applicable COBS rules**

18.1.6

FCA

G

Where an applicable *rule* in *COBS* requires the doing of any thing in relation to a *client*, the *trustee firm* should consider who, in the context of that *rule* and having regard to the particular trust arrangement, is the most appropriate person to treat as its *client*. This might, for example, be the beneficiary, another trustee or the trust, depending on the particular circumstances.



## 18.2 Energy market activity and oil market activity

### Energy market activity and oil market activity - MiFID business

18.2.1

FCA

R

The provisions of COBS in the table do not apply in relation to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

| COBS                | Description   |
|---------------------|---|
| 6.1A                | Adviser charging and remuneration   |
| 6.1B                | Retail investment product provider requirements relating to adviser charging and remuneration |
| 6.2A                | Describing advice services  |
| 6.3                 | Disclosing information about services, fees and commission - packaged products                |
| 6.4                 | Disclosure of charges, remuneration and commission  |
| 9.4                 | Suitability reports   |
| 9.6                 | Special rules for providing basic advice on a stakeholder product                             |
| 11.6                | Use of dealing commission   |
| 16.3.9              | Guidance on contingent liability transaction  |
| 16.5                | Quotations for surrender values   |
| 16.6                | Life insurance contracts - communications to clients  |
| 16 Annex 1 R (1) 14 | Information to be provided in accordance with COBS 16.2.1 R and 16.3                          |

18.2.2

FCA

G

The provisions of COBS in the table are unlikely to be relevant to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

| COBS | Description             |
|------|-------------------------|
| 5    | Distance communications |

|      |  |
|------|--|
| 7    | Insurance mediation                          |
| 13   | Preparing product information                |
| 14.2 | Providing product information to clients     |
| 15   | Cancellation                                 |
| 17   | Claims handling for long-term care insurance |
| 18.1 | Trustee firms' regime                        |
| 18.3 | Corporate finance business                   |
| 18.4 | Stock lending activity                       |
| 19   | Pensions - supplementary provisions          |
| 20   | With-profits                                 |

### Energy market activity and oil market activity - non-MiFID business

18.2.3

FCA

R

Only the COBS provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not:

- (1) *MiFID or equivalent third country business*; or
- (2) *energy market activity* or *oil market activity* set out in
  - COBS 18.2.4 R.

| COBS     | Description   |
|----------|---|
| <b>1</b> | <b>Application</b>  |
| 2.1.1    | Acting honestly, fairly and professionally  |
| 2.4      | Agent as client and reliance on others  |
| 3        | Client categorisation   |
| 4        | Communication to clients including financial promotions, but only in relation to <i>communicating</i> or <i>approving a financial promotion</i> |
| 5.2      | E-commerce  |
| 11.8     | Recording telephone conversations and electronic communications   |
| 12       | Investment research   |
| 16.2     | Occasional reporting  |

### Energy market activity and oil market activity - dealings with or through authorised persons

PAGE  
5

18.2.4

FCA

R

Only the COBS provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not *MiFID or equivalent third country business* but which, if the *firm* were not *authorised*, would not be a *regulated activity* because of article 16 of the *Regulated Activities*

*Order* (Dealing in contractually based investments) or article 22 of the *Regulated Activities Order* (Deals with or through authorised persons etc.).

| COBS | Description                               |
|------|---|
| 1    | Application                               |
| 2.4  | Agent as client and reliance on others    |
| 4.12 | Unregulated collective investment schemes |
| 5.2  | E-commerce                                |

### Other non-MiFID business related to commodity or exotic derivative instruments

18.2.5

FCA

R

COBS applies as set out in the table to *firms* in respect of activities referred to in the *general application rule* related to:

- (1) *commodity futures*; or
- (2) *commodity options*; or
- (3) *contracts for differences* related to an underlying *commodity*; or
- (4) other *futures* or *contracts for differences* which are not related to *commodities*, financial instruments or cash;

which is not *MiFID* or *equivalent third country business* and *energy market activity* or *oil market activity*.

Application of COBS to other non-MiFID business related to commodity derivative instruments

All of COBS applies, except COBS 18.2.6 R to COBS 18.2.9 E applies instead of COBS 11.2 (Best execution)

### Best execution for other non-MiFID business related to commodity and exotic derivative instruments

18.2.6

FCA

R

A *firm* that *executes a customer order* in the course of carrying out activities referred to in ■ COBS 18.2.5 R must provide best execution.

### Exceptions to best execution

18.2.7

FCA

R

The duty to provide best execution does not apply where:

- (1) the *firm* has agreed with a *professional client* that it does not owe a duty of best execution to him; or
- (2) the *firm* relies on another *person* to whom it passes a *customer order* for *execution* to provide best execution, but only if it has taken reasonable care to ensure that he will do so.

**Providing best execution**

18.2.8

FCA

R

To provide best execution, a *firm* must:

- (1) take reasonable care to ascertain the price which is the best available for the *customer order* in the relevant market at the time for transactions of the kind and size concerned; and
- (2) *execute* the *customer order* at a price which is no less advantageous to the *customer*, unless the *firm* has taken reasonable steps to ensure that it would be in the *customer's* best interests not to do so.

18.2.9

FCA

A

- (1) In order to take reasonable care to ascertain the price which is the best available, a *firm*:
  - (a) should disregard any *charges* and *commission* made by it or its agents that are disclosed to the *customer* under
    - COBS 6.1.9 R (Information about costs and associated charges);
  - (b) need not have access to competing exchanges, or to all, or a minimum number of, available price sources; but if a *firm* can access prices displayed by different exchanges and trading platforms and make a direct and immediate comparison, it should *execute* the *customer order* at the best price available to the firm on such exchanges or trading platforms, if this is in the best interests of the *customer*;
  - (c) should pass on to the *customer* the price at which it *executes* the transaction to meet the *customer order*; and
  - (d) should not take a *mark-up* or *mark-down* from the price at which it *executes* the *customer order*.
- (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))
- (3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))

## 18.3 Corporate finance business

### Corporate finance business - MiFID business

18.3.1

FCA

R

The provisions of *COBS* in the table do not apply in respect of any *corporate finance business* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

| COBS                | Description   |
|---------------------|---|
| 6.1A                | Adviser charging and remuneration   |
| 6.1B                | Retail investment product provider requirements relating to adviser charging and remuneration |
| 6.2A                | Describing advice services  |
| 6.3                 | Disclosing information about services, fees and commission - packaged products                |
| 6.4                 | Disclosure of charges, remuneration and commission  |
| 9.4                 | Suitability reports   |
| 9.6                 | Special rules for providing basic advice on a stakeholder product                             |
| 11.6                | Use of dealing commission   |
| 11.8                | Recording telephone conversations and electronic communications                               |
| 16.3.9              | Guidance on contingent liability transaction  |
| 16.5                | Quotations for surrender values   |
| 16.6                | Life insurance contracts - communications to clients  |
| 16 Annex 1 R (1) 14 | Information to be provided in accordance with <i>COBS</i> 16.2.1 R and 16.3                   |

## 18.3.2

FCA

G

The provisions of COBS in the table are unlikely to be relevant to any *corporate finance business* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

| COBS | Description  |
|------|--|
| 5    | Distance communications, except in relation to <i>distance contracts</i> concluded with <i>consumers</i>                         |
| 7    | Insurance mediation  |
| 13   | Preparing product information  |
| 14.2 | Providing product information  |
| 15   | Cancellation, except cancellation and withdrawal rights in relation to <i>distance contracts</i> concluded with <i>consumers</i> |
| 17   | Claims handling for long-term care insurance   |
| 18.1 | Trustee firms' regime  |
| 18.2 | Energy market activity and oil market activity   |
| 18.4 | Stock lending activity   |
| 19   | Pensions - supplementary provisions  |
| 20   | With-profits   |

18

#### Corporate finance business - non-MiFID business

## 18.3.3

FCA

R

Only the provisions of COBS in the table apply to *corporate finance business* carried on by a *firm* which is not *MiFID* or *equivalent third country business*.

| COBS     | Description   |
|----------|---|
| <b>1</b> | <b>Application</b>  |
| 2.1.1    | Acting honestly, fairly and professionally  |
| 2.3      | Inducements   |
| 2.4      | Agent as client and reliance on others  |
| 3        | Client categorisation   |
| 4        | Communication to clients including financial promotions, except COBS 4.5 - COBS 4.11  |
| 5.1      | The information and other requirements of the Distance Marketing Directive, but only in relation to <i>distance contracts</i> concluded with <i>consumers</i> |
| 5.2      | E-commerce  |
| 11.7     | Personal account dealing  |
| 12       | Investment research   |

18.3.4

FCA

G

| COBS | Description  |
|------|--|
| 15   | <b>Cancellation, but only in relation to distance contracts concluded with consumers</b> |

■ COBS 15 (Cancellation) is likely to be of limited application to *corporate finance business*. *Distance contracts* concluded with *consumers* in the course of *corporate finance business* will be exempt from ■ COBS 15 if the price of the financial service is dependent on fluctuations in the financial market outside the *firm's* control.

## 18.4 Stock lending activity

18.4.1

FCA

R

The provisions of COBS in the table do not apply in relation to any *stock lending activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

| COBS                | Subject   |
|---------------------|---|
| 6.1A                | Adviser charging and remuneration   |
| 6.1B                | Retail investment product provider requirements relating to adviser charging and remuneration |
| 6.2A                | Describing advice services  |
| 6.3                 | Disclosing information about services, fees and commission - packaged products                |
| 6.4                 | Disclosure of charges, remuneration and commission  |
| 9.4                 | Suitability reports   |
| 9.6                 | Special rules for providing basic advice on a stakeholder product                             |
| 11.6                | Use of dealing commission   |
| 16.3.9              | Guidance on contingent liability transaction  |
| 16.5                | Quotations for surrender values   |
| 16.6                | Life insurance contracts - communications to clients  |
| 16 Annex 1 R (1) 14 | Information to be provided in accordance with COBS 16.2.1 R and 16.3                          |

PAGE  
11

18.4.2

FCA

G

The provisions of COBS in the table are unlikely to be relevant in relation to any *stock lending activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

| COBS | Description  |
|------|--|
| 5    | Distance communications, except in relation to <i>distance contracts</i> concluded with <i>consumers</i> |
| 7    | Insurance mediation  |



|      |  |
|------|--|
| 13   | Preparing product information  |
| 14.2 | Providing product information  |
| 15   | Cancellation, except cancellation and withdrawal rights in relation to <i>distance contracts</i> concluded with <i>consumers</i> |
| 17   | Claims handling for long-term care insurance   |
| 18.1 | Trustee firms' regime  |
| 18.2 | Energy market activity and oil market activity   |
| 18.3 | Corporate finance business   |
| 19   | Pensions - supplementary provisions  |
| 20   | With-profits   |



**18.5 Operators of collective investment schemes**

**Application**

18.5.1  
FCA

**R**

This section applies to a *firm* which is an *operator* of a *collective investment scheme*.

**Application or modification of general COBS rules for operators**

18.5.2  
FCA

**R**

An *operator* when it is carrying on *scheme management activity*:

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

Table: Application of conduct of business rules

Application of conduct of business rules

| Chapter, section or rule | Description  | Modifications |
|--------------------------|--|---------------|
| 1                        | Application  |               |
| 2.1.1                    | Acting honestly, fairly and professionally           |               |
| 2.3                      | Inducements  |               |
| 2.4                      | Agent as client and reliance on others               |               |
| 4.2.1 - 4.2.3            | Fair, clear and not misleading communications        |               |
| 5.1                      | Distance communications                              |               |
| 5.2                      | E-Commerce   |               |
| 6.1G.2                   | Re-registration requests: firms acting as registrars |               |

| Chapter, section or rule | Description   | Modifications  |
|--------------------------|---|--|
| 11.2                     | Best execution  | In the case of an <i>unregulated collective investment scheme</i> , COBS 18.5.4R (Modification of best execution) applies instead of COBS 11.2 in the circumstances set out in COBS 18.5.4R. |
| 11.3                     | Client order handling   |  |
| 11.5                     | Record keeping: client orders and decisions to deal             |  |
| 11.6                     | Use of dealing commission                                       |  |
| 11.8                     | Recording telephone conversations and electronic communications |  |
| 18.5                     | Operators of collective investment schemes                      |  |

#### Additional application of COBS rules for management companies

18.5.2A

FCA

R

A *management company* must:

- (1) in addition to complying with the *COBS rules* specified in ■ COBS 18.5.2 R, comply with ■ COBS 11.7 (Personal account dealing); and
- (2) comply with ■ COBS 2.3 (Inducements) as modified by ■ COBS 2.3.2A R

[Note: article 13(1) to 13(4) of the *UCITS implementing Directive*]

#### General modifications

18.5.3

FCA

R

The *COBS rules* specified in the table in ■ COBS 18.5.2 R apply to an *operator* when it is carrying on *scheme management activity* with the following modifications:

- (1) subject to (2), references to *customer* or *client* are to be construed as references to any *scheme* in respect of which the *operator* is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on;
- (2) in the case of an *unregulated collective investment scheme*, when an operator is required by the rules in COBS to provide

information to, or obtain consent from, a *customer* or *client*, the *operator* must ensure that the information is provided to, or consent obtained from, a *participant* or a potential *participant* in the *scheme* as the case may be; and

- (3) references to the service of *portfolio management* in ■ COBS 11.2 and ■ 11.3 are to be construed as references to the management by an *operator* of *financial instruments* held for or within the *scheme* of which it is the *operator*.

#### Modification of best execution for operators of unregulated collective investment schemes

18.5.4

FCA

R

The best execution provisions applying to an *operator* of a *collective investment scheme* do not apply in relation to an *unregulated collective investment scheme* whose scheme documents include a statement that best execution does not apply in relation to the *scheme* and in which:

- (1) no *participant* is a *retail client*; or
- (2) no current *participant* in the *scheme* was a *retail client* on joining the *scheme* as a *participant*.

#### Scheme documents for an unregulated collective investment scheme

18.5.5

FCA

R

An *operator* of an *unregulated collective investment scheme* must not accept a *retail client* as a *participant* in the *scheme* unless it has taken reasonable steps to offer and, if requested, provide to the potential *participant* scheme documents which adequately describe how the operation of the *scheme* is governed.

#### Format and content of scheme documents

18.5.6

FCA

G

An *operator's* scheme documents may consist of any number of *documents* provided that it is clear that collectively they constitute the scheme documents and provided the use of several *documents* in no way diminishes the significance of any of the statements which are required to be given to the potential *participant*.

18.5.7

FCA

G

The scheme documents of an *unregulated collective investment scheme* (if they exist) should make it clear that if a *participant* is reclassified as a *retail client*, this reclassification will not affect certain *scheme management activities* of the *operator* of the *scheme*. In particular, despite such a reclassification, the operator will not be required to comply with the best execution provisions applying to an *operator* of a *collective investment scheme*. It should be noted that there is no requirement that scheme documents must be produced for an *unregulated collective investment scheme*.

18.5.8

FCA

R

Where the *scheme* is an *unregulated collective investment scheme* and no current *participant* in the *scheme* was a *retail client* on joining the *scheme* as a *participant*, the scheme documents must include a statement that:

- (1) explains that if a *participant* is reclassified as a *retail client* subsequent to joining the *scheme* as a *participant*, then the *operator*

may continue to treat all *participants* in the *scheme* as though they were not *retail clients*;

- (2) explains that if a *participant* is reclassified as a *retail client* subsequent to joining the scheme as a participant, then the modification of best execution (see ■ COBS 18.5.5 R ) will continue to apply to that *scheme*; and
- (3) explains that, in the event of such a reclassification, the *operator* will not be required to provide best execution in relation to the *scheme*.

18.5.9

FCA

G

The *operator* will still have to comply with other COBS provisions as a result of the reclassification of a *participant* as a *retail client*, for example, the requirement to provide *periodic statements* to *participants* who are *retail clients* in an *unregulated collective investment scheme* (see the rule on periodic statements for an unregulated collective investment scheme ( ■ COBS 18.5.11)).

#### Adequate information

18.5.10

FCA

A

- (1) In order to provide adequate information to describe how the operation of the *scheme* is governed, an *operator* of an *unregulated collective investment scheme* should include in the scheme documents a provision about each of the items of relevant information set out in the following table (Content of scheme documents).
- (2) Compliance with (1) may be relied on as tending to establish compliance with ■ COBS 18.5.5 R.
- (3) Contravention of (1) may be relied on as tending to establish contravention of ■ COBS 18.5.5 R.

Table: Content of scheme documents

#### Content of scheme documents

The scheme documents should include provision about:

- |     |   |
|-----|---|
| (1) | Regulator<br><br>The <i>firm</i> statutory status in accordance with GEN 4 Annex 1 R (Statutory status disclosure); |
| (2) | Services<br><br>the nature of the services that the <i>operator</i> will provide in relation to the <i>scheme</i> ; |

## The scheme documents should include provision about:

- (3) Payments for services
- details of any payment for services payable by the *scheme* or from the property of the *scheme* or *participants* in the *scheme* to the *operator*, including where appropriate:
- (a) the basis of calculation;
  - (b) how it is to be paid and collected;
  - (c) how frequently it is to be paid; and
  - (d) whether or not any other payment is receivable by the *operator* (or to its knowledge by any of its *associates*) in connection with any transactions effected by the *operator* with or for the *scheme*, in addition to or in lieu of any fees;
- (4) Commencement
- when and how the *operator* is appointed;
- (5) Accounting
- the arrangements for accounting to the *scheme* or *participants* in the *scheme* for any transaction effected;
- (6) Termination method
- how the appointment of the *operator* may be terminated;
- (7) Complaints procedure
- how to complain to the *operator* and a statement that the *participants* in the *scheme* may subsequently complain direct to the *Financial Ombudsman Service*;
- (8) Compensation
- whether or not compensation may be available from the *compensation scheme* should the *operator* be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained;
- (9) Investment objectives
- the investment objectives for the portfolio of the *scheme*;
- (10) Restrictions
- (a) any restrictions on:

## The scheme documents should include provision about:

- (i) the types of *investments* or property which may be included in the portfolio of the *scheme*;
  - (ii) the markets on which *investments* or property may be acquired for the portfolio of the *scheme*;
  - (iii) the amount or value of any one *investment* or asset, or on the proportion of the portfolio of the *scheme* which any one *investment* or asset or any particular kind of *investment* or asset may constitute; or
- (b) that there are no such restrictions;
- (11) Holding scheme assets
- (a) if it is the case, that the *operator* will:
- (i) hold *money* on behalf of the *scheme* or be the *custodian* of *investments* or other property of the *scheme*; or
  - (ii) arrange for some other *person* to act in either capacity and, if so, whether that *person* is an associate of the *operator* identifying that *person* and describing the nature of any association; and
- (b) in either case:
- (i) how any *money* is to be deposited;
  - (ii) the arrangements for recording and separately identifying registrable *investments* of the *scheme* and, where the registered holder is the *operator's* own nominee, that the *operator* will be responsible for the acts and omissions of that *person*;
  - (iii) the extent to which the *operator* accepts liability for any loss of the *investment* of the *scheme*;
  - (iv) the extent to which the *operator* or any other *person* mentioned in (11)(a)(ii), may hold a lien or security interest over *investments* of the *scheme*;
  - (v) where *investments* of the *scheme* will be registered collectively in the same name, a statement that the entitlements of the scheme may not be identifiable by separate certificates or other physical documents of

## The scheme documents should include provision about:

- title, and that, should the *operator* default, any shortfall in *investments* of the *scheme* registered in that name may be shared proportionately among all *schemes* and any other *customers* of the *operator* whose *investments* are so registered;
- (vi) whether or not *investments* or other property of the *scheme* can be lent to, or deposited by way of collateral with, a third party and whether or not *money* can be borrowed on behalf of the *scheme* against the security of those *investments* or property and, if so, the terms upon which they may be lent or deposited;
- (vii) the arrangements for accounting to the *scheme* for *investments* of the *scheme*, for income received (including any interest on *money* and any income earned by lending *investments* or other property) of the *scheme*, and for rights conferred in respect of *investments* or other property of the *scheme*;
- (viii) the arrangements for determining the exercise of any voting rights conferred by *investments* of the *scheme*; and
- (ix) where *investments* of the *scheme* may be held by an eligible *custodian* outside the *United Kingdom*, a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those *investments*, may apply;
- (12) Clients' money outside the United Kingdom
- if it is the case, that the *operator* may hold the *money* of the *scheme* in a *client bank account* outside the *United Kingdom*;
- (13) Exchange rates
- if a liability of the *scheme* in one currency is to be matched by an asset in a different currency, or if the services to be provided to the *operator* for the *scheme* may relate to an *investment* denominated in a currency other than the currency in which the *investments* of the *scheme* are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the *investments* of the *scheme*;



## The scheme documents should include provision about:

- (14) Stabilised investments
- if it is the case, that the *operator* is to have the right under the *scheme documents* to effect transactions in *investments* the prices of which may be the subject of stabilisation;
- (15) Conflict of interest and material interest
- if it is the case, that the *operator* is to have the right under the agreement or *instrument constituting the scheme* to effect transactions on behalf of the *scheme* in which the *operator* has directly or indirectly a material interest (except for an interest arising solely from the participation of the *operator* as agent for the *scheme*), or a relationship of any description with another party which may involve a conflict with the *operator's* duty to the *scheme*, together with a disclosure of the nature of the interest or relationship;
- (16) Use of dealing commission
- if the *operator* receives goods or services in addition to the *execution* of its *customer orders* in accordance with the section on the use of dealing commission, the prior disclosure required by the *rule* on prior disclosure (see COBS 11.6.2 R);
- (17) Acting as principal
- if it is the case, that the *operator* may act as *principal* in a transaction with the *scheme*;
- (18) Stock lending
- if it is the case, that the *operator* may undertake *stock lending activity* with or for the *scheme* specifying the type of assets of the *scheme* to be lent, the type and value of *relevant collateral* from the borrower and the method and amount of payment due to the *scheme* in respect of the lending;
- (19) Transactions involving contingent liability investments
- (a) if it is the case, that the agreement or *instrument constituting the scheme* allows the *operator* to effect transactions involving *contingent liability investments* for the account of the portfolio of the *scheme*;
- (b) if applicable, whether there are any limits on the amount to be committed by way of margin and, if so, what those limits are; and
- (c) if applicable, that the *operator* has the authority to effect transactions involving *contingent liability investments* otherwise than under the rules of a *recog-*

## The scheme documents should include provision about:

- nised investment exchange or designated investment exchange and in a contract traded thereon;*
- (20) Periodic statements
- (a) the frequency of any *periodic statement* (this should not be less than once every 12 months) except where a *periodic statement* is not required (see COBS 18.5.13R); and
- (b) whether those statements will include some measure of performance, and, if so, what the basis of that measurement will be;
- (21) Valuation
- the bases on which assets comprised in the portfolio of the *scheme* are to be valued;
- (22) Borrowings
- if it is the case, that the *operator* may supplement the funds in the portfolio of the *scheme* and, if it may do so:
- (a) the circumstances in which the *operator* may do so;
- (b) whether there are any limits on the extent to which the *operator* may do so and, if so, what those limits are; and
- (c) any circumstances in which such limits may be exceeded;
- (23) Underwriting commitments
- if it is the case, that the *operator* may for the account of the portfolio of the *scheme* underwrite or sub-underwrite any issue or offer for sale of *securities*, and:
- (a) whether there are any restrictions on the categories of *securities* which may be underwritten and, if so, what these restrictions are; and
- (b) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;
- (24) Investments in other collective investment schemes
- whether or not the portfolio may contain *units* in a *collective investment scheme* either operated or advised by the *operator* or by an *associate* of the *operator* or in a *collective investment scheme* which is not a *regulated collective investment scheme*;

### The scheme documents should include provision about:

- (25) Investments in securities underwritten by the operator
- whether or not the portfolio may contain *securities* of which any issue or offer for sale was underwritten, managed or arranged by the *operator* or by an *associate* of the *operator* during the preceding 12 months.

### Periodic statements for an unregulated collective investments scheme

18.5.11

FCA

R

An *operator* of an *unregulated collective investment scheme* must, subject to the exceptions from the requirement to provide a *periodic statement*, provide to *participants* in the *scheme*, promptly and at suitable intervals, a statement in a *durable medium* which contains adequate information on the value and composition of the portfolio of the *scheme* at the beginning and end of the period of the statement.

### Promptness, suitable intervals and adequate information

18.5.12

FCA

E

- (1) An *operator* should act in accordance with the provisions in the right hand column of the periodic statements table (see ■ COBS 18.5.15E) to fulfil the requirement to prepare and issue *periodic statements* indicated in the left hand column against these provisions.
- (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to prepare and issue periodic statements.
- (3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to prepare and issue periodic statements.

### Exceptions from the requirement to provide a periodic statement

18.5.13

FCA

R

- (1) An *operator* of an *unregulated collective investment scheme* need not provide a *periodic statement*:
  - (a) (i) to a *participant* in the *scheme* who is a *retail client* ordinarily resident outside the *United Kingdom*; or
  - (ii) to a *participant* in the *scheme* who is a *professional client*;  
if the *participant* has so requested or the *operator* has taken reasonable steps to establish that the *participant* does not wish to receive it; or
  - (b) if it would duplicate a statement to be provided by someone else.

(2) For a *firm* acting as an *outgoing ECA provider*, the exemption for *retail client participants* ordinarily resident outside the *United Kingdom* applies only to a *participant* in the *scheme* who is a *retail client* ordinarily resident outside the *EEA*.

**Record keeping requirements**

18.5.14

FCA

R

An operator of an *unregulated collective investment scheme* must make a copy of any *periodic statement* it has provided in accordance with the requirement to prepare and issue *periodic statements* to *participants* in the *scheme*. The record must be retained for a minimum period of three years.

18.5.15

FCA

A

Table: Periodic statements

This table belongs to ■ COBS 18.5.12 E .

| Periodic statements   |  |
|-----------------------|--|
| Suitable inter-vals   | <p>(1) A <i>periodic statement</i> should be provided at least:</p> <ul style="list-style-type: none"> <li>(a) six-monthly; or</li> <li>(b) once in any other period, not exceeding 12 months, which has been mutually agreed between the <i>operator</i> and the <i>participant</i> in the <i>scheme</i>.</li> </ul>  |
| Adequate in-formation | <p>(2) (a) A <i>periodic statement</i> should contain:</p> <ul style="list-style-type: none"> <li>(i) (A) The information set out in the table of general contents of a <i>periodic statement</i>;</li> <li>(B) where the portfolio of the <i>scheme</i> includes uncovered open positions in <i>contingent liability investments</i>, the additional information in the table listing the contents of a <i>periodic statement</i> (see COBS 18.5.15E ) in respect of <i>contingent liability investments</i>; or</li> <li>(ii) such information as a <i>participant</i> who is a <i>retail client</i> ordinarily resident outside the <i>United Kingdom</i>, or a <i>professional client</i>, has on his own initiative agreed with the <i>operator</i> as adequate.</li> </ul> |

18.5.16

FCA

G

Examples of uncovered open positions include:

- (1) selling a call *option* on an *investment* not held in the portfolio;
- (2) unsettled sales of call *options* on currency in amounts greater than the portfolio's holding of that currency in cash or in *readily realisable investments* denominated in that currency; and
- (3) transactions having the effect of *selling* an index to an amount greater than the portfolio's holdings of *investments* included in that index.

18.5.17

FCA

A

Table: General contents of a periodic statement

This table belongs to ■ COBS 18.5.15 E .

| General contents of periodic statements |  |
|---|--|
| 1                                       | <p>Contents and value</p> <p>(a) As at the beginning of the account period, the total value of the portfolio of the <i>scheme</i>, being either:</p> <ol style="list-style-type: none"> <li>(i) the value of the assets comprised in the portfolio on the date as at which the statement provided for the immediately preceding period of account is made up; or</li> <li>(ii) in the case of the first <i>periodic statement</i>, the value of the assets comprised in the portfolio on the date on which the <i>operator</i> assumed responsibility for the management of the portfolio.</li> </ol> <p>(b) As at the end of the account period:</p> <ol style="list-style-type: none"> <li>(i) the number, description and value of each <i>investment</i> held on behalf of the <i>scheme</i>;</li> <li>(ii) the amount of cash held on behalf of the <i>scheme</i>; and</li> <li>(iii) the total value of the portfolio of the <i>scheme</i>.</li> </ol> |
| 2                                       | <p>Basis of valuation</p> <p>A statement of the basis on which the value of each <i>investment</i> has been calculated and, if applicable, a statement that the basis for valuing a particular <i>investment</i> has changed since the previous</p>  |

## General contents of periodic statements

*periodic statement*. Where any *investments* are shown in a currency other than the usual one used for valuation of the portfolio of the *scheme*, the relevant currency exchange rates must be shown.

- 3 Details of any assets loaned or charged
- (a) A summary of those *investments* (if any) which were, at the closing date, loaned to any third party and those *investments* (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the *scheme*; and
  - (b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during the period.
- 4 Transactions and changes in composition
- Except in the case of a portfolio which aims to track the performance of an external index:
- (a) a statement that summarises the transactions entered into for the portfolio of the *scheme* during the period; and
  - (b) the aggregate of *money* and a summary of all investments transferred into and out of the portfolio of the *scheme* during the period; and
  - (c) the aggregate of any interest payments, dividends and other benefits received by the *operator* for the portfolio of the *scheme* during that period.
- 5 Charges and remuneration
- If not previously advised in writing, a statement for the account period:
- (a) of the aggregate charges of the *operator* and its *associates*; and
  - (b) of any *remuneration* received by the *operator* or its *associates* or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio of the *scheme*.
- 6 Movement in value of portfolio
- A statement of the difference between the value of the portfolio at the closing date and its value at the starting date of the account period, having regard at least, during the account period, to the following:

## General contents of periodic statements

- (a) the aggregate of assets received from *participants* of the *scheme* and added to the portfolio of the *scheme*;
- (b) the aggregate of the value of assets transferred, or of amounts paid, to the *scheme*;
- (c) the aggregate income received on behalf of the *scheme* in respect of the portfolio; and
- (d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio of the *scheme*.

## Notes:

For the purposes of Item 1, where the *scheme* is a *property enterprise trust*, it will be sufficient for the *periodic statement* to disclose the number of properties held in successive valuation bands where this is appropriate to the size and composition of the *scheme*, rather than the value of each asset in the portfolio. The valuation bands of over £10m, £5-£10m, £2.5-£5m, £1-£2.5m and under £1m would be appropriate, unless an *operator* could show that different bands were justifiable in the circumstances.

The statement to be provided under Item 6 is not intended to be an indicator of the performance of the portfolio of the *scheme*.

An *operator* may wish to distinguish capital and income, and thereby provide more information than referred to in this table. If the statement includes some measure of performance, the basis of measurement should be stated.

18.5.18

FCA



Table: Contents of a periodic statement in respect of contingent liability investments

This table belongs to ■ COBS 18.5.15 E.

## Contents of a periodic statement in respect of contingent liability investments

- (1) Changes in value
 

The aggregate of *money* transferred into and out of the portfolio of the *scheme* during the account period.
- (2) Open positions
 

In relation to each open position in the portfolio of the *scheme* at the end of the account period, the unrealised profit or loss to the portfolio of the *scheme* (before deducting or adding any *commission* which would be payable on closing out).

### Contents of a periodic statement in respect of contingent liability investments

#### (3) Closed positions

In relation to each transaction effected during the account period to close out a position of the *scheme*, the resulting profit or loss to the portfolio of the *scheme* after deducting or adding any *commission*.

(Instead of the specific detail required by Items 2 or 3, the statement may show the net profit or loss in respect of the overall position of the *scheme* in each contract)

#### (4) Aggregate of contents

The aggregate of each of the following in, or relating to, the portfolio of the *scheme* at the close of business on the valuation date:

- (a) cash;
- (b) *collateral* value;
- (c) management fees; and
- (d) *commissions* attributable to transactions during the period or a statement that this information has been separately disclosed in writing on earlier statements or confirmations to the *participant*.

#### (5) Option account valuations

In respect of each open *option* comprising the portfolio of the *scheme* on the valuation date:

- (a) the *share, future, index* or other *investment* or asset involved;
- (b) (unless the valuation statement follows the statement for the period in which the *option* was opened) the trade price and date for the opening transaction;
- (c) the market price of the contract; and
- (d) the exercise price of the contract.

*Options* account valuations may show an average trade price and market price in respect of an *option* series where a number of contracts within the same series have been purchased on behalf of the *scheme*.



## 18.6 Lloyd's

### Application

**18.6.1** **R** This section applies to a *firm* when it carries on *Lloyd's market activities*.  
**FCA**

### COBS rules that apply to Lloyd's market activities

**18.6.2** **R** Only **■** COBS 3 (Client categorisation) and the *financial promotion rules* apply when a *firm* is carrying out *Lloyd's market activities*.  
**FCA**

**18.6.3** **G** *Firms* are reminded that *syndicate* business plans may be used in ways that bring them within the definition of a *financial promotion*.  
**FCA**

### Definitions and modifications

**18.6.4** **R** When a *firm* is carrying on *Lloyd's market activities*, any reference in COBS to the term:  
**FCA**

- (1) *designated investment* is to be taken to include the following specified investments:
  - (a) the *underwriting capacity of a Lloyd's syndicate*;
  - (b) *membership of a Lloyd's syndicate*; and
  - (c) *rights to or interests in the specified investments* in (a) or (b);
- (2) *designated investment business* is to be taken to include the following *regulated activities*:
  - (a) *advising on syndicate participation at Lloyd's*;
  - (b) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*; and
  - (c) *agreeing to carry on the regulated activities* in (a) or (b).

### The Principles and Lloyd's market activities

**18.6.5** **G** Whilst COBS has limited application to *Lloyd's market activities*, firms conducting *Lloyd's market activities* are reminded that they are required to comply with the *Principles*.  
**FCA**



**18.7 Depositaries**

18.7.1

FCA

**R**

Only the COBS provisions in the table apply to a *depositary* when acting as such, when carrying on business which is not *MiFID or equivalent third country business*:

| COBS | Description  |
|------|--|
| 2.1  | Acting honestly, fairly and professionally   |
| 2.3  | Inducements, except COBS 2.3.1 R (2)(b) and COBS 2.3.2 R   |
| 4    | Communication to clients including financial promotions, but only in relation to <i>communicating or approving a financial promotion</i> |
| 11.7 | Personal account dealing   |



## 18.8 OPS firms - non scope business

18.8.1

FCA

R

COBS applies to an *OPS firm* when it carries on business which is not *MiFID or equivalent third country business*, with the following modifications:

- (1) references to *client* are to be taken to be references to the *OPS* or *welfare trust*, as the case may be, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of whom the relevant business is to be carried on;
- (2) if an *OPS firm* is required by any *COBS rule* 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 *OPS* or *welfare trust* for whom that *firm* is acting; and
- (3) *COBS* is modified by the addition of the *rules* in the table below:

### Additional COBS rules applicable to an OPS firm

| COBS        | Description   |
|-------------|---|
| 16.2.6R (4) | If an <i>OPS firm</i> carries on <i>OPS activity</i> for an <i>OPS trustee</i> who is a <i>professional client</i> and who is habitually resident in the <i>United Kingdom</i> , it may rely upon the exceptions in <i>COBS 16.2.1 R (2)</i> or <i>COBS 16.2.6 R (1)</i> only if it provides a <i>periodic statement</i> to the <i>professional client</i> containing the information required by <i>COBS 18.8.2R</i> |

18.8.2

FCA

R

Where an *OPS firm* conducts *OPS activity* and is obliged to provide a *periodic statement*, the *periodic statement* must contain the information in the table below.

### Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

- (1) **Investment objectives**

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

- A statement of any investment objectives governing the mandate of the portfolio of the *occupational pension scheme* as at the closing and starting date of the *periodic statement*.**
- (2) **Details of any asset loaned or charged**
- (a) a summary of any *investments* that were, at the closing date, lent to a third party and any *investments* that were at that date charged to secure borrowings made on behalf of the portfolio; and
- (b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period and a comparison with the previous period.
- (3) ***Transactions* and changes in composition**
- (a) a summary of the *transactions* entered into for the portfolio during the period and a comparison with the previous period;
- (b) the aggregate of *money* and a summary of all *investments* transferred into and out of the portfolio during the period; and
- (c) the aggregate of any interest payments, dividends and other benefits received by the firm for the portfolio during that period and a comparison with the previous period.
- (4) ***Charges* and remuneration**
- If not previously advised in writing, a statement for the period of account:
- (a) of the aggregate *charges* of the *firm* and its *associates*; and
- (b) of any *remuneration* received by the *firm* or its *associates* or both from a third party in respect of the *transactions* entered into, or any other services provided, for the portfolio.
- (5) **Movement in value of portfolio**
- A statement of the difference between the value of the portfolio at the closing date of the period of account and its value at the starting date, having regard, during the period of account, to:
- (a) the aggregate of assets received from the *occupational pension scheme* and added to the portfolio;

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

(b) the aggregate of the value of assets transferred, or of amounts paid, to the *client*;

(c) the aggregate income received on behalf of the *client* in respect of the portfolio; and

(d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio.

18.8.3

FCA

R

■ COBS 8 (Client agreements) does not apply to an *OPS firm*, where the *OPS firm* is carrying on *designated investment business* as part of its *OPS activity* in relation to an *occupational pension scheme* of which it is a *trustee*.

 18.9 ICVCs

## 18.9.1

FCA

R

- (1) The *financial promotion rules* in COBS apply to an ICVC, except that COBS 4.13 (UCITS) applies only to an ICVC that is a UCITS scheme.
- (2) ■ COBS 14.2 (Providing product information to clients) applies to an ICVC that is a UCITS scheme.

## 18.9.2

FCA

G

Firms should note that the *operator* of an ICVC when it is undertaking *scheme management activity* will be subject to ■ COBS 18.5.2R .



**18.10 UCITS qualifiers and service companies**

18.10.1

FCA

**R**

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

| COBS | Description   |
|------|---|
| 4    | <b>Communications to clients, but only in relation to <i>communicating or approving a financial promotion</i></b> |
| 5.2  | <b>E-Commerce</b>   |
| 12.4 | <b>Investment Research recommendations: required disclosures</b>  |

## 18.11 Authorised professional firms

**18.11.1** **R** COBS applies to an *authorised professional firm*, except that its application in relation to *non-mainstream regulated activities* and *financial promotion* is modified as set out below.  
**FCA**

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

- (1) the *fair, clear and not misleading rule* applies;
- (2) the *financial promotion rules* apply as modified below;
- (3) ■ COBS 7 (Insurance mediation) applies but only if the *designated professional body* of the *firm* does not have rules approved by the FCA under section 332(5) of the Act that implement articles 12 and 13 of the *Insurance Mediation Directive* and that apply to the *firm*;
- (4) ■ COBS 8.1.3 R (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and
- (5) ■ COBS 5.2 (E-commerce) applies.

**18.11.3** **R** The *financial promotion rules* do not apply to an *authorised professional firm* in relation to the *communication* of a *financial promotion* if:  
**FCA**

- (1) the *firm's* main business is the practice of its profession (see IPRU(INV) 2.1.2R(3));
- (2) the *financial promotion* is made for the purposes of and incidental to the promotion or provision by the *firm* of its professional services or its *non-mainstream regulated activities*; and
- (3) the *financial promotion* is not *communicated* on behalf of another *person* who would not be able lawfully to *communicate* the *financial promotion* if he were acting in the course of business;



however, a *firm* may use the exemptions for promoting *unregulated collective investment schemes* in ■ COBS 4 (Communicating with clients, including financial promotions) if it wishes.

18.11.4

FCA

G

The *rules* on *approving financial promotions* continue to apply.

## Chapter 19

# Pensions supplementary provisions

**19.1 Pension transfers and opt-outs**

**Preparing and providing a transfer analysis**

19.1.1

FCA

**R**

If an individual who is not a *pension transfer specialist* gives a *personal recommendation* about a *pension transfer* or *pension opt-out* on a *firm's* behalf, the *firm* must ensure that the recommendation is checked by a *pension transfer specialist*.

19.1.2

FCA

**R**

A *firm* must:

- (1) compare the benefits likely (on reasonable assumptions) to be paid under a *defined benefits pension scheme* with the benefits afforded by a *personal pension scheme* or *stakeholder pension scheme*, before it advises a *retail client* to transfer out of a *defined benefits pension scheme*;
- (2) ensure that that comparison includes enough information for the *client* to be able to make an informed decision;
- (3) give the *client* a copy of the comparison, drawing the *client's* attention to the factors that do and do not support the *firm's* advice, no later than when the *key features document* is provided; and
- (4) take reasonable steps to ensure that the *client* understands the *firm's* comparison and its advice.

19.1.3

FCA

**G**

In particular, the comparison should:

- (1) take into account all of the *retail client's* relevant circumstances;
- (2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;
- (3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up; and
- (4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the *retail client's* funds will be invested.

19.1.4

FCA

R

When a *firm* compares the benefits likely to be paid under a *defined benefits pension scheme* with the benefits afforded by a *personal pension scheme* or *stakeholder pension scheme* (■ COBS 19.1.2 R (1)), it must:

(1) assume that:

(a) the annuity interest rate is the intermediate rate of return appropriate for a level or fixed rate of increase annuity in COBS 13 Annex 2

3.1R(6) unless COBS 19.1.4B R applies or the rate for annuities in payment (if less);

(b) the *RPI* is 2.5%

(c) the average earnings index and the rate for section 21 orders is 4.0%

(d) for benefits linked to the *RPI*, the pre-retirement limited price indexation revaluation is 2.5%

(e) the annuity interest rate for post-retirement *limited price indexation* based on the *RPI* with maximum pension increases less than or equal to 3.5% or with minimum pension increases more than or equal to 3.5% is the rate in (a) above allowing for increases at the maximum rate of pension increase ; otherwise it is the rate in (f) below;

(f) the index linked annuity interest rate for pension benefits linked to the *RPI* is the intermediate rate of return in COBS 13 Annex 2 3.1 R (6) for annuities linked to the *RPI* unless COBS 19.1.4B R applies;

**(g) the mortality rate used to determine the annuity is based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables PCMA00 and PCFA00 and including mortality improvements derived from each of the male and female annual mortality projections models, in equal parts;**

**(h) for benefits linked to the *CPI*, the pre-retirement *limited price indexation* revaluation is**

**2.0%**

**(i) the index linked annuity interest rate for pension benefits linked to the *CPI* is the intermediate rate of return in**

**COBS 13 Annex 2 3.1R(6) for annuities linked to the *RPI* plus 0.5% unless COBS 19.1.4B R applies in which case it is the annuity rate in COBS 19.1.4B R plus 0.5%;**

**(j) the annuity interest rate for post-retirement *limited price indexation* based on the *CPI* with maximum pension increases less than or equal to 3.0% or with minimum pension increases more than or equal to 3.5% is the rate in (a) above allowing for increases at the maximum rate**

**of pension increase; where minimum pension increases are more than or equal to 3% but less than 3.5% the annuity rate is the rate in (a) above allowing for increases at the minimum rate of pension increase otherwise it is the rate in (i) above;**

- or use more cautious assumptions;
- (2) calculate the interest rate in deferment; and
- (3) have regard to benefits which commence at difference times.

**19.1.4A** FCA ▲ For any year commencing 6 April, the use of the male and female annual CMI Mortality Projections Models in the series CMI(20YY-1)\_M\_[1.25%] and CMI(20YY-1)\_F\_[1.25%], where YY-1 is the year of the Model used, will tend to show compliance with ■ COBS 19.1.4R (1)(g) .

**19.1.4B** FCA R *Firms* must apply the annual provisions at ■ COBS 13 Annex 2 3.1R(6) on a monthly basis in any month where the yields on the 15th of the relevant month would give a rolling 12 month average annuity rate that varies by at least 0.2% from the previous rate.

**19.1.5** FCA R If a *firm* arranges a *pension transfer* or *pension opt-out* for a *retail client* as an *execution-only transaction*, the *firm* must make, and retain indefinitely, a clear record of the fact that no *personal recommendation* was given to that *client*.

**Suitability**  
.....

**19.1.6** FCA G When advising a *retail client* who is, or is eligible to be, a member of a *defined benefits occupational pension scheme* whether to transfer or opt-out, a *firm* should start by assuming that a transfer or opt-out will not be suitable. A *firm* should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the *client's* best interests.

**19.1.7** FCA G When a *firm* advises a *retail client* on a *pension transfer* or *pension opt-out*, it should consider the *client's* attitude to risk in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

19.1.7A  
FCA

G

When giving a *personal recommendation* about a *pension transfer*, a *firm* should clearly inform the *retail client* about the loss of the fixed benefits and the consequent transfer of risk from the *defined benefits pension scheme* to the *retail client*, including:

- (1) the extent to which benefits may fall short of replicating those in the *defined benefits pension scheme*;
- (2) the uncertainty of the level of benefit that can be obtained from the purchase of a future annuity and the prior investment risk to which the *retail client* is exposed until an annuity is purchased with the proceeds of the proposed *personal pension scheme* or *stakeholder pension scheme*; and
- (3) the potential lack of availability of annuity types (for instance, annuity increases linked to different indices) to replicate the benefits being given up in the *defined benefits pension scheme*.

19.1.7B  
FCA

G

In considering whether to make a *personal recommendation*, a *firm* should not regard a rate of return which may replicate the benefits being given up from the *defined benefits pension scheme* as sufficient in itself.

19.1.8  
FCA

G

When a *firm* prepares a *suitability report* it should include:

- (1) a summary of the advantages and disadvantages of its *personal recommendation*;
- (2) an analysis of the financial implications (if the recommendation is to opt-out); and
- (3) a summary of any other material information.

19.1.9  
FCA

G

If a *firm* proposes to advise a *retail client* not to proceed with a *pension transfer* or *pension opt-out*, it should give that advice in writing.



## 19.2 Personal pensions, FSAVCs and AVCs

### Financial promotions

19.2.1  
FCA

G

A *financial promotion* for a FSAVC should contain a prominent warning that, as an alternative an AVC arrangement exists, and that details can be obtained from the scheme administrator (if that is the case).

### Suitability

19.2.2  
FCA

R

When a *firm* prepares a *suitability report* it must:

- (1) (in the case of a *personal pension scheme*), explain why it considers the *personal pension scheme* to be at least as suitable as a *stakeholder pension scheme*; and
- (2) (in the case of a *personal pension scheme, stakeholder pension scheme* or FSAVC) explain why it considers the *personal pension scheme, stakeholder pension scheme* or FSAVC to be at least as suitable as any facility to make additional contributions to an *occupational pension scheme, group personal pension scheme* or *group stakeholder pension scheme* which is available to the *retail client*.

19.2.3  
FCA

R

When a *firm* promotes a *personal pension scheme*, including a *group personal pension scheme*, to a group of *employees* it must:

- (1) be satisfied on reasonable grounds that the scheme is likely to be at least as suitable for the majority of the *employees* as a *stakeholder pension scheme*; and
- (2) record why it thinks the promotion is justified.



19.3.1

FCA

R

### 19.3 Product disclosure to members of occupational pension schemes

- (1) When a *firm* sells, *personally recommends* or arranges the payment of an AVC contribution by a member of an *occupational pension scheme* to be secured by a *packaged product* purchased by the scheme trustees, it must give the trustees sufficient information to pass to the relevant member for that member to be able to make informed comparisons between the AVC and any alternative *personal pension schemes* and *stakeholder pension schemes* available.
- (2) This *rule* applies to an AVC where members' benefits are linked to the earmarked segments of a *life policy* or *scheme*, but it does not apply to an AVC where the trustees make pooled investments and have their own arrangements for allocating investment returns to determine members' AVC benefits.

## 19.4 Open market options

19

19.4.1

FCA

R

In this section:

- (1) 'intended retirement date' means:
  - (a) the date (according to the most recent recorded information available to the provider) when the scheme member intends to retire, or to bring the benefits in the scheme into payment, whichever is the earlier; or
  - (b) if there is no such date, the scheme member's state pension age;
- (2) 'open market option' means the option to use the proceeds of a *personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity contract* or *pension buy-out contract* to purchase an annuity on the open market; and
- (3) 'open market option statement' means:
  - (a) the fact sheet "Your pension: it's time to choose" available on [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.org.uk), together with a written summary of the *retail client's* open market option, which is sufficient for the *client* to be able to make an informed decision about whether to exercise, or to decline to exercise, an open market option; or
  - (b) a written statement that gives materially the same information.

19.4.2

FCA

R

- (1) If a *retail client* asks a *firm* for a retirement quotation more than four *months* before the *client's* intended retirement date, the *firm* must give the *client* an open market option statement with or as part of its reply, unless the *firm* has given the *client* such a statement in the last 12 *months*.
- (2) If a *firm* does not receive such a request, it must provide a *retail client* with an open market option statement between four and six *months* before the *client's* intended retirement date.

19.4.3

FCA

R

The *firm* must:

- (1) remind the *retail client* about the open market option statement; and
- (2) tell the *client* what sum of money will be available to purchase an annuity on the open market;

at least six weeks before the *client's* intended retirement date.

19.4.4

FCA

R

If a *retail client* with an open market option tells a *firm* that he is considering, or has decided:

- (1) to discontinue an *income withdrawal* arrangement; or
- (2) to take a further sum of money from his pension to buy an *annuity* as part of a phased retirement,

the *firm* must give the *client* an open market option statement, unless the *firm* has given the *client* such a statement in the last 12 *months*.

# Chapter 20

## With-profits

## 20.1 Application

20.1.1

FCA PRA

R

This chapter applies to a *firm* carrying on *with-profits business*, except to the extent modified in the following *rules*.

20.1.2

FCA PRA

R

- (1) The section on the process for *retribution* ( ■ COBS 20.2.42 R to ■ COBS 20.2.52 G):
  - (a) applies to a *firm* that is proposing to make a *retribution* of its *inherited estate*;
  - (b) but not if, and to the extent that, it would require the *firm* to breach, or would prevent the *firm* from complying with, an order made by a court of competent jurisdiction.
- (2) If a *firm* proposes to seek an order from a court of competent jurisdiction that would allow or require it to act in a way that is contrary to the *rules* on *retribution* ( ■ COBS 20.2.42 R to ■ COBS 20.2.52 G) (through, or because of, the exception in (1)(b)), the *firm* must:
  - (a) tell the *appropriate regulator* that that is what it proposes to do;
  - (b) seek the order at the earliest opportunity; and
  - (c) if it wishes to take a step that would be contrary to those *rules* in anticipation of such an order, secure a *waiver* before it does so.

20.1.3

FCA

R

For an *EEA insurer*:

- (1) the *rules* and *guidance* on treating *with-profits policyholders* fairly ( ■ COBS 20.2.1 G to ■ COBS 20.2.41 G and ■ COBS 20.2.53 R to ■ COBS 20.2.60 G) apply only in so far as responsibility for the matter in question has not been reserved to the *firm's Home State regulator* by an *EU instrument*;
- (2) ■ COBS 20.3 (Principles and Practices of Financial Management) does not apply;

- (3) the *rule* on providing information to *with-profits policyholders* who are *habitually resident* in the *United Kingdom* ( ■ COBS 20.4.4 R) and the *rule* on production and provision of a *CFPPFM* ( ■ COBS 20.4.5 R) apply, but the rest of ■ COBS 20.4 (Communications with with-profits policyholders) does not; and
- (4) the *rule* on production and provision of a *CFPPFM* ( ■ COBS 20.4.5 R) applies as if a reference to a *firm* was a reference to an *EEA insurer* in relation to any of its *with-profits policyholders* who are *habitually resident* in the *United Kingdom*.

20.1.3A

PRA

R

For an *EEA insurer* the *rules and guidance* on treating with-profits policyholders fairly ( ■ COBS 20.2.33 G to ■ COBS 20.2.35 G and ■ COBS 20.2.53 R to ■ COBS 20.2.54 R) apply only in so far as responsibility for the matter in question has not been reserved to the *firm's Home State regulator* by an *EU instrument*.

20.1.4

FCA

R

The following do not apply to a *non-directive friendly society*:

- (1) ■ COBS 20.3 (Principles and Practices of Financial Management);
- (2) ■ COBS 20.4 (Communications with with-profits policyholders);  
and
- (3) ■ COBS 20.5 (With-profits governance).

20.1.5

FCA PRA

R

This chapter does not apply to *with-profits business* that consists of effecting or carrying out *Holloway sickness policies*.

## 20.2 Treating with-profits policyholders fairly

### Introduction

20.2.1

FCA

G

- (1) *With-profits business*, by virtue of its nature and the extent of discretion applied by *firms* in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of *policyholders*. Potential conflicts of interest may arise between shareholders and *with-profits policyholders*, between *with-profits policyholders* and non-profit *policyholders* within the same fund, between *with-profits policyholders* and the members of mutually-owned *firms*, between *with-profits policyholders* and management, and between different classes of with-profits policyholders, for example those with and without guarantees. The *rules* in this section address specific situations where the risk may be particularly acute.
- (2) *With-profits policyholders* have an interest in the whole and in every part of the *with-profits fund* into which their *policies* are written and from which the amounts payable in connection with their *policies* are to be paid. Those amounts include those required to satisfy their contractual rights and such other amounts as the *firm* is required to pay in order to treat them fairly (including but not limited to the amounts required to satisfy their reasonable expectations).
- (3) The fair treatment of *with-profits policyholders* requires the *firm's* pay-outs on individual *with-profits policies* to be fair (see ■ COBS 20.2.3 R et seq.) and, if the *firm* makes a distribution from the *with-profits fund* into which their *policies* are written, the receipt by the *with-profits policyholders* of at least the *required percentage* (see ■ COBS 20.2.17 R).

20.2.1A

FCA

R

**A *firm* must take reasonable care to ensure that all aspects of its operating practice are fair to the interests of its *with-profits policyholders* and do not lead to an undisclosed, or otherwise unfair, benefit to shareholders or to other *persons* with an interest in the *with-profits fund*.**

20.2.1B

FCA

G

- (1) Notwithstanding that there may not be a *rule* in the remainder of this section addressing a particular aspect of a *firm's* operating practices, *firms* will need to ensure that they take reasonable care to ensure that all aspects of their operating practice comply with ■ COBS 20.2.1A R.
- (2) For the avoidance of doubt ■ COBS 20.2.1A R does not exhaust or restrict the scope of *Principle 6*. *Firms* will in any event need to ensure that their operating practices are consistent with *Principle 6*.

**20.2.1C** **G** When considering the provisions in this chapter a *firm* will need to ensure that, if applicable, it complies with the with-profits governance requirements in ■ COBS 20.5.  
**FCA**

**20.2.1D** **G** For the purposes of ■ COBS 20.2.1A R the *FCA* expects a *firm* to be able to demonstrate that it has taken reasonable care to ensure its operating practices are fair, including being able to produce appropriate evidence to show that it has followed relevant governance procedures.  
**FCA**

**20.2.2** **R** Neither *Principle 6* (Customers' interests) nor the *rules* on treating *with-profits policyholders* fairly (■ COBS 20.2) relieve a *firm* of its obligation to deliver each *policyholder's* contractual entitlement.  
**FCA**

#### Amounts payable under with-profits policies

**20.2.3** **R** A *firm* must have good reason to believe that its pay-outs on individual *with-profits policies* are fair.  
**FCA**

#### Amounts payable under with-profits policies: Maturity payments

**20.2.4** **G** In this section, maturity payments include payments made when a *with-profits policy* provides for a minimum guaranteed amount to be paid.  
**FCA**

**20.2.5** **R**

- (1) Unless a *firm* cannot reasonably compare a maturity payment with a calculated asset share, it must:
  - (a) set a target range for the maturity payments that it will make on:
    - (i) all of its *with-profits policies*; or
    - (ii) each group of its *with-profits policies*;
  - (b) ensure that each target range:
    - (i) is expressed as a percentage of unsmoothed asset share; and
    - (ii) includes 100% of unsmoothed asset share; and
  - (c) manage its *with-profits business*, and the business of each *with-profit fund*, with the aim of making on each *with-profit policy* a maturity payment that falls within the relevant target range.
- (2) Unsmoothed asset share means:
  - (a) the unsmoothed asset share of the relevant *with-profits policy*; or
  - (b) an estimate of the unsmoothed asset share of the relevant *with-profits policy* derived from the unsmoothed asset share of one or more specimen *with-profits policies*, which a *firm*



has selected to represent a group, or all, of the *with-profits policies* effected in the same *with-profits fund*.

- (3) A *firm* must calculate unsmoothed asset share by:
- (a) applying the methods in ■ INSPRU 1.3.119 R to ■ INSPRU 1.3.123 R;
  - (b) including any amounts that have been added to the *policy* as the result of a distribution from an *inherited estate*; and
  - (c) subject to (d), and where the terms of the *policy* so provide, adding or subtracting an amount that reflects the experience of the *insurance business* in the relevant *with-profits fund*; but
  - (d) if a *with-profits fund* has suffered adverse experience, which results from a *firm's* failure to comply with the *rules and guidance* on treating *with-profits policyholders* fairly (■ COBS 20.2.1 G to ■ COBS 20.2.41 G and ■ COBS 20.2.53 R to ■ COBS 20.2.60 G), that adverse experience may only be taken into account if, and to the extent that, in the reasonable opinion of the *firm's governing body*, the amount referred to in (c) cannot be met from:
    - (i) the *firm's inherited estate* (if any); or
    - (ii) any assets attributable to shareholders, whether or not they are held in the relevant *with-profits fund*.

20.2.6  
FCA

**R** Notwithstanding that a *firm* must aim to make maturity payments that fall within the relevant target range, a *firm* may make a maturity payment that falls outside the target range if it has a good reason to believe that at least 90% of maturity payments on *with-profits policies* in that group have fallen, or will fall, within the relevant target range.

20.2.7  
FCA

**G** If it is not fair or reasonable to calculate or assess a maturity payment using the *prescribed asset share methodology*, a *firm* may use another methodology to set bonus rates, if that methodology properly reflects its representations to *with-profits policyholders* and it applies that methodology consistently.

20.2.8  
FCA

**R** A *firm* may make deductions from asset share to meet the cost of guarantees, or the cost of capital, only under a plan approved by its *governing body* and described in its *PPFM*. A *firm* must ensure that any deductions are proportionate to the costs they are intended to offset.

20.2.9  
FCA

**R** If a *firm* has approved a plan to make deductions from asset share, it must ensure that its planned deductions do not change unless justified by changes in the business or economic environment, or changes in the nature of the *firm's* liabilities as a result of *policyholders* exercising options in their *policies*.

**20.2.10** **R** If a *firm* calculates maturity payments using the *prescribed asset share methodology*, it must manage its *with-profits business*, and each *with-profits fund*, with the longer term aim that it will make aggregate maturity payments of 100% of unsmoothed asset share.

**FCA**

#### **Amounts payable under with-profits policies: Surrender payments**

**20.2.11** **G** A *firm* may use its own methodology to calculate surrender payments, but it should have good reason to believe that its methodology produces a result which, in aggregate across all similar policies, is not less than the result of the *prescribed asset share methodology*. A *firm* might, for example, test the surrender payments on a suitable range of specimen *with-profits policies*.

**FCA**

**20.2.12** **R** If a *firm* calculates surrender payments using the *prescribed asset share methodology*, it must first calculate what the surrender payment would be if it was a maturity payment calculated by that methodology.

**FCA**

**20.2.13** **R** A *firm* may then make a deduction from unsmoothed asset share if necessary, in the reasonable opinion of the *firm's governing body*, to protect the interests of the *firm's remaining with-profits policyholders*.

**FCA**

**20.2.14** **G** Amounts that might be deducted include:

**FCA**

- (1) the *firm's* unrecovered costs, including any financing costs incurred in effecting or carrying out the surrendered *with-profits policy* to the date of surrender, including the costs that might have been recovered if the *policy* had remained in force;
- (2) costs that would fall on the *with-profits fund*, if the surrender value is calculated by reference to an assumed *market value* of assets which exceeds the true *market value* of those assets;
- (3) the *firm's* costs incurred in administering the surrender; and
- (4) a fair contribution towards the cost of any contractual benefits due on the whole, or an appropriate part, of the continuing policies in the *with-profits fund* which would otherwise result in higher costs falling on the continuing *with-profits policies*.

**20.2.15** **G** The provisions dealing with the calculation of surrender payments (■ COBS 20.2.11 G to ■ COBS 20.2.12 R) do not prevent a *firm* from setting a target range for surrender payments where the top-end of the range is lower than the top-end of the relevant range for maturity payments.

**FCA**

**20.2.16** **R** A *firm* must not, in so far as is reasonably practicable, make a market value reduction to the face value of the units of an accumulating *with-profits policy* unless:

**FCA**

- (1) the *market value* of the *with-profits assets* in the relevant *with-profits fund* is, or is expected to be, less than the assumed

value of the assets on which the face value of the units of the *policy* has been based; and

- (2) the market value reduction is no greater than is necessary to reflect the impact of the difference in value referred to in (1) on the relevant payment out to the *policyholder*.

20.2.16A

FCA

G

If a *firm* is able to satisfy ■ COBS 20.2.16R (1), then the volume of surrenders, transfers, or other exits from the *with-profits fund* that there has been, or is expected to be, is a factor that a *firm* may take into account when it is considering whether to make a market value reduction, and if so, its amount, subject to the limit in ■ COBS 20.2.16R (2).

### Conditions relevant to distributions

20.2.17

FCA

R

A *firm* must ensure that the amount distributed to *policyholders* from a *with-profits fund*, taking into account any adjustments required by ■ COBS 20.2.17A R, is not less than the *required percentage* of the total amount distributed.

20.2.17A

FCA

R

- (1) Where a *firm* adjusts the amounts distributed to *policyholders*, either by market value reduction or otherwise, in a way that would result in a distribution to *policyholders* of less than the *required percentage*, taking both the relevant distributions and the adjustment into account, then the *firm* must apply a proportionate adjustment to amounts distributed to shareholders so that the distribution to *policyholders* will not be less than the *required percentage*.
- (2) The adjustments referred to in (1) include but are not limited to a situation where such an adjustment has the effect of retrospectively reducing past *policyholder* distributions.

20.2.17B

FCA

G

An example of the application of ■ COBS 20.2.17A R, without limitation to its scope generally, is where a *firm* reduces, for any reason, the amounts of a bonus or of bonus units added to *policies* in force. The *firm* should treat this as effectively a 'negative distribution', calculated by making the same assumptions regarding discount rates and other relevant factors as would be used for positive bonus additions. The amount so calculated should then be taken into account in ensuring that the amount distributed to *policyholders* from a *with-profits fund* is not less than the *required percentage* for the purposes of ■ COBS 20.2.17 R.

20.2.17C

FCA PRA

R

A *firm* must not make a distribution from a *with-profits fund*, unless the whole of the cost of that distribution can be met without eliminating the *regulatory surplus* in that *with-profits fund*.

20.2.18

FCA PRA

R

A *realistic basis life firm* must not make a distribution from a *with-profits fund* to any *person* who is not a *with-profits policyholder*, unless the whole of the cost of that distribution (including the cost of any obligations that will or may arise from the decision to make a

distribution) can be met from the excess of the *realistic value of assets* over the *realistic value of liabilities* in that *with-profits fund*.

20.2.19

FCA PRA

R

A distribution to a *person* who is not a *with-profits policyholder* includes a transfer of assets out of a *with-profits fund* that is not made to satisfy a liability of that fund.

20.2.20

FCA

R

If, on a distribution, a *firm* incurs a tax liability on a transfer to shareholders, it must not attribute that tax liability to a *with-profits fund*, unless:

- (1) the *firm* can show that attributing the tax liability to that *with-profits fund* is consistent with its established practice;
- (2) that established practice is explained in the *firm's PPFM*; and
- (3) that liability is not charged to asset shares.

#### Requirement relating to distribution of an excess surplus

20.2.21

FCA

R

At least once a year (or, in the case of a *non-directive friendly society*, at least once in every three years) and whenever a *firm* is seeking to make a *retribution* of its *inherited estate*, a *firm's governing body* must determine whether the *firm's with-profits fund*, or any of the *firm's with-profits fund*, has an *excess surplus*.

20.2.22

FCA

A

- (1) If a *with-profits fund* has an *excess surplus*, and to retain that surplus would be a breach of *Principle 6* (Customers' interests), the *firm* should make a distribution from that *with-profits fund*.
- (2) Compliance with (1) may be relied on as tending to establish compliance with *Principle 6* (Customers' interests).
- (3) Contravention of (1) may be relied on as tending to establish a contravention of *Principle 6* (Customers' interests).

#### Charges to a with-profits fund

20.2.23

FCA

R

A *firm* must only charge costs to a *with-profits fund* which have been, or will be, incurred in operating the *with-profits fund*. This may include a fair proportion of overheads.

20.2.24

FCA

R

Subject to ■ COBS 20.2.25 R, ■ COBS 20.2.25A R and ■ COBS 20.2.25B R, a *firm* must not pay compensation or redress from a *with-profits fund*.

PAGE  
9

20.2.25

FCA

R

A proprietary *firm* may pay compensation or redress due to a *policyholder*, or former *policyholder*, from assets attributable to shareholders, whether or not they are held within a *long-term insurance fund*.

20.2.25A

FCA

R

A *mutual* may pay compensation or redress due to a *policyholder*, or former *policyholder*, from a *with-profits fund*, but may only pay from assets that

would otherwise be attributable to asset shares if, in the reasonable opinion of the *firm's governing body*, the compensation or redress cannot be paid from any other assets in the *with-profits fund*.

**20.2.25B** **R** A payment or transfer of liabilities made to correct an error and which has the effect of restoring a *policyholder*, or former *policyholder*, and the *with-profits fund* to the position they would have been in if the error had not occurred (a "rectification payment"), is not a payment of compensation or redress for the purposes of **COBS 20.2.24 R**.

**20.2.25C** **G** Rectification payments may include, for example, a payment to a *policyholder* or former *policyholder* to correct an erroneous underpayment of policy proceeds, or a reimbursement of premiums overpaid. The effect of **COBS 20.2.25B R** is that a *firm* may make rectification payments using assets in a *with-profits fund*.

**20.2.25D** **G** **COBS TP 2.14 R** has the effect that payments of compensation and redress arising out of events which took place before 31 July 2009 are subject to **COBS 20.2.23 R** to **COBS 20.2.25 R** as in force at 30 July 2009.

**20.2.26** **R** A proprietary *firm* must not charge to a *with-profits fund* any amounts paid or payable to a skilled person in connection with a report under section 166 of the *Act* (Reports by skilled persons) if the report indicates that the *firm* has, or may have, materially failed to satisfy its obligations under the *regulatory system*.

#### Tax charge to a with-profits fund

**20.2.27** **R** A *firm* must not charge a contribution to corporation tax to a *with-profits fund*, if that contribution exceeds the notional corporation tax liability that would be charged to that *with-profits fund* if it were assessed to tax as a separate *body corporate*.

#### New business

**20.2.28** **R** A *firm* must not effect new *contracts of insurance* in an existing *with-profits fund* unless:

- (1) the *firm's governing body* is satisfied, so far as it reasonably can be, and can demonstrate, having regard to the analysis in (2), that the terms on which each type of contract is to be effected are likely to have no adverse effect on the interests of the *with-profits policyholders* whose *policies* are written into that fund; and
- (2) the *firm* has:
  - (a) carried out or obtained appropriate analysis, based on relevant evidence and proportionate to the risks involved, as to the likely impact on *with-profits policyholders*, having regard to relevant factors including:

- (i) the volumes of each type of contract that the *firm* expects to be effected; and
  - (ii) the periods over which the contracts are expected to remain in force; and
- (b) provided the analysis referred to in (a) to its *with-profits committee* or, if applicable, its *with-profits advisory arrangement* and to its *governing body* for the purposes of (1).

20.2.28A

FCA

G

- (1) Writing new *insurance business* into a *with-profits fund* is not, of itself, automatically adverse to the interests of *with-profits policyholders*. For example, new *insurance business* which defers the emergence or distribution of surplus to a limited extent for a number of *policyholders*, or which leads to a marginal change in the equity backing ratio, may, subject to satisfying the guidance in ■ COBS 20.2.60 G and ■ COBS 20.2.29 G, reasonably be considered not to have an adverse effect on the *with-profits policyholders* in a *with-profits fund*, if the *firm's governing body* is satisfied (and can demonstrate based on appropriate analysis) that each new line of *insurance business* is likely to be financially self-supporting over the periods during which the contracts are expected to remain in force and is likely to add sufficient value to the *with-profits fund* to offset the cost of acquiring the business.
- (2) Conversely, if the particular line of new *insurance business* is priced on loss-making terms or the terms are such that the new *insurance business* is not likely to generate sufficient value after covering all the costs associated with it (in either case when considered in aggregate over the periods over which the contracts are expected to remain in force), then in the FCA's view, the terms of that *insurance business* are likely to have an adverse impact on *with-profits policyholders* interests in the relevant fund.
- (3) *Firms* will need to ensure that they comply with ■ COBS 20.2.28 R at all times, but in practice *firms* will be expected to pay particular attention when they are designing and pricing or re-pricing products, when they are preparing their financial plans that take into account their expected costs and levels of new business, and, in particular, when reviewing their financial performance, if that reveals that costs or levels of new business have varied significantly from those expected previously.
- (4) New business for the purposes of ■ COBS 20.2.28 R will not, in general, include increments on existing *policies* or business written as a result of the exercise of options by an existing *policyholder*.

20.2.29

FCA

G

In some circumstances, it may be difficult or impossible for a *firm* to mitigate the risk of an adverse effect on its existing, or new, *with-profits policyholders*, unless it establishes a new bonus series or *with-profits fund*. Circumstances that might cause a *firm* to establish a new bonus series or *with-profits fund* include:

- (1) where the *firm* has a high level of guarantees or options in its existing *with-profits policies*, which might place an excessive burden on new *with-profits policies*, or vice versa; and
- (2) where the potential risks are likely to be so great that a single *with-profits fund* cannot provide adequately for the interests of new and existing *policyholders*,



even after allowing for any beneficial effects of diversification. Such potential risks are likely to arise from significant differences in the terms and conditions of the new and existing *with-profits policies*, including the basis on which charges are levied and reviewed.

20.2.30

FCA

G

- (1) When a *firm* prices the new *insurance business* that it proposes to effect in an existing *with-profits fund*, it should estimate the volume of new *insurance business* that it is likely to effect and then build in adequate margins that will allow it to recover any acquisition costs to be charged to the *with-profits fund*.
- (2) ■ COBS 20.2.28 R requires *firms* to obtain appropriate analysis and evidence and this should include at least a profitability analysis on a marginal cost basis.

20.2.31

FCA

G

When a *firm* sets a target volume for new *insurance business* in an existing *with-profits fund*, it should pay particular attention to the risk of disadvantage to existing *with-profits policyholders*. Those *policyholders* might be disadvantaged, for example, by the need to retain additional capital to support a rapid growth in new business, when that capital might have been distributed in the ordinary course of the *firm's* existing business.

#### Relationship of a with-profits fund with the firm and any connected persons

20.2.32

FCA

R

A *firm* carrying on *with-profits business* must not:

- (1) make a loan to a *connected person* using assets in a *with-profits fund*; or
- (2) give a guarantee to, or for the benefit of, a *connected person*, where the guarantee will be backed using assets in a *with-profits fund*;

unless that loan or guarantee:

- (3) will be on commercial terms;
- (4) will, in the reasonable opinion of the *firm's* senior management, be beneficial to the *with-profits policyholders* in the relevant *with-profits fund*; and
- (5) will not, in the reasonable opinion of the *firm's* senior management, expose those *policyholders* to undue *credit* or *group* risk.

#### Contingent loans and other forms of support for the with-profits fund

20.2.33

FCA PRA

G

- (1) If a *firm*, or a *connected person*, provides support to a *with-profits fund* (for example, by a contingent loan), no reliance should be placed on that support when the *firm* assesses the *with-profits fund's* financial position unless there

are clear and unambiguous criteria governing any repayment obligations to the support provider.

- (2) The degree of reliance placed on that support should depend on the subordination of the support to the fair treatment of *with-profits policyholders* and clarification of what fair treatment means in various circumstances. For a *realistic basis life firm* this would normally be evidenced by the liability for such support being capable, under stress, of a progressively lower valuation in the *future policy-related liabilities*.

20.2.34

FCA PRA

G

Where assets from outside a *with-profits fund* are made available to support that fund (and there is no ambiguity in the criteria governing any repayment obligations to the support provider), a *firm* should manage the fund disregarding the liability to repay those assets, at least in so far as that is necessary for its *policyholders* to be treated fairly.

### Other rules and guidance on the conduct of with-profits business

20.2.35

FCA

G

When a *firm* determines its investment strategy, and the acceptable level of risk within that strategy, it should take into account:

- (1) the extent of the guarantee in its *with-profits policies*;
- (2) any representation that it has made to its *with-profits policyholders*;
- (3) its established practice; and
- (4) the amount of capital support available.

20.2.35A

PRA

G

When a *firm* determines its investment strategy, and the acceptable level of risk within that strategy, it should take into account:

- (1) the extent of the guarantee in its *with-profits policies*; and
- (2) the amount of capital support available.

20.2.36

FCA

R

**A *firm* must not:**

- (1) use *with-profits assets* to finance the purchase of a *strategic investment*, directly or by or through a *connected person*; or
- (2) retain an investment referred to in (1);

unless its *governing body* is satisfied, so far as it reasonably can be, and can demonstrate, that the purchase or retention is likely to have no adverse effect on the interests of its *with-profits policyholders* whose *policies* are written into the relevant fund.

20.2.36A

FCA

R

**A *firm* must keep adequate records setting out the strategic purpose for which a *strategic investment* has been purchased or retained.**



20.2.36B

FCA

G

- (1) In order for a *firm* to comply with ■ COBS 20.2.36 R, a *firm's governing body* should consider:
- (a) the size of the investment in relation to the *with-profits fund*;
  - (b) the expected rate of return on the investment;
  - (c) the risks associated with the investment, including, but not limited to, liquidity risk, the capital needs of the acquired business or investment and the difficulty of establishing fair value (if any);
  - (d) any costs that would result from divestment;
  - (e) whether the *with-profits actuary* would regard the investment as having no adverse effect on the interests of *with-profits policyholders* as a class;
  - (f) in the case of a proprietary *firm*, whether it would be more appropriate for the investment to be made using assets other than those in the *with-profits fund*; and
  - (g) any other relevant material factors.
- (2) A *firm* should also consider whether making or retaining the investment should be disclosed to *with-profits policyholders*.
- (3) Examples of *strategic investments* include, but are not limited to, a significant investment in another business or significant real estate assets used within the business of the *firm*.

20.2.37

FCA

G

If a *firm* carries out *non-profit insurance business* in a *with-profits fund*, it should review the profitability of the *non-profit insurance business* regularly.

20.2.38

FCA

G

If a *firm* has reinsured its *with-profits insurance business* into another *insurance undertaking*, it should take reasonable steps to discharge its responsibilities to its *with-profits policyholders*, in respect of the reinsured business. Those steps should include maintaining adequate controls.

### Significant changes in with-profits funds

20.2.39

FCA

R

A *firm* must not enter into a material transaction relating to a *with-profits fund* unless, in the reasonable opinion of the *firm's governing body*, the transaction is unlikely to have a material adverse effect on the interests of that fund's existing *with-profits policyholders*.

20.2.40

FCA

R

A material transaction includes a series of related non-material transactions which, if taken together, are material.

20.2.41

FCA

G

Examples of material transactions include:

- (1) a significant bulk outwards *reinsurance* contract;
- (2) inwards *reinsurance* of *with-profits business* from another *insurance undertaking*;

- (3) a financial engineering transaction that would materially change the profile of any surplus expected to emerge on the *with-profits fund's* existing *insurance business*; and
- (4) a significant restructuring of the *with-profits fund*, especially if it involves the creation of new *sub-funds*.

20.2.41A

R

FCA

A *firm* must contact the *FCA* as soon as is reasonably practicable to make arrangements to discuss what actions may be required to ensure the fair treatment of *with-profits policyholders* if, in relation to any *with-profits fund* it operates:

- (1) the *firm* reasonably expects, or if earlier, there has been, a sustained and substantial fall in either the volume of new *non-profit insurance contracts*, or in the volume of new *with-profits policies* (effected other than by *reinsurance*), or in both, effected into the *with-profits fund*; or
- (2) the *firm* cedes by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect.

20.2.41B

G

FCA

- (1) The aim of the discussions in ■ COBS 20.2.41A R is to:
  - (a) allow the *FCA* to comment on the adequacy of the *firm's* planning; and
  - (b) seek agreement with the *firm* on any other appropriate actions to ensure *with-profits policyholders* are treated fairly.
- (2) If the *firm* is no longer effecting a material volume of new *with-profits policies* (other than by *reinsurance*) into a *with-profits fund*; or if it is ceding by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect, then it may also be appropriate to consider whether, in the particular circumstances of the *firm*, it should be regarded as ceasing to effect new *contracts of insurance* for the purposes of ■ COBS 20.2.54R (3).
- (3) In the discussions the *FCA* will have with regard to ■ COBS 20.2.28 R (New business), if the volumes of new business are expected to be profitable and, in relation to *non-profit insurance business*, it is demonstrated that a fair distribution to *with-profits policyholders* out of the fund can be achieved and the economic value of any expected future profits is likely to be available for distribution during the lifetime of the *with-profits business* for the purposes of ■ COBS 20.2.60 G, then, in the *FCA's* view, it is likely to be reasonable for a *firm* to be satisfied that there will be no adverse effect for *with-profits policyholders*, and accordingly that such business may continue to be written.

### Process for reattribution of inherited estates: Policyholder advocate: appointment and role

20.2.42

R

FCA

A *firm* that is seeking to make a *reattribution* of its *inherited estate* must:

- (1) first discuss with the *FCA* (as part of its determination under ■ COBS 20.2.21 R):

- (a) its projections for capital required to support existing business, which must include an assessment of:
  - (i) the *firm's* future risk appetite for the *with-profits fund* and other relevant business; and
  - (ii) how much of the margin for prudence can be identified as excessive and removed from the projected capital requirements; and
- (b) its projections for capital required to support future new business, which must include an assessment of:
  - (i) new business volumes;
  - (ii) product terms; and
  - (iii) pricing margins;

- (2) following the discussions referred to in (1), identify at the earliest appropriate point a *policyholder advocate*, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of *policyholders*, to negotiate with the *firm* on behalf of relevant *with-profits policyholders* and seek the approval of the *FCA* for the appointment of the *policyholder advocate* as soon as he is identified, or appoint a *policyholder advocate* nominated by the *FCA* if its approval is not granted; and
- (3) involve the policyholder advocate designate at the earliest possible opportunity to enable him to participate effectively in the negotiations about the proposals for the *retribution*.

20.2.42A

PRA

R

A *firm* that is seeking to make a *retribution* of its *inherited estate* must first discuss with the *PRA*:

- (1) its projections for capital required to support existing business, which must include an assessment of:
  - (a) the *firm's* future risk appetite for the *with-profits fund* and other relevant business; and
  - (b) how much of the margin for prudence can be identified as excessive and removed from the projected capital requirements; and
- (2) its projections for capital required to support future new business, which must include an assessment of:
  - (a) new business volumes
  - (b) product terms; and

## (c) pricing margins.

20.2.43

FCA

G

The *firm* should include an independent element in the *policyholder advocate* selection process, which may include consulting representative groups of *policyholders* or using the services of a recruitment consultant. When considering an application for approval of a nominee to perform the *policyholder advocate* role, the *FCA* will have regard to the extent to which the *firm* has involved others in the selection process.

20.2.44

FCA

G

The precise role of the *policyholder advocate* in any particular case will depend on the nature of the *firm* and the *retribution* proposed. A *firm* will need to discuss, with a view to agreeing, with the *FCA* the precise role of the *policyholder advocate* in a particular case (■ COBS 20.2.45 R). However, the role of the *policyholder advocate* should include:

- (1) negotiating with the *firm*, on behalf of the relevant *with-profits policyholders*, the benefits to be offered to them in exchange for the rights or interests they will be asked to give up;
- (2) commenting to *with-profits policyholders*, on:
  - (a) the methodology used for the allocation of benefits amongst the relevant (or groups of) *with-profits policyholders* and the form of those benefits;
  - (b) the criteria used for determining the eligibility of the various *with-profits policyholders*;
  - (c) the terms and conditions of the proposals (to the extent that they materially affect the benefits to be offered, or the bonuses that may be added to *with-profits policies*); and
  - (d) the views expressed by the *independent expert* or the *retribution expert* (as the case may be), and the *firm's with-profits actuary* on the allocation of any benefits amongst the relevant *with-profits policyholders*; and
- (3) telling *with-profits policyholders*, or each group of *with-profits policyholders*, with reasons, whether the *firm's* proposals are in their interests.

### Process for retribution of inherited estates: Policyholder advocate: terms of appointment

20.2.45

FCA

R

A *firm* must:

- (1) notify the *FCA* of the terms on which it proposes to appoint a *policyholder advocate* (whether or not the candidate was nominated by the *FCA*); and
- (2) ensure that the terms of appointment for the *policyholder advocate*:
  - (a) include a description of the role of the *policyholder advocate* as agreed with the *FCA* under ■ COBS 20.2.44 G;
  - (aA) stress the independent nature of the *policyholder advocate's* appointment and function, and are consistent with it;
  - (b) define the relationship of the *policyholder advocate* to the *firm* and its *policyholders*;

- (c) set out arrangements for communications between the *policyholder advocate* and *policyholders*;
- (d) make provision for the resolution of any disputes between the *firm* and the *policyholder advocate*;
- (e) specify when and how the *policyholder advocate's* appointment may be terminated;
- (f) allow the *policyholder advocate* to communicate freely and in confidence with the *FCA*;
- (g) require the *policyholder advocate* to communicate with *policyholders*:
  - (i) as soon as is practicable after his appointment, having regard to (h)(i) and (iii); and
  - (ii) thereafter no less frequently than every six *months* for the duration of the *policyholder advocate's* appointment; and
- (h) require the *policyholder advocate*:
  - (i) to make reasonable endeavours to agree with the *firm* the contents of any proposed *policyholder* communications;
  - (ii) to allow sufficient time for the process in (i) in order to meet any timescales in (g); and
  - (iii) to provide copies of the final draft of the intended *policyholder* communications, whether or not agreement has been reached in accordance with (i) above, both to the *firm* and to the *FCA* at least seven *days* in advance of the date on which the *policyholder advocate* intends to make the communications.

20.2.46

FCA

G

A *firm* may include, within the *policyholder advocate's* terms of appointment, arrangements for the *policyholder advocate* to be indemnified in respect of certain claims that may be made against him in connection with the performance of his functions. If such indemnity is included, it should not include protection against any liability arising from acts of bad faith.

20.2.47

FCA PRA

R

#### Process for reattribution of inherited estates: Reattribution expert

Where a *firm* is not otherwise required to appoint an *independent expert*, it must:

- (1) appoint a reattribution expert to undertake an objective assessment of its *reattribution* proposals, who must be:
  - (a) nominated or approved by the *appropriate regulator* before he is appointed; and

(b) free from any conflicts of interest that may, or may appear to, undermine his independence or the quality of his report;

(2) ensure that the *retribution expert's* terms of appointment allow him to communicate freely and in confidence with the *appropriate regulator*; and

(3) require the *retribution expert* to prepare a report which must be available to the *appropriate regulator*, the *policyholder advocate* and the court (if it is relevant to any court proceedings).

20.2.48

FCA PRA

G

A *retribution expert's* report should comply with the applicable rules on expert evidence. The scope and content of the report should be substantially similar to that of the report required of an *independent expert* under ■ SUP 18.2 (Insurance business transfers), as if (where appropriate) a reference to:

- (1) the '*scheme report*' was a reference to the '*retribution expert's* report';
- (2) the '*independent expert*' was a reference to the '*retribution expert*'; and
- (3) the '*scheme*' was a reference to the proposal for a '*retribution*'.

#### **Process for retribution of inherited estates: Information to policyholders**

20.2.49

FCA

R

A *firm* must ensure that every *policyholder* that may be affected by the proposed *retribution* is sent appropriate and timely information about:

- (1) the *retribution* process, including the role of the *policyholder advocate*, the *independent expert* or *retribution expert*, as the case may be, and other individuals appointed to perform particular functions;
- (2) the *retribution* proposals and how they affect the relevant *policyholders*, including an explanation of any benefits they are likely to receive and the rights and interests that they are likely to be asked to give up;
- (3) the *policyholder advocate's* views on the *retribution* proposals and any benefits the relevant *policyholders* are likely to receive and the rights and interests that they are likely to be asked to give up; and
- (4) the outcome of the negotiations between the *firm* and the *policyholder advocate* about the benefits that will be offered to relevant *with-profits policyholders*, in exchange for the rights and interests that they will be asked to give up.

20.2.50

FCA

R

An adequate summary of the report by the *retribution expert* must be made available to every *policyholder* that may be affected by the proposed *retribution*.

20.2.51

FCA

R

**Process for reattribution of inherited estates: Consent of policyholders**

A *firm* must give relevant *with-profits policyholders* the option to:

- (1) individually accept or reject the final proposals for the *reattribution*; or
- (2) (if the legal process to be followed allows the majority of *policyholders* to bind the minority) vote on whether the *firm* should go ahead with those proposals.

20.2.52

FCA

G

**Process for reattribution of inherited estates: Costs**

- (1) *Reattribution* and *insurance business transfer* costs (excluding *policyholder advocate* costs) should be met from shareholder funds. A *firm* may present alternative arrangements if it can show good reasons for doing so.
- (2) Shareholders should pay a reasonable proportion of the *policyholder advocate's* costs.
- (3) If a *reattribution* proposal is not successful, the *FCA* would expect the costs of the *policyholder advocate* to be met by the *person* initiating the proposal. That will usually be the shareholders of the *firm*.

20.2.53

FCA PRA

R

**Ceasing to effect new contracts of insurance in a with-profits fund**

A *firm* must:

- (1) inform the *appropriate regulator* and its *with-profits policyholders* within 28 days; and
- (2) submit a run-off plan to the *appropriate regulator* as soon as reasonably practicable and, in any event, within three months;

of first ceasing to effect new *contracts of insurance* in a *with-profits fund*.

20.2.54

FCA PRA

R

A *firm* will be taken to have ceased to effect new *contracts of insurance* in a *with-profits fund*:

- (1) when any decision by the *governing body* to cease to effect new *contracts of insurance* takes effect; or
- (2) where no such decision is made, when the *firm* is no longer:
  - (a) actively seeking to effect new *contracts of insurance* in that fund; or
  - (b) effecting new *contracts of insurance* in that fund, except by increment; or
- (3) if the *firm*:



- (a) (i) is no longer effecting a material volume of *with-profits policies* (other than by *reinsurance*), into the *with-profits fund*; or
- (ii) is ceding by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect; and
- (b) cannot demonstrate that it will treat *with-profits policyholders* fairly if it does not cease to effect new *contracts of insurance*.

20.2.55

FCA

G

For the purposes of ■ COBS 20.2.54R (3) the FCA will have regard to, amongst other things, the factors set out in ■ COBS 20.2.41BG (3).

20.2.56

FCA

R

The run-off plan required by ■ COBS 20.2.53 R must:

- (1) include an up-to-date plan to demonstrate how the *firm* will ensure a fair distribution of the closed *with-profits fund*, and its *inherited estate* (if any); and
- (2) be approved by the *firm's governing body*.

20.2.57

FCA

G

- (1) A *firm* should also include the information described in Appendix 2.15 (Run-off plans for closed with-profits funds) of the Supervision manual in its run-off plan.
- (2) A *firm* should periodically review and update its run-off plan and submit updated versions to the FCA when requested to do so.

20.2.58

FCA

G

When a *firm* tells its *with-profits policyholders* that it has ceased to effect new *contracts of insurance* in a *with-profits fund*, it should also explain:

- (1) why it has done so;
- (2) what changes it has made, or proposes to make, to the fund's investment strategy (if any);
- (3) how closure may affect *with-profits policyholders* (including any reasonably foreseeable effect on future bonus prospects);
- (4) the options available to *with-profits policyholders* and an indication of the potential costs associated with the exercise of each of those options; and
- (5) any other material factors that a *policyholder* may reasonably need to be aware of before deciding how to respond to this information.

20.2.59

FCA

G

A *firm* may not be able to provide its *with-profits policyholders* with all of the information described above until it has prepared the run-off plan. In those circumstances, the *firm* should:

- (1) tell its *with-profits policyholders* that that is the case;



20.2.60

FCA

G

- (2) explain what is missing and give a time estimate for its supply; and
  - (3) provide the missing information as soon as possible, and within the time estimate given.
- (1) If *non-profit insurance business* is written in a *with-profits fund*, a *firm* should take reasonable steps to ensure that the economic value of any future profits expected to emerge on the *non-profit insurance business* is available for distribution during the lifetime of the *with-profits business*.
- (1A) Where a *with-profits fund* contains assets which may not be readily realisable, the *firm* should take reasonable steps to ensure that the economic value of those assets is made available as part of a fair distribution to *with-profits policyholders*.
- (2) Where it is agreed by its *with-profits policyholders*, and subject to meeting the requirements for effecting new *contracts of insurance* in an existing *with-profits fund* (■ COBS 20.2.28 R), a *mutual* may make alternative arrangements for continuing to carry on *non-profit insurance business*, and a *non-directive friendly society* may make alternative arrangements for continuing to carry on non-insurance related business.

## 20.3 Principles and Practices of Financial Management

### Production of PPFM

20.3.1

FCA

R

- (1) A *firm* must:
  - (a) establish and maintain the *PPFM* according to which its *with-profits business* is conducted (or, if appropriate, separate *PPFM* for each *with-profits fund*); and
  - (b) retain a record of each version of its *PPFM* for five years.
- (2) A *firm's with-profits principles* must:
  - (a) be enduring statements of the standards it adopts in managing *with-profits funds*; and
  - (b) describe the business model it uses to meet its duties to *with-profits policyholders* and to respond to longer-term changes in the business and economic environment.
- (3) A *firm's with-profits practices* must:
  - (a) describe how a *firm* manages its *with-profits funds* and how it responds to shorter-term changes in the business and economic environment; and
  - (b) be sufficiently detailed for a knowledgeable observer to understand the material risks and rewards from effecting or maintaining a *with-profits policy* with it.
- (4) A *firm* must not change its *PPFM* unless, in the reasonable opinion of its *governing body*, that change is justified to:
  - (a) respond to changes in the business or economic environment; or
  - (b) protect the interests of *policyholders*; or
  - (c) change the *firm's with-profits practices* better to achieve its *with-profits principles*.

- (5) A *firm* may change its *PPFM* if that change:
  - (a) is necessary to correct an error or omission; or
  - (b) would improve clarity or presentation without materially affecting the *PPFM*'s substance; or
  - (c) is immaterial.

20.3.2 G [deleted]

20.3.3 G [deleted]

**Scope and content of PPFM**

20.3.4 R A *firm*'s *PPFM* must cover the issues set out in the table in FCA ■ COBS 20.3.6 R.

20.3.5 R A *firm*'s *PPFM* must cover any matter that has, or it is reasonably foreseeable may have, a significant impact on the *firm*'s management of *with-profits funds*, including but not limited to:

- (1) any requirements or constraints that apply as a result of previous dealings, including previous business transfer schemes; and
- (2) the nature and extent of any shareholder commitment to support the *with-profits fund*.

20.3.6 R Table: Issues to be covered in PPFM FCA

|     | Subject                                    | Issues  |
|-----|--|---|
| (1) | Amount payable under a with-profits policy | (a) <b>Methods used to guide determination of the amount that is appropriate to pay individual <i>with-profits policyholders</i>, including:</b> <ul style="list-style-type: none"> <li>(i) the aims of the methods and approximations used;</li> <li>(ii) how the current methods, including any relevant historical assumptions used and any systems</li> </ul> |

| Subject | Issues   |
|---------|--|
|         | <p style="text-align: right;"><b>maintained to deliver results of particular methods, are documented; and</b></p> <p style="text-align: right;"><b>(iii) the procedures for changing the current method or any assumptions or parameters relevant to a particular method.</b></p> <p><b>(b) Approach to setting bonus rates.</b></p> <p><b>(c) Approach to smoothing maturity payments and surrender payments, including:</b></p> <p style="text-align: right;"><b>(i) the smoothing policy applied to each type of <i>with-profits</i> policy;</b></p> <p style="text-align: right;"><b>(ii) the limits (if any) applied to the total cost of, or excess from, smoothing; and</b></p> <p style="text-align: right;"><b>(iii) any limits applied to any changes in the level of maturity payments between one period to another.</b></p> |

|     | Subject                     | Issues   |
|-----|-----------------------------|--|
| (2) | <b>Investment strategy</b>  | <p>Significant aspects of the <i>firm's</i> investment strategy for its <i>with-profits business</i> or, if different, any <i>with-profits fund</i>, including:</p> <p>(a) the degree of matching to be maintained between assets relevant to <i>with-profits business</i> and liabilities to <i>with-profits policyholders</i> and other creditors;</p> <p>(b) the <i>firm's</i> approach to assets of different credit or liquidity quality and different volatility of market values;</p> <p>(c) the presence among the assets relevant to <i>with-profits business</i> of any assets that would not normally be traded because of their importance to the <i>firm</i>, and the justification for holding such assets; and</p> <p>(d) the <i>firm's</i> controls on using new asset or liability instruments and the nature of any approval required before new instruments are used.</p> |
| (3) | <b>Business risk</b>        | <p>The exposure of the <i>with-profits business</i> to business risks (new and existing), including the <i>firm's</i>:</p> <p>(a) procedures for deciding if the <i>with-profits business</i> may undertake a particular business risk;</p> <p>(b) arrangements for reviewing and setting a limit on the scale of such risks; and</p> <p>(c) procedures for reflecting the profits or losses of such business risks in the amounts payable under <i>with-profits policies</i>.</p>   |
| (4) | <b>Charges and expenses</b> | <p>(a) The way in which the <i>firm</i> applies charges and apportionments expenses to its <i>with-</i></p>  |

|     | Subject   | Issues  |
|-----|---|---|
|     |   | <i>profits business, including, if material, any interaction with connected firms.</i>  |
|     |   | (b) <b>The cost apportionment principles that will determine which costs are, or may be, charged to a <i>with-profits fund</i> and which costs are, or may be, charged to the other parts of its business of its shareholders.</b>  |
| (5) | <b>Management of inherited estate</b>   | <b>Management of any <i>inherited estate</i> and the uses to which the <i>firm</i> may put that <i>inherited estate</i>.</b>  |
| (6) | <b>Volumes of new business and arrangements on stopping taking new business</b> | <b>If a <i>firm's with-profits fund</i> is accepting new <i>with-profits business</i>, its practice for review of the limits on the quantity and type of new business and the actions that the <i>firm</i> would take if it ceased to take on new business of any significant amount.</b> |
| (7) | <b>Equity between the with-profits fund and any shareholders</b>                | <b>The way in which the interests of <i>with-profits policyholders</i> are, or may be, affected by the interests of any shareholders of the <i>firm</i>.</b>  |

20.3.7  
FCA

G

The table in ■ COBS 20.3.8 G sets out *guidance* on how various information relevant to some of the issues covered in a *firm's PPFM* ( ■ COBS 20.3.6 R) might be split between *with-profits principles* and *with-profits practices*. This is an example of the matters a *firm* should address in its *with-profits principles* and *with-profits practices* and is not exhaustive. A *firm* should consider carefully the scope and content of its *PPFM* as appropriate.

20.3.8  
FCA

G

Table: Guidance on with-profits principles and practices

| Reference to PPFM issues (COBS 20.3.6R)        | With-profits principles  | With-profits practices   |
|--|--|--|
| (1) Amount payable under a with-profits policy | General<br><br>(a) Circumstances under which any historical assumptions or parameters, relevant to methods used to determine the | General<br><br>(e) For each major class of <i>with-profits policy</i> , methods establishing the main assumptions or parameters that decide the output of methods that determine the amount payable; |

| Reference to PPFM issues (COBS 20.3.6R) | With-profits principles         | With-profits practices  |
|---|---------------------------------|---|
|   | amount payable, may be changed; | <p>(f) Degree of approximation allowed when assumptions or parameters are applied across generations of <i>with-profits policyholders</i> or across different types or classes of <i>with-profits policies</i>;</p> <p>(g) Formality with which the methods, parameters or assumptions used are documented;</p> <p>(h) Target range, or target ranges, that have been set for maturity payments;</p> <p>(i) Factors likely to be regarded as relevant to address <i>policyholders'</i> interests or security when determining <i>excess surplus</i>; and</p> <p>Investment return, expenses or charges and tax</p> <p>(j) How investment return, expenses or charges and tax are brought into account and how the impact of those items is determined on the amount payable. In particular:</p> <p>(i) any distinctions made in recognising the investment return from a subset of the total assets of a <i>with-profits fund</i>;</p> <p>(ii) whether expenses are apportioned between all the policies in a <i>with-profits fund</i> or apportioned in some other way;</p> <p>(iii) the relationship between the liability to tax attributed to a <i>with-profits fund</i> and the tax that the <i>firm</i> imputes to determine the amount payable;</p> <p>(iv) impact on the amount payable of any attributed liability to tax of a <i>with-profits fund</i> as a result of the <i>firm</i></p> |

| Reference to PPFM issues (COBS 20.3.6R) | With-profits principles   | With-profits practices  |
|---|---|---|
|   | <p>Bonus rates</p> <p>(b) General aims in setting bonus rates and the constraints to which the <i>firm</i> may be subject in changing economic circumstances;</p> <p>(c) How the range of <i>with-profits policies</i> or generations of <i>with-profits policies</i> over which the <i>firm</i> believes a single bonus rate would be appropriate is determined and the circumstances under which it believes a new bonus series would be necessary; and</p> | <p>making a transfer to shareholders; and</p> <p>(v) how any other items are brought into account.</p> <p>Bonus rates</p> <p>(k) Current approach to setting bonus rates, including the weight given to recent economic experience. For final bonus rates, the description should include any distinctions made between <i>with-profits policies</i> that remain in force until contractual dates, or dates on which no market value reduction applies (for example, maturity or retirement dates) and policies that are surrendered or transferred at other dates;</p> <p>(l) Frequency at which bonus rates are re-set or expected to be re-set and the circumstances under which changes in the economic environment would cause the time between re-setting to change;</p> <p>(m) Maximum amount by which annual bonuses would alter if annual bonus rates were reset;</p> <p>(n) Approach to setting any interim bonus rates before the next declaration of annual bonus rates;</p> <p>(o) Relationship or interaction between final bonus rates and any market value reductions, if both can apply at the same time;</p> <p>(p) How final bonus rates influence the value of <i>with-profits policies</i> that have formulaic surrender or transfer bases (for example, older conventional policies rather than unitised policies); and</p> |



| Reference to PPFM issues (COBS 20.3.6R) | With-profits principles   | With-profits practices  |
|---|---|---|
|   | Smoothing   | Smoothing   |
|   | (d) Statement as to whether smoothing is intended to be neutral over time.  | (q) Any differences in approach for:<br>(i) the various types of <i>with-profits policy</i> ;<br>(ii) different categories of payout, such as between surrendered policies and maturing policies; and<br>(iii) different generations of <i>with-profits policyholders</i> .   |
| (2) Investment strategy                 | (a) How the types, classes or mix of assets are determined; and<br><br>(b) Strategy in respect of derivatives and other instruments.  | (c) Whether and to what extent there is hypothecation of assets;<br><br>(d) Period between formal reviews of investment strategy;<br><br>(e) Approach to investment in different asset classes, and assets of different credit or liquidity quality, including assets not normally traded; and<br><br>(f) Details of any external support available to the <i>with-profits fund</i> and how this affects the investment strategy.   |
| (3) Business risk                       | (a) Where a <i>firm</i> explicitly excludes business risk from a class of <i>with-profits policies</i> but there are residual risks, clarification where these risks such as guarantee and smoothing costs are borne; and<br><br>(b) Define where compensation costs from a business risk would be borne. | (c) Current limits which apply to the taking on of business risk; and<br><br>(d) Whether and to what extent particular generations of <i>with-profits policyholders</i> or classes of <i>with-profits policies</i> bear or might bear particular business risks, including for example, crystallised or contingent guarantees to other classes of <i>policyholders</i> or whether the out-turn from all business risk is pooled across all <i>with-profits policies</i> . |
| (4) Charges and expenses                | (a) Factors that would drive any change to the basis on   | (b) Charges currently applied and the expenses currently apportioned to major classes of <i>with-profits policies</i> ;   |

| Reference to PPFM issues (COBS 20.3.6R)                       | With-profits principles  | With-profits practices  |
|---|--|---|
|   | <p>which the <i>firm</i> applies charges to or apportions its actual expenses amongst <i>with-profits policies</i>, or exercises any discretion to apply charges to particular <i>with-profits policies</i>.</p>   | <p>(c) Relationship between the <i>firm's</i> actual charges and expenses, as applied to determine the amounts payable under <i>with-profits policies</i>, and the charges and expenses borne by the <i>with-profits fund</i>;</p> <p>(d) Circumstances under which expenses will be charged to the <i>with-profits fund</i> at an amount other than cost, and the reasons why; and</p> <p>(e) Interval for reviewing any arrangements for out-sourced services, including those provided by connected parties, giving a broad indication of the terms for termination.</p> |
| (5) Management of inherited estate                            | <p>(a) Preferred size or scale of <i>inherited estate</i> and implications for the values of the <i>with profits policies</i>; and</p> <p>(b) Any existing division of the <i>inherited estate</i> between <i>with-profits funds</i>; and</p> <p>(c) Any constraints on the freedom to deal with the <i>inherited estate</i> as a result of previous dealings.</p> | <p>(d) How the <i>inherited estate</i> is used, for example, in meeting costs;</p> <p>(e) Whether the investment strategy for the <i>inherited estate</i> differs from the rest of the <i>with-profits fund</i>; and</p> <p>(f) Any current guidelines in place as to the size or scale of the <i>inherited estate</i> or as to how and over what time period the <i>inherited estate</i> would be managed, if it becomes too large or too small.</p>   |
| (6) Equity between the with-profits fund and any shareholders | (a) Arrangements for, and any changes to, profit sharing between shareholders and <i>with-profits policyholders</i> .  | <p>(b) Current basis on which profit between <i>with-profits policyholders</i> and shareholders is divided; and</p> <p>(c) Whether the pricing of any policies being written, and particular policies open to new business, appear to be significantly and systematically reducing the <i>inherited estate</i> if the shareholder transfer is taken into account.</p>   |

## 20.4 Communications with with-profits policyholders

### Provision and publication of PPFM

20.4.1

FCA

R

A *firm* must:

- (1) on request, provide its *PPFM*, or the *PPFM* applicable to specified *with-profits funds*:
  - (a) free of charge to its *with-profits policyholders*; or
  - (b) for a reasonable charge to any person who is not its *with-profits policyholder*; and
- (2) if the *firm* publishes its *PPFM* on its website, prominently signpost its location there.

### Notification of changes

20.4.2

FCA

R

A *firm* must send its *with-profits policyholders* who are affected by any change in its *PPFM*, written notice, setting out any:

- (1) proposed changes to the *with-profits principles*, three *months* in advance of the effective date; and
- (2) changes to the *with-profits practices*, within a reasonable time.

20.4.3

FCA

R

A *firm* need not give the notice required if the change to its *PPFM*:

- (1) is necessary to correct an error or omission; or
- (2) would improve clarity or presentation without materially affecting the *PPFM*'s substance; or
- (3) is immaterial.

20.4.4

FCA

R

**Requirements on EEA insurers**

In relation to any *with-profits policyholder* who is *habitually resident* in the *United Kingdom*, an *EEA insurer* must:

- (1) on request, provide the information necessary to enable that *policyholder* properly to understand the *insurer's* commitment under the *policy*;
- (2) ensure that the information provided is not narrower in scope or less detailed in content than the equivalent *PPFM*; and
- (3) send the *policyholder* who is affected by any information being changed written notice, setting out:
  - (a) any proposed changes to information that is equivalent to the *with-profits principles*, three *months* in advance of the effective date; and
  - (b) any changes to information that is equivalent to the *with-profits practices*, within a reasonable time.

**Consumer-friendly PPFM**

20.4.5

FCA

R

A *firm* must:

- (1) produce a *CFPPFM* describing the most important information set out under each of the headings in its *PPFM* and keep it up to date as the *PPFM* changes over time;
- (2) express its *CFPPFM* in clear and plain language that can be easily understood by a *with-profits policyholder*, or potential *with-profits policyholder* who does not possess any specialist or technical knowledge;
- (3) provide its *CFPPFM* free of charge with any:
  - (a) written notice sent to *with-profits policyholders* on proposed changes to its *with-profits principles* (where the *firm* must provide the version of the *CFPPFM* in use before the changes if this has not already been provided);
  - (b) annual statements sent to its *with-profits policyholders* (unless there has been no material change in the *CFPPFM* since it was last supplied); and
  - (c) *key features document* for a *with-profits policy*; and
- (4) make its *CFPPFM* publicly available and prominently signpost the availability on its website.

20.4.6

FCA

G

A *firm* may include the information set out in its *CFPPFM* in any other document it produces.

### Annual report to with-profits policyholders

20.4.7

FCA

R

A *firm* must produce an annual report to its *with-profits policyholders*, which must:

- (1) state whether, throughout the *financial year* to which the report relates, the *firm* believes it has complied with its obligations relating to its *PPFM* and setting out its reasons for that belief;
- (2) address all significant relevant issues, including the way in which the *firm* has:
  - (a) exercised, or failed to exercise, any discretion that it has in the conduct of its *with-profits business*; and
  - (b) addressed any competing or conflicting rights, interests or expectations of its *policyholders* (or groups of *policyholders*) and, if applicable, *shareholders* (or groups of *shareholders*), including the competing interests of different classes and generations.

20.4.8

FCA

G

The following documents should be annexed to the annual report in this section:

- (1) the report to *with-profits policyholders* made by a *with-profits actuary* in respect of each financial year (see SUP 4.3.16AR(4)); and
- (2) any statement or report provided by the *person* or committee who provides the independent judgement under the *firm's* governance arrangements for its *with-profits business*.

20.4.9

FCA

G

In preparing the annual report to *with-profits policyholders*, a *firm* should take advice from a *with-profits actuary*.

20.4.10

FCA

G

A *firm* should make the annual report available to *with-profits policyholders* within six *months* of the end of the *financial year* to which it relates. A *firm* should notify its *with-profits policyholders* in any annual statements how copies of the report can be obtained.

## 20.5 With-profits governance

### Requirement to appoint a with-profits committee or advisory arrangement

20.5.1

FCA

R

A *firm* must, in relation to each *with-profits fund* it operates:

- (1) appoint:
  - (a) a *with-profits committee*; or
  - (b) a *with-profits advisory arrangement* (referred to in this section as an 'advisory arrangement'), but only if appropriate, in the opinion of the *firm's governing body*, having regard to the size, nature and complexity of the fund in question;
- (2) ensure that the *with-profits committee* or advisory arrangement operates in accordance with its *terms of reference*; and
- (3) make available a copy of any *terms of reference* on the *firm's* website, or if the *firm* does not have a website, at the request of *policyholders*.

20.5.2

FCA

G

- (1) Ultimate responsibility for managing a *with-profits fund* rests with the firm through its *governing body*. The role of the *with-profits committee* or advisory arrangement is, in part, to act in an advisory capacity to inform the decision-making of a *firm's governing body*. The *with-profits committee* or advisory arrangement also acts as a means by which the interests of *with-profits policyholders* are appropriately considered within a *firm's* governance structures. The *with-profits committee* or advisory arrangement should address issues affecting *policyholders* as a whole or as separately identifiable groups of *policyholders* generally rather than dealing with individual *policyholder* complaints or taking management decisions with respect to a *with-profits fund*.
- (2) If a *firm* considers that it is appropriate to appoint an advisory arrangement, a *firm's governing body* will need to decide whether it is appropriate to appoint an independent person or one or more *non-executive directors* to carry out the role. The FCA expects *firms* to make this determination according to the nature, size and complexity of the fund in question. So the larger or more complex the fund is, the more likely it would be that it would be appropriate to appoint an independent person.
- (3) Where a *firm* has appointed a *with-profits committee* to one of its *with-profits funds* it may also decide to appoint that *with-profits committee* to some or all

of its other *with-profits funds*, even if the *firm* would not have determined it appropriate to appoint a *with-profits committee* to those other funds when considered individually having regard to their size, nature or complexity.

### **Terms of reference of with-profits committee or advisory arrangement**

20.5.3

FCA

R

A *firm* must ensure that the *terms of reference* contain, as a minimum, terms having the following effect:

- (1) the role of the *with-profits committee* or advisory arrangement is, as relevant, to assess, report on, and provide clear advice and, where appropriate, recommendations to the *firm's governing body* on:
  - (a) the way in which each *with-profits fund* is managed by the *firm* and, if a *PPFM* is required, whether this is properly reflected in the *PPFM*;
  - (b) if applicable, whether the *firm* is complying with the principles and practices set out in the *PPFM*;
  - (c) whether the *firm* has addressed effectively the conflicting rights and interests of *with-profits policyholders* and other *policyholders* or stakeholders including, if applicable, shareholders, in a way that is consistent with *Principle 6* (treating customers fairly); and
  - (d) any other issues with which the *firm's governing body*, *with-profits committee* or advisory arrangement considers *with-profits policyholders* might reasonably expect the *with-profits committee* or advisory arrangements to be involved;
- (2) that the *with-profits committee* or advisory arrangement must:
  - (a) decide on the specific matters it will consider in order to enable it to carry out its role described in (1)(a) to (d) as appropriate to the particular circumstances of the *with-profits fund(s)*; and
  - (b) in any event give appropriate consideration to the following non-exhaustive list of specific matters:
    - (i) the identification of surplus and *excess surplus*, the merits of its distribution or retention and the proposed distribution policy;
    - (ii) how bonus rates, smoothing and, if relevant, market value reductions have been calculated and applied;
    - (iii) if relevant, the relative interests of *policyholders* with and without valuable guarantees;

- (iv) the *firm's* with-profits customer communications such as annual policyholder statements and product literature and whether the *with-profits committee* or advisory arrangement wishes to make a statement or report to *with-profits policyholders* in addition to the annual report made by a *firm*;
  - (v) any significant changes to the risk or investment profile of the *with-profits fund* including the management of material illiquid investments and the *firm's* obligations in relation to *strategic investments*;
  - (vi) the *firm's* strategy for future sales supported by the assets of the *with-profits fund* and its impact on surplus;
  - (vii) the impact of any management actions planned or implemented;
  - (viii) relevant management information such as customer complaints data (but not necessarily information relating to individual customer complaints);
  - (ix) the drafting, review, updating of and compliance with run-off plans, court schemes and similar matters; and
  - (x) the costs incurred in operating the *with-profits fund*;
- (3) that any person appointed as a member of the *with-profits committee* or as a person carrying out the advisory arrangement must have the appropriate skills, knowledge and experience to perform, or contribute to, as appropriate, the role set out in (1) and (2);
- (4) if the firm appoints a *with-profits committee*:
- (a) that there must be three or more members;
  - (b) that the quorum for any meeting (or decision by written procedure) must be at least half of the number of, and no less than two, members; and
- (5) that the *with-profits committee* or advisory arrangement must:
- (a) advise the *governing body* on the suitability of candidates proposed for appointment as the *with-profits actuary*; and
  - (b) assess the performance of the *with-profits actuary* at least annually, and report its view to the *governing body* of the *firm*.
- (1) The *FCA* expects that a *with-profits committee* will meet at least quarterly and ad hoc if required.



- (2) The *FCA* expects that, in general, a *with-profits committee* or advisory arrangement will work closely with the *with-profits actuary*, and obtain his opinion and input as appropriate.

### Role of with-profits committee or advisory arrangement in the firm's governance

20.5.5

FCA

R

A *firm* must:

- (1) ensure that its *governing body*, in the context of its consideration of issues referred to in ■ COBS 20.5.3R (1)(a) to ■ (d) and ■ (2)(b)(i) to ■ (x):
- (a) obtains, as relevant, assessments, reports, advice and/or recommendations of the *with-profits committee* or advisory arrangement, if the *governing body*, the *with-profits committee* or advisory arrangement considers that significant issues concerning the interests of *with-profits policyholders* need to be considered by the *firm*;
  - (b) allows the *with-profits committee* or advisory arrangement sufficient time to enable it to provide fully considered input on the issues to be considered;
  - (c) considers fully and gives due regard to the input of the *with-profits committee* or advisory arrangement when determining issues concerning the management of the *with-profits funds* and the interests of *with-profits policyholders*;
  - (d) if the *governing body* decides to depart in any material way from the advice or recommendations of the *with-profits committee* or advisory arrangement, sets out fully its reasons and allows the *with-profits committee* or advisory arrangement a reasonable period to consider them and respond; and
  - (e) considers any further representations from the *with-profits committee* or advisory arrangement and, if appropriate, sets out fully any additional reasons if it continues to depart from the *with-profits committee* or advisory arrangement's advice or recommendation;
- (2) provide a *with-profits committee* or advisory arrangement with sufficient resources as it may reasonably require to enable it to perform its role effectively;
- (3) notify the *FCA* of the decision of the *governing body* to depart from the advice or recommendation of the *with-profits committee* or advisory arrangement if the *with-profits committee* or advisory arrangement considers that the issue is sufficiently

significant and requests of the *governing body* that the *FCA* be informed; and

- (4) consult the *with-profits actuary* on the appointment of a new member of the *with-profits committee* or of the person or persons carrying out the advisory arrangement.

20.5.6

FCA

G

- (1) ■ COBS 20.5.5R (2) requires that a *firm* provides a *with-profits committee* or advisory arrangement with sufficient resources. A *with-profits committee* or advisory arrangement should be able to obtain external professional, including actuarial, advice, at the expense of the *firm*, if the *with-profits committee* or advisory arrangement considers the advice to be necessary to perform its role effectively. In a proprietary *firm* the *with-profits committee* or advisory arrangement should be able to request that the cost of the external professional advice either is not chargeable to the *with-profits fund* in question, or is shared with the *with-profits fund*, according to whether the issue under consideration is wholly or partly to the benefit of the *firm* rather than *policyholders*. A *with-profits committee* or advisory arrangement should also be adequately supported by the *firm's* own internal resources and support functions. This may include the *firm* ensuring that relevant employees, including the *with-profits actuary*, are made sufficiently available, and provide relevant information and input, to assist the *with-profits committee* in its role, as required.
- (2) If the *with-profits committee* or advisory arrangement wishes to make a statement or report to *with-profits policyholders* in addition to the annual report made by a *firm*, the effect of ■ COBS 20.5.5R (2) is that a *firm* will need to facilitate this.
- (3) In order to comply with ■ SYSC 3.2.20R the *FCA* expects *firms* to keep full records of all requests of, and material produced by, the *with-profits committee* or advisory arrangement, and of all decisions and reasons of the *governing body* as described in ■ COBS 20.5.5R (1)(d) and ■ (e).
- (4) For the purposes of ■ COBS 20.5.5 R (3), the *FCA* expects that it will only be in exceptional circumstances that a *with-profits committee* or alternative arrangement will consider a departure from a recommendation or advice to be sufficiently significant to warrant its making a request of the *governing body* that the *FCA* be informed.

### Assessment of independence by governing body

20.5.7

FCA

G

- (1) The *FCA* expects the *governing body* of the *firm* to decide whether a member of the *with-profits committee* or a person (other than a *non-executive director*) carrying out the advisory arrangement is independent. The *FCA* expects a *firm's governing body* to adopt the following approach and have regard to the following factors when making this assessment:
- (a) the *governing body* should determine whether the person is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the person's judgment; and
- (b) the *governing body* should state its reasons if it determines that a person is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the person:

- (i) has been an employee of the *firm* or group within the last five years; or
- (ii) has, or has had within the last three years, a material business relationship with the *firm* either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the *firm*; or
- (iii) has received or receives additional remuneration from the *firm*, participates in the *firm's* share option or a performance-related pay scheme, or is a member of the *firm's* pension scheme; or
- (iv) has close family ties with any of the *firm's* advisers, directors or senior employees; or
- (v) has significant links with the *firm's* directors through involvement in other companies or bodies; or
- (vi) represents a significant shareholder; or
- (vii) has served on the *governing body* for more than nine years from the date of their first election.

- (2) If a *firm* appoints one or more *non-executive directors* to carry out the advisory arrangement, the *FCA* expects the *governing body* of the *firm* to be satisfied that that person or persons is or are adequately able to provide independent judgment.

#### **Governance arrangements in relation to the PPFM**

20.5.8

FCA

G

In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering ( ■ SYSC 3.2.6 R), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records, any applicable *PPFM*. These arrangements should:

- (1) be appropriate to the scale, nature and complexity of the *firm's with-profits business*; and
- (2) include the approval of the *firm's PPFM* by its *governing body*.

# Chapter 21

## Permitted Links

## 21.1 Application

### 21.1.1

FCA PRA

R

The *rules* in this section apply on an ongoing basis to *linked long-term* contracts that are effected by:

- (1) *insurers* other than *EEA insurers*; and
- (2) *EEA insurers* in the *United Kingdom*.

### 21.1.2

FCA PRA

R

The *rules* in this section do not apply to:

- (1) contracts that were effected before 1 July 1994, and under which *linked benefits* were permitted to be determined before that date;
- (2) contracts effected by an *insurer* that are *linked long-term* contracts only because the *policyholder* is eligible to participate in any *established surplus*;
- (3) contracts effected by an *EEA insurer* that are *linked long-term* contracts only because the *policyholder* is eligible to participate in an excess of assets representing the whole or a particular part of the *long-term insurance fund* over the liabilities, or a particular part of the liabilities, of the *insurer* as determined by the law of the *EEA state* in which the head office of the *insurer* is situated;
- (4) [deleted]
- (5) contracts effected before 30 June 1995, to the extent that they provide for benefits to be determined by reference to a *collective investment scheme* that was a *listed security* immediately before 1 July 1994; and
- (6) contracts linked to *permitted units* that were effected before 1 February 1992, except to the extent that they relate to acts or omissions on or after that date.

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

- 21.2.1** **R** A *firm* must ensure that the values of its *permitted links* are determined fairly and accurately.  
FCA PRA
- 21.2.2** **R** A *firm* must ensure that its *linked assets*:
- (1) are capable of being realised in time for it to meet its obligations to *linked policyholders*; and
  - (2) are matched with its *linked liabilities* as required by the *close matching rules*.
- 21.2.3** **R** A *firm* must ensure that there is no reasonably foreseeable risk that the aggregate value of any of its *linked funds* will become negative.  
FCA PRA
- 21.2.4** **R** A *firm* must notify its *linked policyholders* of the risk profile and investment strategy for the *linked fund*:  
FCA
- (1) at *inception*, and
  - (2) before making any material changes.
- 21.2.5** **R** A *firm* must ensure that its systems and controls and other resources are appropriate for the risks associated with its *linked assets* and *linked liabilities*.  
FCA PRA
- 21.2.6** **R**
- (1) A *firm* must ensure when selecting *linked assets* that there is no reasonably foreseeable risk of a conflict of interest with its *linked policyholders*.
  - (2) If a conflict does arise, the *firm* must take reasonable steps to ensure that the interests of the *linked policyholders* are safeguarded.
- 21.2.7** **R** In applying the rules in this section, a *firm* must consider the economic effect of its *permitted links* and *linked assets* ahead of their legal form.  
FCA PRA
- 21.2.8** **R** A *firm* must notify the *appropriate regulator* in writing as soon as it becomes aware of any failure to meet the requirements of this section.  
FCA PRA

21.2.9

FCA

G

In considering what action to take in response to written notification of a failure to meet the requirements of this section, the *appropriate regulator* will have regard to the extent to which the relevant circumstances are exceptional and temporary and to any other reasons for the failure.

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

### 21.3.1

FCA

R

An *insurer* must not contract to provide benefits under *linked long-term* contracts of insurance that are determined:

- (1) wholly or partly, or directly or indirectly, by reference to fluctuations in any index other than an *approved index*;
- (2) wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than any of the following:
  - (a) *approved securities*;
  - (b) *listed securities*;
  - (c) *permitted unlisted securities*;
  - (d) *permitted land and property*;
  - (e) *permitted loans*;
  - (f) *permitted deposits*;
  - (g) *permitted scheme interests*;
  - (h) [deleted]
  - (i) *cash*;
  - (j) *permitted units*;
  - (k) *permitted stock lending*; and
  - (l) *permitted derivatives contracts*.

### 21.3.2

FCA

G

- (1) Nothing in these rules prevents a *firm* making allowance in the value of any *permitted link* for any notional tax loss associated with the relevant *linked assets* for the purposes of fair pricing.
- (2) In the *appropriate regulator's* view the Consumer Prices Index, as well as the Retail Prices Index, is a national index of retail prices and so may be used as an *approved index* for the purposes of ■ COBS 21.3.1R (1).



21.3.3

FCA

R

A *firm* that has entered into a *reinsurance contract* in respect of its *linked long-term insurance business* must nevertheless discharge its responsibilities under its *linked long-term insurance contracts* as if no *reinsurance contract* had been effected.

21.3.4

FCA

G

In order to comply with the requirements of ■ COBS 21.3.3 R a *firm* should:

- (1) disclose to *policyholders* the implications of any credit risk exposure they may face in relation to the solvency of the reinsurer; and
- (2) suitably monitor the way the reinsurer manages the business in order to discharge its continuing responsibilities to *policyholders*.

21.3.5

FCA PRA

R

- (1) Except in the case specified in (2), a *firm* which proposes to undertake *linked long-term insurance business*, which is linked to the average earnings index and used for the purposes of orders made by the Department for Work and Pensions under section 148 of the Social Security Administration Act 1992, must notify the *appropriate regulator* in writing of its intention to do so in good time before effecting any such business for the first time, or if there is a material change in the volume of such business, and explain how the risks associated with this business will be safely managed.
- (2) These requirements do not apply in respect of liabilities for which a limited revaluation premium has been paid to the Department for Work and Pensions so that the liability for revaluation, while still linked to orders made under section 148 of the Social Security Administration Act 1992, is limited to 5%.

## Conduct of Business Sourcebook

### COBS TP 1 Transitional Provisions relating to Client Categorisation

FCA

| (1) | (2)  | (3) | (4)   | (5)                                    | (6)                                    |
|-----|--|-----|---|--|--|
|     | Material to which the transitional provision applies |     | Transitional provision  | Transitional provision: dates in force | Handbook provisions: coming into force |
| 1.1 | COBS 3   | G   | <p>Overview of transitional provisions for client categorisation</p> <p>(1) <i>COBS</i> TP 1.2 contains default transitional categorisation provisions in relation to the existing <i>clients</i> of a <i>firm</i> on 1 November 2007. In many cases, they allow a <i>client</i> to be automatically provided with the nearest equivalent categorisation under <i>COBS</i> 3 to their previous categorisation.</p> <p>(2) <i>COBS</i> TP 1.3 explains how the transitional provisions for <i>client</i> categorisation relate to the requirement for a <i>firm</i> to act if it becomes aware that an <i>elective professional client</i> no longer satisfies the initial conditions for its categorisation.</p> <p>(3) The default provisions do not prevent a <i>firm</i> categorising such a <i>client</i> differently in accordance with <i>COBS</i> 3. <i>COBS</i> TP 1.4 provides guidance on how some of the procedural requirements in <i>COBS</i> 3 apply in some such cases.</p> <p>(4) <i>COBS</i> TP 1.5 contains transitional notification obligations, which apply if the default provisions do not allow that <i>client</i> to be provided with the nearest equivalent categorisation or a <i>firm</i> chooses not to take advantage of those provisions in relation to a <i>client</i>.</p> | From 1 November 2007 indefinitely      | 1 November 2007                        |

| (1) | (2)    | (3) | (4)   | (5)                               | (6)             |
|-----|--------|-----|---|-----------------------------------|-----------------|
| 1.2 | COBS 3 | R   | <p>(5) COBS TP 1.6 contains a transitional notification obligation that applies to a <i>firm</i> that, in relation to <i>MiFID or equivalent third country business</i>, takes advantage of the default transitional categorisation provisions to classify a <i>client</i> as a <i>per se professional client</i>.</p> <p>(6) COBS TP 1.9 contains transitional categorisation provisions in relation to <i>clients</i> of a <i>firm</i> that are taken on between 1 November 2007 and 30 June 2008 in relation to business that is not <i>MiFID or equivalent third country business</i>.</p> <p>Categorisation of existing clients</p> <p>(1) An existing <i>client</i> that was correctly categorised as a <i>private customer</i> immediately before 1 November 2007 is a <i>retail client</i> unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>(2) An existing <i>client</i> that was correctly categorised as an <i>intermediate customer</i> immediately before 1 November 2007:</p> <p>(a) is an <i>elective professional client</i> if it was an expert <i>private customer</i> that had been re-classified as an <i>intermediate customer</i> on the basis of its experience and understanding; or</p> <p>(b) is otherwise a <i>per se professional client</i>;</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>(3) An existing <i>client</i> that was correctly categorised as a <i>market counterparty</i> immediately before 1 November 2007 is:</p> <p>(a) for <i>eligible counterparty business</i> that is not <i>MiFID or equivalent third country business</i>, an <i>eligible counterparty</i>; and</p> <p>(b) otherwise, a <i>per se professional client</i>;</p> | From 1 November 2007 indefinitely | 1 November 2007 |

| (1) | (2)    | (3) | (4)  | (5)                               | (6)             |
|-----|--------|-----|--|-----------------------------------|-----------------|
|     |        |     | <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>[<b>Note:</b> Article 71(6) of, and third paragraph of section II.2 of Annex II to, <i>MiFID</i>]</p>   |                                   |                 |
| 1.3 | COBS 3 | G   | <p>Under COBS 3.5.9 R, if a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i>, the <i>investment firm</i> must take the appropriate action. In the case of a <i>client</i> that has been classified as an <i>elective professional client</i> under COBS TP 1.2R(2)(a), the initial conditions are those that applied to the <i>client's</i> initial categorisation as an <i>intermediate customer</i>.</p>   | From 1 November 2007 indefinitely | 1 November 2007 |
| 1.4 | COBS 3 | G   | <p>Former inter-professional business</p> <p>The requirement to provide notices under COBS 3.3.1 R only applies in relation to new <i>clients</i>. The requirement to obtain confirmation under COBS 3.6.4 R (2) only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under COBS 3 in relation to <i>eligible counterparty business</i>.</p>  | From 1 November 2007 indefinitely | 1 November 2007 |
| 1.5 | COBS 3 | R   | <p>Transitional notification obligations</p> <p>(1) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>private customer</i> immediately before 1 November 2007 as a <i>retail client</i>, it must notify that <i>client</i> of its categorisation as a <i>professional client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(2) If a <i>firm</i> does not categorise a <i>client</i> that was an <i>intermediate customer</i> immediately before 1 November 2007 as a <i>professional client</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>eligible</i></p> | From 1 November 2007 indefinitely | 1 November 2007 |

| (1) | (2)    | (3) | (4)   | (5)                               | (6)             |
|-----|--------|-----|---|-----------------------------------|-----------------|
|     |        |     | <p><i>counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>(3) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>market counterparty</i> immediately before 1 November 2007 as an <i>eligible counterparty</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>professional client</i> on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>[<b>Note:</b> article 28(1) of the <i>MiFID implementing Directive</i>]</p> |                                   |                 |
| 1.6 | COBS 3 | R   | <p>If a <i>firm</i>, in relation to <i>MiFID</i> or equivalent third country business, categorises a <i>client</i> who would not otherwise have been a <i>professional client</i> as a <i>professional client</i> under <i>COBS</i> TP 1.2(2)(b) or (3)(b), it must inform that <i>client</i> about the relevant conditions for the categorisation of <i>clients</i>. This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>[<b>Note:</b> article 71(6) of <i>MiFID</i>]</p>   | From 1 November 2007 indefinitely | 1 November 2007 |
| 1.7 |        | G   | <p>A notice to a <i>professional client</i> under <i>COBS</i> TP 1.6 should inform that <i>client</i>:</p> <p>(a) that they have been categorised as a <i>professional client</i>; and</p> <p>(b) of the main differences between the treatment of a <i>retail client</i> and a <i>professional client</i>.</p>   | From 1 November 2007 indefinitely | 1 November 2007 |
| 1.8 |        | R   | <p>The record-keeping requirements under <i>COBS</i> 3.8.2 R apply in relation to any <i>client</i> categorisations or re-categorisations made under the transitional provisions for <i>COBS</i> 3.</p> <p>Categorisation of new clients before 30 June (business that is not <i>MiFID</i> or equivalent third country business)</p>  | From 1 November 2007 indefinitely | 1 November 2007 |

---

| (1) | (2)    | (3) | (4)     | (5) | (6) |
|-----|--------|-----|---------|-----|-----|
| 1.9 | COBS 3 | R   | Expired |     |     |



## Conduct of Business Sourcebook

### COBS TP 2 Other Transitional Provisions

FCA

| (1)  | (2)  | (3) | (4)  | (5)                                    | (6)                                    |
|------|--|-----|--|--|--|
|      | Material to which the transitional provision applies |     | Transitional provision   | Transitional provision: dates in force | Handbook provisions: coming into force |
| 2.-1 | COBS 4   | R   | Expired  |  |  |
| 2.1  | COBS 6.1   | G   | <p>(1) If a <i>firm</i> provides services of an ongoing nature to an existing <i>client</i> it need not provide information to that <i>client</i> that it would be required to provide under <i>COBS</i> to a new <i>client</i> but which it was not required to provide under <i>COB</i>.</p> <p>(2) Services of an ongoing nature include <i>safekeeping and administration investments</i> and <i>managing investments</i>,</p> | From 1 November 2007 indefinitely      | 1 November 2007                        |
| 2.2  | COBS 6.1   | G   | <p>(1) If a <i>firm</i> provides a service for an existing <i>client</i> that is not of an ongoing nature and which relates to the same particular type of <i>designated investment</i> as a previous service, the <i>firm</i> need not provide information to that <i>client</i> that it would be required to provide under <i>COBS 6.1</i> to a new <i>client</i></p>  | From 1 November 2007 indefinitely      | 1 November 2007                        |



| (1)       | (2)  | (3) | (4)   | (5)                                    | (6)                                     |
|-----------|--|-----|---|--|---|
|           | Material to which the transitional provision applies |     | Transitional provision  | Transitional provision: dates in force | Hand-book provisions: coming into force |
|           |  |     | but which it was not required to provide under <i>COB</i> .   |  |   |
|           |  |     | (2) But a <i>firm</i> should ensure that the <i>client</i> has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those described in respect of a previous transaction. |  |   |
| [deleted] |  |     |   |  |   |
| [deleted] |  |     |   |  |   |
| 2.2B      | COBS 6.3   | R   | Expired   |  |   |
| 2.2C      | COBS 6.3   | G   | Expired   |  |   |
| 2.2D      | COBS 6.3   | R   | A <i>firm</i> may use a <i>combined initial disclosure document</i> prepared in accordance with the <i>rules</i> in COBS 6.3 and COBS 6 Annex 2R as they were in force as at 31 March 2013  | From 1 April 2013 to 31 March 2014     | 1 April 2013                            |
| 2.2E      | COBS 6.3.7 G   | R   | A <i>firm</i> may use an <i>initial disclosure document</i> prepared in accordance with the <i>rules</i> in COBS 6.3.7 G and COBS 6 Annex 1 G as they were in force as at 31 March 2013   | From 1 April 2013 to 31 March 2014     | 1 April 2013                            |
| 2.3       | COBS 10.1.2 R  | R   | Expired   |  |   |
| 2.4       | COBS 10.1.2 R  | G   | Expired   |  |   |
| 2.4A      | COBS 11.2  | R   | Expired   |  |   |
| 2.4B      | COBS 11.2  | G   | Expired   |  |   |
| 2.4C      | COBS 11.2  | R   | Expired   |  |   |
| 2.4D      | COBS 11.2  | R   | Expired   |  |   |

| (1)   | (2)  | (3) | (4)  | (5)                                    | (6)                                    |
|-------|--|-----|--|--|--|
|       | Material to which the transitional provision applies |     | Transitional provision   | Transitional provision: dates in force | Handbook provisions: coming into force |
| 2.4 E | COBS 12.2 and R<br>COBS 12.3                         |     | Expired  |  |  |
| 2.4 F | COBS 12.2 and G<br>COBS 12.3                         |     | Expired  |  |  |
| 2.4 G | COBS 12.2 and R<br>COBS 12.3                         |     | Expired  |  |  |
| 2.5   | COBS 13  | R   | Expired  |  |  |
| 2.5-A | COBS 13.4.1 R  | R   | A <i>firm</i> may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment) Instrument 2013 as if the amendments to the <i>Handbook</i> set out in that instrument were in force. | From 6 April 2013 to 5 April 2014      | 6 April 2014                           |
| 2.5A  | COBS 13.4.2 R  | R   | A <i>firm</i> may rely on COBS 13.4.2 R(5) (as introduced by the Retail Distribution Review (Key Features Illustrations) Instrument 2011) as if it was in force from 1 October 2012.   | 1 October 2012 until 31 December 2012  | 31 December 2012                       |
| 2.5AA | COBS 13.5.1 R  | R   | A <i>firm</i> may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment) Instrument 2013 as if the amendments to the <i>Handbook</i> set out in that instrument were in force. | From 6 April 2013 to 5 April 2014      | 6 April 2014                           |

| (1)   | (2)  | (3) | (4)  | (5)                                    | (6)                                    |
|-------|--|-----|--|--|--|
|       | Material to which the transitional provision applies |     | Transitional provision   | Transitional provision: dates in force | Handbook provisions: coming into force |
| 2.5AB | COBS 13.5.2 R  | R   | A <i>firm</i> may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment) Instrument 2013 as if the amendments to the <i>Handbook</i> set out in that instrument were in force. | From 6 April 2013 to 5 April 2014      | 6 April 2014                           |
| 2.5-B | COBS13Annex2   | R   | A <i>firm</i> may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment) Instrument 2013 as if the amendments to the <i>Handbook</i> set out in that instrument were in force. | From 6 April 2013 to 5 April 2014      | 6 April 2014                           |
| 2.5B  | COBS13Annex223                                       | R   | A <i>firm</i> may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Projections) (Amendment) Instrument 2012 as if the amendments to the <i>Handbook</i> set out in that instrument were in force.                                      | From 6 April 2013 to 5 April 2014      | 6 April 2014                           |
| 2.5C  | COBS13Annex224                                       | R   | A <i>firm</i> may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Projections) (Amendment) Instrument 2012 as if the amendments to the <i>Handbook</i>  | From 6 April 2013 to 5 April 2014      | 6 April 2014                           |

| (1)  | (2)  | (3) | (4)   | (5)                                    | (6)                                    |
|------|--|-----|---|--|--|
|      | Material to which the transitional provision applies |     | Transitional provision  | Transitional provision: dates in force | Handbook provisions: coming into force |
| 2.5D | COBS 13 Annex 3                                      | R   | set out in that instrument were in force.<br><i>A firm</i> may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment) Instrument 2013 as if the amendments to the <i>Handbook</i> set out in that instrument were in force. | From 6 April 2013 to 5 April 2014      |  |
| 2.5E | COBS 13 Annex 4                                      | R   | <i>A firm</i> may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment) Instrument 2013 as if the amendments to the <i>Handbook</i> set out in that instrument were in force.  | From 6 April 2013 to 5 April 2014      |  |
| 2.6  | COBS 14.1 and<br>COBS 14.2                           | R   | Expired   |  |  |
| 2.6A | COBS 14.2 and<br>COBS 14.3<br><br>Expired            |     | Expired   |  |  |
| 2.7  | COBS 15  | R   | Expired   |  |  |

| (1)  | (2)   | (3) | (4)  | (5)                                    | (6)                                    |
|------|---|-----|--|--|--|
|      | Material to which the transitional provision applies                                |     | Transitional provision   | Transitional provision: dates in force | Handbook provisions: coming into force |
| 2.8  | COBS 16.3 (Periodic statements)   | G   | This transitional <i>rule</i> applies in relation to a periodic reporting period for a <i>periodic statement</i> that includes 1 November 2007.<br><br><i>A firm</i> may choose to comply with either COBS 16.3 or COB 8.2 in providing any <i>periodic statement</i> in relation to which this <i>rule</i> applies. | From 1 November 2007 indefinitely      | 1 November 2007                        |
| 2.8A | COBS 18   | R   | Expired  |  |  |
| 2.8B | COBS 18   | G   | Expired  |  |  |
| 2.8C | COBS 18   | R   | Expired  |  |  |
| 2.8D | COBS 18   | G   | [deleted]  |  |  |
| 2.8E | COBS 18   | R   | Expired  |  |  |
| 2.9  | COBS 20.2.1 G to COBS 20.2.23 R; COBS 20.2.26 R to COBS 20.2.41 G                   | R   | The provisions listed in column (2) do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>appropriate regulator</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005.             | From 1 November 2007 indefinitely      | 1 November 2007                        |
| 2.9A | COBS 20.2.24 R to COBS 20.2.25 AR (Charging payments of compensation and redress to | R   | The provisions listed in column (2) do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>appropriate regulator</i> , a <i>previous regulator</i> or a court of compe-  | From 31 July 2009 indefinitely         | 31 July 2009                           |

| (1)  | (2)   | (3)                    | (4)   | (5)  | (6)                                    |
|--|---|------------------------|---|--|--|
| Material to which the transitional provision applies |   | Transitional provision |   | Transitional provision: dates in force                                   | Handbook provisions: coming into force |
| 2.10   | a with-profits fund)<br>COBS20.242R(3) R<br>(Policyholder advocate: appointment and role) |                        | tent jurisdiction, on or before 31 July 2009.<br><br>The provision listed in column (2) does not apply to a <i>firm</i> if it is already carrying out a <i>retribution</i> and the process is substantially underway to the extent that it has on or before 31 October 2007 appointed a <i>policyholder advocate</i> .  | From 1 November 2007 - until completion of the <i>firm's retribution</i> | 1 November 2007                        |
| 2.11   | COBS TP 2.9 G   | G                      | The <i>rules</i> and <i>guidance</i> on treating with-profits policyholders fairly (COBS 20.2.1 G - COBS 20.2.41 G; ) may be contrary to, or inconsistent with, some arrangements that were formally approved by the <i>appropriate regulator</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005. The effect of TP 2.9 is that these <i>rules</i> do not apply to such arrangements if, and to the extent that, it is inconsistent with them.<br><br>A <i>firm</i> should be mindful, however, that, even if some or all of these <i>rules</i> are disapplied, the <i>firm</i> is still subject to the <i>rules</i> in the rest of the <i>Handbook</i> , including <i>Principle 6</i> . | From 1 November 2007 indefinitely  | 1 November 2007                        |
| 2.12   | COBS  | R                      | [deleted]   |  |  |

| (1)  | (2)  | (3) | (4)  | (5)                                    | (6)                                    |
|------|--|-----|--|--|--|
|      | Material to which the transitional provision applies           |     | Transitional provision   | Transitional provision: dates in force | Handbook provisions: coming into force |
| 2.13 | COBS   | R   | [deleted]  |  |  |
| 2.14 | COBS 20.2.24 R to COBS 20.2.25A R                              | R   | (1) COBS 20.2.24 R to COBS 20.2.25A R have effect in relation to payments of compensation and redress arising out of events occurring on or after 31 July 2009.<br><br>(2) For payments of compensation and redress arising out of events occurring before 31 July 2009, COBS 20.2.23 R to COBS 20.2.25 R apply as they were in force on 30 July 2009. | From 31 July 2009 indefinitely         | 31 July 2009                           |
|      | [deleted]  |     | [deleted]  | [deleted]                              |  |
| 2.16 | COBS 9.4.10 G; COBS 13 Annex 2; COBS 13 Annex 3; COBS 14.2.1 R | R   | Expired  |  |  |
| 2.17 | COBS 9.4.10 G; COBS 13 Annex 2; COBS 13 Annex 3; COBS 14.2.1 R | G   | Expired  |  |  |
| 2.18 | COBS 20.2.53 R to COBS 20.2.60 G, SUP App 2.15G                | R   | (1) Unless (2) applies, and subject to (3), a <i>firm</i> that has ceased to effect new <i>contracts of insurance</i> in a <i>with-profits fund</i> must submit to the <i>FCA</i> a run-off plan of the type described in COBS 20.2.53 R (2); COBS 20.2.56 R, and COBS 20.2.57 G, if it has not done so already, by 31 December 2012, regardless of    | From 1 April 2012 indefinitely         | 1 November 2007 and 1 April 2012       |

| (1) | (2)   | (3) | (4)   | (5)   | (6)  |
|-----|---|-----|---|---|--|
|     | <p>Material to which the transitional provision applies</p> |     | <p>Transitional provision</p>   | <p>Transitional provision: dates in force</p> | <p>Hand-book provisions: coming into force</p> |
|     |   |     | <p>when it closed to new business.</p> <p>(2) Paragraph (1) does not apply to a <i>firm</i> if, and to the extent that, to comply would be contrary to or inconsistent with an arrangement that was formally approved by a court of competent jurisdiction, on or before 1 April 2012.</p> <p>(3) A <i>firm</i> required by (1) above to produce a run-off plan:</p> <p>(a) should consider the guidance in SUP App 2.15.6 G, 2.15.7G (11), 2.15.13 G, 2.15.14 G and 2.15.15 G to continue to apply to it, as appropriate;</p> <p>(b) may demonstrate compliance with the guidance in SUP App 2.15.2 G, 2.15.3 G, 2.15.4 G and 2.15.5 G by reference to existing documents created by or for the <i>firm</i>, provided that it submits copies of relevant extracts to the <i>FCA</i>;</p> <p>(c) may disregard the remaining provisions in SUP App 2.15G if to do so would be consistent with meeting the requirements of COBS 20.2.56 R (1); and</p> |   |  |



| (1)  | (2)  | (3) | (4)   | (5)                                    | (6)                                     |
|------|--|-----|---|--|---|
|      | Material to which the transitional provision applies |     | Transitional provision  | Transitional provision: dates in force | Hand-book provisions: coming into force |
| 2.19 | COBS 20.2.53 R G to COBS 20.2.60 G                   |     | (d) may otherwise tailor the run-off plan to reflect the fact that the fund in question has already been closed.<br>The effect of COBS TP 2.18 is that <i>firms</i> which were not required to submit a run-off plan to the <i>FCA</i> because they ceased to effect new <i>contracts of insurance</i> before 1 November 2007 or because of previous transitional provisions in <i>COBS</i> , will need to submit a version of a run-off plan to the <i>FCA</i> , taking into account the fact that the fund has already closed, by 31 December 2012. However, this will not apply to the extent that it would be inconsistent with a formally approved court scheme. | From 1 April 2012 indefinitely         | 1 November 2007 and 1 April 2012        |
| 2.20 | COBS 20.2.28 R R                                     |     | Expired   |  |   |
| 2.21 | COBS 20.2.36 R R to COBS 20.2.36A R                  |     | <i>Firms</i> which retain <i>strategic investments</i> in reliance on decisions made by the <i>firm's governing body</i> appropriately taking into account COBS 20.2.36 G prior to 1 April 2012 are deemed to be compliant with COBS 20.2.36 R and COBS 20.2.36A R until 1 October 2012.  | From 1 April 2012 to 1 October 2012    | 1 April 2012                            |
| 2.22 | COBS 20.5.1 R R to COBS 20.5.5 R                     |     | Expired   |  |   |

## Conduct of Business Sourcebook

### Schedule 1 Record keeping requirements

#### Sch 1.1 G

FCA

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

#### Sch 1.2 G

FCA

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

#### Sch 1.3 G

FCA

| Handbook reference | Subject of record   | Contents of record  | When record must be made         | Retention period   |
|--------------------|---|---|----------------------------------|--|
| COBS 2.3.17 R (1)  | Information disclosed to the <i>client</i> in accordance with COBS 2.3.1 R (2)(b)   | The information disclosed   | When information is disclosed    | 5 years from date information is given   |
| COBS 2.3.17 R (2)  | Each benefit given to another <i>firm</i> which does not have to be disclosed to the <i>client</i> in accordance with COBS 2.3.1 R (2)(b)(ii) | Each benefit given  | When benefit is given            | 5 years from date of benefit   |
| COBS 3.8.2 R (1)   | Standard form notice to <i>clients</i> and agreements under COBS 3  | Each standard form notice and agreement   | When standard form is first used | Relevant period from when the <i>firm</i> ceases to carry on business with clients under that standard form (see COBS 3.8.2 R (3)) |
| COBS 3.8.2 R (2)   | <i>Client</i> categorisation  | <i>Client</i> categorisation and supporting information, evidence of dispatch to client of any notice (the notice | From time of categorisation      | Relevant period from when the <i>firm</i> ceases to carry on business with or for that client (see COBS 3.8.2 R (3))               |

| Handbook reference | Subject of record                         | Contents of record  | When record must be made  | Retention period              |
|--------------------|---|---|---|-------------------------------|
|                    |   | itself where this differs from standard form) and a copy of any agreement entered into  |   |                               |
| COBS 4.11.1 R (1)  | <i>Financial promotion</i>                | A <i>financial promotion</i> communicated or approved (subject to exemptions)   | When <i>communicated</i> or <i>approved</i>   | See COBS 4.11.1 R (3)         |
| COBS 4.11.1 R (2)  | Telemarketing scripts                     | Copy of any script used   | Date script used  | See COBS 4.11.1 R (3)         |
| COBS 4.11.2 G      | Compliance of <i>financial promotions</i> | <i>Firms</i> encouraged to consider recording why a <i>financial promotion</i> is considered compliant.   | Date of assessment of compliance  |                               |
| COBS 6.1A.27 R     | Adviser charging and remuneration         | (1) the <i>firm's</i> charging structure;<br><br>(2) the total adviser charge payable by each retail client; (3) if the total <i>adviser charge</i> paid by a <i>retail client</i> has varied materially from the charge indicated for that service in the <i>firm's</i> charging structure, the reasons for that difference. | (1) when the charging structure is first used;<br>(2) from the date of disclosure; (3) from the date of disclosure; | See COBS 6.1A.27 R (1) to (3) |
| COBS 6.1C.21 R     | Consultancy charging and remuneration     | (1) the <i>firm's</i> charging structure;<br><br>(2) the total <i>consultancy charge</i> payable by each employer.<br><br>(3) if the total <i>consultancy charge</i> for a particular service has varied materially from that indicated in the <i>firm's</i> charging structure, the reasons for that difference.             | (1) when the charging structure is first used;<br><br>(2) from the date of disclosure;                              | See COBS 6.1C.21 R            |
| COBS 6.3.11 R      | <i>Menu</i>                               | Copy of each <i>menu</i>  | From date on which it was updated or replaced   | 5 years                       |

| Handbook reference | Subject of record   | Contents of record   | When record must be made  | Retention period  |
|--------------------|---|--|---|---|
| COBS 8.1.4 R       | <i>Client agreements</i>  | Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i>                                      | From date of agreement  | From whichever is the longer of 5 years or the duration of the relationship with the <i>client</i> . Records relating to a <i>pension transfer</i> , <i>pension opt-out</i> or <i>FSAVC</i> must be retained indefinitely |
| COBS 9.2.9 R       | Recommendations on <i>friendly society life policies</i> .                | Why the recommendation is considered suitable  | Date of recommendation.   | 5 years.  |
| COBS 9.5.1 G       | Suitability   | <i>Client</i> information for <i>suitability report</i> and <i>suitability report</i>                                      | From date of <i>suitability report</i>                                      | See COBS 9.5.2 R.   |
| COBS 9.6.19 R      | <i>Basic advice</i>   | Decision to give <i>basic advice</i> , <i>range</i> used and <i>basic advice</i> summary prepared for <i>retail client</i> | Date on which <i>basic advice</i> given                                     | 5 years   |
| COBS 9.6.20 R      | <i>Scope of basic advice (stakeholder products)</i>                       | <i>Scope of basic advice</i> and its <i>range</i> (or <i>ranges</i> ) of <i>stakeholder products</i>                       | Date on which the <i>scope</i> and <i>range</i> becomes relevant            | 5 years from the date replaced by more up-to-date record  |
| COBS 10.7.1 G      | Appropriateness   | <i>Client</i> information obtained in making assessment of appropriateness and the appropriateness assessment              | Date of assessment  | 5 years   |
| COBS 11.3.2 R      | Client orders   | Orders executed for <i>clients</i>   | See COBS 11.5   | 5 years   |
| COBS 11.5.1 EU     | <i>Client</i> orders and decisions to deal in <i>portfolio management</i> | Orders received from <i>clients</i> and decisions taken - details in COBS 11.5.1 EU  | See COBS 11.5.1 EU  | 5 years   |
| COBS 11.5.2 EU     | <i>Client</i> orders  | Execution of orders  | See COBS 11.5.1 EU  | 5 years   |
| COBS 11.5.3 EU     | <i>Client</i> orders  | Transmission details (see COBS 11.5.3 EU)  | Date of transmission  | 5 years   |
| COBS 11.6.19 R     | Prior and periodic disclosure   | Prior and periodic disclosure on use of dealing commission   | From date of disclosure to <i>customers</i>                                 | 5 years   |
| COBS 11.7.4 R      | Personal account dealing  | Notifications by outsourcing provider and authorisation or prohibition.  | Date of notification or decision.   | 5 years   |
| COBS 11.8.5 R      | Telephone conversations and electronic                                    | Telephone conversations and electronic communications  | When the conversation or electronic communication is made, sent or received | 6 months  |

| Handbook reference | Subject of record   | Contents of record  | When record must be made  | Retention period  |
|--------------------|---|---|---|---|
|                    | communications subject to the taping obligation (see COBS 11.8.5 R) | recorded under COBS 11.8.5 R  |   |   |
| COBS 12.4.6 R      | <i>Research recommendations</i>                                     | Basis of substantiation of <i>research recommendation</i>   | Date of recommendation  | 5 years   |
| COBS 15.3.4 R      | Cancellation: exercise of right                                     | Exercise of the right to cancel or withdraw   | Date of exercise  | As specified in COBS 15.3.4 R(1), (2) and (3)   |
| COBS 16.2.7 R      | Confirmation to clients   | Copy of a confirmation  | From date of despatch to client   | <i>MiFID or equivalent third country business</i> - 5 years<br>Other business - 3 years |
| COBS 16.3.11 R     | <i>Periodic statements</i>  | A copy of a <i>periodic statement</i> sent to a client  | From date of despatch to client   | <i>MiFID or equivalent third country business</i> - 5 years<br>Other business - 3 years |
| COBS 16.6.6 R      | Life insurance contracts  | Information to be provided during the terms of the contract   | When information is given   | 5 years after information given   |
| COBS 18.5.14R      | Collective investment scheme operators                              | <i>Periodic statement</i> to be provided to participants  | When provided   | 3 years   |
| COBS 19.1.5 R      | Execution only pension transfer or opt out                          | That no <i>personal recommendation</i> was given to the client  | Date of transaction   | 5 years   |
| COBS 19.2.3 R      | Promotion of personal pension scheme                                | Why the promotion was justified   | When promoted   | 5 years   |
| COBS 20.2.36A R    | <i>strategic investments</i>  | A description of the strategic purpose for which a <i>strategic investment</i> has been purchased or retained | Before making a <i>strategic investment</i> or when reviewing whether to retain a <i>strategic investment</i> | Until the firm ceases to hold the <i>strategic investment</i> in question               |
| COBS 20.3.1 R      | <i>PPFMs</i>  | Each version of the <i>PPFM</i>   | Date on which the <i>PPFM</i> is relevant   | 5 years   |
| COBS TP 1          | <i>Client</i> categorisation transitional                           | Categorisation or re-categorisation under TP1   | Date of categorisation/re-categorisation  | See COBS 3.8.2 R (2)  |
| COBS TP 2          | <i>Investment research</i> transitional                             | Election to comply with COBS 12.2 - COBS 12.3 sooner than 1 May 2008  | Date of decision and date from which election is to be effective  | 5 years   |
| COBS TP 2          | Specialist regimes  | Election to comply with COBS 18 sooner than 1 May 2008  | Date of decision and date from which election is to be effective  | 5 years   |

## Conduct of Business Sourcebook

### Schedule 2

#### Sch 2.1 G

FCA

| Handbook reference | Matters to be notified   | Contents of notification   | Trigger event   | Time allowed  |
|--------------------|--|--|---|---|
| COBS 20.2.45 R     | Appointment of <i>policyholder advocate</i> .  | The terms on which the <i>firm</i> proposes to appoint a <i>policyholder advocate</i> .  | Proposal to appoint <i>policyholder advocate</i> .  | As soon as reasonably practicable                       |
| COBS 21.2.8 R      | Breach of COBS 21.3.5 R  | Any failure to meet the requirements of COBS 21.3.5 R  | Breach of COBS 21.3.5 R   | As soon as the <i>firm</i> becomes aware of the failure |
| COBS 20.5.5 R (3)  | The decision of a <i>firm's governing body</i> to depart from the advice or recommendation of the <i>with-profits committee</i> or advisory arrangement. | <p>A description of:</p> <p>(1) the decision of, and reasons given by, the <i>firm's governing body</i>;</p> <p>(2) the recommendation and advice of the <i>with-profits committee</i> or advisory arrangement;</p> <p>together with a copy of the <i>firm's</i> records of the decision, reasons, advice and recommendations.</p> | The <i>with-profits committee</i> or advisory arrangement considers that the issue is sufficiently significant and requests of the <i>governing body</i> that the <i>FSA</i> be informed. | As soon as reasonably practicable                       |



## Conduct of Business Sourcebook

### Schedule 3 Fees and other required payments

R  
Sch 3.1 G  
FCA

There are no requirements for fees or other payments in *COBS*.





---

## Conduct of Business Sourcebook

### Schedule 4 Powers exercised

#### R

##### Sch 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *COBS*:

- Section 138 (General rule-making power)
- Section 139 (4) (Miscellaneous ancillary matters)
- Section 141 (Insurance business rules)
- Section 145 (Financial promotion rules)
- Section 147 (Control of information rules)
- Section 149 (Evidential provisions)
- Section 156 (General supplementary powers)
- Section 238(5) (Restrictions on promotion)

##### Sch 4.2 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *COBS*:

- Section 157(1) (Guidance)



## Conduct of Business Sourcebook

### Schedule 5 Rights of action for damages

#### Sch 5.1 G

FCA

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

#### Sch 5.2 G

FCA

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

#### Sch 5.3 G

FCA

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

#### Sch 5.4 G

FCA

| Chapter/ Appendix  | Section/Annex | Paragraph | Right of action under section 138D |          |                   |                  |
|--|---------------|-----------|------------------------------------|----------|-------------------|------------------|
|  |               |           | For private person?                | Removed? | For other person? |                  |
| All <i>rules</i> in <i>COBS</i> with the status letter "E"   |               |           | No                                 | No       | No                |                  |
| Any <i>rule</i> in <i>COBS</i> which prohibits an <i>authorised person</i> from seeking to make provision excluding or restricting any duty or liability   |               |           | Yes                                | No       | Yes               | Any other person |
| Any <i>rule</i> in <i>COBS</i> which is directed at ensuring that transactions in <i>designated investments</i> are not effected with the benefit of unpublished information that, if made public, would be likely to affect the price of that designated investment |               |           | Yes                                | No       | Yes               | Any other person |

---

|  |     |                  |    |
|--|-----|------------------|----|
| The <i>fair, clear and not misleading rule</i> | Yes | In part (Note 1) | No |
| All other <i>rules</i> in <i>COBS</i>          | Yes | No               | No |

## Notes

1. *COBS* 4.2.6R provides that if, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the *Act*.

---

## Conduct of Business Sourcebook

### Schedule 6 Rules that can be waived

R

Sch 6.1 G

FCA

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

# Insurance: Conduct of Business sourcebook

## Insurance: Conduct of Business sourcebook

|   |  |
|---|--|
| <b>ICOBS 1</b>                                      | <b>Application</b>   |
| 1.1<br>1 Annex 1                                    | The general application rule<br>Application (see ICOBS 1.1.2 R)  |
| <b>ICOBS 2</b>                                      | <b>General matters</b>   |
| 2.1<br>2.2<br>2.3<br>2.4<br>2.5                     | Client categorisation<br>Communications to clients and financial promotions<br>Inducements<br>Record-keeping<br>Exclusion of liability and reliance on others  |
| <b>ICOBS 3</b>                                      | <b>Distance marketing</b>  |
| 3.2<br>3 Annex 1<br>3 Annex 2<br>3 Annex 3          | E-Commerce<br>Guidance on the Distance Marketing Directive<br>Distance marketing information<br>Abbreviated distance marketing information   |
| <b>ICOBS 4</b>                                      | <b>Information about the firm, its services and remuneration</b>   |
| 4.1<br>4.2<br>4.3<br>4.4<br>4.5<br>4.6<br>4 Annex 1 | General requirements for insurance intermediaries<br>Additional requirements for protection policies for insurance intermediaries and insurers<br>Fee disclosure<br>Commission disclosure for commercial customers<br>Initial disclosure document<br>Commission disclosure for pure protection contracts sold with retail investment products<br>Initial disclosure document |
| <b>ICOBS 5</b>                                      | <b>Identifying client needs and advising</b>   |
| 5.1<br>5.2<br>5.3                                   | General<br>Statement of demands and needs<br>Advised sales   |
| <b>ICOBS 6</b>                                      | <b>Product Information</b>   |



|                |   |
|----------------|---|
| 6.1            | General   |
| 6.2            | Pre-contract information: general insurance contracts                               |
| 6.3            | Pre- and post-contract information: pure protection contracts                       |
| 6.4            | Pre- and post-contract information: protection policies                             |
| 6 Annex 1      | Responsibilities of insurers and insurance intermediaries in certain situations     |
| 6 Annex 2      | Policy summary for consumers  |
| <br>           |   |
| <b>ICOBS 7</b> | <b>Cancellation</b>   |
| 7.1            | The right to cancel   |
| 7.2            | Effects of cancellation   |
| <br>           |   |
| <b>ICOBS 8</b> | <b>Claims handling</b>  |
| 8.1            | Insurers: general   |
| 8.2            | Motor vehicle liability insurers  |
| 8.3            | Insurance intermediaries (and insurers handling claims on another insurer's policy) |
| 8.4            | Employers' Liability Insurance  |
| 8 Annex 1      | Employers' liability register   |
| <br>           |   |
|                | <b>Transitional Provisions and Schedules</b>  |
| TP 1           | Transitional Provisions   |
| TP 2           | Other Transitional Provisions   |
| Sch 1          | Record keeping requirements   |
| Sch 2          | Notification requirements   |
| Sch 3          | Fees and other required payments requirements                                       |
| Sch 4          | Powers exercised  |
| Sch 5          | Rights of action for damages  |
| Sch 6          | Rules that can be waived  |



# Chapter 1

# Application



## 1.1 The general application rule

### The general application rule

1.1.1

FCA

R

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

- (1) an *insurance mediation activity*;
- (2) *effecting and carrying out contracts of insurance*;
- (3) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (4) *communicating or approving a financial promotion*;

and activities connected with them.

### Modifications to the general application rule

1.1.2

FCA

R

The general application *rule* is modified in ■ ICOBS 1 Annex 1 G according to the type of *firm* (Part 1), its activities (Part 2), and its location (Part 3).

1.1.3

FCA

R

The general application *rule* is also modified in the chapters of this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

### Guidance

1.1.4

FCA

G

*Guidance* on the application provisions is in ■ ICOBS 1 Annex 1 G (Part 4).

## Application (see ICOBS 1.1.2 R)

**FCA**

## Part 1: Who?

## Modifications to the general application rule according to type of firm

**1 Third party processors**

- 1.1 R** (1) *This rule applies where a firm (or its appointed representative) ("A") has outsourced insurance mediation activities to a third party processor.*
- (2) *Any rule in this sourcebook which requires the third party processor, when acting as such, to disclose its identity to a customer must be read as applying to the third party processor only to the extent that it applies to A and as requiring disclosure of A's identity.*

**2 Managing agents**

- 2.1 R** (1) *References to an insurer apply equally to a managing agent unless the context requires otherwise.*
- (2) *A managing agent must give effect to the policy that a consumer must, where required by this sourcebook, be offered cancellation rights.*
- (3) *References to managing agents in this sourcebook relate to their functions in managing the obligations of a member in his capacity as such.*

**3 Authorised professional firms**

- 3.1 R** *This sourcebook (except for ICOBS 4.6) does not apply to an authorised professional firm with respect to its non-mainstream regulated activities except for:*
- (1) *the provisions on communications to clients and financial promotions (see ICOBS 2.2);*
- (2) *the e-commerce provisions (ICOBS 3.2);*
- (3) *status disclosure requirements in relation to complaints procedures (see ICOBS 4.1); and*
- (4) *provisions implementing articles 12 and 13 of the Insurance Mediation Directive (see ICOBS 4.1, ICOBS 5.2 and ICOBS 5.3.3 R), except to the extent that the firm is subject to equivalent rules of its designated professional body approved by the FCA.*

- 3.2 G** *Compliance with provisions of the Distance Marketing Directive is dealt with in the Professional Firms sourcebook (see PROF 5.4).*

**4 Appointed representatives**

Part 1: Who?

Modifications to the general application rule according to type of firm

- 4.1 R (1) An *insurer* must ensure that its *appointed representative* complies with this sourcebook as it applies to an *insurance intermediary*.
- (2) However, if the *appointed representative* is acting as the *insurer's third party processor* then:
  - (a) this rule is subject to the *third party processors rule* (see paragraph 1.1R); and
  - (b) the *insurer* is not required to ensure that the *appointed representative* complies with the *rules* in this sourcebook on commission disclosure (see **ICOBS 4.4**) or, unless they apply to an *insurer*, the *rules* on statements of demands and needs (see **ICOBS 5.2**).
- 4.2 G The cancellation requirements in chapter 7 do not apply to a *distance contract* entered into by an *appointed representative* to provide mediation services. Regulations 9 (Right to cancel) to 13 (Payment for services provided before cancellation) of the *Distance Marketing Regulations* apply instead.
- 5 Service companies
- 5.1 R This sourcebook does not apply to a *service company*, except for the provisions on communications to *clients* and *financial promotions* (see **ICOBS 2.2**).
- 6 Lloyd's
- 6.1 R The *Society* must ensure that no *member* carries on *motor vehicle liability insurance business* at Lloyd's unless a claims representative has been appointed to act for that *member* in each *EEA State* other than the *United Kingdom*, with responsibility for handling and settling a claim by an *injured party*. Otherwise, this sourcebook does not apply to the *Society*.

Part 2: What?

Modifications to the general application rule according to activities

- 1 Reinsurance
- 1.1 R This sourcebook does not apply to activities carried on in relation to a *reinsurance contract*.  
[Note: article 12(4) of the *Insurance Mediation Directive*]
- 2 Contracts of large risks
- 2.1 R Subject to Part 3 of this Annex, this sourcebook does not apply to an *insurance intermediary* mediating a *contract of large risks*:
  - (1) where the risk is located outside the *European Economic Area*; or
  - (2) for a *commercial customer* where the risk is located within the *European Economic Area*.
 [Note: article 12(4) of the *Insurance Mediation Directive*]

Part 2: What?

Modifications to the general application rule according to activities

- 2.2 G *Principle 7* continues to apply so a *firm* should provide evidence of cover promptly after inception of a *policy* to its *customer*. In respect of a *group policy*, a *firm* should provide information to its *customer* to pass on to other *policyholders* and should tell the *customer* that he should give the information to each *policyholder*.
- 3 Pure protection contracts: election to apply COBS rules
- 3.1 R (1) This sourcebook (except for **ICOBS 4.6**) does not apply in relation to a *pure protection contract* to the extent that a *firm* has elected to comply with the Conduct of Business sourcebook (*COBS*) in respect of such business.
- (2) Within the scope of such an election, a *firm* must:
  - (a) comply with the rest of the Handbook (except for **COBS 6.1A**, **COBS 6.1B** and **COBS 6.1.9 R**) treating the *pure protection contract* as a life policy and a *designated investment*, and not as a *non-investment insurance contract*; and
  - (b) if applicable, also comply with **ICOBS 4.6**.
- (3) A *firm* must make, and retain indefinitely, a record in a *durable medium* of such an election (and any reversal or amendment). The record must include the effective date and a precise description of the part of the *firm's* business to which the election applies.
- 4 Chains of insurance intermediaries
- 4.1 R Where there is a chain of *insurance intermediaries* between the *insurer* and the *customer*, this sourcebook applies only to the *insurance intermediary* in contact with the *customer*.

Part 3: Where?

Modifications to the general rule of application according to location

- 1 EEA territorial scope rule: compatibility with European law
- 1.1 R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for *guidance* on this).
- (2) This *rule* overrides any other *rule* in this sourcebook.
- 1.2 R In addition to the *EEA territorial scope rule*, the effect of the *E-Commerce Directive* on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 8 of Part 4 for *guidance* on this).
- [Note: article 3(3) of, and Annex to, the *E-Commerce Directive*]
- 2 Exemption for insurers: business with non-EEA customers via non-UK intermediaries
- 2.1 R This sourcebook does not apply to an *insurer* if:

Part 3: Where?

Modifications to the general rule of application according to location

- (1) the intermediary (whether or not an *insurance intermediary*) in contact with the *customer* is not established in the *United Kingdom*; and
- (2) the *customer* is not *habitually resident* in, and, if applicable, the *State of the risk* is outside, an *EEA State*.

3 Exemption for insurers: business with non-UK EEA customers

3.1 R A rule in this sourcebook which goes beyond the minimum required by *EU* legislation does not apply to an *insurer* if the *customer* is *habitually resident* in (and, if applicable, the *State of the risk* is) an *EEA State* other than the *United Kingdom*, to the extent that the *EEA State* in question imposes measures of like effect.

Part 4: Guidance

1 The main extensions and restrictions to the general application rule

1.1 G The general application rule is modified in Parts 1 to 3 of this Annex and in certain chapters of this sourcebook.

1.2 G The provisions of the *Single Market Directives* and other directives also extensively modify the general application rule, particularly in relation to territorial scope. However, for the majority of circumstances, the general application rule is likely to apply.

2 The Single Market Directives and other directives

2.1 G This guidance provides a general overview only and is not comprehensive.

2.2 G When considering the impact of a directive on the territorial application of a rule, a firm will first need to consider whether the relevant situation involves a non-UK element. The *EEA* territorial scope rule is unlikely to apply if a UK firm is doing business from a UK establishment for a client located in the *United Kingdom* in relation to a UK product. However, if there is a non-UK element, the firm should consider whether:

- (1) it is subject to the directive;
- (2) the business it is performing is subject to the directive; and
- (3) the particular rule is within the scope of the directive.

If the answer to all three questions is 'yes', the *EEA* territorial scope rule may change the effect of the general application rule.

2.3 G When considering a particular situation, a firm should also consider whether two or more directives apply.

3 Insurance Mediation Directive: effect on territorial scope

3.1 G The *Insurance Mediation Directive's* scope covers most firms carrying on most types of *insurance mediation*. The rules in this sourcebook within the Directive's scope are those that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis (see **ICOBS 4** (Information about the firm,



## Part 4: Guidance

- its services and remuneration), **ICOBS 5.2** (Statement of demands and needs), **ICOBS 5.3.3 R** (Advice on the basis of a fair analysis) and **ICOBS 6** (Product information)).
- 3.2 G** The *rules* implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in **ICOBS 4.1** (General requirements for insurance intermediaries), **ICOBS 5.2** (Statement of demands and needs) and **ICOBS 5.3.3 R** (Advice on the basis of a fair analysis).
- 3.3 G** In the *FCA's* view, the responsibility for these minimum requirements rests with the *Home State*, but a *Host State* is entitled to impose additional requirements within the Directive's scope in the 'general good'. (See recital 19 to and article 12(5) of the *Insurance Mediation Directive*.) Accordingly, the general *rules* on territorial scope are modified so that:
- (1) for a *UK firm* providing *passported activities* through a *branch* in another *EEA State* under the Directive, the *rules* implementing the Directive's minimum requirements apply, but the territorial scope of the additional *rules* within the Directive's scope is not modified;
  - (2) for an *EEA firm* providing *passported activities* under the Directive in the *United Kingdom*, the *rules* implementing the Directive's minimum requirements do not apply, but the additional *rules* within the Directive's scope have their unmodified territorial scope unless the *Home State* imposes measures of like effect; and
  - (3) an *EEA firm* acting as the principal of an *appointed representative* is required to ensure that its *appointed representative* complies with this sourcebook as it applies to a *UK firm* that is an *authorised person*.
- 4 Non-Life Directives: effect on territorial scope**
- 4.1 G** The *Non-Life Directives'* scope covers *insurers* authorised under those Directives conducting *general insurance business*.
- 4.2 G** The *rules* in this sourcebook within the Directives' scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the insurance contract (see **ICOBS 2.2** (Communications to clients and financial promotions), **ICOBS 4** (Information about the firm, its services and remuneration), **ICOBS 6** (Product information) and **ICOBS 8** (Claims handling) except **ICOBS 8.2** (Motor vehicle liability insurers)).
- 4.3 G** The Directives specify minimum information requirements and permit *EEA States* to adopt additional mandatory rules. (See article 7 of the *Second Non-Life Directive*)
- 4.4 G** If the *State of the risk* is an *EEA State*, the Directives provide that the applicable information rules shall be determined by that state. Accordingly, if the *State of the risk* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the risk* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial promotion rules*, is not affected since the Directives explicitly permit *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 28 and 41 of the *Third Non-Life Directive*)

## Part 4: Guidance

- 5 Consolidated Life Directive: effect on territorial scope**
- 5.1 G** The *Consolidated Life Directive's* scope covers *long-term insurers* authorised under that Directive conducting *long-term insurance business*.
- 5.2 G** The *rules* in this sourcebook within the Directive's scope are the *cancellation rules* (see **ICOBS 7**) and those *rules* requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the *contract of insurance* (see **ICOBS 2.2** (Communications to clients and financial promotions), **ICOBS 4** (Information about the firm, its services and remuneration), **ICOBS 6** (Product information) and **ICOBS 8** (Claims handling) except **ICOBS 8.2** (Motor vehicle liability insurers)).
- 5.3 G** The Directive specifies minimum information and cancellation requirements and permits *EEA States* to adopt additional information requirements that are necessary for a proper understanding by the *policyholder* of the essential elements of the commitment.
- 5.4 G** If the *State of the commitment* is an *EEA State*, the Directive provides that the applicable information rules and cancellation rules shall be determined by that state. Accordingly, if the *State of the commitment* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the commitment* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial promotion rules*, is not affected since the Directive explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the *Consolidated Life Directive*)
- 6 Motor Insurance Directives: effect on territorial scope**
- 6.1 G** The scope of the *Consolidated Motor Insurance Directive* covers *insurers* conducting *motor vehicle liability insurance business*. The *rules* in this sourcebook within the Directive's scope are those regarding the appointment of claims representatives and handling of claims by *injured parties* (see **ICOBS 8.4**).
- 6.2 G** The Directive requires a *motor vehicle liability insurer* to appoint a claims representative in each *EEA State* other than its *Home State*. It specifies minimum requirements regarding function and powers of claims representatives in handling claims and regarding the settlement of claims by *injured parties*.
- 6.3 G** The Directive's provisions apply to *motor vehicle liability insurers* for which the *United Kingdom* is the *Home State*. (See articles 21 and 22 of the *Consolidated Motor Insurance Directive*).
- 7 Distance Marketing Directive: effect on territorial scope**
- 7.1 G** In broad terms, a *firm* is within the *Distance Marketing Directive's* scope when conducting an activity relating to a *distance contract* with a *consumer*. The *rules* in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information (see **ICOBS 2.2** ((Communications to clients and financial promotions), **ICOBS 4** (Information about the firm, its services and remuneration) and **ICOBS 6** (Product information)), the *cancellation rules* (see **ICOBS 7**) and the other specific *rules* implementing the Directive (see **ICOBS 3.1** ).

## Part 4: Guidance

- 7.2 **G** In the *FCA's* view, the Directive places responsibility for requirements within the Directive's scope on the *Home State* except in relation to business conducted through a *branch*, in which case the responsibility rests with the *EEA State* in which the *branch* is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the *Distance Marketing Directive*)
- 7.3 **G** This means that relevant *rules* in this sourcebook will, in general, apply to a *firm* conducting business within the Directive's scope from an establishment in the *United Kingdom* (whether the *firm* is a national of the *United Kingdom* or of any other *EEA State* or *non-EEA state*).
- 7.4 **G** Conversely, the territorial scope of the relevant *rules* in this sourcebook is modified as necessary so that they do not apply to a *firm* conducting business within the Directive's scope from an establishment in another *EEA State* if the *firm* is a national of the *United Kingdom* or of any other *EEA State*.
- 7.5 **G** In the *FCA's* view:
- (1) the 'country of origin' basis of the Directive is in line with that of the *E-Commerce Directive*; (see recital 6 to the *Distance Marketing Directive*)
  - (2) for business within the scope of both the *Distance Marketing Directive* and the *Consolidated Life Directive*, the territorial application of the *Distance Marketing Directive* takes precedence; in other words, the *rules* requiring pre-contract information and cancellation rules derived from the *Consolidated Life Directive* apply on a 'country of origin' basis rather than being based on the *State of the commitment*; (see articles 4(1) and 16 of the *Distance Marketing Directive* noting that the *Distance Marketing Directive* was adopted after the *Consolidated Life Directive*)
  - (3) for business within the scope of both the *Distance Marketing Directive* and the *Insurance Mediation Directive*, the minimum information and other requirements in the *Insurance Mediation Directive* continue to be those applied by the *Home State*, but the minimum requirements in the *Distance Marketing Directive* and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the *Insurance Mediation Directive* was adopted after the *Distance Marketing Directive* and is not expressed to be subject to it.)
- 8 **Electronic Commerce Directive: effect on territorial scope**
- 8.1 **G** The *E-Commerce Directive's* scope covers every *firm* carrying on an *electronic commerce activity*. Every *rule* in this sourcebook is within the Directive's scope.
- 8.2 **G** A key element of the Directive is the ability of a *person* from one *EEA State* to carry on an *electronic commerce activity* freely into another *EEA State*. Accordingly, the territorial application of the *rules* in this sourcebook is modified so that they apply at least to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.
- 8.3 **G** Conversely, a *firm* that is a national of the *United Kingdom* or another *EEA State*, carrying on an *electronic commerce activity* from an *establishment* in another *EEA*

## Part 4: Guidance

*State with or for a person in the United Kingdom, need not comply with the rules in this sourcebook. (See article 3(1) and (2) of the E-Commerce Directive)*

- 8.4 G The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the FCA has adopted for this sourcebook. The derogation applies to an *insurer* that is authorised under, and carrying on an *electronic commerce activity* within, the scope of the *Insurance Directives* and permits *EEA States* to continue to apply their advertising rules in the 'general good'.
- 8.5 G Where the derogation applies, the rules on *financial promotion* continue to apply for incoming *electronic commerce activities* (unless the firm's 'country of origin' applies rules of like effect), but do not apply for outgoing *electronic commerce activities*. (See article 3(3) and Annex, fourth indent of the *E-Commerce Directive*; Annex to European Commission Discussion Paper MARKT/2541/03)
- 8.6 G In the FCA's view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):
- (1) is in line with the *Distance Marketing Directive*;
  - (2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
- 8.7 G The 'derogations' in the Directive may enable other *EEA States* to adopt a different approach to the *United Kingdom* in certain fields. (See recital 19 to the *Insurance Mediation Directive*, recital 6 to the *Distance Marketing Directive*, article 3 of, and the Annex to, the *E-Commerce Directive*)

## Chapter 2

# General matters

## 2.1 Client categorisation

### Introduction

2.1.1  
FCA

G

Different provisions in this sourcebook may apply depending on the type of *person* with whom a *firm* is dealing:

- (1) A *policyholder* includes anyone who, upon the occurrence of the contingency insured against, is entitled to make a claim directly to the *insurance undertaking*.
- (2) Only a *policyholder* or a prospective *policyholder* who makes the arrangements preparatory to him concluding a *contract of insurance* (directly or through an agent) is a *customer*. In this sourcebook, *customers* are either *consumers* or *commercial customers*.
- (3) A *consumer* is any natural person who is acting for purposes which are outside his trade or profession.
- (4) A *commercial customer* is a *customer* who is not a *consumer*.

### Customer to be treated as consumer when status uncertain

2.1.2  
FCA

R

If it is not clear in a particular case whether a *customer* is a *consumer* or a *commercial customer*, a *firm* must treat the *customer* as a *consumer*.

### Customer covered in both a private and business capacity

2.1.3  
FCA

G

If a *customer* is acting in the capacity of both a *consumer* and a *commercial customer* in relation to a particular *contract of insurance*, the *customer* is a *commercial customer*.

### Customer classification examples

2.1.4  
FCA

G

In practice, private individuals may act in a number of capacities. The following table sets out a number of examples of how an individual acting in certain capacities should, in the *FCA's* view, be categorised.

| Customer classification examples   |                 |
|--|-----------------|
| Capacity   | Classification  |
| Personal representatives, including executors, unless they are acting in a professional capacity, for example, a solicitor acting as executor. | <i>Consumer</i> |

| Customer classification examples   |                            |
|--|----------------------------|
| Capacity   | Classification             |
| Private individuals acting in personal or other family circumstances, for example, as trustee of a family trust.     | <i>Consumer</i>            |
| Trustee of a trust such as a housing or NHS trust.   | <i>Commercial customer</i> |
| Member of the governing body of a club or other unincorporated association such as a trade body and a student union. | <i>Commercial customer</i> |
| Pension trustee.   | <i>Commercial customer</i> |
| <i>Person</i> taking out a <i>policy</i> covering property bought under a buy-to-let mortgage.                       | <i>Commercial customer</i> |
| <i>Partner</i> in a <i>partnership</i> when taking out insurance for purposes related to his profession.             | <i>Commercial customer</i> |



## 2.2 Communications to clients and financial promotions

### Application

2.2.1  
FCA

R

In addition to the general application *rule* for this sourcebook, this section applies to the *communication*, or *approval for communication*, to a *person* in the *United Kingdom* of a *financial promotion* of a *non-investment insurance contract* unless it can lawfully be *communicated* by an *unauthorised* communicator without *approval*.

### Clear, fair and not misleading rule

2.2.2  
FCA

R

When a *firm* communicates information, including a *financial promotion*, to a *customer* or other *policyholder*, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading.

### Approving financial promotions

2.2.3  
FCA

R

- (1) Before a *firm* *approves* a *financial promotion* it must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.
- (2) If, subsequently, a *firm* becomes aware that a *financial promotion* is not clear, fair and not misleading, it must withdraw its *approval* and notify any *person* that it knows to be relying on its approval as soon as reasonably practicable.

### Pricing claims: guidance on the clear, fair and not misleading rule

2.2.4  
FCA

G

- (1) This *guidance* applies in relation to a *financial promotion* that makes pricing claims, including *financial promotions* that indicate or imply that a *firm* can reduce the *premium*, provide the cheapest *premium* or reduce a *customer's* costs.
- (2) Such a *financial promotion* should:
  - (a) be consistent with the result reasonably expected to be achieved by the majority of *customers* who respond, unless the proportion of those *customers* who are likely to achieve the pricing claims is stated prominently;
  - (b) state prominently the basis for any claimed benefits and any significant limitations; and



- 
- (c) comply with other relevant legislative requirements, including the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008.

## 2.3 Inducements

### 2.3.1

FCA

G

- (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. This principle extends to soliciting or accepting inducements where this would conflict with a *firm's* duties to its *customers*. A *firm* that offers such inducements should consider whether doing so conflicts with its obligations under *Principles 1* and *6* to act with integrity and treat *customers* fairly.
- (2) An inducement is a benefit offered to a *firm*, or any *person* acting on its behalf, with a view to that *firm*, or that *person*, adopting a particular course of action. This can include, but is not limited to, cash, cash equivalents, *commission*, goods, hospitality or training programmes.

## 2.4 Record-keeping

2

### 2.4.1

FCA

G

- (1) The Senior Management Arrangements, Systems and Controls sourcebook contains high-level record-keeping requirements (see ■ SYSC 3.2.20 R and ■ SYSC 9.1.1 R).
- (2) This sourcebook does not generally have detailed record-keeping requirements: *firms* will need to decide what records they need to keep in line with the high-level record-keeping requirements and their own business needs.
- (3) *Firms* should bear in mind the need to deal with requests for information from the *FCA* as well as queries and complaints from *customers* which may require evidence of matters such as:
  - (a) the reasons for *personal recommendations*;
  - (b) what documentation has been provided to a *customer*; and
  - (c) how claims have been settled and why.



## 2.5 Exclusion of liability and reliance on others

### Exclusion of liability

2.5.1  
FCA

R

A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *customer* or other *policyholder* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.

2.5.2  
FCA

G

The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

### Reliance on others

2.5.3  
FCA

G

- (1) Where it is compatible with the nature of the obligation imposed by a particular *rule* and with the *Principles*, in particular *Principles* 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.
- (2) For example, where a *rule* requires a *firm* to take reasonable steps to achieve an outcome, it will generally be reasonable for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a *firm* cannot delegate its responsibility under the *regulatory system*. For example, where a *rule* imposes an absolute obligation (such as the requirement for an *insurer* to handle claims promptly and fairly) although a *firm* could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required.

# Chapter 3

## 3.1 Distance marketing

### Application

3.1.1  
FCA

R

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

### Guidance on the Distance Marketing Directive

3.1.2  
FCA

G

Guidance on expressions derived from the *Distance Marketing Directive* and on the Directive's application in the context of *insurance mediation activity* can be found in ■ ICOB3 3 Annex 1 G.

### The distance marketing disclosure rules

3.1.3  
FCA

R

A *firm* must provide a *consumer* with the distance marketing information (■ ICOB3 3 Annex 2 R) in good time before conclusion of a *distance contract*.

[Note: article 3(1) of the *Distance Marketing Directive*]

3.1.4  
FCA

G

The *rules* setting out the responsibilities of *insurers* and *insurance intermediaries* for producing and providing information apply to requirements in this section to provide information (see ■ ICOB3 6.1.1 R).

3.1.5  
FCA

R

A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[Note: article 3(2) of the *Distance Marketing Directive*]

3.1.6  
FCA

R

When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

3.1.7

FCA

R

A *firm* must ensure that the information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

#### Terms and conditions, and form

3.1.8

FCA

R

A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

[Note: article 5(1) of the *Distance Marketing Directive*]

3.1.9

FCA

G

A *firm* will provide or communicate information or contractual terms and conditions to a *consumer* if another *person* provides or communicates it to the *consumer* on its behalf.

#### Commencing performance of the distance contract

3.1.10

FCA

R

The performance of the *distance contract* may only begin after the *consumer* has given his approval.

[Note: article 7(1) of the *Distance Marketing Directive*]

#### Exception: distance contract as a stage in the provision of another service

3.1.11

FCA

R

This section does not apply to a *distance contract* to act as *insurance intermediary*, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[Note: recital 19 to the *Distance Marketing Directive*]

#### Exception: successive operations

3.1.12

FCA

R

In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

[Note: article 1(2) of the *Distance Marketing Directive*]

3.1.13

FCA

R

If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* will only apply:

- (1) when the first operation is performed; and
- (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

[Note: recital 16 and article 1(2) of the *Distance Marketing Directive*]

**Exception: voice telephony communications**

3.1.14  
FCA

R

- (1) In the case of a voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information ( ■ ICOBS 3 Annex 3 R) needs to be provided during that communication.
- (2) However, unless another exemption applies (such as the exemption for means of distance communication not enabling disclosure) a *firm* must still provide the distance marketing information ( ■ ICOBS 3 Annex 2 R) in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

[Note: articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

**Exception: Means of distance communication not enabling disclosure**

3.1.15  
FCA

R

A *firm* may provide the distance marketing information ( ■ ICOBS 3 Annex 2 R) and the contractual terms and conditions in writing or another *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before conclusion of any *distance contract*.

[Note: article 5(2) of the *Distance Marketing Directive*]

**Consumer's right to request paper copies and change the means of communication**

3.1.16  
FCA

R

At any time during the contractual relationship the *consumer* is entitled, at his request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[Note: article 5(3) of the *Distance Marketing Directive*]

**Unsolicited services**

3.1.17  
FCA

R

- (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of reply not constituting consent.
- (2) This *rule* does not apply to the tacit *renewal* of a *distance contract*.

[Note: article 9 of the *Distance Marketing Directive*]



**Mandatory nature of consumer's rights**

3.1.18

FCA

R

If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[Note: article 12 of the *Distance Marketing Directive*]

3.1.19

FCA

R

If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of one or more *EEA States*.

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

3

## 3.2 E-Commerce

### Application

3.2.1

FCA

R

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

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

3.2.2

FCA

R

A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R), together with a statement which explains that it is on the *Financial Services Register* and includes its *Financial Services Register* number;
- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
  - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
  - (b) the professional title and the *EEA State* where it was granted;
  - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and

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

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

3.2.3

FCA

R

If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

3.2.4

FCA

R

A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

3.2.5

FCA

R

An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

**Requirements relating to the placing and receipt of orders**

3.2.6

FCA

R

A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
  - (a) the different technical steps to follow to conclude the contract;
  - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
  - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
  - (d) the languages offered for the conclusion of the contract;

- (2) indicate any relevant codes of conduct to which it subscribes and provide information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and
- (4) make available to an *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

3.2.7

FCA

R

Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the *E-Commerce Directive*]

**Exception: contract concluded by e-mail**

3.2.8

FCA

R

The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: article 10(4) and 11(3) of the *E-Commerce Directive*]

## Guidance on the Distance Marketing Directive

### FCA

This Annex belongs to ■ ICOBS 3.1.2 G

#### Q1. What is a distance contract?

To be a *distance contract*, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or otherwise) of one or more means of distance communication up to and including the time at which the contract is concluded.

So:

- the *firm* must have put in place facilities designed to enable a *consumer* to deal with it exclusively at a distance; and
- there must have been no simultaneous physical presence of the *firm* and the *consumer* throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the internet, through a telemarketing operation or by *post*, will normally be *distance contracts*.

#### Q2. What about a firm that normally operates face-to-face but occasionally uses distance means?

If a *firm* normally operates face-to-face and has no facilities in place enabling a *consumer* to deal with it customarily by distance means, there will be no *distance contract*. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*.

#### Q3. What is meant by "simultaneous physical presence"?

A *consumer* may visit the *firm's* local office in the course of the offer, negotiation or conclusion of a contract. Wherever, in the literal sense, there has been "simultaneous physical presence" of the *firm* and the *consumer* at the time of such a visit, any ensuing contract will not be a *distance contract*.

#### Q4. Does the mere fact that an intermediary is involved make the sale of a product or service a distance contract?

No.

#### Q5. When is a contract concluded?

A contract is concluded when an offer to be bound by it has been accepted. An offer in the course of negotiations (for example, an offer by an *insurer* to consider an application) is not an offer to be bound, but is part of a pre-contractual negotiation.

A *consumer* will provide all the information an *insurer* needs to decide whether to accept a risk and to calculate the *premium*. The *consumer* may do this orally, in writing or by completing a proposal form. The response by an *insurer*, giving a quotation to the *consumer* specifying the *premium* and the terms, is likely to amount to an offer of the terms on which the *insurer* will insure the risk. Agreement by the *consumer* to those terms is likely to be an acceptance which concludes the contract.

In other cases where the *insurer* requires a signed proposal form (for example, some *pure protection contracts*), the proposal form may amount to an offer by the *consumer* on which the *insurer* decides whether to insure the risk and in such cases the *insurer's* response is likely to be the acceptance.

#### Q6. What if the contract has not been concluded but cover has commenced?

Where the parties to a contract agree that insurance cover should commence before all the terms and conditions have been agreed, the *consumer* should be provided with information required to be provided before conclusion of the contract to the extent that agreement has been reached.

Q7. How does the Directive apply to insurance intermediaries' services?

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

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

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

The *rules* implementing the *Distance Marketing Directive* will not apply in the typical case where an *insurance intermediary* sells an insurance contract to a *consumer* on a one-off basis, even if the *insurance intermediary* is involved in the *renewal* of that contract and handling claims under it.

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

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

Q9. When would the exception for successive operations apply?

We consider that the *renewal* of a *policy* falls within the scope of this exception. So, the distance marketing disclosure *rules* would only apply in relation to the initial sale of a *policy*, and not to subsequent *renewals* provided that the new *policy* is of the same nature as the initial *policy*. However, unless there is an initial service agreement in place, the exclusion would only apply where the *renewal* takes place no later than one year after the initial *policy* was taken out or one year after its last *renewal*. If the *policy* terms have changed, *firms* will need to consider what information should be disclosed about those changes in accordance with the requirement to disclose appropriate information about a *policy* (see ICOBS 6.1.5 R), as well as ensuring their effectiveness under contract law.

## Distance marketing information

**FCA**

This Annex belongs to ■ ICOBS 3.1.3 R

### Distance marketing information

#### The firm

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *consumer's* EEA State of residence, the name of that representative and the geographical address relevant for the *consumer's* relations with the representative.
- (3) When the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant for the *consumer's* relations with that professional.
- (4) An appropriate statutory status disclosure statement (**GEN 4**), a statement that the firm is on the *Financial Services Register* and its *FCA* registration number.

#### The financial service

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related *fees*, charges and expenses, and all taxes paid through the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the *firm's* control and that past performance is no indicator of future performance.
- (8) Notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it.
- (9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a *firm's* offer applies as it stands.
- (10) The arrangements for payment and for performance.
- (11) Details of any specific additional cost for the *consumer* for using a means of distance communication.

## Distance marketing information

**The distance contract**

- (12) The existence or absence of a right to cancel under the cancellation *rules* ( **ICOB3 7**) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those *rules*, as well as the consequences of not exercising the right to cancel.
- (13) The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
- (14) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
- (15) Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
- (16) The *EEA State* or *States* whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the contract.
- (17) Any contractual clause on law applicable to the contract or on the competent court, or both.
- (18) In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.

**Redress**

- (19) How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.
- (20) Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities, and information about any other applicable named compensation scheme.

[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]



## Abbreviated distance marketing information

**FCA**

This Annex belongs to ■ ICOBS 3.1.14 R

### Abbreviated distance marketing information

- (1) The identity of the *person* in contact with the *consumer* and his link with the *firm*.
- (2) A description of the main characteristics of the financial service.
- (3) The total price to be paid by the *consumer* to the *firm* for the financial service including all taxes paid through the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (4) Notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it.
- (5) The existence or absence of a right to cancel in accordance with the cancellation rules (ICOBS 7) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay (or which may not be returned to the *consumer*) on the basis of those rules.
- (6) That other information is available on request and what the nature of that information is.

[Note: article 3(3)(b) of the *Distance Marketing Directive*]



## Chapter 4

# Information about the firm, its services and remuneration



## 4.1 General requirements for insurance intermediaries

### Application: who?

4.1.1  
FCA

**R** This section applies to an *insurance intermediary*.

### Status disclosure: general

4.1.2  
FCA

**R** Prior to the conclusion of an initial *contract of insurance* and, if necessary, on its amendment or *renewal*, a *firm* must provide the *customer* with at least:

- (1) its name and address;
- (2) the fact that it is included in the *Financial Services Register* and the means for verifying this;
- (3) whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);
- (4) whether a given *insurance undertaking* (that is not a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing more than 10% of the voting rights or capital in the *firm*; and
- (5) the procedures allowing *customers* and other interested parties to register complaints about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *customers*.

[Note: article 12(1) of the *Insurance Mediation Directive*]

### Status disclosure exemption: introducers

4.1.3  
FCA

**R** A *firm* whose contact with a *customer* is limited to effecting introductions (see ■ PERG 5.6) need only provide its name and address and whether it is a member of the same *group* as the *firm* to which it makes the introduction.

4.1.4  
FCA

**G** If a *firm* goes further than putting a *customer* in contact with another *person* (for example, by *advising* him on a particular *policy* available from the *firm*) the full status disclosure requirements will apply.

4.1.5  
FCA

**R** In relation to a *connected travel insurance contract*, a *firm* need only provide the procedures allowing *customers* and other interested parties to register *complaints* about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court *complaint* and redress procedures available for the settlement of disputes between the *firm* and its *customers*.

**Scope of service**

4.1.6  
FCA

**R**

- (1) Prior to the conclusion of an initial *contract of insurance* (other than a *connected travel insurance contract*) and, if necessary, on its amendment or *renewal*, a *firm* must tell the *customer* whether:
  - (a) it gives advice on the basis of a fair analysis of the market; or
  - (b) it is under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings*; or
  - (c) it is not under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair analysis of the market.
- (2) A *firm* that does not *advise* on the basis of a fair analysis of the market must inform its *customer* that he has the right to request the name of each *insurance undertaking* with which the *firm* may and does conduct business. A *firm* must comply with such a request.

[Note: article 12(1) of the *Insurance Mediation Directive*]

4.1.7  
FCA

**R** Prior to conclusion of an initial *contract of insurance* with a *consumer* a *firm* must state whether it is giving a *personal recommendation* or information.

**Guidance on using panels to advise on the basis of a fair analysis**

4.1.8  
FCA

**G**

- (1) One way a *firm* may give advice on a fair analysis basis is by using 'panels' of *insurance undertakings* which are sufficient to enable the *firm* to give advice on a fair analysis basis and are reviewed regularly.
- (2) A *firm* which provides a service based on a fair analysis of the market (or from a sector of the market) should ensure that its analysis of the market and the available contracts is kept adequately up-to-date. For example, a *firm* should update its selection of contracts if aware that a contract has generally become available offering an improved product feature, or a better *premium*, compared

with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market.

- (3) The panel selection criteria will be important in determining whether the panel is sufficient to meet the 'fair analysis' criteria. Selection should be based on product features, *premiums* and services offered to *customers*, not solely on the benefit offered to the *firm*.

#### Means of communication to customers

4.1.9  
FCA

R

- (1) All information to be provided to a *customer* in accordance with this chapter must be communicated:
  - (a) on paper or on any other *durable medium* available and accessible to the *customer*;
  - (b) in a clear and accurate manner, comprehensible to the *customer*; and
  - (c) in an official language of the *State of the commitment* or in any other language agreed by the parties.
- (2) The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.
- (3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see ■ ICOBS 3.1.14 R).
- (4) If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.

[Note: article 13 of the *Insurance Mediation Directive*]



## 4.2 Additional requirements for protection policies for insurance intermediaries and insurers

### Application: what?

4.2.1 **R** This section applies in relation to a *pure protection contract* or a *payment protection contract* for a consumer.  
FCA

### Ensuring customers can make an informed decision

4.2.2 **G** In considering a *customer's* information needs for the purposes of *Principle 7*, a *firm* should have regard to the importance of information for a *customer's* purchasing decision when deciding when and how to give it.  
FCA

4.2.3 **G** If a *firm* provides elements of status disclosure information orally as part of an interactive dialogue, it should do so for all elements of the information. In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see ■ ICOB5 3.1.14 R).  
FCA

### Disclosing the limits of the service provided

- 4.2.4 **R**
- (1) In a sale that does not involve a *personal recommendation*, a *firm* must take reasonable steps to ensure a *customer* understands he is responsible for deciding whether a *policy* meets his demands and needs.
  - (2) If this is done orally, the information must be provided to the *customer* in writing or any other *durable medium* no later than immediately after the conclusion of the contract.
  - (3) If a *firm* anticipates providing, or provides, information on any main characteristic of a *policy* orally during a non-advised sale, taking reasonable steps includes explaining the *customer's* responsibility orally.
  - (4) A *policy's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.

**Status disclosure for insurers**

4.2.5

FCA

R

- (1) Prior to the conclusion of an initial contract and, if necessary, on its amendment or *renewal*, an *insurer* must disclose to the *customer* at least:
  - (a) the statutory status disclosure statement (see ■ GEN 4);
  - (b) whose *policies* it offers; and
  - (c) whether it is providing a *personal recommendation* or information.
  
- (2) If this is done orally, the disclosure must be provided in writing or any other *durable medium* no later than immediately after the conclusion of the contract.

4.2.6

FCA

G

*Insurers* cannot carry on an *insurance mediation activity* in respect of a third party's products unless they can show a natural fit or necessary connection between their insurance business and the third party's products (see the restriction of business in ■ INSPRU 1.5.13 R).





## 4.3 Fee disclosure

4

4.3.1

FCA

R

- (1) A *firm* must provide its *customer* with details of the amount of any *fees* other than *premium monies* for an *insurance mediation activity*.
- (2) The details must be given before the *customer* incurs liability to pay the *fee*, or before conclusion of the contract, whichever is earlier.
- (3) To the extent that an actual *fee* cannot be given, a *firm* must give the basis for calculation.

4.3.2

FCA

G

The *fee* disclosure requirement extends to all such *fees* that may be charged during the life of a *policy*.



## 4.4 Commission disclosure for commercial customers

### Commission disclosure rule

4.4.1

FCA

R

- (1) An *insurance intermediary* must, on a *commercial customer's* request, promptly disclose the *commission* that it and any *associate* receives in connection with a *policy*.
- (2) Disclosure must be in cash terms (estimated, if necessary) and in writing or another *durable medium*. To the extent this is not possible, the *firm* must give the basis for calculation.

4.4.2

FCA

G

An *insurance intermediary* should include all forms of remuneration from any arrangements it may have. This includes arrangements for sharing profits, for payments relating to the volume of sales, and for payments from premium finance companies in connection with arranging finance.

4.4.3

FCA

G

- (1) The commission disclosure *rule* is additional to the general law on the fiduciary obligations of an agent in that it applies whether or not the *insurance intermediary* is an agent of the *commercial customer*.
- (2) In relation to *contracts of insurance*, the essence of these fiduciary obligations is generally a duty to account to the agent's principal. But where a *customer* employs an *insurance intermediary* by way of business and does not remunerate him, and where it is usual for the *firm* to be remunerated by way of *commission* paid by the *insurer* out of premium payable by the *customer*, then there is no duty to account but if the *customer* asks what the *firm's* remuneration is, it must tell him.



## 4.5 Initial disclosure document

4.5.1

FCA

G

Using an *initial disclosure document* (see ■ ICOBS 4 Annex 1G) or *combined initial disclosure document* satisfies the status disclosure, scope of service and *fee* disclosure requirements if it is used in accordance with its notes and provided to the *customer* at the correct time.

4



## 4.6 Commission disclosure for pure protection contracts sold with retail investment products

4.6.1  
FCA

G

The *rules* in this section:

- (1) address the risk that a *consumer* believes that a *firm's* remuneration for its *pure protection service* is included in its *adviser charge*, where this is not the case; and
- (2) enable the *consumer* to evaluate a *firm's adviser charge* in the light of any additional remuneration received by the *firm* for the *pure protection service* it provides.

4.6.2  
FCA

R

A *firm* which agrees an *adviser charge* with a *consumer* and provides an associated *pure protection service* to that *consumer* must:

- (1) in good time before the provision of its services, take reasonable steps to ensure that the *consumer* understands:
  - (a) how the *firm* is remunerated for its *pure protection service*; and
  - (b) if applicable, that the *firm* will receive *commission* in relation to its *pure protection service* in addition to the *firm's adviser charge*;
- (2) as close as practicable to the time that it makes the *personal recommendation* or *arranges* the sale of the *pure protection contract*, comply with the following disclosure requirements, substituting *pure protection contract* for references to *packaged product*:
  - (a) ■ COBS 6.4.3 R, or ■ COBS 6.4.4A R and ■ COBS 6.4.4B R; and
  - (b) ■ COBS 6.4.5 R.

4.6.3  
FCA

G

A *pure protection service* is unlikely to be associated with an *adviser charge* for the purposes of ■ ICOB 4.6.2 R if the *firm* agreed the *adviser charge* with the *consumer* 12 *months* or more before the provision of the *pure protection service*.

4.6.4

FCA

G

A *pure protection service* is not associated with an *adviser charge* for the purposes of ■ ICOBS 4.6.2 R if the *adviser charge* is agreed with the *consumer* by a *firm* or an *appointed representative* and the *pure protection service* is provided to that *consumer* by another *firm* or *appointed representative*. However, if a *firm* or an *appointed representative* refers a *consumer* with whom it is agreeing an *adviser charge* to another *firm* or *appointed representative* for the provision of a *pure protection service*, it should consider its obligation to communicate with the *consumer* in a way that is clear, fair and not misleading in the context of the guidance in ■ ICOBS 4.6.1 G.

4.6.5

FCA

R

If a *firm* expects to provide, or provides, information about its *adviser charge* orally, it must also provide the information required by ■ ICOBS 4.6.2R (1)(a) and ■ ICOBS 4.6.2R (1)(b) orally.

4



---

## Initial disclosure document

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Initial disclosure document* - [FSA/docs/icobs/future/icobs4\\_annex\\_1.pdf](https://www.fsa.gov/docs/icobs/future/icobs4_annex_1.pdf)





## Chapter 5

# Identifying client needs and advising



**5.1 General**

**Eligibility to claim benefits: general insurance contracts and pure protection contracts**

5.1.1  
FCA

G

- (1) In line with *Principle 6*, a *firm* should take reasonable steps to ensure that a *customer* only buys a *policy* under which he is eligible to claim benefits.
- (2) If, at any time while *arranging* a *policy*, a *firm* finds that parts of the cover apply, but others do not, it should inform the *customer* so he can take an informed decision on whether to buy the *policy*.
- (3) This *guidance* does not apply to *policies* arranged as part of a *packaged bank account*.

5.1.2  
FCA

R

**Eligibility to claim benefits: payment protection contracts**

- (1) A *firm* arranging a *payment protection contract* must:
  - (a) take reasonable steps to ensure that the *customer* only buys a *policy* under which he is eligible to claim benefits; and
  - (b) if, at any time while *arranging* the *policy*, it finds that parts of the cover do not apply, inform the *customer* so he can take an informed decision on whether to buy the *policy*.
- (2) This *rule* does not apply to *payment protection contract* arranged as part of a *packaged bank account*.

5.1.3  
FCA

G

- (1) For a typical *payment protection contract* the reasonable steps required in the first part of the *eligibility rule* are likely to include checking that the *customer* meets any qualifying requirements for different parts of the *policy*.
- (2) This *guidance* does not apply to *payment protection contracts* arranged as part of a *packaged bank account*.

**Eligibility to claim benefits: policies arranged as part of a packaged bank account**

5.1.3A

FCA

R

A *firm* arranging policies as part of a *packaged bank account* must:

- (1) take reasonable steps to establish whether the *customer* is eligible to claim each of the benefits under each *policy* included in the *packaged bank account* which must include checking that the *customer* meets any qualifying requirements to claim each of the benefits under each *policy*; and
- (2) inform the *customer* whether or not he would be eligible to claim each of the benefits under each *policy* included in the *packaged bank account* so that the *customer* can take an informed decision about the arrangements proposed.

5.1.3B

FCA

R

A *firm* must make a record of the eligibility assessment and, if the *customer* proceeds with the arrangements proposed, retain it for a minimum period of three years from the date on which the assessment was undertaken.

5.1.3C

FCA

R

- (1) Throughout the term of a *policy* included in a *packaged bank account*, a *firm* must provide the *customer* with an eligibility statement, in writing, on an annual basis. This statement must set out any qualifying requirements to claim each of the benefits under the *policy* and recommend that the *customer* reviews his circumstances and whether he meets these requirements.
- (2) Where a *customer* has reached an age limit on claiming benefits under a travel insurance *policy* included in a *packaged bank account* (or will reach an age limit before the next annual statement is due), a *firm* must state this clearly and prominently in the statement and on an annual basis thereafter.
- (3) The statement (provided under ■ ICOB5 5.1.3G (1)) must not:
  - (a) include any information other than that required under this rule; or
  - (b) form part of another *document* provided to the *customer* by the *firm*; or
  - (c) be included in the same mailing as any other *document* provided to the *customer* by the *firm*.

**Disclosure of material facts**

5.1.4

FCA

G

A *firm* should bear in mind the restriction on rejecting claims for non-disclosure (■ ICOB5 8.1.1R (3)). Ways of ensuring a *customer* knows what he must disclose include:

- (1) explaining the duty to disclose all circumstances material to a *policy*, what needs to be disclosed, and the consequences of any failure to make such a disclosure; or

- 
- (2) ensuring that the *customer* is asked clear questions about any matter material to the *insurance undertaking*.



## 5.2 Statement of demands and needs

### Application: who? what?

5.2.1

FCA

R

This section applies to:

- (1) an *insurance intermediary* in relation to any *policy* (other than a *connected travel insurance contract*); and
- (2) an *insurer* when it has given a *personal recommendation* to a *consumer* on a *payment protection contract* or a *pure protection contract*.

### Statement of demands and needs

5.2.2

FCA

R

- (1) Prior to the conclusion of a contract, a *firm* must specify, in particular on the basis of information provided by the *customer*, the demands and the needs of that *customer* as well as the underlying reasons for any advice given to the *customer* on that *policy*.
- (2) The details must be modulated according to the complexity of the *policy* proposed.

[Note: article 12(3) of the *Insurance Mediation Directive*]

### Means of communication to customers

5.2.3

FCA

R

- (1) A statement of demands and needs must be communicated:
  - (a) on paper or on any other *durable medium* available and accessible to the *customer*;
  - (b) in a clear and accurate manner, comprehensible to the *customer*; and
  - (c) in an official language of the *State of the commitment* or in any other language agreed by the parties.
- (2) The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.

- (3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see ■ ICOBS 3.1.14 R).
- (4) If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.

[Note: article 13 of the *Insurance Mediation Directive*]

**Statement of demands and needs: non-advised sales**

The format of a statement of demands and needs is flexible. Examples of approaches that may be appropriate where a *personal recommendation* has not been given include:

- (1) providing a demands and needs statement as part of an application form, so that the demands and needs statement is made dependent upon the *customer* providing personal information on the application form. For instance, the application form might include a statement along the lines of: "If you answer 'yes' to questions a, b and c your demands and needs are those of a pet owner who wishes and needs to ensure that the veterinary needs of your pet are met now and in the future";
- (2) producing a demands and needs statement in product documentation that will be appropriate for anyone wishing to buy the product. For example, "This product meets the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future";
- (3) giving a *customer* a record of all his demands and needs that have been discussed; and
- (4) providing a *key features document*.

5.2.4

FCA

G



## 5.3 Advised sales

### Suitability

5.3.1  
FCA

R

A *firm* must take reasonable care to ensure the suitability of its advice for any *customer* who is entitled to rely upon its judgment.

### Suitability guidance for protection policies

5.3.2  
FCA

G

- (1) In taking reasonable care to ensure the suitability of advice on a *payment protection contract* or a *pure protection contract* a *firm* should:
  - (a) establish the *customer's* demands and needs. It should do this using information readily available and accessible to the *firm* and by obtaining further relevant information from the *customer*, including details of existing insurance cover; it need not consider alternatives to policies nor *customer* needs that are not relevant to the type of policy in which the *customer* is interested;
  - (b) take reasonable care to ensure that a *policy* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations and conditions; and
  - (c) inform the *customer* of any demands and needs that are not met.
- (2) This *guidance* does not apply to *payment protection contracts* or *pure protection contracts* included in a *packaged bank account*.

### Suitability of advice on policies included in a packaged bank account

5.3.2A  
FCA

R

In taking reasonable care to ensure the suitability of advice on a *policy* included in a *packaged bank account*, a *firm* must:

- (1) establish the *customer's* demands and needs by using information readily available to the *firm* and by obtaining further relevant information from the *customer*, including details of existing insurance cover; it need not consider alternatives to *policies* nor *customer* needs that are not relevant to the type of *policy* in which the *customer* is interested;
- (2) take reasonable steps to establish whether each *policy* included in the *packaged bank account* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations, and conditions;

- (3) inform the *customer* of any demands and needs that are not met; and
- (4) explain to the *customer* its recommendation and the reasons for the recommendation.

5.3.2B

FCA

R

A *firm* must make a record of the suitability assessment, the recommendation given and the reasons for the recommendation and, if the *customer* proceeds with the recommendation, retain it for a minimum period of three years from the date on which the recommendation was made.

**Advice on the basis of a fair analysis**

5.3.3

FCA

R

If an *insurance intermediary* informs a *customer* that it gives advice on the basis of a fair analysis, it must give that advice on the basis of an analysis of a sufficiently large number of *contracts of insurance* available on the market to enable it to make a recommendation, in accordance with professional criteria, regarding which *contract of insurance* would be adequate to meet the *customer's* needs.

[Note: article 12(2) of the *Insurance Mediation Directive*]



## Chapter 6

# Product Information



**6.1 General**

**Responsibilities of insurers and insurance intermediaries**

**6.1.1** **R** An *insurer* is responsible for producing, and an *insurance intermediary* for providing to a *customer*, the information required by this chapter and by the distance communication *rules* (see ■ ICOBS 3.1). However, an *insurer* is responsible for providing information required on mid-term changes, and an *insurance intermediary* is responsible for producing price information if it agrees this with an *insurer*.  
**FCA**

**6.1.2** **R** If there is no *insurance intermediary*, the *insurer* is responsible for producing and providing the information.  
**FCA**

**6.1.3** **R** An *insurer* must produce information in good time to enable the *insurance intermediary* to comply with the *rules* in this chapter, or promptly on an *insurance intermediary's* request.  
**FCA**

**6.1.4** **R** These general *rules* on the responsibilities of *insurers* and *insurance intermediaries* are modified by ■ ICOBS 6 Annex 1 R if one of the *firms* is not based in the *United Kingdom*, and in certain other situations.  
**FCA**

**Ensuring customers can make an informed decision**

**6.1.5** **R** A *firm* must take reasonable steps to ensure a *customer* is given appropriate information about a *policy* in good time and in a comprehensible form so that the *customer* can make an informed decision about the arrangements proposed.  
**FCA**

**6.1.6** **G** The appropriate information *rule* applies pre-conclusion and post-conclusion, and so includes matters such as mid-term changes and *renewals*. It also applies to the price of the *policy*.  
**FCA**

**6.1.7** **G** The level of information required will vary according to matters such as:

- (1) the knowledge, experience and ability of a typical *customer* for the *policy*;
- (2) the *policy* terms, including its main benefits, exclusions, limitations, conditions and its duration;
- (3) the *policy's* overall complexity;

- (4) whether the *policy* is bought in connection with other goods and services;
- (5) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in a sale made purely by written correspondence (see ■ ICOBS 3.1.14 R)); and
- (6) whether the same information has been provided to the *customer* previously and, if so, when.

6.1.8  
FCA

**G** In determining what is "in good time", a *firm* should consider the importance of the information to the *customer's* decision-making process and the point at which the information may be most useful. Distance communication timing requirements are also relevant (for example, the distance communication *rules* enable certain information to be provided post-conclusion in telephone and certain other sales (see ■ ICOBS 3.1.14 R and ■ ICOBS 3.1.15 R)).

6.1.9  
FCA

**G** Cancellation rights do not affect what information it is appropriate to give to a *customer* in order to enable him to make an informed purchasing decision.

6.1.10  
FCA

**G** A *firm* dealing with a *consumer* may wish to provide information in a *policy summary* or as a *key features document* (see ■ ICOBS 6 Annex 2 ).

**Providing evidence of cover**

6.1.11  
FCA

**G** Under *Principle 7* a *firm* should provide evidence of cover promptly after inception of a *policy*. *Firms* will need to take into account the type of *customer* and the effect of other information requirements, for example those under the distance communication *rules* ( ■ ICOBS 3.1).

**Group policies**

6.1.12  
FCA

**G** Under *Principle 7*, a *firm* that sells a *group policy* should provide appropriate information to the *customer* to pass on to other *policyholders*. It should tell the *customer* that he should give the information to each *policyholder*.

**Price disclosure: connected goods or services**

6.1.13  
FCA

- (1) If a *policy* is bought by a *consumer* in connection with other goods or services a *firm* must, before conclusion of the contract, disclose its *premium* separately from any other prices and whether buying the *policy* is compulsory.
- (2) In the case of a *distance contract*, disclosure of whether buying the *policy* is compulsory may be made in accordance with the timing requirements under the distance communication *rules* (see ■ ICOBS 3.1.8 R, ■ ICOBS 3.1.14 R and ■ ICOBS 3.1.15 R).

- (3) This *rule* does not apply to policies bought in connection with other goods or services provided as part of a *packaged bank account*.

**Exception to the timing rules: distance contracts and voice telephony communications**

6.1.14

FCA

**R**

Where a *rule* in this chapter requires information to be provided in writing or another *durable medium* before conclusion of a contract, a *firm* may instead provide that information in accordance with the distance communication timing requirements (see ■ ICOBS 3.1.14 R and ■ ICOBS 3.1.15 R).



## 6.2 Pre-contract information: general insurance contracts

### Application: what?

6.2.1

FCA

R

This section applies in relation to a *general insurance contract*.

### Non-life insurance directive disclosure requirements

6.2.2

FCA

R

Before a *general insurance contract* is concluded, a *firm* must inform a *customer* who is a natural *person* of:

- (1) the law applicable to the contract where the parties do not have a free choice, or the fact that the parties are free to choose the law applicable and, in the latter case, the law the *firm* proposes to choose; and
- (2) the arrangements for handling *policyholders'* complaints concerning contracts including, where appropriate, the existence of a complaints body (usually the *Financial Ombudsman Service*), without prejudice to the *policyholders'* right to take legal proceedings.

[Note: article 31 of the *Third Non-Life Directive*]

6.2.3

FCA

R

- (1) If the *insurance undertaking* is an *EEA firm*, the *firm* must inform the *customer*, before any commitment is entered into, of the *EEA State* in which the head office or, where appropriate, the *branch* with which the contract is to be concluded, is situated.
- (2) Any documents issued to the *customer* must convey the information required by this *rule*.

[Note: article 43(2) of the *Third Non-Life Directive*]

6.2.4

FCA

R

The contract or any other document granting cover, together with the insurance proposal where it is binding upon the *customer*, must state the address of the head office, or, where appropriate, of the *branch* of the *insurance undertaking* which grants the cover.

[Note: article 43(2) of the *Third Non-Life Directive*]

6.2.5

FCA

R

**Disclosure of cancellation right**

- (1) A *firm* must provide a *consumer* with information on the right to cancel a *policy*.
- (2) The information to be provided on the right to cancel is:
  - (a) its existence;
  - (b) its duration;
  - (c) the conditions for exercising it;
  - (d) information on the amount which the *consumer* may be required to pay if he exercises it;
  - (e) the consequences of not exercising it; and
  - (f) the practical instructions for exercising it.
- (3) The information must be provided in good time before conclusion of the contract and in writing or another *durable medium*.



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

#### Life insurance directive disclosure requirements

6.3.1

FCA

R

- (1) Before a *pure protection contract* is concluded, a *firm* must inform a *customer* of the information in the table below.
- (2) The information must be communicated in a clear and accurate manner, in writing, and in an official language of the *State of the commitment* or in another language agreed by the parties.

#### Information to be communicated before conclusion

- (1) The name of the *insurance undertaking* and its legal form.
- (2) The name of the *EEA State* in which the head office and, where appropriate, the agency or *branch* concluding the contract is situated.
- (3) The address of the head office and, where appropriate, of the agency or *branch* concluding the contract.
- (4)\* Definition of each benefit and each option.
- (5)\* Term of the contract.
- (6)\* Means of terminating the contract.
- (7)\* Means of payment of *premiums* and duration of payments.
- (8)\* Information on the *premiums* for each benefit, both main benefits and supplementary benefits, where appropriate.
- (9) Arrangements for application of the cancellation period.
- (10) General information on the tax arrangements applicable to the type of *policy*.
- (11) The arrangements for handling complaints concerning contracts by *policyholders*, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body (usually the *Financial Ombudsman Service*), without prejudice to the right to take legal proceedings.
- (12) The law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the *insurance undertaking* proposes to choose.

6

**Note: The *rule* on mid-term changes applies to items marked with an asterisk (see ICOBS 6.3.3 R).**

[Note: Annex III(A) to the *Consolidated Life Directive*]

6.3.2  
FCA

G

If the contract is concluded with a *commercial customer* by telephone, the information in this section may be provided immediately after conclusion.

**Mid-term changes**

6.3.3  
FCA

R

In addition to the *policy* conditions, both general and special, a *customer* must, throughout the term of a *pure protection contract*, receive:

- (1) any change in the name of the *insurance undertaking*, its legal form or the address of its head office and, where appropriate, of the agency or *branch* which concluded the contract; and
- (2) all the information marked '\*' in the table of information to be communicated before conclusion, in the event of a change in the *policy* conditions or amendment of the law applicable to the contract.

[Note: Annex III(B) to the *Consolidated Life Directive*]





## 6.4 Pre- and post-contract information: protection policies

### Application: what?

6.4.1  
FCA

R

This section applies in relation to a *payment protection contract* or a *pure protection contract* except as otherwise stated.

### Oral sales: ensuring customers can make an informed decision

6.4.2  
FCA

R

- (1) If a *firm* provides information orally during a sales dialogue with a *customer* on a main characteristic of a *policy*, it must do so for all the *policy's* main characteristics.
- (2) A *firm* must take reasonable steps to ensure that the information provided orally is sufficient to enable the *customer* to take an informed decision on the basis of that information, without overloading the *customer* or obscuring other parts of the information.

6.4.3  
FCA

G

- (1) A *policy's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.
- (2) A significant exclusion or limitation is one that would tend to affect the decision of *customers* generally to buy. In determining what exclusions or limitations are significant, a *firm* should particularly consider the exclusions or limitations that relate to the significant features and benefits of a *policy* and factors which may have an adverse effect on the benefit payable under it. Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.

### Policy summary

6.4.4  
FCA

R

A *firm* must provide a *consumer* with a *policy summary* in good time before the conclusion of a contract.

### Payment protection contracts: importance of reading documentation

PAGE  
9

6.4.5  
FCA

R

- (1) A *firm* must draw a *consumer's* attention to the importance of reading *payment protection contract* documentation before the end of the cancellation period to check that the *policy* is suitable for the *consumer*.

- (2) This must be done orally if a *firm* provides information orally on any main characteristic of a *policy*.

**Price information: general**

6.4.6  
FCA

R

A *firm* must provide price information in a way calculated to enable the *customer* to relate it to a regular budget.

6.4.7  
FCA

G

Price information is likely also to include at least the total *premium* (or the basis for calculating it so that the *customer* can verify it) and, where relevant:

- (1) for *policies* of over one year with reviewable *premiums*, the period for which the quoted *premium* is valid, and the timing of reviews;
- (2) other *fees*, administrative charges and taxes payable by the *customer* through the *firm*; and
- (3) a statement identifying separately the possibility of any taxes not payable through the *firm*.

6.4.8  
FCA

G

Price information should be given in writing or another *durable medium* in good time before conclusion of the contract. This is in addition to any requirement or decision to provide the information orally. In the case of a *distance contract* concluded over the telephone, it may be provided in writing or another *durable medium* no later than immediately after conclusion.

**Price information: premiums paid using a non-revolving credit agreement**

6.4.9  
FCA

R

- (1) This *rule* applies when a *premium* will be paid using a credit agreement other than a revolving credit agreement.
- (2) A *firm* must provide price information in a way calculated to enable the *customer* to understand the additional repayments that relate to the purchase of the *policy*, and the total cost of the *policy*.
- (3) Price information must reflect any difference between the duration of the *policy* and that of the credit agreement.
- (4) A *firm* must explain to a *customer*, as applicable, that the *premium* will be added to the amount provided under the credit agreement and that interest will be payable on it.

**Price information: policies sold in connection with revolving credit arrangements**

6.4.10  
FCA

G

- (1) This *guidance* applies to *policies* bought as secondary products to revolving credit agreements (such as store cards or credit cards).
- (2) Price information should be given in a way calculated to enable a typical *customer* to understand the typical cumulative cost of taking out the *policy*. This does not require oral disclosure where there is a sales dialogue with a *customer*. However, consistent with *Principle 7*, a *firm* should ensure that

this element of price information is not undermined by any information given orally.

#### Mid-term changes

6.4.11

FCA

R

- (1) Throughout the term of a *policy*, a *firm* must provide a *customer* with information about any change to:
  - (a) the *premium*, unless the change conforms to a previously disclosed formula; and
  - (b) any term of the *policy*, together with an explanation of any implications of the change where necessary.
- (2) This information must be provided in writing or another *durable medium* in good time before the change takes effect or, if the change is at the *customer's* request, as soon as is practicable provided the *firm* explains the implications of the change before it takes effect.

6.4.12

FCA

G

- (1) When explaining the implications of a change, a *firm* should explain any changes to the benefits and significant or unusual exclusions arising from the change.
- (2) *Firms* will need to consider whether mid-term changes are compatible with the original *policy*, in particular whether it reserves the right to vary *premiums*, charges or other terms. *Firms* also need to ensure that any terms which reserve the right to make variations are not themselves unfair under the *Unfair Terms Regulations*.



**Responsibilities of insurers and insurance intermediaries in certain situations**

**FCA**

This annex belongs to **ICOBS 6.1.4 R**

The table in this annex modifies the general *rules* on the responsibilities of *insurers* and *insurance intermediaries* for producing and providing to a *customer* the information required by this chapter.

| Situation  | <i>Insurance intermediary's</i> responsibility | <i>Insurer's</i> responsibility  |
|--|--|--|
| (1) <i>Insurance intermediary</i> operates from <i>UK</i> establishment  | Production and providing                       | None   |
| <i>Insurer</i> does not operate from <i>UK</i> establishment   |  |  |
| (2) <i>Insurance intermediary</i> does not operate from <i>UK</i> establishment, is not <i>authorised</i> , is selling <i>connected contracts</i> or is <i>authorised professional firm</i> carrying on <i>non-mainstream regulated activities</i> | None   | Production and providing (but no <i>policy summary</i> is required unless the <i>insurance intermediary</i> does not operate from a <i>UK</i> establishment) |
| <i>Insurer</i> operates from <i>UK</i> establishment   |  |  |
| <i>Customer</i> habitually resident in the <i>EEA</i>  |  |  |
| (3) As (2) but <i>customer</i> habitually resident outside the <i>EEA</i> and <i>insurer</i> not in contact with the <i>customer</i>   | None   | None   |
| (4) As (2) but <i>customer</i> habitually resident outside the <i>EEA</i> and <i>insurer</i> in contact with the <i>customer</i>   | None   | Production and providing   |
| (5) <i>Insurance intermediary</i> does not operate from <i>UK</i> establishment  | None   | Production and providing   |
| <i>Insurer</i> does not operate from <i>UK</i> establishment   |  |  |



## Policy summary for consumers

**FCA**

This annex belongs to ■ ICOBS 6.1.10 G and ■ ICOBS 6.4.4 R

### 1 Format

- 1.1 R (1) *A policy summary must be in writing or another durable medium.*
- (2) *A policy summary must be in a separate document, or within a prominent separate section of another document clearly identifiable as containing key information that the consumer should read.*
- 1.2 G The quality and presentation standard of a *policy summary* should be consistent with that used for other *policy* documents.

### 2 Content

- 2.1 R *A policy summary must contain the information in the table below and no other information.*

#### Policy summary content

- Keyfacts logo in a prominent position at the top of the *policy summary*. Further requirements regarding the use of the logo and the location of specimens are set out in GEN 5.1 and GEN 5 Annex 1 G.
- Statement that the *policy summary* does not contain the full terms of the *policy*, which can be found in the policy document.
- Name of the *insurance undertaking*.
- Type of insurance and cover.
- Significant features and benefits.
- Significant or unusual exclusions or limitations, and cross-references to the relevant policy document provisions.
- Duration of the *policy*.
- A statement, where relevant, that the *consumer* may need to review and update the cover periodically to ensure it remains adequate.
- Price information (optional).
- Existence and duration of the right of cancellation (other details may be included).
- Contact details for notifying a claim.
- How to complain to the *insurance undertaking* and that complaints may subsequently be referred to the *Financial Ombudsman Service* (or other applicable named complaints scheme).

- That, should the *insurance undertaking* be unable to meet its liabilities, the consumer may be entitled to compensation from the *compensation scheme* (or other applicable compensation scheme), or that there is no compensation scheme. Information on the extent and level of cover and how further information can be obtained is optional.

2.2 G A *policy summary* should properly describe the *policy* but, in line with *Principle 7*, should not overload the *consumer* with detail.

### 3 Significant or unusual exclusions or limitations

3.1 G (1) A significant exclusion or limitation is one that would tend to affect the decision of *consumers* generally to buy. An unusual exclusion or limitation is one that is not normally found in comparable contracts.

(2) In determining what exclusions or limitations are significant, a *firm* should, in particular, consider the exclusions or limitations that relate to the significant features and benefits of a *policy* and factors which may have an adverse effect on the benefit payable under it.

(3) Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.

#### Examples of significant or unusual exclusions or limitations

- Deferred payment periods
- Exclusion of certain conditions, diseases or pre-existing medical conditions
- Moratorium periods
- Limits on the amounts of cover
- Limits on the period for which benefits will be paid
- Restrictions on eligibility to claim such as age, residence or employment status
- Excesses

### 4 Key features document as an alternative to a policy summary

4.1 R A *firm* may provide a document that has the contents of a *key features document* instead of a *policy summary*. The document must include contact details for notifying a claim but need not include the title 'key features of the [name of product]'.



# Chapter 7

## Cancellation

## 7.1 The right to cancel

### The right to cancel

7.1.1  
FCA

**R** A *consumer* has a right to cancel, without penalty and without giving any reason, within:

- (1) 30 *days* for a *contract of insurance* which is, or has elements of, a *pure protection contract* or *payment protection contract*; or
- (2) 14 *days* for any other *contract of insurance* or *distance contract*.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to a *distance contract* and article 35 of the *Consolidated Life Directive* in relation to a *pure protection contract*]

7.1.2  
FCA

**G** A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *consumer* as those in this chapter, unless the differences are clearly explained.

### Exceptions to the right to cancel

7.1.3  
FCA

**R** The right to cancel does not apply to:

- (1) a travel and baggage *policy* or similar short-term *policy* of less than one *month's* duration;
- (2) a *policy* the performance of which has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel;
- (3) a *pure protection contract* of six *months'* duration or less which is not a *distance contract*;
- (4) a *pure protection contract* effected by the trustees of an *occupational pension scheme*, an employer or a *partnership* to secure benefits for the *employees* or the *partners* in the *partnership*;

(5) a *general insurance contract* which is neither a *distance contract* nor a *payment protection contract*, sold by an intermediary who is an *unauthorised person* (other than an *appointed representative*); and

(6) a *connected contract* which is not a *distance contract*.

[Note: articles 6(2)(b) and (c) of the *Distance Marketing Directive* and 35(1) and (2) of the *Consolidated Life Directive*]

7.1.4  
FCA

**G** A 'similar short-term *policy*' is any *policy* where the event or activity being insured is less than one *month*'s duration. 'Duration' refers to the period of cover rather than the period of the contract.

**Start of the cancellation period**

7.1.5  
FCA

**R** The cancellation period begins either:

- (1) from the day of the conclusion of the contract, except in respect of a *pure protection contract* where the time limit begins when the *customer* is informed that the contract has been concluded; or
- (2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

[Note: article 35 of the *Consolidated Life Directive* and article 6(1) of the *Distance Marketing Directive*]

**Exercising a right to cancel**

7.1.6  
FCA

**R** If a *consumer* exercises the right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if on paper or another *durable medium*, is dispatched before the deadline expires.

[Note: article 6(1) and (6) of the *Distance Marketing Directive*]



## 7.2 Effects of cancellation

### Termination of contract

7.2.1

FCA

R

By exercising the right to cancel, the *consumer* withdraws from the contract and the contract is terminated.

### Payment for the service provided before cancellation

7.2.2

FCA

R

- (1) When a *consumer* exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract.
- (2) The amount payable must not:
  - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract; and
  - (b) in any case be such that it could be construed as a penalty.
- (3) A *firm* must not require a *consumer* to pay any amount:
  - (a) unless it can prove that the *consumer* was duly informed about the amount payable; or
  - (b) if it commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.
- (4) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *pure protection contract*.
- (5) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *payment protection contract* unless a claim is made during the cancellation period and settlement terms are subsequently agreed.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive*]

7.2.3

FCA

G

The amount payable may include:

- (1) any sums that a *firm* has reasonably incurred in concluding the contract, but should not include any element of profit;
- (2) an amount for cover provided (i.e. a proportion of the *policy's* exposure that relates to the time on risk);
- (3) a proportion of the *commission* paid to an *insurance intermediary* sufficient to cover its costs; and
- (4) a proportion of any *fees* charged by an *insurance intermediary* which, when aggregated with any *commission* to be repaid, would be sufficient to cover its costs.

7.2.4

FCA

G

In most cases, the *FCA* would expect the proportion of a *policy's* exposure that relates to the time on risk to be a pro rata apportionment. However, where there is material unevenness in the incidence of risk, an *insurer* could use a more accurate method. The sum should be reasonable and should not exceed an amount commensurate to the risk incurred.

7.2.5

FCA

G

An *insurer* and an *insurance intermediary* should take reasonable steps to ensure that double recovery of selling costs is avoided, particularly where the contract for the *insurance intermediary's* services is a *distance contract*, or where both *commission* and *fees* are recouped by the *insurer* and *insurance intermediary* respectively.

**Firm's obligation on cancellation**

7.2.6

FCA

R

- (1) A *firm* must, without any undue delay and no later than within 30 days, return to a *consumer* any sums it has received from him in accordance with the contract, except as specified in this section.
- (2) This period shall begin from the day on which the *firm* receives the notification of cancellation.

[Note: article 7(4) of the *Distance Marketing Directive*]

**Consumer's obligation on cancellation**

7.2.7

FCA

R

- (1) A *firm* is entitled to receive from a *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 days.
- (2) This period shall begin from the day on which the *consumer* dispatches the notification of cancellation.

[Note: article 7(5) of the *Distance Marketing Directive*]

7.2.8

FCA

G

If an *insurer* has made a charge for services provided, the sums and property to be returned by a *consumer* should not include any money or property provided in settling a claim.

**Set off**

7.2.9

FCA

**R**

Any sums payable under this section are owed as simple contract debts and may be set off against each other.

**Automatic cancellation of an attached distance contract**

7.2.10

FCA

**G**

A *consumer's* notice to cancel a *distance contract* may also operate to cancel any attached contract which is also a distance financial services contract. This is unless the *consumer* gives notice that cancellation of the contract is not to operate to cancel the attached contract. (See the *Distance Marketing Regulations*.) Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.

# Chapter 8

## Claims handling

## 8.1 Insurers: general

### 8.1.1

FCA

R

An *insurer* must:

- (1) handle claims promptly and fairly;
- (2) provide reasonable guidance to help a *policyholder* make a claim and appropriate information on its progress;
- (3) not unreasonably reject a claim (including by terminating or avoiding a *policy*); and
- (4) settle claims promptly once settlement terms are agreed.

### 8.1.2

FCA

R

A rejection of a *consumer policyholder's* claim is unreasonable, except where there is evidence of fraud, if it is for:

- (1) non-disclosure of a fact material to the risk which the *policyholder* could not reasonably be expected to have disclosed;  
or
- (2) non-negligent misrepresentation of a fact material to the risk;  
or
- (3) breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless (for a *pure protection contract*):
  - (a) under a 'life of another' contract, the warranty relates to a statement of fact concerning the life to be assured and, if the statement had been made by the life to be assured under an 'own life' contract, the *insurer* could have rejected the claim under this *rule*; or
  - (b) the warranty is material to the risk and was drawn to the *customer's* attention before the conclusion of the contract.





## 8.2 Motor vehicle liability insurers

### Application: who? what?

8.2.1

FCA

R

- (1) This section applies to a *motor vehicle liability insurer*.
- (2) The *rules* in this section relating to the appointment of claims representatives apply in relation to claims by *injured parties* resulting from accidents occurring in an *EEA State* other than the *injured party's EEA State* of residence which are caused by the use of *vehicles* insured through an establishment in, and normally based in, an *EEA State* other than the *injured party's EEA State* of residence.
- (3) The *rules* in this section relating to claims handling apply in respect of claims arising from any accident caused by a *vehicle normally based* in the *United Kingdom*.

[Note: article 20(1) of the *Consolidated Motor Insurance Directive*]

### Requirement to appoint claims representatives

8.2.2

G

[deleted]

8.2.2A

FCA

R

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

### Conditions for appointing claims representatives

8.2.3

FCA

R

A *firm* must ensure that each claims representative:

- (1) is responsible for handling and settling a claim by an *injured party*;
- (2) is resident or established in the *EEA State* where it is appointed;
- (3) collects all information necessary in connection with the settlement of a claim and takes the measures necessary to negotiate its settlement;

- (4) possesses sufficient powers to represent the *firm* in relation to an *injured party* and to meet an *injured party's* claim in full; and
- (5) is capable of examining cases in the official language(s) of the *EEA State* of residence of the *injured party*.

[Note: article 21(1), (4) and (5) of the *Consolidated Motor Insurance Directive*]

8.2.4  
FCA

G

The requirement to possess sufficient powers does not prevent a claims representative from seeking additional authority or instructions if needed. It does prevent it from declining to deal with, or transferring responsibility for, claims properly referred to it by an *injured party*, or their representative.

**Notifying the appointment of claims representatives**

8.2.5  
FCA

R

- (1) A *firm* must notify to the *information centres* of all *EEA States*:
  - (a) the name and address of the claims representative which they have appointed in each of the *EEA States*;

[Note: article 23(2) of the *Consolidated Motor Insurance Directive*]

- (b) the telephone number and effective date of appointment; and
- (c) any material change to information previously notified.
- (2) Notification must be made within ten *business days* of an appointment or of a material change.

**Motor vehicle liability claims handling rules**

8.2.6  
FCA

R

Within three *months* of the *injured party* presenting his *claim* for compensation:

- (1) the *firm* of the *person* who caused the accident or its claims representative must make a reasoned offer of compensation in cases where liability is not contested and the damages have been quantified; or
- (2) the *firm* to whom the claim for compensation has been addressed or its claims representative must provide a reasoned reply to the points made in the claim in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified.

[Note: article 22 of the *Consolidated Motor Insurance Directive* and article 3 of the *Consolidated Motor Insurance Directive*]

8.2.7  
FCA

R

- (1) If liability is initially denied, or not admitted, within three *months* of any subsequent admission of liability, the *firm* must

(directly, or through a claims representative) make a reasoned offer of settlement, if, by that time, the relevant claim for damages has been fully quantified.

- (2) If an *injured party's* claim for damages is not fully quantified when it is first made, within three *months* of the subsequent receipt of a fully quantified claim for damages, the *firm* must (directly, or through a claims representative) make a reasoned offer of damages, if liability is admitted at that time.

8.2.8

FCA

R

A claim for damages will be fully quantified for the purpose of this section when the *injured party* provides written evidence which substantiates or supports the amounts claimed.

#### Interest on compensation

8.2.9

FCA

R

- (1) If the *firm*, or its claims representative, does not make an offer as required by this section, the *firm* must pay simple interest on the amount of compensation offered by it or awarded by the court to the *injured party*, unless interest is awarded by any tribunal.
- (2) The interest calculation period begins when the offer should have been made and ends when the compensation is paid to the *injured party*, or his authorised representative.
- (3) The interest rate is the Bank of England's base rate (from time to time), plus 4%.

[Note: article 22 of the *Consolidated Motor Insurance Directive*. Regulation 6 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 makes this *rule* actionable under section 138D of the Act (Actions for damages) by any person who suffers loss as a result of its contravention]

8.2.10

FCA

R

A *firm* will be taken to have received a claim, or a fully quantified claim, for damages when the claim is delivered to it, or a claims representative, by any *person* by any method of delivery which is lawful in the *firm's*, or its claims representative's, respective State of residence or establishment.

8.2.11

FCA

G

The provisions in this section are not intended to, and do not, restrict any rights which the *injured party*, or its *motor vehicle liability insurer*, or any other *insurer* acting on its behalf, may have and which would enable any of them to begin legal proceedings against the *person* causing the accident or that *person's*, or the *vehicle's*, *insurers*.



## 8.3 Insurance intermediaries (and insurers handling claims on another insurer's policy)

### Application: who?

8.3.1  
FCA

G

This section applies to an *insurance intermediary*, and to an *insurer* handling a claim on another *insurance undertaking's* policy.

### Interaction with the general law

8.3.2  
FCA

G

A *firm* is expected to comply with the general law on the duties of an insurance intermediary. This section does not seek to set out the full extent of those duties.

### Conflicts of interest

8.3.3  
FCA

G

- (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly. ■ SYSC 10 also requires an *insurance intermediary* to take all reasonable steps to identify conflicts of interest, and maintain and operate effective organisational and administrative arrangements to prevent conflicts of interest from constituting or giving rise to a material risk of damage to its *clients*.
- (2) [deleted]
- (3) If a *firm* acts for a *customer* in *arranging a policy*, it is likely to be the *customer's* agent (and that of any other *policyholders*). If the *firm* intends to be the *insurance undertaking's* agent in relation to claims, it needs to consider the risk of becoming unable to act without breaching its duty to either the *insurance undertaking* or the *customer* making the *claim*. It should also inform the *customer* of its intention.
- (4) A *firm* should in particular consider whether declining to act would be the most reasonable step where it is not possible to manage a conflict, for example where the *firm* knows both that its *customer* will accept a low settlement to obtain a quick payment, and that the *insurance undertaking* is willing to settle for a higher amount.

### Dealing with claims notifications without claims handling authority

8.3.4  
FCA

G

A *firm* that does not have authority to deal with a claim should forward any claim notification to the *insurance undertaking* promptly, or inform the *policyholder* immediately that it cannot deal with the notification.

## 8.4 Employers' Liability Insurance

### Application

8.4.1

FCA

R

- (1) The general application *rule* in ■ ICOBS 1.1.1 R applies to this section subject to the modifications in (2).
- (2) This section applies to:
  - (a) any *firm* solely with respect to the activities of:
    - (i) *carrying out contracts of insurance*; or
    - (ii) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;

in relation to *general insurance contracts* and, in either case, including business accepted under *reinsurance to close*;
  - (b) all *incoming EEA firms* or *incoming Treaty firms* falling within (a) including those providing *cross border services*.
- (3) In this section references to:
  - (a) an 'employers' liability register' are to the employers' liability register referred to in ■ ICOBS 8.4.4R (1)(a);
  - (b) a '*director's certificate*' are to a statement complying with the requirements in ■ ICOBS 8.4.4R (1)(b);
  - (c) *employers' liability insurance* include business accepted under *reinsurance to close* covering *employers' liability insurance* (including business that is only included as *employers' liability insurance* for the purposes of this section) ; and
  - (d) a '*qualified director's certificate*' are to the statement complying with the requirements in ■ ICOBS 8.4.4R (1)(b)(ii).

8

PAGE  
7

8.4.2

FCA

G

■ ICOBS 8.4 does not generally apply to activities carried out in relation to a *reinsurance contract* (see ■ ICOBS 1.1.2 R and ■ ICOBS 1 Annex 1 Part 2 1.1 R) but it does apply to business accepted under *reinsurance to close*.

8.4.3  
FCA

G

**Purpose**

The purpose of ■ ICOBS 8.4 is to assist individuals with claims arising out of their course of employment in the *United Kingdom* for employers carrying on, or who carried on, business in the *United Kingdom*, to identify an *insurer* or *insurers* that provided *employers' liability insurance* (other than certain co-insurance and excess cover arrangements) by requiring *insurers* to produce an employers' liability register. In particular it aims to assist ex-employees whose employers no longer exist or who cannot be located.

8.4.4  
FCA

R

**Principal obligation to produce an employers' liability register and supporting documents**

- (1) A *firm carrying out contracts of insurance*, or a *managing agent managing insurance business*, including in either case business accepted under *reinsurance to close*, which includes *United Kingdom commercial lines employers' liability insurance*, must:
  - (a) produce an employers' liability register complying with the requirements in (2) and ■ ICOBS 8 Annex 1;
  - (b) obtain and submit to the *FCA* a written statement, by a *director* of the *firm* responsible for the production of the employers' liability register, that to the best of the *director's* knowledge the *firm* in its production of the register is either:
    - (i) materially compliant with the requirements of ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1; or
    - (ii) not materially compliant with the provisions referred to in (i), in which case the statement must also set out, to the best of the *director's* knowledge, the information required by ■ ICOBS 8.4.4A R; and
  - (c) obtain and submit to the *FCA* a report satisfying the requirements of ■ ICOBS 8.4.4C R, prepared by an auditor satisfying the requirements of ■ SUP 3.4 and ■ SUP 3.8.5 R to ■ 3.8.6 R, and addressed to the *directors* of the *firm*.
- (1A) For the purposes of ■ ICOBS 8.4.4R (1)(b):
  - (a) 'materially compliant' means that in relation to at least ninety-nine percent of *policies* for which information is required to be included, the information in the register does not contain any inaccuracy or lack faithful reproduction (as relevant) that would affect the outcome of a search when compared to a search carried out with fully accurate and/or faithfully reproduced information; and
  - (b) the *firm* must ensure that the *director's* certificate includes the description of 'materially compliant' referred to in (a).

- (2) For the purposes of (1)(a) the employers' liability register is required to:
- (a) include the date upon which the register was produced;
  - (b) include a database which:
    - (i) reliably stores information required by ■ ICOBS 8 Annex 1;
    - (ii) in relation to information required by ■ ICOBS 8 Annex 1 1.1R(1), contains accurate information and, in relation to information required by ■ ICOBS 8 Annex 1 1.1R(2), contains information which faithfully reproduces the information that the *firm* has; and
    - (iii) has an effective search function which allows a person inputting data included on the register relating to a particular employer over a particular period to retrieve information on the register relating to a potential employers' liability claim corresponding to that employer and period;
  - (c) allow for requests for information or searches relating to a potential claim to be made by:
    - (i) individuals with the potential claim, or their authorised representative, or
    - (ii) any employer to whom the potential claim relates; or
    - (iii) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
    - (iv) a relevant *insurance intermediary* acting for an *insurer* in (iii);
  - (d) allow for requests by a tracing office which meets the conditions in ■ ICOBS 8.4.9R relating to the use of information on the *firm's* register to the extent that the information is necessary, and used solely, to enable the tracing office to provide comprehensive searching facilities to its users; and
  - (e) allow for responses to requests or searches in (c) to be provided without delay.
- (3) For the purposes of (1)(b) and (c) the *director's* certificate and report prepared by an auditor must:
- (a) relate to a version of the register as at a date no later than 12 *months* after it is first produced in accordance with (1)(a); and
  - (b) be obtained and submitted to the *FCA* within four *months* of the date in (a).

- (4) For the purposes of (1):
  - (a) *United Kingdom* commercial lines *employers' liability insurance* means commercial lines *employers' liability insurance* where both the employer's business was or is carried on, and the employees' course of employment was or is, in the *United Kingdom*; and
  - (b) commercial lines business comprises *contracts of insurance* carried out in relation to *persons* whose *employers' liability insurance* relates to a business or profession they carry on.

8.4.4A

FCA

R

The information referred to in ■ ICOBS 8.4.4R (1)(b)(ii) is:

- (1) a description of the ways in which the *firm*, in its production of the register, is not materially compliant;
- (2) the number of *policies*, in relation to which, either:
  - (a) the *firm* is not able to include any information in the register; and/or
  - (b) information is included in the register but information may be incorrect or incomplete;

in each case as a proportion of the total number of *policies* required to be included in the register;
- (3) where the *firm* is only practicably able to provide an estimate of the numbers in (2), the basis of each estimate; and
- (4) a description of the systems and controls used in the production of the register and of the steps, together with relevant timescales, that the *firm* is taking to ensure that the *firm* will be materially compliant as soon as practicable.

8.4.4B

FCA

G

In relation to the written statement referred to in ■ ICOBS 8.4.4R (1)(b):

- (1) ■ ICOBS 8.4.4R (1)(b) does not preclude the relevant *director* from, in addition, including in the *director's* statement any of the following as relevant:
  - (a) if a *firm's* employers' liability register is more than materially compliant, a statement to this effect, and/or a statement of the extent to which the *director* considers, to the best of his knowledge, the *firm* to be compliant in its production of the register;
  - (b) reasons for the level of any non-compliance; and/or
  - (c) information relating to *policies* which are not required to be included in the register;
- (2) the statement regarding the *firm's* level of compliance with requirements in ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1, and, in relevant cases, the steps the *firm* is undertaking to ensure material compliance as soon as practicable,



does not alter the underlying requirement that the *firm* has to comply fully with the relevant requirements in ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1 (that is, not just to a material extent). So, it is possible that a *firm* will be able to comply with ■ ICOBS 8.4.4R (1)(b) but continue to not fully comply with the underlying requirements, for example, in respect of the *policies* falling outside the ninety-nine percent threshold. In relation to these *policies*, as well as those identified in any qualified *director's* certificate, the *firm* will need to remedy errors or omissions as soon as practicable, and have systems and controls in place to give effect to this on an ongoing basis.

8.4.4C

FCA

R

The report referred to in ■ ICOBS 8.4.4R (1)(c) must:

- (1) be prepared on the basis of providing an opinion under a *limited assurance engagement* confirming whether the auditor has found no reason to believe that the *firm*, solely in relation to the *firm's* extraction of information from its underlying records, has not materially complied with the requirements in ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1 in the production of its employer's liability register, having regard in particular to the possible errors and omissions referred to in (3) below;
- (2) use the description of material compliance as referred to in ■ ICOBS 8.4.4R (1A)(a) adapted as necessary to apply solely to the *firm's* extraction of information from its underlying records;
- (3) address, in particular, the following risks:
  - (a) information relating to certain *policies* issued or renewed on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the *firm's* underlying records;
  - (b) information relating to certain *policies* in respect of which claims were made on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the *firm's* underlying records;
  - (c) relevant information required to be included in the register, and which is included in the *firm's* underlying records, is omitted from, or is inaccurately entered on to, the register; and
  - (d) information relating to *policies* which do not provide *employers' liability insurance* are included in the register.

8.4.5

FCA

G

- (1) For the purposes of ■ ICOBS 8.4.4R (2)(c) and ■ ICOBS 8.4.4 R (2)(d), a *firm* may put in place appropriate screening on its employers' liability register to monitor:
  - (a) requests for information and searches to ensure that they are being made for a legitimate purpose by persons falling into one of the categories in ■ ICOBS 8.4.4R (2)(c); and
  - (b) requests from tracing offices to ensure that the information is necessary, and will only be used by the tracing office, for the purposes of providing

users of the tracing service with the same information as the *firm* itself would have provided had the inquirer approached the *firm* directly.

If a *firm* has any reason to suspect that the information is, or may be, being misused then it may restrict the use of the information provided or request its return.

- (2) For the purposes of ■ ICOBS 8.4.4R (2)(e) the *FCA* expects that, in the ordinary course, a person searching or making an information request will be provided with a response within one *business day* of the initial request.
- (3) In the *FCA*'s view, commercial lines business does not include *employers' liability insurance* provided for retail consumers, for example, in relation to insurance taken out to cover liability in relation to domestic arrangements such as home help.

### FCA notification requirements

8.4.6

FCA

**R** A *firm* must:

- (1) notify the *FCA*, within one *month* of falling within ■ ICOBS 8.4.1R (2), as to whether or not it, or, if relevant, a member of the *syndicates* it manages, carries on business falling within ■ ICOBS 8.4.4R (1) and, if it does, include in that notification:
  - (a) details of the internet address of the *firm* or tracing office at which the employers' liability register is made available;
  - (b) the name of a contact person at the *firm* and their telephone number or postal address, or both; and
  - (c) the period over which the *firm* or *syndicate* member provided cover under relevant *policies* or, if still continuing, the date that cover commenced; and
  - (d) the *firm*'s Firm Reference Number; and
- (2) ensure that the notification in (1):
  - (a) is approved and signed by a *director* of the *firm*; and
  - (b) contains a statement that to the best of the *director*'s knowledge the content of the notification is true and accurate.

8.4.6A

FCA

**R** A *firm* with potential liability under an excess *policy* and which satisfies the requirements in ■ ICOBS 8 Annex 1 1.1B R must notify the *FCA* before the date upon which it first seeks to rely upon that *rule* and ensure that the requirements of ■ ICOBS 8.4.6R (2) are satisfied in respect of this notification.

### Requirement to make employers' liability register and supporting documents available

8.4.7

FCA

R

- (1) A *firm* must make available:
- (a) the information on the employers' liability register either:
    - (i) on the *firm's* website at the address notified to the FCA in ■ ICOBS 8.4.6R (1); or
    - (ii) by arranging for a tracing office which meets the conditions in ■ ICOBS 8.4.9 R to make the information available on the tracing office's website; and
  - (b) the latest *director's* certificate and the latest report prepared by an auditor for the purposes of ■ ICOBS 8.4.4R (1)(c), to a tracing office which has obtained information from the *firm* for the purposes of providing comprehensive tracing information, in accordance with ■ ICOBS 8.4.4R (2)(d), provided that the tracing office has agreed with the *firm* not to disclose confidential information in the certificate and the report to third parties, save as required by law.
- (2) If a *firm* arranges for a tracing office to make information available for the purposes of (1)(a)(ii) the *firm* must:
- (a) send to the tracing office copies of its latest *director's* certificate and report prepared by the *firm's* auditor provided that the tracing office has agreed with the *firm* not to disclose confidential information in the certificate and the report to third parties, save as required by law;
  - (b) maintain records of all the tracing information and copies of all documents it has provided to the tracing office;
  - (c) retain all legal rights in relation to the ownership and use of the information and documents provided to the tracing office to enable the *firm* to provide that information or documentation to another tracing office or to make it available itself; and
  - (d) send to the tracing office its Firm Reference Number.

8.4.8

FCA

A

For the purposes of ■ ICOBS 8.4.4R (2)(d) and ■ ICOBS 8.4.7R (1)(a)(ii) the existence of published and up-to-date versions of both a certificate from the *directors* of the tracing office, stating that the tracing office has complied in all material respects with the requirements in ■ ICOBS 8.4.9R (1) to ■ (6), and a report under a *reasonable assurance engagement*, addressing the accuracy and completeness of the tracing office's database, may be relied upon as tending to establish that a *firm* has satisfied the requirement to use a tracing office which meets the conditions in ■ ICOBS 8.4.9R (1) to ■ (6).

8.4.9

FCA

R

**Qualifying tracing offices**

The conditions referred to in ■ ICOBS 8.4.4R (2)(d) and ■ ICOBS 8.4.7R (1)(a)(ii) are that the tracing office is one which:

- (1) maintains a database which:
  - (a) accurately and reliably stores information submitted to it by *firms* for the purposes of complying with these *rules*;
  - (b) has systems which can adequately keep it up to date in the light of new information provided by *firms*;
  - (c) has an effective search function which allows a person inputting data included on the database relating to a particular employer over a particular period to retrieve information on the database relating to a potential employers' liability claim corresponding to that employer and period;
- (2) maintains adequate records of the *director's* certificates and reports prepared by an auditor sent to it by *firms* for the purposes of complying with these *rules*;
- (3) has effective arrangements for information security, information back up and business continuity and to prevent the misuse of data;
- (4) accepts search requests in relation to information in (1) relating to a potential claim from:
  - (a) individuals with the potential claim, or their authorised representative; or
  - (b) the employer to whom the potential claim relates; or
  - (c) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
  - (d) a relevant *insurance intermediary* acting for an *insurer* in (c);
- (5) provides responses to requests in (4) without delay;
- (6) has adequate arrangements for providing to a *firm*, upon request and without delay, a full copy of the information on the database that the *firm* has provided to it;
- (7) includes in its published annual report:
  - (a) a certificate from the *directors* of the tracing office stating whether the tracing office has complied with the

requirements in (1) to (6) in relation to the period covered by the annual report; and

- (b) an independent report commissioned under a *reasonable assurance engagement* satisfying the requirement in ■ ICOBS 8.4.9A R, addressing the accuracy and completeness of the database, prepared by an auditor satisfying the requirements of ■ SUP 3.4 and ■ SUP 3.8.5 R to ■ SUP 3.8.6 R, and addressed to the *directors* of the tracing office; and

(8) provides to a *firm* making use of the tracing office for the purposes of ■ ICOBS 8.4.7R (1)(a)(ii):

- (a) a copy of its annual report promptly after publication; and
- (b) upon request and without delay a full copy of the information on the database that the *firm* has provided to it.

8.4.9A

FCA

R

The requirement referred to in ■ ICOBS 8.4.9R (7)(b) is that the report must include an opinion from the auditor confirming whether, in all material respects, the tracing office maintains a database which accurately and reliably stores information submitted to it by *firms* for the purpose of complying with relevant requirements in ■ ICOBS 8.4 and that it has systems which can adequately keep it up to date in the light of new information provided by *firms*.

8.4.10

FCA

G

- (1) ■ ICOBS 8.4.4R (2)(b) and ■ ICOBS 8.4.9R (1) require a *firm*, or a tracing office used by a *firm*, to have an effective search function in relation to the employers' liability register database. In the FCA's view an effective search function is one which finds all matches in the register to any specified whole word.
- (2) For the purposes of ■ ICOBS 8.4.9R (5) the term 'without delay' should have the same meaning as in ■ ICOBS 8.4.5G (2).
- (3) In order to assist *firms* with their obligations under these *rules* the FCA has agreed to publish on its website at <http://www.fca.org.uk/consumers/financial-services-products/insurance/employers-liability> a list of *persons* providing tracing office facilities which have published the *directors'* certificate and independent assurance report referred to in ■ ICOBS 8.4.9R (7).

#### Updating and verification requirements

8.4.11

FCA

R

- (1) A *firm* must notify the FCA:
  - (a) of any information provided to the FCA under ■ ICOBS 8.4.6 R or ■ ICOBS 8.4.6A R which ceases to be true or accurate; and
  - (b) of the new position, in accordance with the notification requirements in ■ ICOBS 8.4.6 R;
 within one *month* of the change.

- (2) A *firm* producing an employers' liability register must:
- (a) update the register with any new or more accurate information falling within ■ ICOBS 8 Annex 1:
    - (i) by virtue of the entry into or renewal of, or of a claim made in relation to, a *policy*, as required by ■ ICOBS 8 Annex 1 Part 1; and
    - (ii) in all other cases, by virtue of the *firm* having received that new or more accurate information;
  - (b) make the updated information in (a) available, in accordance with ■ ICOBS 8.4.7 R, no later than:
    - (i) in relation to new or more accurate information arising out of the entry into or renewal of, or a claim made in relation to, a *policy*, three *months* from the date of entry, renewal or the date upon which the claim was made; and
    - (ii) in all other cases, three *months* from the date upon which the *firm* received the new or more accurate information;
  - (c) update the register, no less frequently than once every three *months*, and include the date that the register was updated and a statement that the register may be relied on as up-to-date as at a date three *months* prior to the date upon which the register was updated, or such later date as applicable to the *firm*;
  - (d) obtain and submit to the *FCA* a *director's* certificate:
    - (i) no later than twelve *months* after the date of the most recent *director's* certificate, obtained and submitted to the *FCA* in accordance with ■ ICOBS 8.4.4R (1)(b) or this *rule*;
    - (ii) complying with the requirements, and containing one of the statements, set out in ■ ICOBS 8.4.4R (1)(b); and
    - (iii) in relation to a version of the employers' liability register dated no more than four *months* prior to the date of the *director's* certificate;
  - (e) obtain and submit to the *FCA* a report prepared by an auditor:
    - (i) no later than twelve *months* after the date of the most recent report, obtained and submitted to the *FCA* in accordance with ■ ICOBS 8.4.4R (1)(c) or this *rule*;
    - (ii) complying with the requirements set out in ■ ICOBS 8.4.4R (1)(c); and

(iii) in relation to a version of the employers' liability register dated no more than four *months* prior to the date of the report; and

(f) make available, in accordance with ■ ICOBS 8.4.7 R, the *director's* statement in (d) and the report in (e) no later than four *months* after the effective date of the version of the register to which they relate, in place of the previous certificate and report.

8.4.12

FCA

G

For the purposes of ■ ICOBS 8.4.11R (2)(c) a *firm* is required to include the date at which it updates the register. However, depending on the *firm's* processes for making information available for the purposes of ■ ICOBS 8.4.11R (2)(b), the register may only be relied upon as being up-to-date as at a date three *months* prior to the date on which the *firm* has updated the register, or such lesser period as applicable to the *firm* as is consistent with the *firm's* processes. ■ ICOBS 8.4.11R (2)(c) requires the *firm* to include a statement as to the date at which the register may be relied upon as containing up-to-date information which can be no earlier than three *months* prior to the new date on the register, but may be later depending on the *firm's* circumstances.

8.4.12A

FCA

R

- (1) For the purposes of ■ ICOBS 8.4.11R (2)(a), ■ 8.4.11R (2)(b) and ■ ICOBS 8 Annex 1 a claim is deemed to be made in relation to a *policy* at the date on which the *firm* establishes, or otherwise accepts, that it has provided relevant cover under the *policy*, and is therefore potentially liable subject to the terms of the *policy*.
- (2) A *firm* must use reasonable endeavours to establish whether it has provided relevant cover:
  - (a) within three *months* of being notified of a potential claim; or
  - (b) if that is not possible, as soon as is reasonably practicable thereafter.

**Transfers of insurance business**

8.4.13

FCA

R

The transferor in an *insurance business transfer scheme* must provide the transferee with the information and documents the transferor holds in compliance with ■ ICOBS 8.4 in respect of the insurance business transferred.





Employers' liability register

**FCA**

See ■ ICOBS 8.4.4R (1)(a).

**Part 1 In relation to information to be included in the employers' liability register**

- 1.1 R A firm must:**
- (1) for each *policy* it enters into or renews on or after 1 April 2011, include, in relation to that *policy*, all the information required by the form in 1.2R, in accordance with the notes;
  - (2) for each *policy* not falling in (1) and in relation to which a claim is made on or after 1 April 2011, include, in relation to that *policy*, all the information required by the form in 1.2R that the *firm* holds, in accordance with the notes; and
  - (3) in relation to (1) and (2) include the notes set out in 1.2R.
- 1.1A R A firm is not required to include information required by 1.1R(1) and (2) to the extent that it relates to the firm's potential liability as a co-insurer, other than as the lead insurer, under a co-insurance arrangement satisfying the following conditions:**
- (1) the risk is covered by a single contract at an overall premium and for the same period by two or more *insurers* each for its own part;
  - (2) one of the *insurers* is the lead *insurer* who is treated as if it were the *insurer* covering the whole risk;
  - (3) the lead *insurer* fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating;
  - (4) the *firm* has entered into and maintains with the lead *insurer* up-to-date written agreements identifying the *policies* in relation to which the *firm* is a co-insurer of the lead *insurer* and the proportions of the risk for which the co-insurer is responsible; and
  - (5) the *firm* is satisfied that the lead *insurer* complies with the requirements in 1.1R(1) and (2) in relation to the co-insured *policies*.
- 1.1B R A firm is not required to include information required by 1.1R(1) and (2) to the extent that it relates solely to the firm's potential liability under an excess policy where another insurer has principal liability for the risk, and the following conditions are satisfied:**
- (1) the principal *insurer's* maximum liability under the primary *policy* covering the risk is for no less than £5,000,000 in relation to a single event;

- (2) the *firm* has no liability to potential claimants until those claimants have exhausted their remedies against the principal *insurer*; and
- (3) the *firm* has adequate arrangements for identifying and recording the *policies* in relation to which the *firm* provides excess cover under an excess *policy*.

1.2 R FORM

Part 2 In relation to information not required to be included

2.1 R A *firm* carrying out contracts of insurance, in relation to which information is not required to be included in the register under *FCA* rules, must, beneath the form in 1.2R, state the following, where applicable, tailored as necessary to the *firm's* circumstances:

"We have potential liability for policies under which UK commercial lines employers' liability cover has been provided to employers and which commenced or were renewed before 1 April 2011 and in respect of which no claims were made on or after 1 April 2011. However, we are not required to make details of those policies available in this register under *FCA* rules. Enquiries may be made about these policies by individual claimants, their authorised representatives, or insurers or their insurance intermediaries, with potential claims, by contacting [insert contact details]"

2.1A R A *firm* with potential liability as a co-insurer and which satisfies the requirements of 1.1AR must tailor the statement in 2.1R to include reference to the following:

- (1) that the *firm* has potential liability for *policies* under which UK commercial lines employers' liability cover has been provided to employers for which the *firm* was co-insurer, but not lead insurer, but that the *firm* is not required to make details of those *policies* available in the register under *FCA* rules; and
- (2) responsibility for making information available in relation to *policies* to which (1) applies is with the lead insurer.

2.1B R A *firm* with potential liability under an excess *policy* and which satisfies the requirements of 1.1BR must tailor the statement in 2.1R to include reference to the following:

- (1) that the *firm* has potential liability for *policies* under which UK commercial lines employers' liability cover has been provided to employers for which it provides cover only in excess of that provided by another *insurer* (and where the principal cover is for £5m or more) but that the *firm* is not required to make details of those *policies* available in the register under *FCA* rules; and
- (2) responsibility for making information available in relation to the *policy* providing the principal cover is with the principal *insurer*.

2.2 G The purpose of 2.1R, 2.1AR and 2.1BR is to inform users of the register that the *firm* may be potentially liable in relation to *policies* other than those on the register. However, a *firm* may include *policies* additional to those entered into, renewed, or in relation to which a claim was made, after April 2011, in

the register. If it does, the statement in 2.1R , 2.1AR or 2.1BR may be amended as necessary to refer to the *policies* that are not included.



## Insurance: Conduct of Business sourcebook

### ICOBS TP 1 Transitional Provisions

#### Consolidated Motor Insurance Directive

- 1 R In relation to a claim by an *injured party* received by a *motor vehicle liability insurer* or its claims representative on or before 10 June 2007, the motor vehicle liability claims handling *rules* (see ICOBS 8.2.6 R to ICOBS 8.2.11 G) only apply if the claim results from an accident occurring in an *EEA State* other than the *injured party's EEA State* of residence which was caused by the use of a *vehicle* insured through an establishment in, and *normally based in*, an *EEA State* other than the *injured party's EEA State* of residence.
- [FCA]

#### Initial disclosure document

- 2 Expired
- 3 [Expired]
- 4 [Expired]
- 5 [Expired]

#### Series of events

- 6 R If, for a *connected travel insurance intermediary*, the application of any provision in this sourcebook is dependent on the occurrence of a series of events, the provision applies with respect to the events that occur on or after 1 January 2009.
- [FCA]

#### Employers' liability insurance: disclosure by insurers

- 7 Expired
- 8 Ex-  
pired
- 8A Expired
- 8B R For the purposes of the report prepared by an auditor required under ICOBS 8.4.4 R (1)(c):
- [FCA]
- (1) a *firm* will not be regarded as having breached ICOBS 8.4.4 R (1)(c) if the *firm* has obtained and submitted to the *FCA* an independent assurance report addressing the accuracy and completeness of the employers' liability register following discussions with its auditors as to the form and content of the report, even if that report does not comply with ICOBS 8.4.4C R;

- (2) notwithstanding (1), a *firm* will be deemed to have complied with ICOBS 8.4.4 R (1)(c) to the extent that the report obtained and submitted includes a detailed account of the procedures performed and the results of those procedures including, as a minimum:
- (a) a description of the underlying records from which the register is extracted;
  - (b) a description, and the results, of the tests aimed at addressing the risk that the register is not completely and accurately compiled from data held on the *firm's* underlying records, and of the method of selecting the sample and the rationale for its being representative, including the following:
    - (i) a reconciliation of the number of, and the identity of, *policies* for which information is included in the register against the number of, and the identity of, relevant *policies* for which details are contained in the underlying records and testing reconciliations to ensure that reconciling items are explained and appropriate;
    - (ii) analysis of a representative sample of relevant employers liability claims made to the *firm* to ensure claims made have been entered onto the register; and
    - (iii) analysis of a representative sample of *policies* in relation to which information appears on the register to ensure that all required information is included and that the included information is accurate compared to the information contained in the underlying records;
  - (c) for the purposes of (b)(ii) and (iii), unless (d) applies, the *firm* must adopt the following approach to determining a representative sample in relation to each set of claims made, or *policies*, for which the same systems and controls are used in producing information for the register:
    - (i) for each set of claims made or *policies*, a sample may be regarded as representative if the ratio of the minimum number in the sample to 25 is equal to the ratio of the square root of the total number of claims made or *policies* within the set to the square root of 1000, subject to a minimum of 10 *policies* or claims made; and
    - (ii) for sets where the information required to be placed on the register relates to fewer than 10 *policies*, the sample may be regarded as representative if it includes all of those *policies*;
  - (d) where the *firm* and the auditor consider that the approach to determining a representative sample set out in (c)(i) to (iii) are inappropriate having regard to the *firm's* particular circumstances, the report

must set out the reasons for selecting a different representative sample by reference to the methods set out in (c); and

- (e) any other procedures agreed between the *firm* and the auditor as deemed necessary to be carried out by the auditor to test the extraction of information from underlying records by the *firm* for the purposes of ICOBS 8.4.4 R (1)(a) tailored as appropriate to correspond to the *firm's* particular circumstances and the results of those procedures.

TP 8BR(1) applies until 1 August 2012.

TP 8BR(2) applies until 1 August 2012 for all *firms*, and thereafter until 1 August 2014 or, if earlier, the date upon which the *firm* first obtains a *director's* certificate which is not a qualified *director's* certificate.

8C G The requirement set out in 8BR(2) is for what is commonly referred to by auditors as 'agreed upon procedures' under which the auditor is not required to provide an opinion or express assurance. All *firms* will be able to provide reports based on 'agreed upon procedures', instead of a *limited assurance engagement*, up until 1 August 2012. After that only *firms* which obtain qualified *director's* certificates will be able to use agreed upon procedures, and only until (and including) 1 August 2014, or, if earlier, the date upon which they first obtained a non-qualified *director's* certificate.

9 Expired

- 9A R (1) For the purposes of ICOBS 8.4.4 R (1)(a), to the extent that a *firm* is unable to include information required under ICOBS 8.4.4 R (2)(b)(ii) solely because of a failure by a third party outside the *firm's* control, then provided that the *firm* has used, and continues to use, best endeavours to obtain that information, other than refusing to provide cover to an employer solely because it has not provided the information requested, the *firm* will be deemed to comply with the requirements in ICOBS 8.4.4 R (2)(b)(ii) and the corresponding parts of ICOBS 8 Annex 1.
- (2) For the purposes of ICOBS 8.4.4 R (1)(b) and (1)(c), a *firm* must treat references to compliance with ICOBS 8.4.4 R (1)(a), ICOBS 8.4.4 R (2) and ICOBS 8 Annex 1 as if TP 9AR did not apply.

9B G The effect of TP 9AR(1) is that a *firm* will not be in breach of the requirements to include relevant information on its register to the extent that it is unable to obtain that information from third parties over which it does not exercise control. However, in order to be able to rely on this provision the *firm* will need to be able to demonstrate that it has used its best endeavours to obtain the information from the third party over the relevant time period and continues to do so, other than by refusing to provide cover to that employer solely for failure to provide relevant information. The effect of TP 9AR(2) is that even though the *firm* may not be regarded as being in breach of the underlying requirements in ICOBS 8.4.4 R (1)(a), the *director's certificate* and report prepared by an auditor will need to be addressed at the level of compliance of the register as if TP 9AR(1) did not provide any transitional relief from the *firm* being in breach.

TP 9AR(1) and (2) and 9BG apply until 1 April 2014.

|       |   |  |
|-------|---|--|
| 10    |   | Expired  |
| 10A   |   | Expired  |
| 11    |   | Expired  |
| 12    |   | Expired  |
| 13    | R | For the purposes of ICOBS 8.4.11 R (2)(a), ICOBS 8.4.11 R (2)(b), ICOBS 8.4.12A R, ICOBS 8 Annex 1, TP 8, TP 8B and TP 9, in relation to references to claims made in relation to <i>policies</i> :  |
| [FCA] |   |  |
|       |   | (1) for claims received by a <i>firm</i> prior to 1 April 2011 which have not been settled as at 1 April 2011, those claims must be treated, for the purposes of the above <i>rules</i> , as having been made on or after 1 April 2011, and for the purposes of the above <i>rules</i> , the <i>firm</i> must include information in the form in ICOBS 8 Annex 1.1.2 R, in accordance with and including the notes, held by the <i>firm</i> (with the exception of information within TP 8R(1)(d) until 1 April 2012) within three <i>months</i> of the date upon which the claim was settled, on or after 1 April 2011; and |
|       |   | (2) if, as at 1 April 2011, a <i>firm's</i> systems record claims by reference to the date the claim was created in the <i>firm's</i> systems or the date upon which it was settled, then, notwithstanding ICOBS 8.4.12A R, that <i>firm</i> may treat references to the date that a claim was made as a reference to the date that the claim was created in the <i>firm's</i> systems, or if applicable to the <i>firm</i> , the date that the claim was settled.   |
|       |   | TP 13R(2) applies until 1 April 2013.  |



## Insurance: Conduct of Business sourcebook

### ICOBS TP 2 Other Transitional Provisions

FCA

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision   | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|-----|--|-----|--|--|---|
| 1   | ICOBS 4.5.1 G  | R   | A <i>firm</i> may use an <i>initial disclosure document</i> prepared in accordance with the <i>rules</i> in ICOBS 4.5.1 G and ICOBS 4 Annex 1 G as they were in force as at 31 March 2013  | From 1 April 2013 to 31 March 2014         | 1 April 2013                              |
| 2   | ICOBS 4.5  | R   | A <i>firm</i> may use a <i>combined initial disclosure document</i> prepared in accordance with the <i>rules</i> in ICOBS 4.5 and COBS 6 Annex 2 as they were in force as at 31 March 2013 | From 1 April 2013 to 31 March 2014         | 1 April 2013                              |



## Insurance: Conduct of Business sourcebook

### Schedule 1 Record keeping requirements

G

FCA

#### Notes

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.

G

FCA

| Handbook reference                | Subject of record   | Contents of record   | When record must be made       | Retention period |
|-----------------------------------|---|--|--------------------------------|------------------|
| ICOB5 1 Annex 1 G, Part 2 3.1R(3) | Record of election to comply with <i>COBS rules</i> for <i>pure protection policies</i> (including amendment or reversal) | Date of election and precise description of parts of the <i>firm's</i> business that will comply with <i>COBS</i> provisions   | Not specified                  | Indefinitely     |
| ICOB5 5.1.3B R                    | Eligibility   | Details of whether the <i>customer</i> is eligible to claim each of the benefits under each <i>policy</i> included in the <i>packaged bank account</i>   | Date of eligibility assessment | 3 years          |
| ICOB5 5.3.2B R                    | Suitability and recommendation given  | Details of whether each <i>policy</i> included in the <i>packaged bank account</i> is suitable for the <i>customer's</i> demand and needs, the recommendation given and the reasons for the recommendation | Date of recommendation         | 3 years          |



## Insurance: Conduct of Business sourcebook

Schedule 2  
Notification requirements

## Sch 2.1 G

FCA

| Handbook reference   | Matters to be notified  | Contents of notification  | Trigger event   | Time allowed   |
|--|---|---|---|--|
| ICOBS 8.4.4 R (1)(b) ,<br>ICOBS 8.4.4 R (3),<br>ICOBS 8.4.11 R (2)(d)                    | A statement satisfying the requirements of<br>ICOBS 8.4.4 R (1)(b)  | A statement satisfying the requirements of<br>ICOBS 8.4.4 R (1)(b)  | Obtaining a statement satisfying the requirements of<br>ICOBS 8.4.4 R (1)(b)  | Four <i>months</i> from the date of the version of the register being commented on in accordance with<br>ICOBS 8.4.4 R (3) or<br>ICOBS 8.4.11 R (2)(d) |
| ICOBS 8.4.4 R (1)(c) ,<br>ICOBS 8.4.4C R,<br>ICOBS 8.4.4 R (3),<br>ICOBS 8.4.11 R (2)(e) | A report satisfying the requirements of<br>ICOBS 8.4.4C R   | A report satisfying the requirements of<br>ICOBS 8.4.4C R   | Obtaining a report satisfying the requirements of<br>ICOBS 8.4.4C R   | Four <i>months</i> from the date of the version of the register being reported on in accordance with<br>ICOBS 8.4.4 R (3) or<br>ICOBS 8.4.11 R (2)(e)  |
| ICOBS 8.4.6 R  | Whether or not business falling within<br>ICOBS 8.4.4 R (1) is being carried out  | Statement by <i>director</i> that, to the best of the <i>director's</i> knowledge, content is true and accurate, and if relevant details of the internet address at which the employers' liability register is made available, the <i>firm's</i> contact details and the period over which the <i>firm</i> or <i>syndicate</i> member provided cover under relevant <i>policies</i> . | <i>Firms</i> or <i>syndicate</i> members <i>carry out contracts of insurance</i> which are <i>general insurance contracts</i> | One <i>month</i>   |
| ICOBS 8.4.6A R   | That the <i>firm</i> has potential liability under an excess <i>policy</i> and satisfies the requirements and relies on | A statement that the <i>firm</i> has potential liability under an excess <i>policy</i> ; satisfies the requirements and relies on the provisions  | <i>Firm</i> relies on<br>ICOBS 8 Annex 1.1.1BR  | Prior to reliance on<br>ICOBS 8 Annex 1.1.1BR  |

| Handbook reference | Matters to be notified  | Contents of notification  | Trigger event  | Time allowed                          |
|--------------------|---|---|--|---------------------------------------|
| ICOB 8.4.11 R      | the provisions in<br>ICOB 8 Annex 1.1.1BR<br><br>Changes to the accuracy of the contents of the notification in<br>ICOB 8.4.6 R (1) or<br>ICOB 8.4.6A R | in<br>ICOB 8 Annex 1.1.1BR<br><br>Details of the change and of the new position | Changes to the accuracy of a notification made under<br>ICOB 8.4.6 R or<br>ICOB 8.4.6A R | Within one <i>month</i> of the change |

---

## Insurance: Conduct of Business sourcebook

### Schedule 3 Fees and other required payments requirements

#### Sch 3.1 G

**FCA**

There are no requirements for fees or other payments in *ICOBS*.





---

## Insurance: Conduct of Business sourcebook

### Schedule 4 Powers exercised

#### Sch 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *ICOBS*:

Section 138 (General rule-making power)

Section 139(4) (Miscellaneous ancillary matters)

Section 145 (Financial promotion rules)

Section 149 (Evidential provisions)

Section 156 (General supplementary powers)

Regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706)

#### Sch 4.2 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *ICOBS*:

Section 157(1) (Guidance)



## Insurance: Conduct of Business sourcebook

### Schedule 5 Rights of action for damages

#### Sch 5.1 G

**FCA**

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

#### Sch 5.2 G

**FCA**

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a *private person* under Section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

#### Sch 5.3 G

**FCA**

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

#### Sch 5.4 G

**FCA**

| Rule  | Right of action under Section 138D |          |                                |
|---|------------------------------------|----------|--------------------------------|
|   | For <i>private person</i> ?        | Removed? | For other <i>person</i> ?      |
| All <i>rules</i> in <i>ICOBS</i> with the status letter "E"   | No                                 | No       | No                             |
| Any <i>rule</i> in <i>ICOBS</i> which prohibits an <i>authorised person</i> from seeking to make provision excluding or | Yes                                | No       | Yes<br>Any other <i>person</i> |

| Rule                                   | Right of action under Section 138D |          |                           |
|--|------------------------------------|----------|---------------------------|
|  | For <i>private person</i> ?        | Removed? | For other <i>person</i> ? |
| restricting any duty or liability      |                                    |          |                           |
| ICOBS 8.2.9 R                          | Yes                                | No       | Yes                       |
| All other <i>rules</i> in <i>ICOBS</i> | Yes                                | No       | No                        |

---

## Insurance: Conduct of Business sourcebook

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

##### FCA

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.



# Mortgages and Home Finance: Conduct of Business sourcebook

---

## Mortgages and Home Finance: Conduct of Business sourcebook

|               |  |
|---------------|--|
| <b>MCOB 1</b> | <b>Application and purpose</b>   |
| 1.1           | Application and purpose  |
| 1.2           | General application: who? what?  |
| 1.3           | General application: where?  |
| 1.4           | [deleted]  |
| 1.5           | Application to appointed representatives   |
| 1.6           | Application to mortgages in relation to the Consumer Credit Act 1974   |
| 1 Annex 1     | [deleted]  |
| 1 Annex 2     | [deleted]  |
| 1 Annex 3     | [deleted]  |
| 1 Annex 4     | [deleted]  |
| <br>          |  |
| <b>MCOB 2</b> | <b>Conduct of business standards: general</b>  |
| 2.1           | Application  |
| 2.2           | Communications   |
| 2.3           | Inducements: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements                        |
| 2.4           | High pressure sales: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements                |
| 2.5           | Reliance on others   |
| 2.5A          | [Not yet in force]   |
| 2.6           | Exclusion of liability   |
| 2.6A          | Protecting customer's interests: home purchase plans, home reversion plans and regulated sale and rent back agreements             |
| 2.7           | Application to electronic media and distance communications  |
| 2.7A          | E-Commerce   |
| 2.8           | Record keeping   |
| 2 Annex 1G    | Form of joint instruction letter   |
| <br>          |  |
| <b>MCOB 3</b> | <b>Financial Promotion of qualifying credit, home reversion plans and regulated sale and rent back agreements</b>                  |
| 3.1           | Application: who?  |
| 3.2           | Application: what?   |
| 3.3           | Application: where?  |
| 3.4           | Purpose  |
| 3.5           | General  |
| 3.6           | Form and content of non-real time qualifying credit promotions   |
| 3.7           | Unsolicited real time financial promotions of qualifying credit, a home reversion plan or a regulated sale and rent back agreement |
| 3.8           | Form and content of real time qualifying credit promotions   |
| 3.8A          | Form and content of financial promotions of home reversion plans   |
| 3.8B          | Form and content of financial promotions of regulated sale and rent back agreements  |



- 3.9 Confirmation of compliance: financial promotions of qualifying credit, home reversion plans or regulated sale and rent back agreements
- 3.10 Records: non-real time financial promotions of qualifying credit, a home reversion plan or a regulated sale and rent back agreement
- 3.11 Communication and approval of qualifying credit promotions for an overseas person or an unauthorised person
- 3.12 The Internet and other electronic media
- 3 Annex 1 Examples of qualifying credit promotions

### MCOB 4 Advising and selling standards

- 4.1 Application
- 4.2 Purpose
- 4.3 Scope of service provided
- 4.4 Initial disclosure requirements
- 4.4A [Not yet in force]
- 4.5 Additional disclosure for distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers
- 4.6 Cancellation of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts
- 4.6A [Not yet in force]
- 4.7 Advised sales
- 4.7A [Not yet in force]
- 4.8 Non-advised sales
- 4.8A [Not yet in force]
- 4.9 Business loans
- 4.10 Home purchase plans
- 4.11 Sale and rent back: advising and selling standards
- 4 Annex 1 Initial disclosure document
- 4 Annex 2 Combined initial disclosure document [deleted - see COBS 6 Annex 2]
- 4 Annex 3 Additional information requirements in respect of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with consumers

### MCOB 5 Pre-application disclosure

- 5.1 Application
- 5.2 Purpose
- 5.3 Applying for a home finance transaction
- 5.4 Mortgage illustrations: general
- 5.5 Provision of illustrations
- 5.6 Content of illustrations
- 5.7 Business loans
- 5.8 Home purchase plans
- 5.9 Pre-sale disclosure for regulated sale and rent back agreements
- 5 Annex 1 The mortgage illustration: table of contents, prescribed text and prescribed section headings and subheadings.

|               |   |
|---------------|---|
| <b>MCOB 6</b> | <b>Disclosure at the offer stage</b>  |
| 6.1           | Application   |
| 6.2           | Purpose   |
| 6.3           | General   |
| 6.4           | Mortgages: content of the offer document                                      |
| 6.5           | Mortgages: information to be provided in the offer document or separately     |
| 6.6           | Mortgages: offer documents in place of illustrations                          |
| 6.7           | Business loans  |
| 6.8           | Home purchase plans   |
| 6.9           | Regulated sale and rent back agreements                                       |
| 6 Annex 1     | Distance home purchase plans: information to be provided to retail customers. |
| 6 Annex 2     | - Written Pre-offer Document of a regulated sale and rent back agreement.     |
| 6 Annex 3     | - Cooling-Off Document of a regulated sale and rent back agreement.           |

|               |  |
|---------------|--|
| <b>MCOB 7</b> | <b>Disclosure at start of contract and after sale</b>            |
| 7.1           | Application  |
| 7.2           | Purpose  |
| 7.3           | General  |
| 7.4           | Mortgages: disclosure at the start of the contract               |
| 7.5           | Mortgages: statements  |
| 7.6           | Mortgages: event-driven information                              |
| 7.7           | Business loans   |
| 7.8           | Home purchase plans  |
| 7.9           | Post-sale disclosure for regulated sale and rent back agreements |
| 7 Annex 1     | An example of the Total Borrowing section.                       |

|               |   |
|---------------|---|
| <b>MCOB 8</b> | <b>Equity release: advising and selling standard</b>            |
| 8.1           | Application   |
| 8.2           | Purpose   |
| 8.3           | Application of rules in MCOB 4                                  |
| 8.4           | [deleted]   |
| 8.5           | Advised sales   |
| 8.5A          | [Not yet in force]  |
| 8.6           | Non-advised sales   |
| 8.6A          | [Not yet in force]  |
| 8.7           | Initial disclosure information: unauthorised reversion provider |
| 8 Annex 1     | Initial disclosure document                                     |
| 8 Annex 2     | Combined initial disclosure document [deleted]                  |

|               |   |
|---------------|---|
| <b>MCOB 9</b> | <b>Equity release: product disclosure</b>                     |
| 9.1           | Application   |
| 9.2           | Purpose   |
| 9.3           | Pre-application disclosure                                    |
| 9.4           | Content of illustrations                                      |
| 9.5           | Disclosure at the offer stage for equity release transactions |

|                |   |
|----------------|---|
| 9.6            | Disclosure at the start of the contract and after sale for equity release transactions  |
| 9.7            | Disclosure at the start of the contract: lifetime mortgages   |
| 9.8            | Disclosure after sale: lifetime mortgages   |
| 9.9            | Disclosure after sale: home reversion plans   |
| 9 Annex 1      | The illustration: table of contents, prescribed text and prescribed section headings and subheadings (R).                       |
| 9 Annex 2      | The illustration: table of contents, prescribed text and prescribed section headings and sub-headings                           |
| <b>MCOB 10</b> | <b>Annual Percentage Rate</b>   |
| 10.1           | Application   |
| 10.2           | Purpose   |
| 10.3           | Formula and assumptions for calculating the APR   |
| 10.4           | Total charge for credit   |
| 10 Annex 1     | A guide to the substantively identical provisions of MCOB 10 and the Consumer Credit (Total Charge for Credit) Regulations 1980 |
| <b>MCOB 11</b> | <b>Responsible lending, and responsible financing of home purchase plans</b>  |
| 11.1           | Application   |
| 11.2           | Purpose   |
| 11.3           | Responsible lending, and responsible financing of home purchase plans   |
| 11.4           | [Not yet in force]  |
| 11.5           | [Not yet in force]  |
| 11.6           | [Not yet in force]  |
| 11.7           | [Not yet in force]  |
| 11.8           | Customers unable to change regulated mortgage contract, home purchase plan or provider  |
| <b>MCOB 12</b> | <b>Charges</b>  |
| 12.1           | Application   |
| 12.2           | Purpose   |
| 12.3           | Early repayment charges : regulated mortgage contracts  |
| 12.4           | Arrears charges: regulated mortgage contracts   |
| 12.5           | Excessive charges: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements               |
| 12.6           | Business loans  |
| 12.7           | Home purchase plans   |
| <b>MCOB 13</b> | <b>Arrears and repossessions: regulated mortgage contracts and home purchase plans</b>  |
| 13.1           | Application   |
| 13.2           | Purpose   |

|      |  |
|------|--|
| 13.3 | Dealing fairly with customers in arrears: policy and procedures                              |
| 13.4 | Arrears: provision of information to the customer of a regulated mortgage contract           |
| 13.5 | Dealing with a customer in arrears or with a sale shortfall on a regulated mortgage contract |
| 13.6 | Repossessions  |
| 13.7 | Business loans   |
| 13.8 | Home purchase plans  |

## Transitional Provisions and Schedules

|       |                                  |
|-------|----------------------------------|
| TP 1  | Transitional Provisions          |
| TP 2  | Transitional Provisions          |
| TP 3  | Transitional Provisions          |
| Sch 1 | Record keeping requirements      |
| Sch 2 | Notification Requirements        |
| Sch 3 | Fees and other required payments |
| Sch 4 | Powers exercised                 |
| Sch 5 | Rights of action for damages     |
| Sch 6 | Rules that can be waived         |

# Chapter 1

## Application and purpose



## 1.1 Application and purpose

### Application

1.1.1

FCA

G

MCOB applies as described in this chapter.

### Purpose

1.1.2

FCA

G

The purpose of this chapter is to set out to whom, for what activities, and within what territorial limits the *rules*, *evidential provisions* and *guidance* in MCOB apply.



## 1.2 General application: who? what?

1.2.1

FCA

R

- (1) This sourcebook applies to every *firm* that:
  - (a) carries on a *home finance activity* (subject to the business loan application provisions); or
  - (b) *communicates* or *approves* a *financial promotion of qualifying credit*, of a *home purchase plan*, of a *home reversion plan* or of a *regulated sale and rent back agreement*.
  
- (2) Where a *firm* has outsourced activities to a *third party processor*, any *rule* in MCOB which requires the *third party processor*, when acting as such, to disclose its identity to a *customer* must be read as requiring disclosure of the identity of the *firm* (or *appointed representative*, as appropriate) which is taking responsibility for the acts and omissions of the *third party processor* when carrying on the outsourced activities.

1.2.1A

FCA

G

*Firms* which outsource *regulated activities* are reminded of the *guidance* on *outsourcing* in ■ SYSC 3.2.4 G and ■ SYSC 8.

### Firm types and the home finance activities

1.2.2

FCA

G

- (1) This sourcebook applies to activities carried out in respect of four types of product: *regulated mortgage contracts* (which includes *lifetime mortgages*), *home purchase plans*, *home reversion plans* and *regulated sale and rent back agreements*. Together, these products are referred to as *home finance transactions*.
  
- (2) *Lifetime mortgages* and *home reversion plans* are together referred to as *equity release transactions*.
  
- (3) The application of most of this sourcebook is expressed by reference to four types of firm: lenders/providers, administrators, arrangers, and advisers. Arrangers and advisers are together referred to as intermediaries. This includes those firms that provide business loans to customers under a regulated mortgage contracts (see ■ MCOB 1.2.3 R to ■ MCOB 1.2.9 G). A single firm may fall into more than one of these types. PERG 4 contains detailed *guidance* on *regulated mortgage activities* and PERG 14 contains detailed *guidance* on *home purchase activities*, *reversion activities* and *regulated sale and rent back activities*.

**Business loans: application of MCOB**

1.2.3  
FCA

R

In relation to a *regulated mortgage contract* for a business purpose

- (1) *MCOB* applies if the *customer* is not a *large business customer*, and
- (2) if *MCOB* applies, a *firm* must either:
  - (a) comply with *MCOB* in full (disregarding the tailored provisions for *regulated mortgage contracts* for a business purpose in the remainder of *MCOB*); or
  - (b) comply with *MCOB* taking account of those tailored provisions, including ■ **MCOB 1.2.7 R**.

1.2.4  
FCA

G

For detail of the tailored provisions applying, see the section on 'business loans' set out in each relevant chapter.

1.2.5  
FCA

G

- (1) In order for a loan to fall within the definition of a *regulated mortgage contract*, at least 40% of the total of the land to be given as security must be used as or in connection with a dwelling. Therefore, the variation in approach provided for in ■ **MCOB 1.2.3 R(2)** can only apply where the loan being used for a business purpose is secured against a property at least 40 per cent of which is used as a dwelling. It cannot apply to a loan secured on property that is used solely for a business purpose.
- (2) Whether a *regulated mortgage contract* is for a business purpose will be a matter of fact to be determined by a *firm* depending on the individual circumstances of each case. In the *FCA*'s opinion, a *regulated mortgage contract* secured, for example, on the borrower's own home, but used to finance the purchase of a single buy-to-let property will not be for a business purpose.

1.2.6  
FCA

G

In determining whether a *customer* is a *large business customer* for the purposes of ■ **MCOB 1.2.3 R(1)**, a *firm* will need to have regard to the figure given for the *customer*'s annual turnover in the *customer*'s annual report and accounts or business plan. In addition, a *firm* may rely on information provided by the *customer* about the annual turnover, unless, taking a common-sense view of this information, it has reason to doubt it.

**Business loans: additional requirements if tailored route is used**

1.2.7  
FCA

R

In relation to a *regulated mortgage contract* for a business purpose, if a *firm* has opted for the tailored route, it must adopt the following modifications to the sourcebook:

- (1) (except in relation to sections 6 and 8 of any *initial disclosure document* or sections 5 and 8 of any *combined initial disclosure document*) substitute an alternative description of the facility provided under the *regulated mortgage contract* for 'mortgage' where that term is used in any disclosure;



**1.2.8**  
**FCA**

**G**

- (2) substitute the term 'illustration' for 'key facts illustration' when opting to use the tailored business loans *rules* in ■ MCOB 4.9, ■ MCOB 5.7, ■ MCOB 6.7 or ■ MCOB 7.7; and
  - (3) limit disclosure to facilities provided under the *regulated mortgage contract*.
- (1) *Firms* are reminded of the requirement in ■ MCOB 2.2.6 R that any communication should be clear, fair and not misleading when substituting an alternative for the term 'mortgage' in accordance with ■ MCOB 1.2.7 R(1).
- (2) Possible alternatives to the term 'mortgage' include, for example, 'secured business overdraft', 'secured loan' or 'secured business credit'.

**1.2.9**  
**FCA**

**G**

The disclosure *rules* in MCOB place particular emphasis on the description of borrowing. Where the *regulated mortgage contract* is for a business purpose, a *firm* should reflect this emphasis in any disclosure by first describing any borrowing before addressing the other facilities provided under the *regulated mortgage contract*.

**Home purchase plans**

**1.2.9A**  
**FCA**

**G**

For detail of the tailored provisions applying to *home purchase plans*, see the section on 'home purchase plans' set out in each relevant chapter.

**Authorised professional firms**

**1.2.10**  
**FCA**

**R**

MCOB does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for:

- (1) ■ MCOB 2.2 (Communications);
- (2) ■ MCOB 3 (Financial promotion); and
- (3) initial disclosure requirements but only as regards providing the information contained in section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme?) of an *initial disclosure document* or *combined initial disclosure document* (see ■ MCOB 4.4 and ■ MCOB 4.10).

**1.2.11**  
**FCA**

**G**

*Authorised professional firms* should be aware of the following:

- (1) ■ PROF 5 (Non-mainstream regulated activities); and
- (2) ■ MCOB 3.1.9 R (Authorised professional firms) and the exception in article 55 of the *Financial Promotion Order* (Communications by members of the professions) which applies in relation to *financial promotion of qualifying credit* or of a *home reversion plan* of *authorised professional firms* under ■ MCOB 3.2.5 R(3) (Exemptions).

**Pre-contractual arrangements by a home finance provider**

1.2.12

FCA

R

In MCOB the activities of a *home finance provider* which would be *arranging* but for article 28A of the *Regulated Activities Order* (Arranging contracts or plans to which the arranger is a party), are to be treated as *arranging* and therefore also as *home finance activities*.

1.2.13

FCA

G

The effect of article 28A of the *Regulated Activities Order* would normally mean that arrangements made by a party to a *home finance transaction* would not fall within the *home finance activity* of *arranging*. So in a direct sale, a *home finance provider* would not be carrying on the *regulated activity* of *arranging* but, where the transaction proceeds to completion, would instead be involved in a *regulated activity* comprising *entering into a home finance transaction*. However, the provisions in MCOB on arranging *home finance transactions* are applied to pre-contractual arrangements by a *home finance provider*.

**[deleted]**

1.2.14

G

[deleted]

## 1.3 General application: where?

### Location of the customer

1.3.1

FCA

R

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

- (1) the *United Kingdom*; or
- (2) another *EEA State*, but in this case only if the activity is carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*;

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

### Financial Promotion

1.3.2

FCA

R

The territorial scope of ■ *MCOB 3* (Financial promotion) is set out in ■ *MCOB 3.3* (Application: where?) rather than in this section.

### Electronic commerce activities and communications

1.3.3

FCA

R

This sourcebook does not apply to an *incoming ECA provider* acting as such.

### Distance contracts entered into from an establishment in another EEA State

1.3.4

FCA

R

- (1) The *rules* in (2) do not apply to a *firm* with respect to a *regulated mortgage activity* or a *home purchase activity* exclusively concerning a *distance contract* if the following conditions are satisfied:

- (a) the *firm* carries on the activity from an establishment maintained by the *firm* in an *EEA State* other than the *United Kingdom*; and
- (b) either the *EEA State*:
  - (i) has implemented the *Distance Marketing Directive*; or
  - (ii) has obligations in its domestic law corresponding to those provided for by the *Distance Marketing Directive*;

and, in either case, with the result that the obligations provided for by the *Distance Marketing Directive* (or corresponding

obligations) are applied by that State when the *firm* carries on that activity; and

- (c) the *firm* is a national of an *EEA State* or a company or firm mentioned in article 54 of the *Treaty*.

(2) The *rules* which do not apply are:

- (a) initial disclosure requirements in ■ MCOB 4.4 (in respect of *regulated mortgage contracts*) and ■ MCOB 4.10 (in respect of *home purchase plans*);
- (b) ■ MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts and distance home purchase mediation contracts with *consumers*);
- (c) ■ MCOB 4.6 (Cancellation of distance mortgage mediation contracts) and distance home purchase mediation contracts);
- (d) ■ MCOB 5 (Pre-application disclosure);
- (e) ■ MCOB 6 (Disclosure at offer stage);
- (f) ■ MCOB 7.6.7 R to ■ MCOB 7.6.17 R (Further advances);
- (g) ■ MCOB 8.3 (Application of rules in ■ MCOB 4) to the extent that it applies ■ MCOB 4.4 to ■ MCOB 4.6;
- (h) [deleted]
- (i) ■ MCOB 9.3 (Pre-application disclosure);
- (j) ■ MCOB 9.4 (Content of illustrations); and
- (k) ■ MCOB 9.5 (Disclosure at offer stage for equity release transactions).

### Distance contracts with retail customers

Parts of MCOB relate to *distance contracts* (or *distance mortgage mediation contracts* and *distance home purchase mediation contracts*) with *consumers*. These expressions are derived from the *Distance Marketing Directive*, and the following paragraphs provide some *guidance* to *firms* on their meaning:

- (1) *consumer*

The *Distance Marketing Directive* applies for *distance contracts* with 'any natural person who is acting for purposes which are outside his trade, business or profession', for which the term '*consumer*' has been adopted. Examples of individuals who would be regarded as *consumers* include:

- (a) personal representatives, including executors, unless they are acting in a professional capacity, for example a solicitor acting as executor; or
- (b) private individuals acting in personal or other family circumstances, for example, a trustee of a family trust.

1.3.5

FCA

G

(2) *Distance contract*

To be a *distance contract*, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication up to and including the time at which the contract is concluded. So:

- (a) the *firm* must have put in place facilities designed to enable a *customer* to deal with it exclusively at a distance, such as facilities for a *customer* to deal with it purely by post, telephone, fax or the Internet. If a *firm* normally operates face-to-face and has no facilities in place enabling a *customer* to deal with it customarily by distance means, the *Distance Marketing Directive* will not apply. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*; and
- (b) there must have been no simultaneous physical presence of the *firm* and the other party to the contract throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the Internet, through a telemarketing operation, or by post will normally be *distance contracts*.

**Use of intermediaries**

1.3.6  
FCA

G

The mere fact that an intermediary (acting for the supplier or for the *consumer*) is involved, does not make the sale of a financial product or service a *distance contract*. There will not be a *distance contract* if there has been simultaneous physical presence of the intermediary and the *consumer* at some stage in the offer, negotiation and conclusion of the contract.

**1**



**1.4** [deleted]

**1.4.1**

[Deleted]



## 1.5 Application to appointed representatives

1.5.1

FCA

G

- (1) Although *MCOB* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the *Act*). In determining whether a *firm* has complied with any provision of *MCOB*, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the *Act*).
- (2) *Firms* should refer to ■ SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives*.

## 1.6 Application to mortgages in relation to the Consumer Credit Act 1974

- 1.6.1** **FCA** **G** MCOB applies to *regulated mortgage contracts* entered into on or after 31 October 2004. Variations made on or after that date to contracts entered into before that date are not subject to FCA regulation but may be subject to the Consumer Credit Act 1974. PERG 4.4.13G contains *guidance* on the variation of contracts entered into before 31 October 2004.
- 1.6.2** **FCA** **G** *Principle 2* requires a *firm* to conduct its business with due skill, care and diligence. The purpose of **■ MCOB 1.6.3 R** is to reinforce this. The FCA would expect *firms* to take appropriate steps to determine whether any mortgage it proposes to enter into is subject to FCA regulation.
- 1.6.3** **FCA** **R** Before a *firm* enters into a mortgage, it must take all reasonable steps to establish whether that mortgage will be a *regulated mortgage contract* and therefore subject to MCOB.
- 1.6.4** **FCA** **R** If, notwithstanding the steps taken by a *firm* to comply with **■ MCOB 1.6.3 R**, it transpires that a mortgage which the *firm* has treated as unregulated is in fact a *regulated mortgage contract*, the *firm* must as soon as practicable after the correct status of the mortgage has been established:
- (1) contact the *customer* and provide him with the following information in a *durable medium*:
    - (a) a statement that the mortgage contract is a *regulated mortgage contract* subject to FCA regulation, stating in particular the position with regard to redress and compensation; and
    - (b) (where relevant) a statement that the Consumer Credit Act 1974 will not apply to the mortgage contract and that any Consumer Credit Act rights or requirements set out in previous communications will not apply;
  - (2) apply to the *regulated mortgage contract* all relevant MCOB requirements, such as those on disclosure (in **■ MCOB 7**) or on the treatment of *customers in arrears* (in **■ MCOB 13**).



1.6.5

FCA

G

- (1) ■ MCOB 1.6.4 R(2) means, for example, that if a *firm* discovered immediately after completion that a loan was a *regulated mortgage contract*, the *firm* would be required to comply with ■ MCOB 7.4 (Disclosure at the start of the contract).
- (2) Although ■ MCOB 1.6.4 R recognises that *firms* may become aware that a mortgage is a *regulated mortgage contract* at a late stage, the *FCA* expects this to be an extremely rare occurrence. It could arise, for example, if a *firm* has acted on the understanding, verified as far as was practicable, that in respect of a particular mortgage contract less than 40% of the land would be used in connection with a dwelling. If it was discovered later that more than 40% of the land was used in connection with the dwelling (and provided that all the other legal requirements were met) the mortgage will be a *regulated mortgage contract* to which *MCOB* applies.
- (3) ■ MCOB 1.6.3 R and ■ MCOB 1.6.4 R do not override the application of *MCOB* to any *regulated mortgage contract*. *MCOB* applies notwithstanding a *firm's* genuine belief that a mortgage is unregulated. In deciding whether to take disciplinary action as a result of a breach of *MCOB*, the *FCA* will take into account whether the action by the *firm* was reckless or deliberate (see ■ DEPP 6.2.1 G (1)(a)).



---

**[deleted]**

**1**



---

**[deleted]**

**1**



---

**[deleted]**

**1**





---

**[deleted]**

**1**



## Chapter 2

# Conduct of business standards: general

## 2.1 Application

### Who?

2.1.1  
FCA

**R** This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 2.1.2 R in accordance with column (2) of that table.

2.1.2  
FCA

**R** Table This table belongs to ■ MCOB 2.1.1 R

| (1) Category of firm               | (2) Applicable section   |
|------------------------------------|--|
| <i>mortgage lender</i>             | <b>whole chapter except MCOB 2.2.6A R, MCOB 2.2.8A R, MCOB 2.2.8B G, MCOB 2.6A and MCOB 2.8.6 G</b>  |
| <i>mortgage administrator</i>      |  |
| <i>mortgage adviser</i>            |  |
| <i>mortgage arranger</i>           |  |
| <i>home purchase provider</i>      | <b>MCOB 2.1, MCOB 2.2.1 G, MCOB 2.2.6 R to MCOB 2.2.9 G, MCOB 2.5, MCOB 2.6, MCOB 2.6A.1 R to MCOB 2.6A.4 G, MCOB 2.6A.7 G to MCOB 2.6A.10 G, MCOB 2.7.4 R to MCOB 2.7.6 R, MCOB 2.7A and MCOB 2.8.6 G</b> |
| <i>home purchase administrator</i> | <b>As for a <i>home purchase provider</i> but MCOB 2.6A.1 R to MCOB 2.6A.4 G and MCOB 2.6A.7 G do not apply</b>  |
| <i>home purchase adviser</i>       | <b>As for a <i>home purchase provider</i> but MCOB 2.6A does not apply</b>   |
| <i>home purchase arranger</i>      |  |
| <i>reversion provider</i>          | <b>whole chapter except MCOB 2.2.6A R, MCOB 2.2.8A R and MCOB 2.2.8B G, MCOB 2.6A.7 G, MCOB 2.7.4 R to MCOB 2.7.6 R and MCOB 2.8.6 G</b>   |
| <i>reversion administrator</i>     | <b>As for a <i>reversion provider</i> but the relevant provisions of MCOB 2.6A apply only when <i>arranging</i> for a</b>  |
| <i>reversion arranger</i>          |  |

| (1) Category of firm   | (2) Applicable section   |
|--|--|
| <i>reversion adviser</i>   | <i>home reversion plan to be entered into by a reversion occupier with, or administering a home reversion plan provided by, an unauthorised reversion provider.</i>  |
| <i>SRB administrator</i>   | As for a reversion provider but MCOB 2.6A does not apply   |
| <i>SRB adviser</i>   | MCOB 2.1, MCOB 2.2.1 G, MCOB 2.2.2 G, MCOB 2.2.3 R, MCOB 2.2.6 R, MCOB 2.2.7 G, MCOB 2.2.8 G, MCOB 2.5 , MCOB 2.6, MCOB 2.6A.5BR (5), MCOB 2.6A.8 R to MCOB 2.6A.11 G, MCOB 2.6A.17A R, MCOB 2.6A.18 G, MCOB 2.7.1 G to MCOB 2.7.5 R, MCOB 2.7A, MCOB 2.8.1 G to MCOB 2.8.5 G. |
| <i>SRB agreement provider</i>  | Whole chapter except MCOB 2.2.5 G, MCOB 2.2.6A R, MCOB 2.2.8A R, MCOB 2.2.8B G, MCOB 2.6A.5 R, MCOB 2.6A.7 G, MCOB 2.6A.17 R and MCOB 2.8.6 G.   |
| <i>SRB arranger</i>  | Whole chapter except MCOB 2.2.5 G, MCOB 2.2.6A R, MCOB 2.2.8A R, MCOB 2.2.8B G, MCOB 2.6A.5 R, MCOB 2.6A.7 G, MCOB 2.6A.17 R and MCOB 2.8.6 G.   |
| <i>a firm that communicates or approves a financial promotion of qualifying credit or of a home reversion plan</i> | MCOB 2.5, MCOB 2.6, MCOB 2.7 (except, when the financial promotion relates to a home reversion plan, MCOB 2.7.4 R to MCOB 2.7.6 R) , MCOB 2.7A and MCOB 2.8 (except MCOB 2.8.6 G)  |
| <i>a firm that communicates or approves a financial promotion of a home purchase plan</i>                          | MCOB 2.2.6 R to MCOB 2.2.9 G, MCOB 2.5, MCOB 2.6, MCOB 2.7, MCOB 2.7A and MCOB 2.8.6 G   |

**What?**

This chapter applies in relation to:

- (1) *home finance activities;*

- 2
- (1A) to the extent specified in ■ MCOB 2.1.2 R, *regulated sale and rent back activity*;
  - (2) those activities in ■ MCOB 12 and ■ MCOB 13 that are carried on after a *regulated mortgage contract* or *home purchase plan* has come to an end following the sale of a *repossessed* property , and those activities in ■ MCOB 12 that are carried on after a *home reversion plan* has ended for any reason ; and
  - (3) the *communication* or *approval* of a *financial promotion* of *qualifying credit*, of a *home purchase plan*, of a *home reversion plan* or of a *regulated sale and rent back agreement*.



## 2.2 Communications

### Purpose

2.2.1  
FCA

G

The purpose of ■ MCOB 2.2 is to restate, in slightly amended form, and as a separate *rule*, the part of *Principle 7* (Communications with clients) that relates to communication of information. This enables a *customer*, who is a *private person*, to bring an action for damages under section 138D (Contravention of rules) of the *Act* to recover loss resulting from a *firm* that carries on the activities referred to in ■ MCOB 2.1.3 R communicating information, in the course of those activities, in a way that is not clear or fair, or that is misleading. ■ MCOB 2.2 also clarifies the expectations of the *FCA* where any *rule* requires the provision of information and there are two or more *customers*.

### General

2.2.2  
FCA

G

In many circumstances there will be two or more *customers* under any *home finance transaction*, or two or more prospective *customers* looking to enter into the same *home finance transaction*. In such circumstances, where a *rule* in *MCOB* requires the provision of information to such *customers* and the *customers* have different addresses, a *firm* sending out this information should send it to each address. If the *customers* share the same address it will be sufficient to send a single copy of the information addressed to each of the *customers*.

### Prescribed terms for regulated mortgage contracts , home reversion plans and regulated sale and rent back agreements

2.2.3  
FCA

R

In any communication to a *customer*, a *firm* must:

- (1) describe any *early repayment charge* as an 'early repayment charge';
- (2) describe any *higher lending charge* as a 'higher lending charge' ;
- (3) describe any *lifetime mortgage* as a 'lifetime mortgage' ;
- (4) describe any *home reversion plan* as a 'home reversion plan'; and
- (5) describe any *regulated sale and rent back agreement* as a 'sale and rent back agreement';

and not use any other expression to describe them.

|   |            |   |
|---|------------|---|
| 2.2.4   | <b>R</b>   | [deleted]   |
| <b>Related investment advice</b>  |            |   |
| 2.2.5   | <b>G</b>   | <i>Firms are reminded that they should follow the relevant rules in ■ COBS 6 and ■ COBS 13 relating to advice and disclosure on investments if they are advising the customer on an investment such as an annuity associated with an equity release transaction or an ISA used as a repayment vehicle.</i>  |
| 2.2.5   | <b>FCA</b> |   |
| <b>Clear, fair and not misleading communications and financial promotions</b> |            |   |
| 2.2.6   | <b>R</b>   | (1) <b>When a firm communicates information to a customer, it must take reasonable steps to communicate in a way that is clear, fair and not misleading.</b>  |
| 2.2.6   | <b>FCA</b> |   |
|   |            | (2) [deleted]   |
| 2.2.6A  | <b>R</b>   | <b>A firm which approves a financial promotion of a home purchase plan must take reasonable steps to ensure that the financial promotion is clear, fair and not misleading.</b>   |
| 2.2.6A  | <b>FCA</b> |   |
| 2.2.7   | <b>G</b>   | When considering how to comply with the requirements of these rules on clear, fair and not misleading communications and financial promotions, a firm should have regard to the customer's knowledge of the home finance transaction to which the information relates.  |
| 2.2.7   | <b>FCA</b> |   |
| 2.2.8   | <b>G</b>   | The rule on clear, fair and not misleading communications covers all communications with customers, for example any oral or written statements, telephone calls and any correspondence which is not a financial promotion to which ■ MCOB 3 (Financial promotion) applies. In respect of financial promotions of qualifying credit, of home reversion plans or of regulated sale and rent back agreements, firms should note the separate requirements of ■ MCOB 3. |
| 2.2.8   | <b>FCA</b> |   |
| 2.2.8A  | <b>R</b>   | <b>If a firm uses a figure equivalent to an APR in a communication of a financial promotion of a home purchase plan, when calculating that figure it must use an approach equivalent to the APR rules.</b>  |
| 2.2.8A  | <b>FCA</b> |   |
| 2.2.8B  | <b>G</b>   | The following guidance may be relevant to a firm that communicates or approves a financial promotion of a home purchase plan:   |
| 2.2.8B  | <b>FCA</b> |   |
|   |            | (1) guidance on what 'communicate', 'approve' and 'financial promotion' mean, and on the media of communication to which financial promotion rules apply (see ■ MCOB 3.2.1 G and ■ MCOB 3.2.2 G);   |
|   |            | (2) guidance on other Handbook provisions relevant to financial promotions (see ■ MCOB 3.2.8 G to ■ MCOB 3.2.9 G);  |
|   |            | (3) guidance on other regulations and guidelines relevant to financial promotions (see ■ MCOB 3.5.3 G);   |
|   |            | (4) guidance on referring to the FCA (see ■ MCOB 3.6.2 G (3));  |



- (5) guidance on the clear, fair and not misleading standard (see ■ MCOB 3.6.5 G, ■ MCOB 3.6.10 G and ■ MCOB 3.6.14 G); and
- (6) guidance on the use of the Internet for *communicating financial promotions* (see ■ MCOB 3.12 and ■ PERG 8.22).

**2.2.9**

**FCA**

**G**

Prominence of relevant information can play a key role in ensuring that a communication is clear, fair and not misleading. Where this is the case, the *firm* should consider prominence in the context of the communication as a whole. Use can be made of the positioning of text, background and text colour and type size to ensure that specified information meets the requirements of *MCOB*.

**2**



## 2.3 Inducements: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements

### Purpose

2.3.1  
FCA

G

The purpose of ■ MCOB 2.3 is to ensure, in accordance with *Principles 1, 6 and 8*, that a *firm* does not conduct business under arrangements that might give rise to a conflict with its duty to *customers* or to unfair treatment of them.

### Prohibition of inducements

2.3.2  
FCA

R

A *firm* must take reasonable steps to ensure that it, and any *person* acting on its behalf, does not:

- (1) offer, give, solicit or accept an inducement; or
- (2) direct or refer any actual or potential business in relation to a *regulated mortgage contract, home reversion plan or regulated sale and rent back agreement* to another *person* on its own initiative or on the instructions of an *associate*;

if it is likely to conflict to a material extent with any duty that the *firm* owes to its *customers* in connection with such a *home finance transaction* or any duty which such a recipient *firm* owes to its *customers* in connection with such a *home finance transaction*.

2.3.3  
FCA

G

An inducement is a benefit offered with a view to bringing about a particular course of action.

2.3.4  
FCA

G

The purpose of ■ MCOB 2.3.2 R(2) is to prevent the requirement in ■ MCOB 2.3.2 R(1) being circumvented by an inducement being given or received by an unregulated *associate*. There may be circumstances, however, where a *firm* is able to demonstrate that it could not reasonably have knowledge of an *associate* giving or receiving an inducement. It should not, however, direct business to another *person* on the instruction of an *associate* if this is likely to conflict with the interests of its *customers*.

2.3.5  
FCA

G

■ MCOB 2.3.2 R does not prevent a *firm*:

- (1) assisting a *home finance intermediary* so that the quality of the *home finance intermediary's* service to *customers* is enhanced; or

- (2) giving or receiving indirect benefits (such as gifts, hospitality and promotional competition prizes);

providing in either case this is not likely to give rise to a conflict with the duties that the recipient owes to the *customer*. In particular, such benefits should not be of a kind or value that is likely to impair the ability of a *firm* to act in compliance with any *rule* in MCOB, for example the suitability requirements in ■ MCOB 4.7 (Advised sales).

2.3.6  
FCA

**R**

- (1) A *firm* must not operate a system of giving or offering inducements to a *mortgage intermediary*, *reversion intermediary*, *SRB intermediary* or any other third party whereby the value of the inducement increases if the intermediary or third party, such as a packager, exceeds a target set for the amount of business referred (for example, a volume override).
- (2) A *firm* must not solicit or accept an inducement whereby the value of the inducement increases if the *firm* exceeds a target set for the amount of business referred.

**Quantification of inducements**

2.3.7  
FCA

**R**

- (1) A *mortgage lender*, *reversion provider* or *SRB agreement provider* must quantify, in cash terms, any material inducement it offers to a *mortgage intermediary*, *reversion intermediary*, *SRB intermediary* or a third party.
- (2) In quantifying the value of the material inducement, the *firm* must include any subsequent payments (such as a trail fee) made where the *customer* continues with the same *home finance transaction*.

2.3.8  
FCA

**G**

- (1) Quantification of any material inducement offered by the *mortgage lender* or *reversion provider* supports the disclosure requirements elsewhere in MCOB. Further *guidance* on the disclosure of any inducement in cash terms is provided in ■ MCOB 5.6.118 G for *regulated mortgage contracts* other than *lifetime mortgages*, ■ MCOB 9.4.124 G for *lifetime mortgages* and ■ MCOB 9.4.173 G for *home reversion plans*.
- (1A) Quantification of any material inducement offered by a *SRB agreement provider* in connection with the conclusion of a *regulated sale and rent back agreement* must be included in the disclosures made to the potential *SRB agreement seller* under ■ MCOB 5.9.1 R (1A)(c).
- (2) A payment made to a third party unconnected with the *home finance intermediary*, where that payment only reflects the cost of outsourcing work relating to the processing of mortgage applications, would not be considered an inducement for these purposes.

**2.4 High pressure sales: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements**

**Purpose**

2.4.1  
FCA

G

The purpose of this section is to remind *firms* of the relevance of the high level standards in *PRIN*, especially with regard to the use of sales methods that may lead a *customer* to feel pressurised to enter into, or vary, a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement*.

**Fair treatment**

2.4.2  
FCA

G

- (1) *Principle 6* (Customers' interests) requires that a *firm* must pay due regard to the interests of its *customers* and treat them fairly. This means, for example, that a *firm* should avoid selling practices that commit *customers* (or lead *customers* to believe that they are committed) to any *regulated mortgage contract* or *home reversion plan* before they have been able to consider the *illustration* and *offer document*. One such practice might be to present a new *customer* with an *illustration*, *offer document* and mortgage deed at one time and to require the mortgage deed to be signed on the same occasion (when there is no urgent need to do so).
- (2) For *regulated sale and rent back agreements*, the *firm* should avoid practices that commit *customers* (or lead *customers* to believe they are committed) to any such agreement before they have been able to consider the information that is required by ■ MCOB 5.9.1 R (Pre-sale disclosure) and before the expiry of the 14 day cooling-off period as required by ■ MCOB 6.9.4 R (Written pre-offer document: Stage One).

**Information**

2.4.3  
FCA

G

*Principle 7* (Communications with clients) requires that a *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading. This means, for example, that a *firm* should avoid giving any *customer* a false impression about the availability of a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement*, such as describing it as a 'special offer' not available after a certain date unless this is really the case.



## 2.5 Reliance on others

### Purpose

2.5.1

FCA

G

*Principle 2* requires a *firm* to conduct its business with due skill, care and diligence.

■ MCOB 2.5 indicates the extent to which *firms* that carry on *home finance activities* and that *communicate* or *approve* a *financial promotion* can meet this requirement by relying on others.

### When firms can rely on others

2.5.2

FCA

R

A *firm* will be taken to be in compliance with any *rule* in MCOB that requires a *firm* to obtain information to the extent that the *firm* can show that it was reasonable for it to rely on information provided to it by another *person*.

2.5.3

FCA

A

(1) In relying on ■ MCOB 2.5.2 R, a *firm* should take reasonable steps to establish that the other *person* providing the information is:

- (a) not connected with the *firm*; and
- (b) competent to provide the information.

(2) Compliance with (1) may be relied on as tending to establish compliance with ■ MCOB 2.5.2 R.

(3) Contravention of (1) may be relied on as tending to establish contravention of ■ MCOB 2.5.2 R.

2.5.4

FCA

R

(1) Any information which a *rule* in MCOB requires to be sent to a *customer* may be sent to another *person* on the instruction of the *customer*, so long as the recipient is not connected with the *firm*.

(2) There is no need for a *firm* to send information to a *customer* where it has taken reasonable steps to establish that this has been or will be supplied by another *person*.



**2.5A [Not yet in force]**



## 2.6 Exclusion of liability

### Purpose

2.6.1  
FCA

G

*Principle 6* (Customers' interests) requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. A *firm* may not exclude the duties it owes or the liabilities it has to a *customer* under the *regulatory system*. It may exclude other duties and liabilities only if it is reasonable for it to do so.

### Limits on the exclusion of liability

2.6.2  
FCA

R

A *firm* must not, in any written or oral communication, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability it may have to a *customer* under the *regulatory system*.

2.6.3  
FCA

R

A *firm* must not, in any written or oral communication to a *customer*, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability not referred to in ■ MCOB 2.6.2 R unless it is reasonable for it to do so.



## 2.6A Protecting customer's interests: home purchase plans, home reversion plans and regulated sale and rent back agreements

2.6A.1  
FCA

**R**

A *firm* must ensure that the interests of its *customer* under a *home purchase plan*, *home reversion plan* or *regulated sale and rent back agreement* are protected to a reasonable standard.

2.6A.2  
FCA

**G**

Circumstances that a *firm* should consider include how the *customer* will be protected in the event of:

- (1) the *failure* of a *reversion provider*, *home purchase provider* or *SRB agreement provider*;
- (2) the transfer of a *reversion provider's*, *home purchase provider's* or *SRB agreement provider's* interest (or the interest the provider would have had, had it not nominated a third party to hold it) in the property to a third party;
- (3) other dealings by a *reversion provider*, *home purchase provider* or *SRB agreement provider* (or its nominee) with a third party; and
- (4) a *reversion provider's*, *home purchase provider's* or *SRB agreement provider's* (or its nominee's) failure to perform obligations owed to third parties, or imposed by statute.

2.6A.3  
FCA

**G**

The steps that a *firm* might take in order to protect its *customer's* interests will depend on a number of factors, including the nature and structure of the *home purchase plan*, *home reversion plan* or *regulated sale and rent back agreement* and the jurisdiction in which the property is situated. If it is not possible to achieve reasonable protection (for example, due to impediments under a particular legal system) then a *firm* should not enter into, arrange or administer the plan.

2.6A.4  
FCA

**G**

- (1) In the *FCA's* view, a *customer's* interests will include:
  - (a) protection of the *customer's* rights under the plan, in particular the right to occupy the property throughout its term;
  - (b) protection of any interest (legal or beneficial) that the *customer* retains, acquires or is intended to acquire in the property, including the expectation that such interests will be unencumbered by third party interests;
  - (c) that, where a *customer* pays sums under a *home purchase plan* towards the purchase price of the property, those sums will be applied towards the purchase price. Or, in circumstances where that is not practicable



(for example, on *repossession*), that an appropriate amount will be returned to the *customer* ; and

- (d) a *customer's* contractual entitlement to receive certain sums back after a qualifying period, such as where it has been agreed that a certain percentage of discount will be refunded to the *customer* after a set period of tenancy.

(2) The protections that a *firm* should consider include:

- (a) the extent to which different forms of tenure protect the tenant's right to occupy the property and afford protection against removal. In particular, granting the *customer* a licence to occupy the property is unlikely to provide an adequate level of security;
- (b) (except in Scotland) the need for any agreement under which a *customer* has a right to acquire an interest in the property to be specifically enforceable;
- (c) the extent to which appropriate registrations, restrictions, notices or other entries should be made in the relevant land register;
- (d) the timing of entries in the relevant land register and who should be responsible for making them; and
- (e) the *customer's* need for a full and clear understanding of all the steps that the *firm* expects him or his advisers to take to protect his interests both at the time the plan is entered into, and throughout its duration.

**Protecting customers' interests: additional material for home reversion plans**

2.6A.5  
FCA

**R**

Unless it is satisfied on reasonable grounds based on the *customer's* knowledge, expertise and experience that it is unnecessary, a *firm* must obtain from its *customer's* legal adviser, before its *customer* enters into a *home reversion plan*, confirmation that:

- (1) he has been instructed to ensure that the *customer's* legal rights under the plan are protected to a reasonable standard; and
- (2) he has explained to the *customer* those aspects of the *customer's* legal rights and obligations under the *home reversion plan* that he needs to understand.

**Protecting customer's interests: regulated sale and rent back agreements**

2.6A.5A  
FCA

**R**

A *firm* must ensure that before a *SRB agreement seller* enters into a *regulated sale and rent back agreement*, the *SRB agreement seller* is made aware of the availability and importance of independent legal or professional advice.

**Protecting customers' interests under regulated sale and rent back agreements: security of tenure**

2.6A.5B  
FCA

**R**

- (1) When entering into a *regulated sale and rent back agreement*, a *firm* must ensure that, under the terms of the *regulated sale and rent back agreement*:

- (a) the entitlement of the *SRB agreement seller* (or trust beneficiary or related person) to occupy the property is governed by a tenancy, which is structured:
    - (i) if the property is in England and Wales, as an assured tenancy (including an assured shorthold tenancy) under the Housing Act 1988 (as amended);
    - (ii) if the property is in Scotland, as an assured tenancy (including a short assured tenancy) under the Housing (Scotland) Act 1988, (as amended); and
    - (iii) if the property is in Northern Ireland, as a private tenancy under the Private Tenancies (Northern Ireland) Order 2006;
  - (b) the tenancy is for a fixed term of no less than five years;
  - (c) the terms of the tenancy provide for the tenant to terminate the tenancy during the fixed term on no more than three months' notice (and with no other conditions attached); and
  - (d) each of the terms of the tenancy is fair.
- (2) When entering into a *regulated sale and rent back agreement*, a *firm* must ensure that, under the terms of the *regulated sale and rent back agreement*, if the property is in England and Wales, the terms of the tenancy do not:
- (a) give the landlord power to determine the tenancy in certain circumstances as referred to in section 5(1) of the Housing Act 1988, as amended; or
  - (b) otherwise make provision for the tenancy to be brought to an end by the landlord save on a ground or grounds for possession applicable for an assured tenancy under the Housing Act 1988, as amended; or
  - (c) make provision for the tenancy to be brought to an end on any of Grounds 2, 6, 8 or 9 under the Housing Act 1988, as amended.
- A *firm* may not rely during the fixed term of the tenancy on any ground for possession of the property other than a ground for possession on which the terms of the tenancy may under this paragraph (2) make provision for the tenancy to be brought to an end by the landlord, and a *firm* may only rely on any ground for possession if it is fair for the *firm* to do so.
- (3) When entering into a *regulated sale and rent back agreement*, a *firm* must ensure that, under the terms of the *regulated sale and rent back agreement*, if the property is in Scotland, the terms of the tenancy do not include:

- (a) any provision for it to be brought to an end by the landlord during the fixed term other than a ground for possession applicable for an assured tenancy under the Housing (Scotland) Act 1988, as amended; or
- (b) Grounds 2, 6, 8 or 9 under the Housing (Scotland) Act 1988, (as amended).

A *firm* may not rely during the fixed term of the tenancy on any ground for possession of the property other than the grounds permitted under this paragraph (3) to be included in the terms of the tenancy, and a *firm* may only rely on any ground for possession if it is fair for the *firm* to do so.

- (4) When entering into a *regulated sale and rent back agreement*, a *firm* must ensure that, under the terms of the *regulated sale and rent back agreement*, if the property is in Northern Ireland, the terms of the tenancy do not include:
  - (a) any provision which would permit the landlord to forfeit the lease and obtain possession of the property during the fixed term unless the provision is equivalent to a ground for possession applicable for an assured tenancy under Schedule 2 to the Housing Act 1988, as amended, in England; or
  - (b) any provision which would permit the landlord to forfeit the lease and obtain possession of the property on the basis that:
    - (i) a mortgagee (or chargee) under a mortgage (or charge) entered into by the landlord requires vacant possession for the purposes of exercising a power of sale of the property; or
    - (ii) the landlord intends to demolish or reconstruct, or carry out substantial works on, the property or any part of the property; or
    - (iii) there are arrears of rent, unless the conditions applicable to either Ground 9 or Ground 10 under the Housing Act 1988, as amended, in England, are satisfied; or
    - (iv) alternative accommodation is available for the tenant.

A *firm* may not rely during the fixed term of the tenancy on any circumstance to forfeit the lease and obtain possession of the property other than the circumstances permitted under this paragraph (4) to be included in the tenancy agreement, and a *firm* may only rely on any circumstance if it is fair for the *firm* to do so.

- (5) A *firm* must not take, or propose or threaten to take, any steps to evict the *SRB agreement seller* (or trust beneficiary or related person) other than by applying to the court for a possession order

based on the grounds or circumstances, reliance on which is not prohibited by this *rule*, and enforcing that order in a lawful manner.

- (6) Where a *SRB agreement provider* enters into or proposes to enter into (whether before or after the commencement of the tenancy) a mortgage (or charge or standard security) over the interest it obtains under a *regulated sale and rent back agreement*, the *firm* must ensure that the mortgagee (or chargee or security holder) has agreed in writing to the proposed letting under the agreement, and to the terms of the agreement. The *firm* must provide to the *SRB agreement seller* a copy of the agreement in writing of the mortgagee (or chargee or security holder).

[Note: In England, Wales and Scotland a landlord, such as a *SRB agreement provider*, can only seek possession of a property during the fixed term of an assured tenancy if one or more of a limited number of grounds for possession set out in (in England and Wales) the Housing Act 1988, as amended, or (in Scotland) the Housing (Scotland) Act 1988, as amended, applies and the terms of the tenancy make provision for it to be ended on any of these grounds. Once the fixed term of the assured tenancy has ended, the landlord has the right to seek possession on broader grounds. Where the tenancy is (in England) an assured shorthold tenancy or (in Scotland) a short assured tenancy, the landlord has an additional right to seek possession from the end of the fixed term.

In Northern Ireland, the position is governed by the Private Tenancies (Northern Ireland) Order 2006 and the parties are free to agree the terms of a tenancy including its duration and the grounds on which the landlord may seek possession, including during any fixed term.

In any event it is for the court to decide whether one or more of the grounds for possession actually applies in the particular circumstances of any case.

In Northern Ireland, a tenant must give at least four weeks' notice to quit. Northern Ireland law implies a fixed term of six months in a private tenancy unless the parties agree an alternative fixed term, so a notice to quit expiring before the first six months of the tenancy may not be effective.]

2.6A.5C

FCA

G

In the light of ■ MCOB 2.6A.5BR (1)(c), and in accordance with *Principle 6*, a *firm* should not seek to prevent a tenant in Northern Ireland from ending the tenancy on less than the agreed notice period (not exceeding three months in accordance with ■ MCOB 2.6A.5BR (1)(c)), where the notice is given in the first six months of the tenancy.

2.6A.6

FCA

G

*Firms* remain responsible for ensuring that their *customers'* interests are protected to a reasonable standard.

**Protecting customers' interests: additional material for home purchase plans**

2.6A.7  
FCA

G

A *home purchase provider* should consider obtaining confirmation from the *customer's* legal adviser that he has carried out, or will carry out, the steps that the *firm* expects the *customer* or his legal advisers to take to protect his interests at the time the plan is taken out.

**Treating customers fairly: home purchase plans, home reversion plans and regulated sale and rent back agreements**

2.6A.8  
FCA

R

A *firm* must pay due regard to the interests of its *customer* and treat him fairly when drafting, amending the terms of, or imposing obligations or exercising rights or discretions under, a *home purchase plan, home reversion plan or regulated sale and rent back agreement*.

2.6A.9  
FCA

G

A *firm* is unlikely, for example, to be treating its *customer* fairly in relation to termination of a *home purchase plan, home reversion plan or regulated sale and rent back agreement* if:

- (1) the grounds on which it may terminate all or part of a plan or agreement are unduly wide, or on which a *customer* may terminate are unduly narrow; or
- (2) the *customer* is not given appropriate notice of termination.

2.6A.10  
FCA

G

A *firm* is also unlikely to be treating its *customer* fairly if, upon termination of an agreement under a *home purchase plan, home reversion plan or regulated sale and rent back agreement*, the *customer* does not receive (net of any reasonable sums payable by the *customer*):

- (1) in the case of a *home reversion plan or regulated sale and rent back agreement* where the *customer* retains a beneficial interest in the property, the value of that beneficial interest; or
- (2) in the case of a *home purchase plan*, the value of purchase payments made.

**Note:** The terms of a *home purchase plan, home reversion plan or regulated sale and rent back agreement* should take into account relevant legal obligations such as those under the *Unfair Terms Regulations* and, where applicable, the *Housing Act 1988* (or, in Scotland, the *Housing (Scotland) Act 1988*). A *firm* may find material on the *FCA* website concerning the *FCA's* consumer protection powers useful. The Office of Fair Trading has also published guidance on the impact of the *Unfair Terms Regulations* on tenancy agreements.

**Treating customers fairly: home reversion plans and regulated sale and rent back agreements**

2.6A.11  
FCA

G

A *firm* is unlikely, for example, to be treating a *reversion occupier or SRB agreement seller* fairly if:

- (1) the *reversion occupier or SRB agreement seller* is obliged to maintain the property to a standard which exceeds the standard that the property is in when the *home reversion plan or regulated sale and rent back agreement* commences;
- (2) the *reversion occupier or SRB agreement seller* is not entitled to, or is not given, reasonable notice of an inspection, or the inspection is conducted in a way that is biased against him;

- (3) unreasonable restrictions are imposed on who may occupy the property, taking into account the potential needs of the *reversion occupier* or *SRB agreement seller* throughout the duration of the *home reversion plan* or *regulated sale and rent back agreement*;
- (4) unreasonable restrictions are imposed on the uses to which the property may be put;
- (5) the *reversion occupier* or *SRB agreement seller* is unreasonably treated as having abandoned the property. For example, it is likely to be unreasonable to treat a property as abandoned based only on a period of non-occupation;
- (5A) the rent payable under a *regulated sale and rent back agreement* is increased by an unreasonable amount or any charges payable under a *regulated sale and rent back agreement* are unreasonably imposed after the agreement is concluded; and
- (6) where the *reversion occupier* has a reasonable expectation that the *home reversion plan* can be transferred to another property, agreement to such a transfer is, or can be, refused unreasonably.

**Independent valuation: home reversion plans and regulated sale and rent back agreements**

2.6A.12  
FCA

**R**

A *firm* must ensure that any valuation is carried out by a competent valuer who is independent of the *reversion provider* or *SRB agreement provider*.

2.6A.12A  
FCA

**R**

A *firm* must ensure that any valuation for the purposes of a *regulated sale and rent back agreement* is carried out by a valuer who owes a duty of care to the *customer* in valuing the property.

2.6A.13  
FCA

**A**

- (1) A valuer may be considered competent if he is a suitably qualified member of a professional body.
- (2) A valuer may be considered independent if:
  - (a) the *customer* can choose the valuer subject to the *firm* objecting on reasonable grounds and to the valuer being competent;
  - (b) he owes a duty of care to the *customer* in valuing the property; and
  - (c) the *customer* has an appropriate remedy against him under a complaints procedure which allows the complaint to be referred to an independent person whose decision is binding on the valuer.
- (3) Compliance with (1) and (2) (except, in the case of a *regulated sale and rent back agreement*, (2)(b)) may be relied on as tending to establish compliance with **■** MCOB 2.6A.12 R.



(4) [deleted]

(5) For a *regulated sale and rent back agreement*, contravention of (1) or (2) (except (2)(b)) may be relied on as tending to show contravention of ■ MCOB 2.6A.12 R.

**2.6A.13A**  
**FCA**

**G**

A *firm* may wish to use the form of joint instruction letter set out in ■ MCOB 2 Annex 1G with a view to establishing that a valuer owes a duty of care to the *customer* (see ■ MCOB 2.6A.12A R). That form incorporates the definition of "market value" required by ■ MCOB 6.9.2 R (1)(b).

**2.6A.14**  
**FCA**

**G**

Members of the Royal Institution of Chartered Surveyors, for example, are required to operate a complaints procedure that allows the complaint to be referred to an independent person whose decision binds the valuer and which, in the *FCA's* view, provides a *customer* with an appropriate remedy.

**Obtaining best price: partial home reversion plans or regulated sale and rent back agreements**

**2.6A.15**  
**FCA**

**R**

A *firm* must take reasonable steps to ensure that, when a *home reversion plan* or *regulated sale and rent back agreement* ends and the *customer* retains a beneficial interest in the property:

- (1) the property is sold within a reasonable period of time; and
- (2) the best price that might reasonably be obtained is paid.

**2.6A.16**  
**FCA**

**G**

It is recognised that a balance has to be struck between the need to sell the property as soon as possible, and other factors, such as market conditions, which may prompt the delay of the sale. Legitimate reasons for deferring action might include the expiry of a period when a grant is repayable on re-sale, or the discovery of a title defect that needs to be remedied if the optimal selling price is to be achieved.

**Arranging or administering for unauthorised providers: home reversion plans**

**2.6A.17**  
**FCA**

**R**

For the purpose of this section (except this *rule*), a *reversion arranger* or *reversion administrator's customer*:

- (1) includes a *reversion occupier* or potential *reversion occupier* who enters, or proposes to enter, into a *home reversion plan* with an *unauthorised reversion provider* who is the *firm's customer*; and
- (2) excludes an *unauthorised reversion provider*.

2.6A.17A

FCA

R

**Arranging or administering for unauthorised providers: regulated sale and rent back agreements**

For the purpose of this section (except this *rule*), a *SRB arranger's* or *SRB administrator's* customer:

- (1) includes a *SRB agreement seller* or potential *SRB agreement seller* who enters, or proposes to enter, into a *regulated sale and rent back agreement* with an *unauthorised SRB agreement provider* who is the *firm's customer*; and
- (2) excludes an *unauthorised SRB agreement provider*.

**Arranging or administering for unauthorised providers: home reversion plans and regulated sale and rent back agreements**

2.6A.18

FCA

G

A *person* may enter into a *home reversion plan* or *regulated sale and rent back agreement* as provider or agreement provider without being regulated by the *FCA* (or an *exempt person*) if the *person* does not do so by way of business (see *PERG* 14.5). If a *firm* arranges or makes arrangements for such a *person* to enter into a *home reversion plan* or *regulated sale and rent back agreement* as provider or agreement provider, the *firm* will be responsible for ensuring that the *reversion occupier's* or *SRB agreement seller's* interests are protected to a reasonable standard, even if the *reversion arranger* or *SRB arranger* is not acting for the *reversion occupier* or *SRB agreement seller*. A *reversion administrator* or *SRB administrator* is under the same obligation in relation to a *reversion occupier* or *SRB agreement seller* under a *home reversion plan* or *regulated sale and rent back agreement* which it *administers* on behalf of an *unauthorised reversion provider* or *unauthorised SRB agreement provider*.





## 2.7 Application to electronic media and distance communications

2.7.1  
FCA

**G** ■ GEN 2.2.14 R (References to writing) has the effect that electronic media may be used to make communications that are required by the *Handbook* to be 'in writing' unless a contrary intention appears. In *MCOB*, the use of an electronic medium is restricted in certain circumstances to a *durable medium* as required by the *Distance Marketing Directive*.

### Additional guidance in respect of electronic communication with or for customers

2.7.2  
FCA

**G** For any electronic communication with a *customer* in relation to a *home finance transaction* a *firm* should:

- (1) have in place appropriate arrangements, including contingency plans, to ensure the secure transmission and receipt of the communication; it should also be able to verify the authenticity and integrity of the communication together with the date and time sent and received; the arrangements should be proportionate and take into account the different levels of risk in a *firm's* business;
- (2) be able to demonstrate that the *customer* wishes to communicate using this medium; and
- (3) if entering into an agreement, make it clear to the *customer* that a contractual relationship is created that has legal consequences.

2.7.3  
FCA

**G** A *firm* should note that ■ GEN 2.2.14 R (References to writing) does not affect any other legal requirement that may apply in relation to the form or manner of *executing a document* or agreement.

### General provisions related to distance contracts

2.7.4  
FCA

**R** During the course of a *distance contract* with a *consumer*, the making or performance of which constitutes or is part of a *regulated mortgage contract*, *home purchase plan* or *regulated sale and rent back agreement*:

- (1) the *firm* must, at the *consumer's* request, provide a paper copy of the contractual terms and conditions of the *regulated mortgage contract*, *home purchase plan*, *regulated sale and rent back agreement* or services being provided by the *firm*; and

2.7.5  
FCA

**R**

(2) the *firm* must comply with the *customer's* request to change the means of distance communication used, unless this is incompatible with the *regulated mortgage contract, home purchase plan, regulated sale and rent back agreement* or service being provided by the *firm*.

A *firm* must ensure that information provided to a *consumer* before the conclusion of a *distance contract* about his contractual obligations under that contract conform with the contractual obligations that would be imposed on him under the law applying if the contract were concluded.

2.7.6  
FCA

**R**

**Unsolicited services**.....

- (1) A *firm* must not:
- (a) supply a service to a *consumer* without a prior request on his part, when this activity includes a request for immediate or deferred payment; or
  - (b) enforce any obligations against a *consumer* in the event of unsolicited supplies of services, the absence of a reply not constituting consent.

(2) Paragraph (1) applies in relation to *mortgage mediation activities, entering into a regulated mortgage contract, home purchase mediation activities* or *entering into a home purchase plan* under an organised distance sales or service-provision scheme run by the *firm* or by an intermediary, who, for the purpose of that supply, makes exclusive use of one or more means of distance communication up to and including the time at which the services are supplied.



## 2.7A E-Commerce

### Application

2.7A.1

FCA

R

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

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

2.7A.2

FCA

R

A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R), together with a statement which explains that it is on the *Financial Services Register* and includes its *Financial Services Register* number;
- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
  - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
  - (b) the professional title and the *EEA State* where the professional title was granted;
  - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and

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

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

2.7A.3  
FCA

**R**

If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

2.7A.4  
FCA

**R**

A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

2.7A.5  
FCA

**R**

An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

**Requirements relating to the placing and receipt of orders**

2.7A.6  
FCA

**R**

A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and before the order is placed by the recipient of the service:
  - (a) the different technical steps to follow to conclude the contract;
  - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
  - (c) the technical means for identifying and correcting input errors before the placing of the order; and

- (d) the languages offered for the conclusion of the contract;
- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and
- (4) make available to an *ECA recipient*, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors before the placing of an order.

[Note: article 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

2.7A.7  
FCA

**R** Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the *E-Commerce Directive*]

**Exception: contract concluded by e-mail**

2.7A.8  
FCA

**R** The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: article 10(4) and 11(3) of the *E-Commerce Directive*]

## 2.8 Record keeping

### Purpose

2.8.1  
FCA

G

■ MCOB 2.8 provides details of the standard expected of *firms* where there is an obligation in *MCOB* requiring *firms* to maintain adequate records to evidence compliance. An overall view of the record keeping requirements in *MCOB* is in ■ MCOB Sch 1.

### Accessibility of records

2.8.2  
FCA

R

The records required in *MCOB* must be readily accessible for inspection by the *FCA*.

2.8.3  
FCA

G

A record would be 'readily accessible' if it were available for inspection within two *business days* of the request being received.

2.8.4  
FCA

G

- (1) A *firm* may arrange for records to be kept in such form as it chooses, provided the record is readily accessible for inspection by the *FCA*.
- (2) Where a *firm* chooses to maintain records in electronic form, it should take reasonable steps to ensure that:
  - (a) the electronic record accurately reflects the original information; and
  - (b) the electronic record has not been subject to unauthorised or accidental alteration.

2.8.5  
FCA

G

Each *rule* in *MCOB* that requires a record also sets out a period that the record must be kept for. While not a requirement of *MCOB*, *firms* may choose to keep records for longer periods, for example, where there is the possibility of *customer* complaint or legal action against the *firm*.

### Home purchase plans

2.8.6  
FCA

G

This sourcebook does not specify detailed record keeping requirements for a *firm* that carries on a *home purchase activity* or that *communicates* or *approves* a *financial promotion* of a *home purchase plan* (but note the high-level record-keeping provisions in the Senior Management Arrangements, Systems and Controls sourcebook).

---

## Form of joint instruction letter

2

**FCA**

This Annex belongs to ■ MCOB 2.6A.13A G. MCOB 2 Annex 1G - Form of joint instruction letter.





## Chapter 3

# Financial Promotion of qualifying credit, home reversion plans and regulated sale and rent back agreements



### 3.1 Application: who?

**3.1.1** **R** This chapter applies to every *firm* which *communicates* or *approves* a *financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement*.  
**FCA**

**3.1.2** **G** This chapter applies generally to *firms* in relation to all *financial promotions of qualifying credit, a home reversion plan or a regulated sale and rent back agreement*. This wide application is however cut back by **MCOB 3.2** (Application: what?) and **MCOB 3.3** (Application: where?) which limit the application of this chapter for:

- (1) *financial promotions* which would fall within the scope of the exemptions in the *Financial Promotion Order* or the additional exemptions set out in **MCOB 3.2.5 R** (Applications: what? Exemptions); and
- (2) *financial promotions* to *persons* outside the *United Kingdom*.

**3.1.3** **G** **MCOB 3.1.1 R** means that:  
**FCA**

- (1) this chapter applies not only to *financial promotions* for *regulated mortgage contracts*, but also to promotions for *qualifying credit*; and
- (2) this chapter applies to all aspects of a promotion by a *firm* of products which combine *unsecured* and *secured lending*.

**3.1.4** **G** In relation to **MCOB 3.1.3 G(2)**, an example would be a promotion for a mortgage product, one feature of which was an *unsecured lending* facility or reserve.  
**FCA**

**3.1.5** **G** Under section 39(3) of the *Act*, a *firm* is responsible for *financial promotions communicated* by its *appointed representatives* when acting as such.  
**FCA**

**3.1.6** **R** [deleted]

**3.1.7** **G** A *financial promotion* may relate to other *controlled investments* in addition to *qualifying credit, home reversion plans and regulated sale and rent back agreements*, for example a building society leaflet which describes the range of mortgage, savings and insurance products it provides. In such cases, the *financial promotion rules* in this and other sourcebooks will each apply as relevant.  
**FCA**

3.1.8

FCA

G

As a result of articles 90 and 91 of the *Regulated Activities Order*:

- (1) a *financial promotion of qualifying credit* is not subject to the advertising provisions of the Consumer Credit Act 1974, unless it is an *exempt generic promotion*; and
- (2) where a *firm* makes a *communication*, which consists of a *financial promotion of qualifying credit* and information relating to a different form of lending that is not *qualifying credit* (for example an unsecured personal loan), the content of the latter will need to comply with the relevant advertising provisions of the Consumer Credit Act 1974.

**Authorised professional firms**

3.1.9

FCA

R

- (1) Except for ■ MCOB 3.6.17 R to ■ MCOB 3.6.25 R (Annual percentage rate (APR)), MCOB 3 does not apply to an *authorised professional firm* in relation to the *communication of a financial promotion* if the following conditions are satisfied:
  - (a) the *firm's* main business must be the practice of its profession (see *IPRU(INV) 2.1.2R(3)*);
  - (b) the *financial promotion* must be made for the purposes of and incidental to the promotion or provision by the *firm* of:
    - (i) its professional services; or
    - (ii) its *non-mainstream regulated activities* (see ■ PROF 5.2 (Nature of non-mainstream activities)); and
  - (c) the *financial promotion* must not be *communicated* on behalf of another *person* who would not be able lawfully to *communicate* the *financial promotion* if he were acting in the course of business.
- (2) In (1)(b)(i), 'professional services' means services:
  - (a) which do not constitute a *regulated activity*; and
  - (b) the provision of which is supervised and regulated by a *designated professional body*.

3.1.10

FCA

G

*Authorised professional firms* are reminded that in circumstances in which ■ MCOB 3 does not apply to the *firm* ■ MCOB 2.2.6 R (Clear fair and not misleading communication) may apply.

**Nationals of other EEA States**

3.1.11

FCA

G

A national of an *EEA State* (other than the *United Kingdom*) wishing to take advantage of the exemption in article 36 of the *Financial Promotion Order* in respect of a *financial promotion of qualifying credit*, a *home reversion plan* or a *regulated sale and rent back agreement* should act in conformity with the *rules* in this chapter.

3.1.12

FCA

G

**Illustrative examples of qualifying credit promotions**

■ MCOB 3 Annex 1 G gives examples of *financial promotion of qualifying credit* that would satisfy some of the provisions of ■ MCOB 3.



**3.2 Application: what?**

**Application for a financial promotion of qualifying credit**

3.2.-3

FCA

**R**

This chapter applies to the *communication* or *approval* of a *financial promotion of qualifying credit* as follows:

|  |                             |
|--|-----------------------------|
| <b>Application, purpose and general</b>  | <b>MCOB 3.1 to MCOB 3.5</b> |
| <b>Form and content of non-real time qualifying credit promotions</b>  | <b>MCOB 3.6</b>             |
| <b>Unsolicited real time promotions of qualifying credit or home reversion plans</b>                               | <b>MCOB 3.7</b>             |
| <b>Form and content of real time qualifying credit promotions</b>  | <b>MCOB 3.8</b>             |
| <b>Confirmation of compliance: financial promotions of qualifying credit or home reversion plans</b>               | <b>MCOB 3.9</b>             |
| <b>Records: non-real time financial promotions of qualifying credit or home reversion plans</b>                    | <b>MCOB 3.10</b>            |
| <b>Communication and approval of qualifying credit promotions for an overseas person or an unauthorised person</b> | <b>MCOB 3.11</b>            |
| <b>The Internet and other electronic media</b>   | <b>MCOB 3.12</b>            |

**Application for a financial promotion of a home reversion plan**

3.2.-2

FCA

**R**

This chapter applies to the *communication* or *approval* of a *financial promotion of a home reversion plan* as follows:

|   |  |
|---|--|
| <b>Application, purpose and general</b>                               | <b>MCOB 3.1 to MCOB 3.5</b>                  |
| <b>Form and content of non-real time qualifying credit promotions</b> | <b>MCOB 3.6 in accordance with MCOB 3.8A</b> |

|  |                  |
|--|------------------|
| <b>Unsolicited real time financial promotions of qualifying credit or home reversion plans</b>       | <b>MCOB 3.7</b>  |
| <b>Form and content of financial promotions of home reversion plans</b>                              | <b>MCOB 3.8A</b> |
| <b>Confirmation of compliance: financial promotions of qualifying credit or home reversion plans</b> | <b>MCOB 3.9</b>  |
| <b>Records: non-real time financial promotions of qualifying credit or home reversion plans</b>      | <b>MCOB 3.10</b> |
| <b>The Internet and other electronic media</b>   | <b>MCOB 3.12</b> |

**Application for a financial promotion of a regulated sale and rent back agreement**

3.2.-2A  
FCA

**R**

This chapter applies to the *communication* or *approval* of a *financial promotion* of a *regulated sale and rent back agreement* as follows:

|   |  |
|---|--|
| <b>Application, purpose and general</b>   | <b>MCOB 3.1 to MCOB 3.5</b>                  |
| <b>Form and content of non-real time qualifying credit promotions</b>   | <b>MCOB 3.6 in accordance with MCOB 3.8B</b> |
| <b>Unsolicited real time financial promotions of qualifying credit or regulated sale and rent back agreements</b>       | <b>MCOB 3.7</b>                              |
| <b>Form and content of financial promotions of regulated sale and rent back agreements</b>                              | <b>MCOB 3.8B</b>                             |
| <b>Confirmation of compliance: financial promotions of qualifying credit or regulated sale and rent back agreements</b> | <b>MCOB 3.9</b>                              |
| <b>Records: non-real time financial promotions of qualifying credit or regulated sale and rent back agreements</b>      | <b>MCOB 3.10</b>                             |
| <b>The Internet and other electronic media.</b>   | <b>MCOB 3.12</b>                             |

**Application for a financial promotion of a home purchase plan**

3.2.-1  
FCA

**G**

The *rules* in this chapter do not apply to the *communication* or *approval* of a *financial promotion* of a *home purchase plan*. However, the clear, fair and not misleading standard still applies as does certain relevant guidance from this chapter (see ■ MCOB 2.2).

3.2.1

FCA

G

**What do "communicate", "approve" and "financial promotion" mean?**

- (1) The *rules* in this chapter adopt various concepts from the restriction on *financial promotion* by *unauthorised persons* in section 21(1) of the *Act* (Restrictions on financial promotion). *Guidance* on that restriction is contained in PERG 8 (Financial promotion and related activities) and that *guidance* will be relevant to interpreting these *rules*. In particular, *guidance* on the meaning of:
  - (a) '*communicate*' is in PERG 8.6 (Communicate); and
  - (b) 'invitation or inducement' and '*engage in investment activity*' (two elements which, with '*communicate*', make up the definition of '*financial promotion*') is in PERG 8.4 (Invitation or inducement) and PERG 8.7 (Engage in investment activity).
- (2) *Guidance* on the *approval* of a *financial promotion* of *qualifying credit* is in ■ MCOB 3.11.1 G (Approval of qualifying credit promotions).

3.2.2

FCA

G

**Media of communication**

- (1) There is no restriction on the media of *communication* to which this chapter applies. It applies to a *financial promotion communicated* by any means, including by way of printed advertising, radio and television broadcasts, a personal visit, a telephone call, an e-mail, the Internet and electronic media such as digital and other forms of interactive television or media. Both solicited and unsolicited *communications* are covered.
- (2) *Financial promotions* may be *communicated* for example, by means of:
  - (a) product brochures;
  - (b) general advertising in magazines, newspapers, radio and television programmes and websites;
  - (c) mailshots (whether distributed by post, facsimile, e-mail or other media);
  - (d) telemarketing activities, such as telephone calls made by call centres;
  - (e) written correspondence, telephone calls and face-to-face discussions with *customers*;
  - (f) sales aids which themselves constitute a *financial promotion*;
  - (g) presentations to groups of *customers*; and
  - (h) other publications, which may contain non-personal recommendations as to obtaining *qualifying credit* or entering into a *home reversion plan*.

3.2.3

FCA

G

*Guidance* on the use of the Internet for *communicating financial promotions* is in ■ MCOB 3.12 (The Internet and other electronic media) and ■ PERG 8.22 (The Internet)

3.2.4  
FCA

**R**

**Exemptions**

This chapter does not apply to a *firm* in relation to a *financial promotion* of *qualifying credit* of a kind listed in ■ MCOB 3.2.5 R, except that if the *firm* approves the *financial promotion*, the following apply:

- (1) ■ MCOB 3.1 to ■ MCOB 3.5 (Application, Purpose and General);
- (2) ■ MCOB 3.6.3 R (Clear, fair and not misleading);
- (3) ■ MCOB 3.11.1 G to ■ MCOB 3.11.4 G (Approval of qualifying credit promotions; No approval of real time qualifying credit promotions; Approval of qualifying credit promotions when not all the rules apply); and
- (4) if the *firm* approves a *non-real time financial promotion* of *qualifying credit* by an *overseas person* ■ MCOB 3.11.5 R (Non-real time qualifying credit promotions for overseas persons) applies.

3.2.4A  
FCA

**R**

This chapter does not apply to a *firm* in relation to a *financial promotion* of a *home reversion plan* or a *regulated sale and rent back agreement* of a kind listed in ■ MCOB 3.2.5 R, unless the *firm* approves the *financial promotion*. However, for non-real time *financial promotions* of the kind listed in ■ MCOB 3.2.5 R, the requirements in ■ MCOB 3.8B.5 R apply in relation to how a *regulated sale and rent back agreement* can be described. Advertisements for other products that could result in the conclusion of *regulated sale and rent back agreements* must carry the sale and rent back risk warning (■ MCOB 3.8B.4 R).

3.2.5  
FCA

**R**

Table This table belongs to ■ MCOB 3.2.4 R and ■ MCOB 3.2.4A R.

**Exemptions**

**This chapter does not apply to the following:**

- (1) an *illustration* produced in accordance with the requirements of *MCOB 5*, *MCOB 6*, *MCOB 7* or *MCOB 9*;
- (2) a *financial promotion* which contains only one or more of the following:
  - (a) the name of the *firm* (or its *appointed representative*);
  - (b) a logo;
  - (c) a contact point (address (including an e-mail address), telephone or facsimile number);
  - (d) a brief, factual statement of the *firm's* (or its *appointed representative's*) main occupation;
- (3) a *financial promotion* which can lawfully be *communicated* by an *unauthorised person* without approval;



**Exemptions**

**(4) a financial promotion communicated from outside the United Kingdom which would be exempt under articles 30, 31, 32 or 33 of the *Financial Promotion Order (Overseas communicators)* if the office from which the financial promotion is communicated were a separate unauthorised person (but see GEN 4.4.1R (Business for private customers from non-UK offices));**

3.2.6  
FCA

**G** ■ MCOB 3.2.5 R(2) exempts a *financial promotion* made by a *firm* or an *appointed representative* which refers to its activities only in general terms in image or brand advertising. The items identified in ■ MCOB 3.2.5 R(2) do not enable detailed information to be given about the *qualifying credit, home reversion plan* or *regulated sale and rent back agreement* available from the *firm*. Thus *firms* should avoid the use of names, logos or addresses, for example, which attempt to convey additional product or cost-related information.

3.2.7  
FCA

**R** **Combination of exemptions**  
A *firm* may rely on more than one exemption (and also on ■ MCOB 3.3.1 R (Application: where?)) in relation to the same *financial promotion*.

3.2.8  
FCA

**G** **Other relevant handbook rules**  
*Firms* are reminded that *financial promotion* (including those which are exempt) may be subject to more general *rules*, including *Principle 7* (Communications with clients), ■ SYSC 3 to ■ SYSC 10 (Systems and controls) and ■ MCOB 2.2.6 R (Clear, fair and not misleading communication).

3.2.9  
FCA

**G** *Firms* are reminded that if in the course of making a *financial promotion* of any kind an adviser gives specific advice on a *home finance transaction* to a *customer* about the suitability of a product for that individual, the adviser in giving the advice is subject to the *rules*, as appropriate, on advising and selling in ■ MCOB 4 (Advising and selling standards) and ■ MCOB 8 (Equity release: advising and selling standards).

### 3.3 Application: where?

#### Territorial Scope

3.3.1

FCA

R

This chapter applies to a *firm* in relation to:

- (1) the *communication of a financial promotion to a person in the United Kingdom*;
- (2) the *communication of an unsolicited real time financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement, unless it is made from a place, and for the purposes of a business which is only carried on, outside the United Kingdom*;
- (3) the approval of a *non-real time financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement for communication to a person in the United Kingdom*; and
- (4) the *communication or approval for communication of a financial promotion that is an electronic commerce communication to a person in an EEA state other than in the United Kingdom*.

3.3.2

FCA

G

- (1) The application under ■ MCOB 3.3.1 R is relevant both when a *firm communicates a financial promotion* itself and when a *firm approves a non-real time financial promotion for communication* by others. But see also ■ MCOB 3.3.3 R (Exceptions to territorial scope: rules without territorial limitation) for approval of financial promotions).
- (2) The exemptions in ■ MCOB 3.2.5 R (Application: what?; Exemptions) also incorporate some territorial elements. In particular, the exemption for *financial promotions* originating outside the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotion)) (see ■ MCOB 3.2.5 R (4)), the exemptions for overseas communicators (see ■ MCOB 3.2.5 R (4)), the exemption for *electronic commerce communications* made from an *establishment* in an *EEA State* other than the *United Kingdom* to an *ECA recipient* in the *United Kingdom* (see PERG 8.12.38G (Incoming electronic commerce communication (article 20B))).

(3) [deleted]

**Exceptions to territorial scope: rules without territorial limitation for approval of financial promotions**

3.3.3

FCA

R

Subject to ■ MCOB 3.3.5 R the following parts of this chapter apply without any territorial limitation if a *firm approves a financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement*:

- (1) ■ MCOB 3.1 to ■ MCOB 3.5 (Application, Purpose and General);
- (2) *rules requiring a financial promotion to be clear, fair and not misleading (see ■ MCOB 3.6.3 R (1) in relation to *qualifying credit*, ■ MCOB 3.8A.1 R in relation to a *home reversion plan* and ■ MCOB 3.8B.1 R in relation to a *regulated sale and rent back agreement*); and*
- (3) *the provisions regarding approval of financial promotions (except those relating to approval of financial promotions of qualifying credit provided by an overseas person) (see ■ MCOB 3.11.1 G to ■ MCOB 3.11.4 G and ■ MCOB 3.8A.6 R).*

3.3.4

FCA

G

There is no need for a *financial promotion* which is indicated in ■ MCOB 3.3.1 R to be outside the territorial scope of the application of ■ MCOB 3 to be *approved* before being *communicated* by an *unauthorised person* (because the restriction in section 21 of the *Act* (Restrictions on financial promotion) does not apply). If a *firm* nevertheless *approves* such a *financial promotion*, it must comply with the *rules* indicated. However, a *firm* must not *approve* a *real time financial promotion* (see ■ MCOB 3.11.2 R (No approval of real time qualifying credit promotions) or ■ MCOB 3.8A.6 R (No approval of real time financial promotions of a home reversion plan)).

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

3.3.5

FCA

R

- (1) Notwithstanding ■ MCOB 3.3.1 R and ■ MCOB 3.3.3 R, where a *firm* which satisfies the conditions in (2) *communicates a financial promotion of qualifying credit*, the *rules* in (3) do not apply.
- (2) The conditions are that:
  - (a) *the firm communicates the financial promotion of qualifying credit from an establishment maintained by the firm in an EEA State other than the United Kingdom, and not from an establishment maintained by the firm in the United Kingdom or outside the EEA;*
  - (b) *either that EEA State:*
    - (i) *has implemented the Distance Marketing Directive; or*

(ii) has obligations in its domestic law corresponding to those provided for by the *Distance Marketing Directive*;

(c) the *financial promotion* of *qualifying credit* relates, exclusively, to a *distance contract*, for the conclusion of which the obligations provided for by the *Distance Marketing Directive* (or corresponding obligations) are applied by that State; and

(d) the *firm* is a national of an *EEA State* or a company or firm mentioned in article 54 of the *Treaty*.

(3) The *rules* which do not apply are:

(a) ■ MCOB 3.6.1 R (Name and contact point);

(b) ■ MCOB 3.6.13 R (Required risk statements);

(c) ■ MCOB 3.6.15 R (Transient advertising);

(d) ■ MCOB 3.6.26 R (Multi-rate mortgages);

(e) ■ MCOB 3.6.27 R (Fees for advice or arranging); and

(f) ■ MCOB 3.8.2 R (3) and (4) (Form and content of real time qualifying credit promotions).

**Meaning of 'communicated to a person inside or outside the United Kingdom'**

3.3.6

FCA

R

For the purposes of this chapter:

(1) a *financial promotion* is *communicated* to a *person* outside the *United Kingdom* if it is:

(a) made to a *person* who receives it outside the *United Kingdom*; or

(b) directed only at *persons* outside the *United Kingdom*; and

(2) a *financial promotion* is *communicated* to a *person* inside the *United Kingdom* if it is *communicated* to a *person* other than as described in (1);

and see ■ MCOB 3.3.7 R and ■ MCOB 3.5.6 R which amplify this *rule*.

3.3.7

FCA

R

Meaning of "'directed only at persons outside the United Kingdom'

(1) If the conditions set out in 4(a), (b), (c) and (d) are met, a *financial promotion* directed from a place inside the *United Kingdom* will be regarded as directed only at *persons* outside the *United Kingdom*.

- (2) If the conditions set out in 4(c) and (d) are met, a *financial promotion* directed from a place outside the *United Kingdom* will be regarded as directed only at *persons* outside the *United Kingdom*.
- (3) In any other case, where one or more of the conditions in 4(a) to (e) is met, that fact will be taken into account in determining whether a *financial promotion* is directed only at *persons* outside the *United Kingdom* (but a *financial promotion* may still be regarded as directed only at *persons* outside the *United Kingdom* even if none of these conditions is met).
- (4) The conditions are that:
  - (a) the *financial promotion* is accompanied by an indication that it is directed only at *persons* outside the *United Kingdom*;
  - (b) the *financial promotion* is accompanied by an indication that it must not be acted upon by *persons* in the *United Kingdom*;
  - (c) the *financial promotion* is not referred to in, or directly accessible from, any other *financial promotion* which is made to a *person* or directed at *persons* in the *United Kingdom* by the same *person*;
  - (d) there are in place proper systems and procedures to prevent recipients in the *United Kingdom* (other than those to whom the *financial promotion* might otherwise lawfully have been made) obtaining the product to which the *financial promotion* relates, from the *person* directing the *financial promotion*, a *close relative* of his or a member of the same *group*;
  - (e) the *financial promotion* is included in:
    - (i) a website, newspaper, journal, magazine or periodical publication which is principally accessed in or intended for a market outside the *United Kingdom*; and
    - (ii) a radio or television broadcast or teletext service transmitted principally for reception outside the *United Kingdom*.

**3.4 Purpose**

**3.4.1**

**FCA**

**G**

- (1) Section 21(1) of the *Act* (Restriction on financial promotion) imposes a restriction on the *communication* of *financial promotions* by *unauthorised persons*. A *person* must not, in the course of business, *communicate* a *financial promotion* unless:
  - (a) he is an *authorised person*; or
  - (b) the content of the *financial promotion* is *approved* by an *authorised person*.
- (2) However, the *Financial Promotion Order* exempts from the restriction created by section 21(1) of the *Act* certain types of *financial promotions*.

**3.4.2**

**FCA**

**G**

- (1) The purpose of this chapter is to provide *rules* and *guidance* for a *firm* which wishes to *communicate* or *approve* a *financial promotion* of *qualifying credit*, a *home reversion plan* or a *regulated sale and rent back agreement*.
- (2) This chapter amplifies, for activities within its scope *Principle 6* (Customers' interests) and *Principle 7* (Communications with clients).

**3.5 General**

**3.5.1** **G** [deleted - see application tables in ■ MCOB 3.2]

**3.5.2** **G** Table [deleted]

**Other regulations and guidelines**

**3.5.3** **G** **FCA** A *firm communicating a financial promotion* may also be subject to other regulations and guidelines, outside the remit of the *FCA*, such as:

- (1) the codes issued from time to time by the Advertising Standards Authority, the Independent Television Commission and the Radio Authority;
- (2) regulations of any *overseas regulator* (where relevant) if the *firm* intends to market from the *United Kingdom* into any other country;
- (3) the Privacy and Electronic Communications (EC Directive) Regulations 2003
- (4) the Timeshare Act 1992, as amended by the Timeshare Regulations 1997 (SI 1997/1081); and
- (5) the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277).

**'Real time' and 'non-real time' qualifying credit promotions**

**3.5.4** **G** **FCA** This chapter draws a distinction between *real time* and *non-real time financial promotions*. *Guidance* on the meaning of those expressions, which are based upon article 7 of the *Financial Promotion Order*, is contained in PERG 8.10.2G (Real time v. non-real time promotions).

**3.5.5** **R** **FCA** (1) A '*real time financial promotion*' is a *financial promotion* which is *communicated* in the course of a personal visit, telephone conversation or other interactive dialogue.

(2) A '*non-real time financial promotion*' is a *financial promotion* that is not a *real time financial promotion*. It includes a *financial promotion* made by letter, e-mail or contained in a newspaper, journal, magazine, other periodical publication, website, television or radio programme, or teletext service.

- (3) The following are to be regarded as indications that a *financial promotion* is a *non-real time financial promotion*:
- (a) the *financial promotion* is *communicated* to more than one *person* in identical terms (save for details of the recipient's identity);
  - (b) the *financial promotion* is *communicated* by way of a system which in the normal course constitutes or creates a record of the communication which is available to the recipient to refer to at a later time; and
  - (c) the *financial promotion* is *communicated* by way of a system which in the normal course does not enable or require the recipient to respond immediately to it.

**Meaning of 'made', 'directed at' and 'recipient' in MCOB 3**

3.5.6

FCA

**R**

(In accordance with article 6 of the *Financial Promotion Order* (Interpretation: communications)) any reference in this chapter to:

- (1) a *communication* being made to another *person* is a reference to a *communication* being addressed, whether verbally or in legible form, to a particular *person* or *persons* (for example, where it is contained in a telephone call or letter);
- (2) a *communication* being directed at *persons* is a reference to a *communication* being addressed to *persons* generally (for example where it is contained in a television broadcast or website); and
- (3) a 'recipient' of a *communication* is the *person* to whom the *communication* is made or, in the case of a *non-real time financial promotion* which is directed at *persons* generally, any *person* who reads or hears the *communication*.





### **3.6 Form and content of non-real time qualifying credit promotions**

#### **Name and contact point**

**3.6.1**  
**FCA**

**R**

*A non-real time financial promotion must contain the name of the firm or its appointed representative and either an address or a contact point from which an address is available.*

**3.6.2**  
**FCA**

**G**

- (1) For the purposes of ■ MCOB 3.6.1 R, the name may be a trading name or shortened version of the legal name of the *firm* (although other legislation, for example, the Companies Act 2006, may require a *firm* to include information not required by this *rule*).
- (2) The type of contact point envisaged for a *firm* by ■ MCOB 3.6.1 R is an e-mail address or telephone or facsimile number, where a *customer* can contact the *firm* for its address.
- (3) A *firm* is not required in a *financial promotion* which it *communicates* or *approves* to name the FCA as its regulator. However, to ensure the *financial promotion* is clear, fair and not misleading, if the *firm* chooses to name the FCA as its regulator and the *financial promotion* refers to matters not regulated by the FCA, it should also make clear that those matters are not regulated by the FCA. This might arise, for example, where the communication included both a *financial promotion of qualifying credit* and a promotion for *unsecured lending*.

#### **Clear, fair and not misleading**

**3.6.3**  
**FCA**

**R**

- (1) A *firm* must be able to show that it has taken reasonable steps to ensure that a *non-real time financial promotion* is clear, fair and not misleading.
- (2) A *non-real time financial promotion* which includes a comparison or contrast must:
  - (a) compare credit meeting the same needs or which is intended for the same purpose;
  - (b) objectively compare one or more material, relevant, verifiable and representative features of that credit, which may include price;
  - (c) not create confusion in the market place between the *firm* itself (or the *person* whose *financial promotion of qualifying credit*

it *approves*) and a competitor or between the *firm's* trademarks, trade names, other distinguishing marks, *qualifying credit* (or those of the *person whose financial promotion of qualifying credit it approves*) and those of a competitor;

- (d) not discredit or denigrate the trademarks, trade names, other distinguishing marks, *qualifying credit*, services, activities or circumstances of a competitor;
- (e) not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor;
- (f) not present *qualifying credit* as an imitation or replica of *qualifying credit* bearing a protected trademark or trade name; and
- (g) indicate in a clear and unequivocal way in any comparison referring to a special offer the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the *qualifying credit*, and, where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions will apply.

3.6.4

FCA



- (1) A *firm* should take reasonable steps to ensure that, for a *non-real time financial promotion*:
  - (a) it does not omit any matters the omission of which causes the *financial promotion of qualifying credit* not to be clear, fair and not misleading;
  - (b) if it describes a feature of any *qualifying credit*, it gives no less prominence to the possible disadvantages than to the benefits associated with that feature;
  - (c) it uses plain and intelligible language, and is easily legible (or, in the case of oral promotions, clearly audible);
  - (d) the accuracy of all statements of fact in it can be substantiated;
  - (e) its promotional purpose is not in any way disguised or misrepresented;
  - (f) any statement of fact, promise or prediction is clear, fair and not misleading and any relevant assumptions are clearly and prominently disclosed (but a *firm* is not required to explain, on the face of the *financial promotion of qualifying credit*, the basis on which a stated *APR* is calculated: see ■ MCOB 3.6.18 G);

- (g) any statement of opinion is honestly held and, unless consent is impracticable, given with the written consent of the *person* concerned;
  - (h) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are prominently disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast;
  - (i) it does not contain any false indications, in particular as to:
    - (i) the *firm's* independence;
    - (ii) the *firm's* resources and scale of activities; or
    - (iii) the scarcity of any *qualifying credit*;
  - (j) the design, content or format does not in any way disguise, obscure or diminish the significance of any statement, warning or other matter which the *financial promotion of qualifying credit* is required by this chapter to contain;
  - (k) it does not include any reference to approval by the *FCA* or any government body, unless such approval has been obtained in writing from the *FCA* or that body (see also ■ GEN 1.2(Referring to approval by the *FCA*));
  - (l) where it contains information required as a consequence of the following provisions, the items of information provided in relation to each provision appear in proximity to each other:
    - (i) ■ MCOB 3.6.11 R;
    - (ii) ■ MCOB 3.6.13 R(Required risk statements), unless ■ MCOB 3.6.15 R(transient advertising) applies;
    - (iii) ■ MCOB 3.6.17 R(Annual percentage rate (*APR*));
    - (iv) ■ MCOB 3.6.25 R;
    - (v) ■ MCOB 3.6.26 R(Multi-rate mortgages); and
    - (vi) ■ MCOB 3.6.27 R(Fees for advice or arranging).
- (2) (a) Contravention of ■ MCOB 3.6.4 E(1) may be relied on as tending to show contravention of ■ MCOB 3.6.3 R(1).
- (b) Compliance with ■ MCOB 3.6.4 E(1) may be relied on as tending to show compliance with ■ MCOB 3.6.3 R(1).

3.6.5

FCA

G

In relation to ■ MCOB 3.6.3 R:

- (1) *firms* should avoid the use of small print to qualify prominent claims;
- (2) if a *non-real time financial promotion* includes information on the performance of the *firm*, on conditions in the market, interest rates, *APRs* or other *price information* this information should be relevant and recent. *Firms* should therefore avoid including this information in *financial promotions* which have a long shelf-life without a clear and prominent warning that the information can become outdated; and
- (3) *firms* must ensure that an adequate description of mortgage products is given. For example, *firms* should take care to ensure that where a rate is variable at any time during the term of the mortgage, the content of the *financial promotion* does not imply the rate may be fixed.

3.6.6

FCA

G

The effect of ■ MCOB 3.6.4 E(1)(b) will depend upon the content of the promotion. A non-exhaustive list of examples satisfying ■ MCOB 3.6.4 E(1)(b) follows:

- (1) a promotion which, when describing any *cashback* offered to the *customer*, also clearly refers to any relevant conditions, such as a requirement to pay back some or all of the *cashback* on early repayment of the mortgage;
- (2) a promotion which, when describing any fixed or discount rate, also clearly states the duration of any *early repayment charges*;
- (3) a promotion which, when describing any reduction in regular payments following from the re-arrangement of existing loans, also clearly indicates any increase in the total cost and any extension to the repayment period for the *customer*;
- (4) a promotion which, when describing any possible monetary saving, also clearly states how this could be achieved;
- (5) a promotion which, when including references to non-standard services or facilities, also clearly states that an additional fee may be payable for these; and
- (6) a promotion which, when it includes an indication of an initial payment holiday (for example, 'pay nothing for 3 months'), also makes clear whether or not interest will be charged during this period.

3.6.7

FCA

G

The requirement in ■ MCOB 3.6.4 E(1)(l) that certain information must be given in proximity means, for example, in relation to printed *financial promotions of qualifying credit*, that this information is all visible at the same time.

3.6.8

FCA

**R**

In ensuring a *financial promotion* is clear fair and not misleading, a *firm* must ensure that the *financial promotion* does not contain any of the following words or expressions, unless the relevant condition applies:

- (1) the word 'overdraft' or any similar expression as describing any agreement for running-account credit except an agreement enabling the *customer* to overdraw on a current account;
- (2) the expression 'interest free' or any similar expression (such as '0% Finance' or 'Interest Free Option') indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by credit than the *customer* would be liable to pay as a cash purchaser in relation to the same transaction, except where:
  - (a) the *total amount payable* by the *customer* does not exceed the cash price; or
  - (b) **■ MCOB 3.6.26 R**(Multi-rate mortgages) applies, in which case the expression may be used in respect of any rate of charge of 0% provided that during the period in which the rate applies there is no interest charged and no increase in the amount of the mortgage loan.
- (3) the expression 'no deposit' or any similar expression, except where no advance payments are required to be made on the loan;
- (4) the expression 'mortgage guaranteed', 'pre-cleared' or any similar expression, unless the *financial promotion* invites entry into a contract that is free of any conditions regarding the credit status of the *customer*; and
- (5) the expression 'gift', 'present' or any similar expressions, unless there are no conditions which would require the *customer* to return the money or items that are the subject of the claim.

3.6.9

FCA

**R**

A *non-real time financial promotion* must:

- (1) describe any *early repayment charge* as an 'early repayment charge' and not use any other expression to describe such charges;
- (2) describe any *higher lending charge* as a 'higher lending charge' and not use any other expression to describe such charges;
- (3) not contain the 'key facts' logo unless it is required by a *rule*; and
- (4) describe any *lifetime mortgage* as a 'lifetime mortgage' and not use any other expression to describe such a mortgage.

3.6.10

FCA

**G**

- (1) It cannot be assumed that *customers* necessarily have an understanding of the *qualifying credit* being promoted. If a *non-real time financial promotion* is

specially designed for a targeted collection of *customers* who are reasonably believed to have particular knowledge of the *qualifying credit* being promoted, this fact should be made clear.

- (2) In relation to quotations of opinion:
  - (a) where only part of an opinion is quoted, it should nevertheless be a fair representation; and
  - (b) any connection between the holder of the opinion and the *firm* should be made clear.

3.6.11  
FCA

**R** A *non-real time financial promotion* that features *qualifying credit* which is conditional upon the *customer* obtaining one or more further products from a specific *firm* (or its agents or *associates*) must prominently state the compulsory nature of these purchases.

3.6.12  
FCA

**G** ■ MCOB 3.6.11 R is concerned with ensuring that *customers* are adequately informed, at an early stage, as to the existence of any *tied products* or services. However, it does not introduce equivalent disclosure requirements for services or products that must be obtained as a condition for the making of the loan, but where the *customer* has a free choice as to the supplier.

**Required risk statements**

3.6.13  
FCA

**R** A *non-real time financial promotion* must, unless the transient advertising *rule* applies, prominently contain one or more of the following statements in the circumstances described:

- (1) where it relates to a *lifetime mortgage*: 'This is a lifetime mortgage. To understand the features and risks, ask for a personalised illustration.' If the promotion also relates to a *home reversion plan* the statement may be adapted to the extent necessary to comply with the equivalent requirement for a *home reversion plan* (see ■ MCOB 3.8A.3 R (2)(a));
- (2) where it refers to paying off unsecured debts (for example, credit cards, personal loans or overdrafts) by taking out *qualifying credit*: 'Think carefully before securing other debts against your home. Your home may be repossessed if you do not keep up repayments on your mortgage.'
- (3) in all cases except (1) and (2): 'Your home may be repossessed if you do not keep up repayments on your mortgage.'; or if it refers in whole or in part to *qualifying credit* secured on property which is not the *customer's* home the statement may be amended but only to the extent necessary in order to reflect that fact.

- (4) where the mortgage will be denominated in a currency other than sterling: 'Changes in the exchange rate may increase the sterling equivalent of your debt.'
- (5) where more than one of the statements in (1) to (4) applies, each relevant statement should be included. In such cases, the statement set out in (1), (2) or (3) should precede that in (4).
- (6) where a *non-real time financial promotion* relates to both *qualifying credit* and credit which is not *qualifying credit* the statements required by (2) or (3) may be modified by replacing your mortgage with a mortgage or any other debt secured on it.

3.6.14

FCA

G

- (1) Prominence of relevant information can play a key role in ensuring that a *communication* is clear, fair and not misleading. As a consequence, a number of requirements in *MCOB* relate to prominence. Where this is the case, the *FCA* will assess prominence in the context of the promotion as a whole. Use can be made of the positioning of text, background and text colour and typesize to ensure that prescribed information meets the requirements of *MCOB*. The surrounding of required statements with other information should be avoided where this might detract from the prominence which it is obligatory to afford to the statements.
- (2) *Firms* may if they wish include a foreign language version of any required warning, in addition to the English language version required by these *rules*. If foreign language versions of warnings are included, *firms* are reminded of prominence requirements in ■ *MCOB* 3.6.13 R and ■ *MCOB* 3.6.14 G (1). Information should not be included which detracts from the required prominence of warning statements.

**Transient advertising**

3.6.15

FCA

R

■ *MCOB* 3.6.13 R (Required risk statements) does not apply if the *non-real time financial promotion* is *communicated*:

- (1) by way of sound broadcasting or television where the primary purpose of the programming in which the promotion is contained is not to promote lending; or
- (2) by an exhibition of pictures or photographic or cinematographic films.

3.6.16

FCA

G

- (1) ■ *MCOB* 3.6.15 R (1) is intended to distinguish between promotions in breaks between 'normal' commercial broadcast programming (where the text prescribed in ■ *MCOB* 3.6.13 R (Required risk statements) is not required) and promotions in breaks which are in or around programming intended to promote lending where ■ *MCOB* 3.6.13 R (Required risk statements) applies.
- (2) In relation to promotions on dedicated interactive television services, if the promotion is not contained within programming but instead forms a separate feature, the exemption offered by ■ *MCOB* 3.6.15 R (1) would not be available.



**Annual percentage rate (APR)**

3.6.17

FCA

R

- (1) A *firm* must ensure that if a *non-real time financial promotion* contains either *price information* for specific *qualifying credit*, or makes reference (either explicitly or implicitly) to the availability of credit for *customers* who might otherwise consider their access to credit restricted, the promotion also:
  - (a) states the *APR*;
  - (b) gives the *APR*, and the accompanying statement in (3), with no less prominence than any *price information* or reference (either explicitly or implicitly) to the availability of credit for *customers* who might otherwise consider their access to credit restricted; and
  - (c) positions the *APR* after any other rate of charge relating to the *qualifying credit*, clearly distinguishing it from any such rate but without interjecting other information in between the *APR* and any other rate of charge.
- (2) A *firm* must calculate the *APR* in accordance with  
■ MCOB 10(Annual percentage rate).
- (3) The *APR* must be expressed as follows, with X being the *APR* calculated for the particular *qualifying credit*: 'The overall cost for comparison is X% APR'

3.6.18

FCA

G

■ MCOB 3.6.17 R does not require a *firm* to explain the basis on which the *APR* is calculated, or to provide a figure for the *total charge for credit*, in the *non-real time financial promotion*.

3.6.19

FCA

G

For the purposes of ■ MCOB 3.6.17 R(1), references to the availability of credit for *customers* who might otherwise consider their access restricted include references to:

- (1) credit history; or
- (2) credit rating; or
- (3) county court judgments; or
- (4) employment; or
- (5) housing circumstances (for example, council tenants).

3.6.20

FCA

G

- (1) In relation to ■ MCOB 3.6.17 R(1)(c), the intention is that the *APR* should follow on, but be readily identifiable as different, from the indicated rate or rates of charge.
- (2) For multi-rate products this should mean that the *APR* is presented, in sequence, after the different rates of charge that apply.



- (3) The *APR* may be distinguished from other rates of charge by techniques such as using a contrasting (and legible) colour for text. However, the requirement of ■ MCOB 3.6.17 R(1)(c) will not be satisfied by text devices such as the use of brackets which tend to diminish the impact of the *APR*.

3.6.21  
FCA

G

If a *financial promotion* contains *price information* for more than one *qualifying credit* product, ■ MCOB 3.6.17 R requires an *APR* to be provided for each product. Where more than one *APR* is required to be given, each *APR* will need to be no less prominent than:

- (1) any *price information* relating to the particular product;
- (2) any reference (either explicitly or implicitly) to the availability of credit for *customers* who might otherwise consider their access to credit restricted; and
- (3) any other *APR* in the *financial promotion*.

3.6.22  
FCA

R

If the *non-real time financial promotion* concerns a contract under which the *APR* varies (for example, depending upon the circumstances of the *customer*), the *APR* required by ■ MCOB 3.6.17 R (Annual percentage rate (*APR*)) is that which is representative of the business expected to arise from the promotion.

3.6.23  
FCA

R

For the purposes of ■ MCOB 3.6.22 R, an *APR* is not representative of business unless it is an *APR* at or below which at least 66% of *customers* responding to the promotion and who enter into a *qualifying credit* agreement which is the subject of the promotion would be charged.

3.6.24  
FCA

G

- (1) The *FCA* would not regard an *APR* described as 'from X%' as satisfying ■ MCOB 3.6.22 R.
- (2) In ■ MCOB 3.6.22 R, when determining the representative *APR*, account should be taken of the business that has arisen from a similar *financial promotion* of *qualifying credit* in the previous 12 months. Where the *financial promotion* is for a new product or business, reference should instead be had to the relevant business plans.

3.6.25  
FCA

R

If the *non-real time financial promotion* of *qualifying credit* concerns a contract where the *APR* varies depending upon the circumstances of the *customer*, the following further statement must be included with due prominence: 'The actual rate available will depend upon your circumstances. Ask for a personalised illustration.'

**Multi-rate mortgages**

PAGE  
25

3.6.26  
FCA

R

If the *non-real time financial promotion* of *qualifying credit* is for a product where more than one rate of charge will or may apply during the course of the contract, and the *non-real time financial promotion* of *qualifying credit* contains information about any of these rates then:

- (1) the *non-real time financial promotion of qualifying credit* must contain a clear and no less prominent description of all of the rates of charge that will apply;
- (2) where any rate to be charged in the future is variable (such as the *mortgage lender's* standard variable rate), the rate indicated must be the level of that rate current at the time of the promotion; and
- (3) the rates must be stated in sequence from the rate initially applying through to the rate assumed to apply at the end of the mortgage, and after each rate must be given a statement:
  - (a) of its period of application; and
  - (b) that the rate then changes.

**Fees for advice or arranging**

3.6.27

FCA

R

If a *non-real time financial promotion of qualifying credit* relates to the *controlled activities* of advising on or *arranging qualifying credit* and a fee may be charged for these activities, a *firm* must ensure that a prominent indication is given of:

- (1) the amount of the fee (if known); or
- (2) a representative fee based upon the business expected to arise from the promotion.

3.6.28

FCA

G

■ MCOB 3.6.27 R seeks to ensure that *customers* are given early notice of the existence of any fees charged by intermediaries in connection with the provision of *qualifying credit*. Where the fee is known at the outset, this must be indicated. The indication could be either as a cash value or as a percentage. If the charging of a fee, and the level of this, are dependent upon the circumstances of the *customer*, the indication must be based upon the business that is expected to result from the promotion.

3.6.29

FCA

G

■ MCOB 3.6.14 G(1) provides further guidance in relation to prominence.

3.6.30

FCA

G

■ MCOB 3.6.27 R(2) does not require the promotion to set out the characteristics of the representative business (loan amount etc) on which the indicated fee is based. For example, where the fee charged by a *firm* relates to circumstances of the *customer* such as their previous credit history, it would be sufficient to state that 'There will be a fee for mortgage advice. The precise amount will depend upon your circumstances but we estimate that it will be X'.

**3.7 Unsolicited real time financial promotions of qualifying credit, a home reversion plan or a regulated sale and rent back agreement**

**Meaning of 'solicited' and 'unsolicited' real time financial promotion**

3.7.1

FCA

R

- (1) An *unsolicited real time financial promotion* is a *real time financial promotion* which is not solicited as described in (2).
- (2) A *solicited real time financial promotion* is a *real time financial promotion* which is solicited, that is, it is made in the course of a personal visit, telephone call or other interactive dialogue if that call, visit or dialogue:
  - (a) was initiated by the recipient of the *financial promotion*; or
  - (b) takes place in response to an express request from the recipient of the *financial promotion*;and it is clear from all the circumstances when the call, visit or dialogue is initiated or requested that during the course of the visit, call or dialogue a *financial promotion* would be made.
- (3) In (2), a *person* is not to be treated as expressly requesting a call, visit or dialogue:
  - (a) because he omits to indicate that he does not wish to receive any or any further visits or calls or to engage in any or any further dialogue;
  - (b) because he agrees to standard terms that state that such visits, calls or dialogues will take place unless he has signified clearly that, in addition to agreeing to the terms, he is willing for them to take place.
- (4) If a *financial promotion* is solicited by a *person* ('R') it is treated as also having been solicited by any other *person* to whom it is made at the same time as R if that other *person* is a *close relative* of R or is expected to enter into a *home reversion plan*, a *regulated sale and rent back agreement* or any contract for *qualifying credit* jointly with R.

PAGE  
27

3.7.2

FCA

G

■ MCOB 3.7.1 R is based on article 8 of the *Financial Promotion Order*. Guidance on whether a *real time financial promotion* is solicited is contained in PERG 8.10.8G (Solicited

v unsolicited real-time promotions). PERG 8.10.11G to PERG 8.10.14G also gives *guidance* on who will be considered the 'recipient' of a communication.

**Prohibition on unsolicited real time financial promotions to customers**

3.7.3

FCA

R

*A firm must not make an unsolicited real time financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement unless the customer has an established existing customer relationship with the firm and the relationship is such that the customer envisages receiving such financial promotions.*

3.7.4

FCA

G

- (1) *Firms are reminded of the exemptions in ■ MCOB 3.2.5 R (Application: what? exemptions). ■ MCOB 3.7.3 R does not prohibit an exempt real time financial promotion.*
- (2) *■ MCOB 3.2.5 R(2) creates an exemption for financial promotions that contain only very limited information about the firm (such as its name or contact details). The limited nature of this exemption means that a firm is unlikely to be able to use it to induce a customer to approach the firm and turn any subsequent communication by the firm into a solicited real time financial promotion.*



### **3.8 Form and content of real time qualifying credit promotions**

**3.8.1**

**FCA**

**G**

A *firm* should note that ■ MCOB 3.7.3 R (Prohibition on unsolicited real time promotions to customers) prevents a *firm* from *communicating* to a *customer* an *unsolicited real time financial promotion* of *qualifying credit* other than an exempt promotion (which is outside the scope of this chapter) or where ■ MCOB 3.7.3 R applies. Many *solicited real time financial promotion* will be exempt promotions (and, therefore, outside the scope of this chapter). Accordingly, ■ MCOB 3.8.2 R and ■ MCOB 3.8.3 G apply only to *solicited real time financial promotions* which are not exempt *financial promotions* and to *unsolicited real time financial promotion* of *qualifying credit* within ■ MCOB 3.7.3 R.

**3.8.2**

**FCA**

**R**

A *firm* must ensure that an individual who makes a *real time financial promotion* of *qualifying credit* on the *firm's* behalf:

- (1) does so in a way which is clear, fair and not misleading;
- (2) does not make any untrue claims;
- (3) makes clear the purpose (or purposes) of the *financial promotion* at the initial point of communication, and identifies himself and the *firm* which he represents;
- (4) if the time and method of *communication* were not previously agreed by the recipient:
  - (a) checks that the recipient wishes him to proceed;
  - (b) terminates the *communication* if the recipient does not wish him to proceed (but may ask for another appointment);
  - (c) recognises and respects, promptly, the right of the recipient to:
    - (i) end the *communication* at any time;
    - (ii) refuse any request for another appointment;
- (5) gives any *person* with whom he arranges an appointment a contact point;
- (6) does not *communicate* with a *person*:

- (a) at an unsocial hour, unless the *person* has previously agreed to such a *communication*;
- (b) on an unlisted telephone number, unless the *person* has previously agreed to such calls on that number.

3.8.3  
FCA

G

In ■ MCOB 3.8.2 R(6)(a) an unsocial hour usually means on a Sunday or before 9am or after 9pm on any other *day*. It could also mean other *days* of the week or other times if the *firm* knows that a particular *customer* would not wish to be called on that *day* or at that time for reasons of, for example, religious faith or night shift working.

3.8.4  
FCA

G

The requirements of ■ MCOB 3.8.2 R and ■ MCOB 3.8.3 G:

- (1) apply in respect of all individuals who initiate the *communication*, including advisers and call centre operators;
- (2) apply to all forms of *real time financial promotion of qualifying credit* with *customers*, including face-to-face and telephone *financial promotion*;
- (3) but do not prevent, for example, a telephone call centre which has received a call from a *customer* at an hour generally regarded as unsocial, either responding to that call or asking during the call if the *customer* would like details of other *qualifying credit*

3.8.5  
FCA

G

■ SYSC 3.2.20 R (Records) requires a *firm* to take reasonable care to make and retain certain records. For a telemarketing campaign to which ■ MCOB 3.8.2 R and ■ MCOB 3.8.3 G apply, those records should include copies of any scripts used.

3.8.6  
FCA

G

*Firms* should note the additional disclosure requirements in ■ MCOB 4.4.7 R (Disclosure where initial contact is by telephone) and ■ MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts and distance home purchase mediation contracts with retail customers) in relation to telephone calls that may fall within the definition of a *financial promotion*.



**3.8A Form and content of financial promotions of home reversion plans**

**Clear, fair and not misleading**

3.8A.1  
FCA

R

A firm which communicates or approves a financial promotion of a home reversion plan must take reasonable steps to ensure that the financial promotion is clear, fair and not misleading.

3.8A.2  
FCA

G

The guidance on the clear, fair and not misleading standard at MCOB 3.6.5 G, MCOB 3.6.10 G and MCOB 3.6.14 G may be relevant.

**Non-real time financial promotions to customers**

3.8A.3  
FCA

R

A non-real time financial promotion of a home reversion plan must:

- (1) describe any home reversion plan as a 'home reversion plan' and not use any other expression to describe it; and
- (2) unless it is communicated by way of sound broadcasting or television where the primary purpose of the programming in which the promotion is contained is not to promote home finance or by an exhibition of pictures or photographic or cinematographic films:
  - (a) (if made to or directed at a customer other than an unauthorised reversion provider) prominently state that it relates to a home reversion plan and that the customer should ask for a personalised illustration to understand its features and risks; or
  - (b) (if made to or directed at an unauthorised reversion provider) prominently state that a home reversion plan is a long-term investment and a complex legal arrangement, and that expert independent legal advice should always be obtained before entering into any agreement.

PAGE  
31

3.8A.4  
FCA

A

- (1) A firm should take reasonable steps to ensure that, for a non-real time financial promotion:
  - (a) it includes any matters the omission of which causes the financial promotion not to be clear, fair and not misleading;

- (b) if it describes a feature of any *home reversion plan*, it gives no less prominence to the possible disadvantages than to the benefits associated with that feature;
  - (c) it uses plain and intelligible language, and is easily legible (or, in the case of oral promotions, clearly audible);
  - (d) the accuracy of all statements of fact in it can be substantiated;
  - (e) its promotional purpose is not in any way disguised or misrepresented;
  - (f) any statement of fact, promise or prediction is clear, fair and not misleading and any relevant assumptions are clearly and prominently disclosed;
  - (g) any statement of opinion is honestly held and, unless consent is impracticable, given with the written consent of the *person* concerned;
  - (h) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are prominently disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast;
  - (i) it does not contain any false indications, in particular as to:
    - (i) the *firm's* independence; or
    - (ii) the *firm's* resources and scale of activities;
  - (j) the design, content or format does not in any way disguise, obscure or diminish the significance of any statement, warning or other matter which the *home reversion plan* is required by this chapter to contain;
  - (k) it does not include any reference to approval by the *FCA* or any government body, unless such approval has been obtained in writing from the *FCA* or that body (see also ■ GEN 1.2 (Referring to approval by the *FCA*));
- (2) (a) Contravention of (1) may be relied on as tending to show contravention of ■ MCOB 3.8A.1 R.
- (b) Compliance with (1) may be relied on as tending to show compliance with ■ MCOB 3.8A.1 R.



## MCOB 3 : Financial Promotion of qualifying credit, home reversion plans and regulated sale and rent back agreements

Section 3.8A : Form and content of financial promotions of home reversion plans

3.8A.5

FCA

G

The effect of giving no less prominence to the possible disadvantages than to the benefits associated with a feature will depend upon the content of the promotion. The following non-exhaustive examples would satisfy the requirement:

- (1) a promotion which, when describing any possible monetary saving, also clearly states how this could be achieved; and
- (2) a promotion which, when including references to non-standard services or facilities, also clearly states that an additional fee may be payable for these.

### **No approval of real time financial promotions of a home reversion plan**

3.8A.6

FCA

R

*A firm must not approve a real time financial promotion of a home reversion plan.*

### **Referring to the FCA**

3.8A.7

FCA

G

The guidance on referring to the *FCA* in a *financial promotion* may be relevant (see

- MCOB 3.6.2 G (3)).



**3.8B Form and content of financial promotions of regulated sale and rent back agreements**

**Clear, fair and not misleading**

3.8B.1  
FCA

**R**

*A firm which communicates or approves a financial promotion of a regulated sale and rent back agreement must take reasonable steps to ensure that the financial promotion is clear, fair and not misleading.*

3.8B.2  
FCA

**G**

The guidance on the clear, fair and not misleading standard at ■ MCOB 3.6.5 G, ■ MCOB 3.6.10 G and ■ MCOB 3.6.14 G may be relevant.

**Ban on SRB leaflet dropping**

3.8B.3  
FCA

**R**

*A regulated sale and rent back firm must not communicate an unsolicited non-real time financial promotion that relates to a regulated sale and rent back agreement to a potential SRB agreement seller in the form of a leaflet or brochure.*

**Non-real time financial promotions to customers and advertisements**

3.8B.4  
FCA

**R**

*A non-real time financial promotion relating to a regulated sale and rent back agreement and any other advertisement which is issued by a regulated sale and rent back firm that could lead to the conclusion of a regulated sale and rent back agreement, must (unless it is of a kind listed in ■ MCOB 3.2.5 R(2)) contain a risk warning that uses the following wording:*

*"If you enter into a sale and rent back agreement you are unlikely to get the market value of your home and, as a tenant, may only be able to remain there for a limited period. There may be other options available. Please ask for a key terms statement."*

3.8B.5  
FCA

**R**

*A non-real time financial promotion relating to a regulated sale and rent back agreement and any other advertisement which is issued by a regulated sale and rent back firm that could lead to the conclusion of a regulated sale and rent back agreement, must describe any regulated sale and rent back agreement as a "sale and rent back agreement" and not use any other expression such as "equity release" to describe it.*

3.8B.6



FCA

- (1) A *firm* should take reasonable steps to ensure that, for a *non-real time financial promotion*:
- (a) it includes any matters the omission of which causes the *financial promotion* not to be clear, fair and not misleading;
  - (b) if it describes a feature of any *regulated sale and rent back agreement*, it gives no less prominence to the possible disadvantages than to the benefits associated with that feature;
  - (c) it uses plain and intelligible language, and is easily legible (or, in the case of oral promotions, clearly audible);
  - (d) the accuracy of all statements of fact in it can be substantiated;
  - (e) its promotional purpose is not in any way disguised or misrepresented;
  - (f) any statement of fact, promise or prediction is clear, fair and not misleading and any relevant assumptions are clearly and prominently disclosed;
  - (g) any statement of opinion is honestly held and, unless consent is impracticable, given with the written consent of the *person* concerned;
  - (h) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are prominently disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast;
  - (i) it does not contain any false indications, in particular as to the *firm's* resources and scale of activities;
  - (j) the design, content or format does not in any way disguise, obscure or diminish the significance of any statement, warning or other matter which the *regulated sale and rent back agreement* is required by this chapter to contain; and
  - (k) it does not include any reference to approval by the *FCA* or any government body, unless that approval has been obtained in writing from the *FCA* or that body (see also ■ GEN 1.2 (Referring to approval by the *FCA*)).
- (2) (a) Contravention of (1) may be relied on as tending to show contravention of ■ MCOB 3.8B.1 R.
- (b) Compliance with (1) may be relied on as tending to show compliance with ■ MCOB 3.8B.1 R.

3

3.8B.7



FCA

The effect of giving no less prominence to the possible disadvantages than to the benefits associated with a feature will depend on the context of the promotion. The costs,

restrictions or conditions relating to a feature such as any option available should be detailed for the following non-exhaustive examples:

- (1) where any part of the discount on the market value of the property is to be repaid to the *consumer* after a qualifying period; and
- (2) where a *consumer* is to benefit from shared appreciation in the value of the property.

**Exploitation of customer**

3.8B.8

FCA

R

*A firm must not in any financial promotion of a regulated sale and rent back agreement exploit the vulnerable nature or circumstances of any customer who may be in financial difficulties and at risk of losing his or her home and must accordingly avoid using in the promotion phrases or terms such as "fast sales", "rescue" or "cash quickly" or any other similar expression.*

**No approval of real time financial promotions of a regulated sale and rent back agreement**

3.8B.9

FCA

R

*A firm must not approve a real time financial promotion of a regulated sale and rent back agreement.*

**Referring to the FCA**

3.8B.10

FCA

G

The guidance on referring to the FCA in a *financial promotion* may be relevant (see ■ MCOB 3.6.2 G (3)).



**3.9 Confirmation of compliance: financial promotions of qualifying credit, home reversion plans or regulated sale and rent back agreements**

3.9.1  
FCA

**R**

- (1) Before a *firm communicates or approves a non-real time financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement* it must confirm that the *financial promotion* complies with the *rules* in this chapter.
- (2) A *firm* must arrange for the confirmation exercise in (1) to be carried out by an individual or individuals with appropriate expertise.

3.9.2  
FCA

**G**

- (1) 'Appropriate expertise' will vary depending on the complexity of the *financial promotion* and the *qualifying credit, home reversion plan or regulated sale and rent back agreement* to which it relates. The individuals engaged by a *firm* to confirm the compliance of its *financial promotions* with this chapter may themselves have different levels of expertise and therefore a different level of authority for confirmation depending on the type of promotion and the *qualifying credit, home reversion plan or regulated sale and rent back agreement* involved.
- (2) A *firm* may arrange for a third party with appropriate expertise to carry out the confirmation exercise on the *firm's* behalf, but the responsibility for the *financial promotion* remains with the *firm*.

**Withdrawing confirmation**

3.9.3  
FCA

**R**

If, at any time after it has completed a confirmation exercise in ■ MCOB 3.9.1 R(1), a *firm* becomes aware that a *financial promotion* no longer complies with the *rules* in this chapter, it must ensure that the *financial promotion* is withdrawn as soon as is reasonably practicable by:

- (1) ceasing to *communicate* it;
- (2) withdrawing its *approval* (if applicable); and
- (3) notifying any *person* that the *firm* knows to be relying on its *approval* (if applicable) or confirmation (under ■ MCOB 3.9.5 R).

3.9.4

FCA

G

- (1) ■ MCOB 3.9.3 R is of particular importance to a *financial promotion*, such as a product brochure, that a *firm* uses over a period of time. It has little application to a *financial promotion* which is of its nature ephemeral, for example a mobile phone text message. Further, a *financial promotion* which clearly speaks as at a particular date will not cease to comply with the *rules* in this chapter merely because the passage of time has rendered it out-of-date. This does not mean, however, that a *financial promotion* can include information (such as *price information*) which is likely to become outdated during the currency of the *financial promotion* without the *firm* having regard to the need for any *financial promotion* to be clear, fair and not misleading. See further ■ MCOB 3.6.5 G (2).
- (2) For compliance with ■ MCOB 3.9.3 R, the FCA will expect a *firm* to monitor its relevant *financial promotions* as part of the *firm's* routine compliance monitoring procedures. A *firm* may find it helpful to designate a relevant *financial promotion* with a 'review date', a date at which the *financial promotion* should be checked once more against the *rules* in this chapter. If it is found no longer to meet these requirements it should be withdrawn as soon as is reasonably practicable.
- (3) If at any time a *firm* becomes aware that *customers* may have been misled by a *financial promotion* it should consider whether *customers* who have responded to the *financial promotion* should be contacted with a view to explaining the position and offering any appropriate form of redress to those who have suffered financial loss.

**Communicating a financial promotion where another firm has confirmed compliance**

3.9.5

FCA

R

A *firm* will not contravene any of the rules in this chapter in circumstances where it (*firm* 'A') *communicates* a *non-real time financial promotion* which has been produced by another *person* provided that:

- (1) A takes reasonable care to establish that another *firm* (*firm* 'B') has already confirmed the compliance of the *financial promotion* in accordance with ■ MCOB 3.9.1 R;
- (2) A takes reasonable care to establish that A communicates the *financial promotion* only to recipients of the type for whom it was intended at the time B carried out the confirmation exercise; and
- (3) so far as A is, or ought reasonably to be, aware:
  - (a) the *financial promotion* has not ceased to be clear, fair and not misleading since that time; and
  - (b) B has not withdrawn the *financial promotion*.



**3.10 Records: non-real time financial promotions of qualifying credit, a home reversion plan or a regulated sale and rent back agreement**

**Requirement to make and retain records**

3.10.1

FCA

R

A *firm* must make an adequate record of each *non-real time financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement* which it has confirmed as complying with the *rules* in this chapter. The record must be retained for a year from the date at which the *financial promotion* was last *communicated*.

**Content of records**

3.10.2

FCA

G

In deciding what is an adequate record, a *firm* should consider including, or providing reference to, where appropriate, such matters as:

- (1) the name of the individual or individuals who confirmed that the *financial promotion* complied with the *rules* in this chapter;
- (2) the date of confirmation and (where appropriate) *approval*;
- (3) details of the medium for which the *financial promotion* was authorised;
- (4) the evidence supporting any material factual statement about *qualifying credit, a home reversion plan or a regulated sale and rent back agreement* in the *financial promotion*. For example, for any testimonial they use, advertisers should hold signed and dated proof, including a contact address. Unless they are genuine opinions taken from a published source, testimonials should only be used with the written permission of those giving them; and
- (5) where the promotion contains a typical *APR*, evidence to show that the *APR* was representative of the business expected to arise from the promotion (see ■ MCOB 3.6.22 R).

3.10.3

FCA

G

- (1) A *firm* should also retain a copy of the *financial promotion* as finally published or, if this is not practicable, monitor the published version to verify that it is in substantially the same format as the version which the *firm* confirmed complied with the *rules* in this chapter.
- (2) Records which should be retained include:
  - (a) any written *financial promotion* used by an adviser; and

- (b) any written material which is used in an organised marketing campaign (including, for example, written mailshots whether sent by e-mail, post, facsimile or other media).
- (3) If the *financial promotion* is not in written form, the record should represent the actual *financial promotion* as accurately as possible.

**Form of records**

3

3.10.4

FCA

G

■ MCOB 2.8 (Record keeping) applies to the form in which records required in accordance with this chapter must be kept.





### **3.11 Communication and approval of qualifying credit promotions for an overseas person or an unauthorised person**

#### **Approval of qualifying credit promotions**

3.11.1

FCA

G

- (1) Section 21(1) of the *Act* (Restrictions on financial promotion) prohibits an *unauthorised person* from *communicating* a *financial promotion*, in the course of business, unless an exemption applies or the *financial promotion* is *approved* by a *firm*.
- (2) Most of the *rules* in this chapter apply when a *firm* *approves* a *financial promotion* of *qualifying credit* in the same way as when a *firm* *communicates* a *financial promotion* of *qualifying credit* itself. A *firm* therefore has a similar responsibility for a *financial promotion* of *qualifying credit* that it *approves* as for one that it *communicates*. For example, a *firm* which *approves* a *non-real time financial promotion* must:
  - (a) confirm that the *financial promotion* complies with the *rules* in this chapter; and
  - (b) be able to show that it has taken reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.
- (3) A *firm* may also wish to *approve* a *financial promotion* of *qualifying credit* that it *communicates* itself. This would ensure that an *unauthorised person* who then also *communicates* it to another *person* will not contravene the restriction in section 21(1) of the *Act* (Restrictions on financial promotion).
- (4) A *firm* which *approves* a promotion that is exempt under ■ MCOB 3.2.5 R (Application: what?; exemptions) or ■ MCOB 3.3.1 R (Application: where?) must still comply with certain *rules* in this chapter (see ■ MCOB 3.2.4 R (Application: what? exemptions) and ■ MCOB 3.3.3 R (Exceptions to territorial scope: rules without territorial limitation)).

#### **No approval of real time qualifying credit promotions**

3.11.2

FCA

R

*A firm* must not *approve* a *real time financial promotion* of *qualifying credit*.

#### **Approval of qualifying credit promotions when not all the rules apply**

3.11.3

FCA

R

If a *firm* *approves* a *financial promotion* of *qualifying credit* in circumstances in which one or more of the *rules* in this chapter are expressly disappplied, the *approval* must be given on terms that it is limited to those circumstances.

3.11.4  
FCA

G

If an *approval* is limited in accordance with ■ MCOB 3.11.3 R, and an *unauthorised person* communicates the *financial promotion* to persons not covered by the *approval*, the *unauthorised person* may commit an *offence* under section 21(1) of the *Act* (Restrictions on financial promotion). A *firm* giving a limited *approval* may wish to advise the *unauthorised person* accordingly.

**Non-real time qualifying credit promotions for overseas persons**

3.11.5  
FCA

R

A *firm* must not *communicate* or *approve* a *non-real time financial promotion* which relates to *qualifying credit* provided by an *overseas person*, unless:

- (1) the *financial promotion of qualifying credit* makes clear which *firm* has *approved* or *communicated* it and, where relevant, explains;
  - (a) that the *rules* made under the *Act* for the protection of *customers* do not apply;
  - (b) the extent and level to which the *compensation scheme* will be available, or if the scheme will not be available, a statement to that effect; and
  - (c) if the communicator wishes, the protection or compensation available under another system of regulation; and
- (2) the *firm* has no reason to doubt that the *overseas person* will deal with *customers* in the *United Kingdom* in an honest and reliable way.



## 3.12 The Internet and other electronic media

3.12.1  
FCA

G

This section contains *guidance* on the use of the Internet and other electronic media to *communicate financial promotions*. *Firms* are also referred to the *guidance* in ■ MCOB 2.7 (Application to electronic media and distance communications).

### Approach and general guidance

3.12.2  
FCA

G

Any material, which meets the definition of a *financial promotion of qualifying credit*, a *home reversion plan* or a *regulated sale and rent back agreement*, including any video or moving image material incorporated in any website containing such a *financial promotion*, should comply with the *rules* in this chapter. See ■ PERG 8 (The Internet) for further *guidance* on *financial promotions* on the Internet, including the treatment of hyperlinks and banners.

3.12.3  
FCA

G

As indicated in ■ MCOB 3.3 (Application: where?), for the purposes of the *financial promotion rules* there are two types of approach to *financial promotion communicated* via the Internet and other electronic media:

- (1) *real time financial promotions* where the *communication* is in the form, for example, of a telephone conversation, or other form of interactive dialogue; and
- (2) *non-real time financial promotions* where the *customer* may, for example, choose from reading a description of the *qualifying credit*, *home reversion plan* or *regulated sale and rent back agreement*, through to the completion of a contract in a similar way to browsing through a leaflet rack. The *rules* in this chapter relating to hard copy *financial promotions* such as advertisements in magazines or newspapers apply equally to such promotions. E-mails, material displayed on a website and sound and television broadcasts are *non-real time financial promotions* (see ■ MCOB 3.5.5 R(2)).

3.12.4  
FCA

G

- (1) Before using the Internet, digital or any other form of interactive television or other electronic media to promote its services, a *firm* should refer to legislation such as the Data Protection Act 1998 and the Computer Misuse Act 1990, as well as to this chapter.
- (2) In relation to *financial promotions communicated* by way of television, *firms* will want to have regard to Guidance Note 3 of the ITC Code of Advertising Standards and Practice on the use and appearance of superimposed text.

- (3) When designing websites and other electronic media, *firms* should be aware of the difficulties that can arise when reproducing certain colours and printing certain types of text. These difficulties could cause problems with the presentation and retrieval of required information. Any *financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement communicated* by the Internet, digital or other forms of interactive television is subject to the requirements on form and content in this chapter.

### Specific guidance

---

[www.fca.org.uk](http://www.fca.org.uk) contains a wide range of information including pages of specific relevance to *customers*. *Firms* may, if they wish, include a reference or hyperlink to the *FCA's* site; this will not, however, replace any requirements of the *financial promotion rules*.

# MCOB 3 : Financial Promotion of qualifying credit, home reversion plans and regulated sale and rent back agreements

## Examples of qualifying credit promotions

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Examples of qualifying credit promotions - MCOB 3 Annex 1*

**MCOB 3 : Financial Promotion of  
qualifying credit, home reversion plans  
and regulated sale and rent back  
agreements**

## Chapter 4

# Advising and selling standards



## 4.1 Application

### Who?

4.1.1

FCA

R

This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 4.1.2 R in accordance with column (2) of that table.

4.1.2

FCA

R

Table This table belongs to ■ MCOB 4.1.1 R

| (1) Category of firm          | (2) Applicable section   |
|-------------------------------|--|
| <i>mortgage lender</i>        | MCOB 4.1 to MCOB 4.4, and MCOB 4.8 to MCOB 4.9   |
| <i>mortgage adviser</i>       | whole chapter except MCOB 4.10   |
| <i>mortgage arranger</i>      | whole chapter except MCOB 4.7 and MCOB 4.10  |
| <i>home purchase provider</i> | MCOB 4.1, MCOB 4.2 and MCOB 4.10 (except MCOB 4.10.5 G to MCOB 4.10.7 G).  |
| <i>home purchase adviser</i>  | MCOB 4.3, MCOB 4.4 and MCOB 4.8 in accordance with MCOB 4.10   |
| <i>home purchase arranger</i> | MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.10. MCOB 4.3, MCOB 4.4, MCOB 4.7 and MCOB 4.8 in accordance with MCOB 4.10 |
| <i>reversion provider</i>     | As for a <i>home purchase adviser</i> except MCOB 4.10.5 G to MCOB 4.10.7 G and MCOB 4.7 do not apply                        |
| <i>reversion adviser</i>      | see MCOB 8 for the application of this chapter   |
| <i>reversion arranger</i>     |  |
| <i>SRB adviser</i>            | MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.11   |



| (1) Category of firm          | (2) Applicable section                               |
|-------------------------------|--|
| <i>SRB arranger</i>           | MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.11 |
| <i>SRB agreement provider</i> | MCOB 4.1, MCOB 4.2 and MCOB 4.11                     |

**What?**

4.1.3  
FCA

**R** This chapter applies if a *firm* in the course of carrying on a *home finance activity* :

- (1) makes, or anticipates making, a *personal recommendation* about; or
- (2) gives, or anticipates giving, personalised information relating to; the *customer*:
- (3) entering into a *home finance transaction*; or
- (4) varying the terms of a *home finance transaction* entered into by the *customer*.

4.1.4  
FCA

**R** (1) ■ MCOB 4.4 (Initial disclosure requirements) applies only in relation to varying the terms of a *regulated mortgage contract* entered into by the *customer* in any of the following ways:

- (a) adding or removing a party;
- (b) taking out a further advance; or
- (c) switching all or part of the *regulated mortgage contract* from one interest rate to another.

(2) Otherwise, this chapter, ■ MCOB 4, applies in relation to any form of variation of a *regulated mortgage contract*.

4.1.5  
FCA

**R** In relation to an *equity release transaction*, this chapter is modified by ■ MCOB 8 ( Equity release : advising and selling standards).

4.1.6  
FCA

**G** ■ MCOB 4.1.5 R means that this chapter, ■ MCOB 4, deals with standard *regulated mortgage contracts*, *home purchase plans* and *regulated sale and rent back agreements* only and therefore *firms* should note that the scope of *service rules* in this chapter do not apply in respect of *equity release transactions* .

PAGE 3  
4.1.7  
FCA

**G** If a *firm* is an *authorised professional firm*, when the *firm* conducts *non-mainstream regulated activities* with a *customer*, the only initial disclosure requirements that apply are those relating to the *Financial Ombudsman Service* and the *FSCS* (see ■ MCOB 1.2.10 R (3)).

4.1.8

FCA

G

The FCA would not view the removal of a party to the *regulated mortgage contract* following the death of that party (and where no other variation is proposed) as a variation for the purposes of ■ MCOB 4.1.4 R(1).



## 4.2 Purpose

### 4.2.1

FCA

G

- (1) This chapter amplifies *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and *Principle 9* (Customers: relationships of trust).
- (2) The purpose of this chapter is to ensure that:
  - (a) *customers* are adequately informed about the nature of the service which they may receive from a *firm* in relation to *home finance transactions* . In particular *firms* need to make clear to *customers* the scope of *home finance transactions* available from them; and
  - (b) where *advice* is given, it is suitable for the *customer*. The steps *firms* need to take to ensure that the *customer* receives suitable *advice* will vary depending on the demands and needs of the *customer* and the type of *home finance transaction*.
- (3) This chapter also implements certain requirements of the *Distance Marketing Directive* in relation to *distance mortgage mediation contracts* and *distance home purchase mediation contracts* .



## 4.3 Scope of service provided

### Providing services within and beyond scope

4.3.1

FCA

R

- (1) Subject to (2), a *firm* must take reasonable steps to ensure that the scope of the service given to a *customer*, and the *home finance transactions* offered, is based on a selection from one of the following:
  - (a) the whole market; or
  - (b) a limited number of *home finance providers*; or
  - (c) a single *home finance provider*.
- (2) A *firm* may change the scope of the service it gives to a particular *customer* by widening the scope, for example, from that in (1)(c) to that in (b) or (a) but it must take reasonable steps to ensure that before doing so:
  - (a) the *customer* is made aware of the proposed change by a communication in a *durable medium*; and
  - (b) the *customer's* attention is drawn to any change in the *fees* that the *customer* must pay to the *firm* for the *firm's* services.

4.3.2

FCA

R

A *firm* must take reasonable steps to ensure that the extent of the scope of the service which it holds itself out as offering to a *customer* reflects the extent of that scope in practice.

4.3.3

FCA

G

■ SYSC 3.2.6 R and ■ SYSC 6.1.1 R (Compliance) requires a *firm* (including a *common platform firm*) to 'establish, implement and maintain effective systems and controls for compliance with applicable requirements and standards under the *regulatory system*'. In meeting this requirement in relation to ■ MCOB 4.3.2 R, a *firm* which states that it provides a service based on a limited number of *mortgage lenders* (see ■ MCOB 4.3.1 R (1)(b)) should have adequate systems and controls in place to monitor whether business is actually placed with those *mortgage lenders*.

**Whole of market**

4.3.4  
FCA

**R**

- (1) A *firm* which holds itself out as giving information or *advice* to *customers* on *regulated mortgage contracts* from the whole market must not give any such information or *advice* unless:
  - (a) it has considered a sufficiently large number of *regulated mortgage contracts* which are generally available from the market; and
  - (b) the consideration in (a) is based on criteria which reflect adequate knowledge of the *regulated mortgage contracts* generally available from the market as a whole.
  
- (2) A *firm* in (1) must satisfy the obligation in ■ MCOB 4.7.2 R by taking reasonable steps to ensure that a *personal recommendation* given to a *customer* is:
  - (a) in accordance with the consideration in (1); and
  - (b) the *regulated mortgage contract* which on the basis of that consideration is the most suitable to meet the *customer's* needs.

4.3.4A  
FCA

**R**

In applying this chapter, there is:

- (1) one market for *regulated mortgage contracts* that are not *lifetime mortgages*; and
- (2) another market for *home purchase plans*.

4.3.5  
FCA

**G**

If a *firm* holds itself out as giving information or *advice* to *customers* on *regulated mortgage contracts* generally available from the whole market, the *firm* may choose to offer its *customers* only a selection of those *regulated mortgage contracts*. The *firm's* selection of *regulated mortgage contracts* for this purpose will need to be sufficiently large to enable the *firm* to satisfy the suitability requirement in ■ MCOB 4.3.4 R (Whole of market).

4.3.6  
FCA

**G**

- (1) When offering only a selection of *regulated mortgage contracts* as described in ■ MCOB 4.3.5 G, a *firm* should ensure that its analysis of the market and of the available *regulated mortgage contracts* is kept adequately up to date. For example, a *firm* would need to update its selection of *regulated mortgage contracts* if it became aware that a *regulated mortgage contract* had become generally available offering an improved product feature, or a better interest rate, when compared with the *regulated mortgage contracts* currently in the *firm's* selection.
  
- (2) One way in which a *firm* may wish to satisfy ■ MCOB 4.3.4 R is by using a panel of *mortgage lenders*, which includes representative *firms* from the whole market. However, if a *firm* wishes to offer a whole of market service through the use of a panel, it must still assess the individual *regulated mortgage contracts* that are being offered by *mortgage lenders* in making its selection.

**Independence**

4.3.7  
FCA

**R**

- (1) When providing information or giving advice to a *customer* on *home finance transactions*, a *firm* must not hold itself out as acting independently unless it intends to:
  - (a) provide that service wholly or predominantly based on the whole market in the relevant type of *home finance transaction* ; and
  - (b) enable the *customer* to pay a *fee* for the provision of that service.
  
- (2) A *firm* which in accordance with (1) holds itself out as independent must ensure that the information or advice subsequently given to the *customer* concerned is information or *advice* on *home finance transactions* from the whole market in the relevant type of *home finance transaction*.

4.3.8  
FCA

**G**

- (1) ■ MCOB 4.3.7 R stipulates what a *firm* must do if it is to hold itself out to any particular *customer* as acting independently. A *firm* which wishes to hold itself out generally as acting independently should ensure that doing so (for example through a trading name or advertising) is consistent with the kind of service which *customers* receive in relation to the relevant *home finance transactions*.
  
- (2) A *firm* that sells both *investments* and home finance products can offer from the whole market (or the whole market for a type of *home finance transaction*) and therefore be 'independent' for one but offer only a limited range for the other. If this is the case, the *firm* should explain the different nature of the services in a way that meets the requirement for clear, fair and not misleading communications in ■ MCOB 2.2.6 (Clear, fair and not misleading communications).

4.3.9  
FCA

**G**

■ MCOB 4.3.7 R (1)(b) means that a *firm* wishing to hold itself out as independent will need to give a *customer* a purely *fee*-based option for paying its *fees*. However, the *firm* may in addition provide the *customer* with other payment options, such as a combination of *fees* and commission.

**Appointed representatives**

4.3.10  
FCA

**R**

A *firm* may restrict the *home finance transactions* it authorises a particular *appointed representative* to sell. If it does so, the *appointed representative* must reflect this restricted scope in any *initial disclosure document* or *combined initial disclosure document* provided to the *customer* .



## 4.4 Initial disclosure requirements

### Disclosure where initial contact is not made by telephone

4.4.1

FCA

R

- (1) A *firm* must ensure that, on first making contact with a *customer* when it anticipates giving personalised information or *advice* on a *regulated mortgage contract*, it:
  - (a) establishes with the *customer* whether it will provide *advice* or information;
  - (b) establishes with the *customer* how much he will pay or, alternatively, the basis on which the *firm* will be remunerated, where appropriate; and
  - (c) provides the *customer* with either:
    - (i) an *initial disclosure document* ; or
    - (ii) if the *firm* has reasonable grounds to be satisfied that the services which it is likely to provide to the *customer* will relate to a combination of different types of *home finance transaction*, or will relate to *home finance transactions* and one or more of *non-investment insurance contracts* or *packaged products* , a *combined initial disclosure document*;

in a *durable medium*.
- (2) The requirement in (1)(c) does not apply where;
  - (a) an *initial disclosure document* has already been provided by the *firm* and that document is still likely to be accurate and appropriate for the *customer*; or
  - (b) an *initial disclosure document* has already been provided by the *firm* which first made contact with the *customer* in respect of the particular *regulated mortgage contract*, and the *firm* subsequently making contact with the *customer*:
    - (i) does not anticipate altering or replacing the service described in that document; or

(ii) is not making contact with a view to concluding a *distance mortgage mediation contract*; or

(c) initial contact is made by telephone.

(3) A *firm* may choose not to include the initial disclosure information required by sections 6, 7 and 8 of the *initial disclosure document*, and sections 5, 7 and 8 of the *combined initial disclosure document*, if it provides the *customer* with the information required by those sections in some other *durable medium* before the *customer* makes an application for a *regulated mortgage contract*.

(4) A *firm* must not use a *combined initial disclosure document* in relation to a combination of:

(a) *regulated mortgage contracts* (other than *lifetime mortgages*) or *home purchase plans*; and

(b) *equity release transactions*.

4.4.2

FCA

G

■ MCOB 4.4.1 R (2)(b) means, for example, that a *mortgage lender* will provide the initial disclosure document in a direct sale but not where the sale involves a *mortgage intermediary*. If a number of different *firms* are involved in relation to the transaction, having regard to ■ MCOB 2.5.4 R (2), those *firms* should take reasonable steps to establish that the *customer* has been provided with an initial disclosure document as required by ■ MCOB 4.4.1 R.

4.4.3

FCA

G

(1) In many cases, ■ MCOB 4.4.1 R (1) means that the initial disclosure document will be provided at the time of the first contact between the *firm* and the *customer*. However, there may be circumstances, for example in relation to a loan for a business purpose, where the possibility of the *customer* entering into, or varying the terms of, a *regulated mortgage contract* is only identified after preliminary discussions. Disclosure, in the context of ■ MCOB 4, is only required once this possibility is identified.

(2) In the FCA's opinion, the requirements at ■ MCOB 4.4.1 R and ■ MCOB 4.4.7 R would not apply when a *customer* contacts a *firm* simply to arrange to receive personalised information or *advice* on a *regulated mortgage contract* at a later time, such as when a *customer* books an appointment. In such cases, initial disclosure should be made when the *firm* first makes contact with the *customer* with a view to actually giving the information or *advice*. However, *firms* should note the additional disclosure requirements in ■ MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts with retail customers), and, the need to ensure that the required information (to be provided with the initial disclosure document) is provided in good time (see ■ MCOB 4.5.3 G (1)).

4.4.4

FCA

G

If a *firm* has provided a *customer* with an appropriate initial disclosure document but subsequently discovers that the *customer* wants different services from those originally anticipated and described in the document, the *firm* will need to establish the details



of the new service to be provided to the *customer* and provide the *customer* with a new initial disclosure document in accordance with ■ MCOB 4.4.1 R or ■ MCOB 4.4.7 R.

**Uncertainty whether a mortgage is regulated**

4.4.5

FCA

R

- (1) If at the point that initial disclosure must be made in accordance with ■ MCOB 4.4.1 R or ■ MCOB 4.4.7 R a *firm* is uncertain whether the contract will be a *regulated mortgage contract*, the *firm* must:
  - (a) provide the initial disclosure document; or
  - (b) seek to obtain from the *customer* information that will enable the *firm* to ascertain whether the contract will be a *regulated mortgage contract*.
- (2) Where (1)(b) applies, the initial disclosure document must be provided unless, on the basis of the information provided by the *customer*, the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract*.

**Information to be provided to customers on request**

4.4.6

FCA

R

- (1) If a *firm's* scope of service is based on ■ MCOB 4.3.1 R (1)(b) it must maintain, and keep up to date, in a *durable medium* and in a form which is appropriate for distribution to the *customer*, a list of the *mortgage lenders* whose *regulated mortgage contracts* it offers. This list must also confirm whether or not the *firm* provides services in relation to all of the *regulated mortgage contracts* generally available from each *mortgage lender*.
- (2) The *customer* must be provided with a copy of the information described in (1) on request.
- (3) A *firm* must take reasonable steps to ensure that its *appointed representatives* provide a copy of the record in (1) to a *customer* on request.

**Disclosure where initial contact is by telephone**

4.4.7

FCA

R

- (1) If the initial contact of a kind in ■ MCOB 4.4.1 R(1) is by telephone, then unless ■ MCOB 4.4.1 R(2)(a) applies, the following information must be given before proceeding further:
  - (a) the name of the *firm* and (if the call is initiated by or on behalf of the *firm*) the commercial purpose of the call;
  - (b) the scope of the service provided by the *firm* (within the meaning of ■ MCOB 4.3.1 R);
  - (c) if the scope of the service is based on ■ MCOB 4.3.1 R(1)(b), that the *customer* can request a copy of the list of *mortgage lenders* whose *regulated mortgage contracts* it offers and confirmation of whether the *firm* provides services in relation

to all of the *regulated mortgage contracts* generally available from each *mortgage lender*;

- (d) whether or not the *firm* will provide the *customer* with *advice* on those *regulated mortgage contracts* within its scope; and
- (e) that the information given under (a) to (d) will be confirmed in writing.

- (2) Provided that the telephone call in (1) has not led the *firm* to conclude that the *customer* is ineligible for any of its *regulated mortgage contracts*, and that the *customer* has provided his contact details, the *firm* must send the *customer* a copy of an *initial disclosure document* or *combined initial disclosure document* and any other information required to be provided, in a *durable medium* within five *business days* of the telephone call (see also ■ MCOB 4.5.2 R (2)(b) for the equivalent requirement in relation to *distance mortgage mediation contracts*).
- (3) If the *customer* accepts the offer in (1)(c) of a list of the *mortgage lenders* whose *regulated mortgage contracts* the *firm* offers, that list must also be sent with the information required in (2).

4.4.8

FCA

G

*Firms* are reminded of the requirements in ■ MCOB 3.8 (Form and content of real time qualifying credit promotions) in relation to telephone calls that may fall within the definition of a *financial promotion* and should also note the additional requirements that apply in relation to *distance mortgage mediation contracts* with *retail customers* in ■ MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts with retail customers).



**4.4A [Not yet in force]**



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

### **4.5.1**

**FCA**

**G**

- (1) There are certain additional disclosure requirements laid down by the *Distance Marketing Directive* that will have to be provided by a *mortgage intermediary* , a *home purchase intermediary* and a *SRB intermediary* to a *consumer* prior to the conclusion of a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract*. The purpose of this section, ■ MCOB 4.5, is to set out those additional requirements. ■ MCOB 4.6 sets out the cancellation rights that apply in relation to such contracts .
- (2) The *FCA* expects the requirements in ■ MCOB 4.5 and ■ MCOB 4.6 to be relevant only in a small minority of cases. Mediation at a distance (see ■ MCOB 1.3.5 G and ■ MCOB 1.3.6 G) is unlikely in the home finance market. ■ MCOB 4.5 and ■ MCOB 4.6 will only be relevant if a *mortgage intermediary* , a *home purchase intermediary* or a *SRB intermediary* enters into a *distance contract* in respect of its *mortgage mediation activities*, *home purchase mediation activities* or *regulated sale and rent back mediation activities* quite independent of any contractual arrangement with a *consumer* relating to a particular *regulated mortgage contract*, *home purchase plan* or *regulated sale and rent back agreement* . An example of a *distance mortgage mediation contract* would be a *distance contract* under which a *mortgage intermediary* agreed to review and provide advice on a *consumer's* mortgage needs from time to time.

### **4.5.2**

**FCA**

**R**

If the initial contact of a kind in ■ MCOB 4.4.1 R (1) is with a *consumer* with a view to concluding a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract* , a *firm* must:

- (1) in addition to initial disclosure information and any other required information, provide the *consumer* with the information in ■ MCOB 4 Annex 3 R in a *durable medium* in good time before the conclusion of the *distance mortgage mediation contract* , *distance home purchase mediation contract* or *distance regulated sale and rent back mediation contract* with that *customer* unless an exemption in (2), (3), (4) or (5) applies.
- (2) Exemption: telephone sales

- (a) This exemption applies if the service is being provided on the telephone and the *customer* wishes to enter into a contract with the *firm*. Provided the *customer* gives his explicit consent to receiving only limited information, the *firm* may proceed on the basis of at least the following information:
    - (i) the name of the person in contact with the *customer* and his link with the *firm*;
    - (ii) the total price to be paid by the *customer* to the *firm* for the services, including all related *fees*, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price, enabling the *customer* to verify it;
    - (iii) notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it;
    - (iv) the information about cancellation rights set out in ■ MCOB 4 Annex 3 R(5); and
    - (v) that other information is available on request, and the nature of that information.
  - (aa) If the *customer* does not give his explicit consent to receiving limited information, and the parties wish to proceed by telephone, the *firm* must, prior to the conclusion of the contract, provide orally to the *customer* all of the information required by (1).
  - (b) Where (a) or (aa) applies, the *firm* must send the *consumer* without delay and, at the latest immediately after a contract is concluded, the information required by (1), in a *durable medium*.
- (3) Exemption: certain other means of distance communication. This exemption applies if the contract is concluded at the *consumer's* request using a means of distance communication (other than telephone) which does not enable provision of the information referred to in ■ MCOB 4 Annex 3 R in a *durable medium* before the conclusion of the contract. In that case, the *firm* must provide the *consumer* with the information in a *durable medium* immediately after its conclusion .
- (4) Exemption: successive operations or separate operations under an initial service agreement. This exemption applies if the *firm* has an initial service agreement with the *consumer* and the contract is in relation to a successive operation or a separate operation of the same nature under that agreement.
- (5) Exemption: other successive or separate operations This exemption applies if:

- (a) the *firm* has no initial service agreement with the *customer*s and
- (b) the *firm* has performed an operation with the *consumer* within the last year; and
- (c) the contract is in relation to a successive operation or separate operation of the same nature.

4.5.3  
FCA

G

- (1) The information in ■ MCOB 4 Annex 3 R will be provided in 'good time' for the purposes of ■ MCOB 4.5.2 R (1), if provided in sufficient time to enable the *customer* to consider properly the services on offer.
- (2) An example of the circumstances in which ■ MCOB 4.5.2 R (4) or (5) may apply is given in ■ MCOB 4.4.4 G. If the initial disclosure document and accompanying information (including that in ■ MCOB 4 Annex 3 R) was previously provided to a *customer* and continues to be appropriate, there is no need to provide the information again. If additional information is required, this may be provided by a supplementary document. However, if a service of a different nature is proposed, the *firm* is expected to provide fresh initial disclosure documentation and, in respect of *distance mortgage mediation contracts* , *distance home purchase mediation contracts* and *distance regulated sale and rent back mediation contracts* with a *consumer*, this will need to be accompanied by the information in ■ MCOB 4 Annex 3 R.

4.5.4

R

[deleted]

4.5.5

R

[deleted]



**4.6 Cancellation of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts**

**4.6.1**  
**FCA**

**G**

A *consumer* has no right to cancel a *home finance transaction* concluded with a *firm* but may have a right to cancel a *distance contract* concluded with a *mortgage intermediary*, a *home purchase intermediary* or a *SRB intermediary* for the provision of his services. Whether a *mortgage intermediary*, a *home purchase intermediary* or a *SRB intermediary* concludes a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract* with a *consumer* will depend on the circumstances. For example, an intermediary may not, in *advising* on or *arranging* a *regulated mortgage contract*, *home purchase plan* or *regulated sale and rent back agreement*, act contractually on behalf of, or for, the *customer*. In such circumstances, no *distance mediation contract* will arise for the *firm's* services, and therefore no right to cancel. If there is a contract between the *customer* and the *firm*, however, and therefore there is a right to cancel, the *firm* is required by ■ MCOB 4.5.2 R(1) to provide the information in ■ MCOB 4 Annex 3 R(5).

**4.6.2**  
**FCA**

**G**

The information provided in accordance with ■ MCOB 4 Annex 3 R(5) should be sufficiently clear, prominent and informative to enable the *consumer* to understand the right to cancel.

**4.6.3**  
**FCA**

**G**

Where the notice of the right to cancel forms part of another document, or is one of a number of documents sent to the *consumer* at the same time, a *firm* should ensure that the presence of the notice of the right to cancel is drawn to the *consumer's* attention.

**Cancellation period**

**4.6.4**  
**FCA**

**R**

- (1) **A *consumer* has a right to cancel a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract* in accordance with this section.**
- (2) **The right to cancel must be exercised within 14 days beginning on the later of:**
  - (a) **the day of the conclusion of the contract; or**
  - (b) **the day on which the *consumer* receives the contractual terms and conditions and other information required by ■ MCOB 4.4 and ■ MCOB 4.5.**

**Exercising the right to cancel**

4.6.5  
FCA

**R** A *consumer* who has a right to cancel a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract* may, without giving any reason, cancel the contract by serving notice on the *firm*, before the expiry of the cancellation period in **■ MCOB 4.6.4 R** either:

- (1) by serving on, or otherwise sending by post, notice to the *firm's* last known address, addressed to the *firm*, its *appointed representative* or on any agent of the *firm* with authority to accept notice on the *firm's* behalf; or
- (2) in accordance with any other practical instructions for exercising that right provided to the *consumer* in accordance with **■ MCOB 4 Annex 3 R(5)**.

4.6.6  
FCA

**R** Where the notice of cancellation is in a *durable medium* and is served in accordance with **■ MCOB 4.6.5 R**, it must be treated as being served on the *firm* on the date it is despatched by the *consumer*.

4.6.7  
FCA

**G** In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as being the date when notice was given, posted or otherwise sent.

**Effects of cancellation**

4.6.8  
FCA

**R** By exercising a right to cancel under **■ MCOB 4.6.4 R** the *consumer* withdraws from the contract and the entire contract is terminated.

4.6.9  
FCA

**G** Regulation 11 (Automatic cancellation of an attached distance contract) of the *Distance Marketing Regulations*, has the effect that when notice of cancellation is given in relation to a contract, that notice also operates to cancel any attached contract, which is also a distance financial services contract. An example of such an attached contract might be a *distance non-investment insurance contract*.

4.6.10  
FCA

**R** When a *consumer* exercises a right to cancel under **■ MCOB 4.6.4 R**:

- (1) the *firm* must:
  - (a) pay to the *consumer* without delay, and no later than 30 days after the date on which the *firm* received notice of cancellation from him, any sums which he has paid to or for the benefit of the *firm* in connection with the contract (including sums paid by the *consumer* to agents of the *firm*) except for the amount referred to in (b);
  - (b) subject to (c), the *firm* is permitted to require the *consumer* to pay for the services it has actually provided in connection with the contract; the amount payable, however, must be



in accordance with the sums which the *consumer* agreed to pay and must not:

- (i) exceed an amount which is in proportion to the extent of the service already provided to the *consumer* by the *firm*; and
  - (ii) be such that it could be construed as a penalty;
- (c) sub-paragraph (b) applies only if:
- (i) where performance of the contract has commenced before expiry of the cancellation period, this was requested by the *consumer*; and
  - (ii) the *firm* can demonstrate that the *consumer* was provided with details of the amount which he may be required to pay if exercising his right to cancel in accordance with ■ MCOB 4 Annex 3 R(5).

- (2) The *firm* is entitled to receive without delay, and no later than 30 days after the date on which the *consumer* posted or otherwise sent notice of cancellation to the *firm* any property that became the *consumer's* under the contract and any sums payable to the *firm* under (1)(b).

**Record keeping**

4.6.11

FCA

**R**

Where notice of cancellation has been served on a *firm* (or its *appointed representative* or agent), the *firm* must make and retain a record (which includes a copy of any receipt of notice issued to the *consumer* and the *consumer's* original notice instructions) for three years from the date when the *firm* first became aware that notice of cancellation had been served.



**4.6A [Not yet in force]**



4.7 Advised sales

**Suitability**

4.7.1  
FCA

G

*Principle 9* requires a *firm* to take reasonable care to ensure the suitability of its advice. In accordance with that *principle*, a *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant for the purposes of ■ MCOB 4.7.

4.7.2  
FCA

R

A *firm* must take reasonable steps to ensure that it does not make a *personal recommendation* to a *customer* to enter into a *regulated mortgage contract*, or to vary an existing *regulated mortgage contract*, unless the *regulated mortgage contract* is, or after the variation will be, suitable for that *customer* (see ■ MCOB 4.3.4 R (2), ■ MCOB 4.3.5 G and ■ MCOB 4.3.6 G).

4.7.3  
FCA

R

In ■ MCOB 4.7, a reference to a recommendation to enter into a *regulated mortgage contract* is to be read as including a reference to a recommendation to vary an existing *regulated mortgage contract* if the context so requires.

4.7.4  
FCA

R

For the purposes of ■ MCOB 4.7.2 R:

- (1) a *regulated mortgage contract* will be suitable if, having regard to the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or should reasonably be aware, the *firm* has reasonable grounds to conclude that:
  - (a) the *customer* can afford to enter into the *regulated mortgage contract*;
  - (b) the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer*; and
  - (c) the *regulated mortgage contract* is the most suitable of those that the *firm* has available to it within the scope of the service provided to the *customer*;
- (2) no recommendation must be made if there is no *regulated mortgage contract* from within the scope of the service provided to the *customer* which is appropriate to his needs and circumstances; and

- (3) if a *firm* is dealing with an existing *customer* in *arrears* and has concluded that there is no suitable *regulated mortgage contract* for the purposes of ■ MCOB 4.7.2 R, the *firm* must nonetheless have regard to ■ MCOB 13.3.2A R (1), ■ MCOB 13.3.2A R (5) and ■ MCOB 13.3.2A R (6) (see also ■ MCOB 13.3.4A R (1)(a) and ■ MCOB 13.3.4A R (1)(b)).

4.7.5  
FCA

R

In relation to ■ MCOB 4.7.4 R(1)(a), a *firm* must explain to the *customer* that the assessment of whether he can afford to enter into a *regulated mortgage contract* is based on:

- (1) current interest rates, which might rise in the future; and
- (2) the *customer's* current circumstances, which might change in the future.

4.7.6  
FCA

R

In relation to ■ MCOB 4.7.4 R(1)(a) and (b), where a *firm* makes a *personal recommendation* to a *customer* to enter into a *regulated mortgage contract* where a main purpose is to consolidate existing debts it must also take account of the following, where relevant, in assessing whether the *regulated mortgage contract* is suitable for the *customer*:

- (1) the costs associated with increasing the period over which a debt is to be repaid;
- (2) whether it is appropriate for the *customer* to secure a previously unsecured loan; and
- (3) where the *customer* is known to have payment difficulties, whether it would be more appropriate for the *customer* to negotiate an arrangement with his creditors than to take out a *regulated mortgage contract*.

4.7.7  
FCA

▲

- (1) In assessing whether a *customer* can afford to enter into a particular *regulated mortgage contract*, a *firm* should give due regard to the following:
  - (a) information that the *customer* provides about his income and expenditure, and any other resources that he has available;
  - (b) any likely change to the *customer's* income, expenditure or resources; and
  - (c) the costs that the *customer* will be required to meet once any discount period in relation to the *regulated mortgage contract* comes to an end (on the assumption that interest rates remain unchanged).

- (2) Contravention of ■ MCOB 4.7.7 E(1) may be relied upon as tending to show contravention of ■ MCOB 4.7.4 R(1)(a).

4.7.8

FCA

G

A *firm* may generally rely on any information provided by the *customer* for the purposes of ■ MCOB 4.7.4 R(1)(a) unless, taking a common-sense view of this information, it has reason to doubt it.

4.7.9

FCA

G

■ MCOB 4.7.4 R(3) explains that different considerations apply when making a *personal recommendation* to a *customer* in arrears. For example, the circumstances of the *customer* may mean that, viewed as a new transaction, a *customer* could not be recommended to enter into a *regulated mortgage contract*. In such cases, a *firm* will still be able to make a *personal recommendation* to that *customer* where this recommendation is, in the circumstances, a more suitable one than the *customer's* existing *regulated mortgage contract*.

4.7.10

FCA

G

In complying with ■ MCOB 4.7.4 R a *firm* is not required to consider whether it would be preferable for the *customer* to:

- (1) purchase a property by using his own resources, rather than by borrowing under a *regulated mortgage contract*;
- (2) rent a property, rather than purchase one; or
- (3) delay entering into a *regulated mortgage contract* until a later date (on the grounds that property prices would have fallen in the intervening period, or that the interest rate in relation to the *regulated mortgage contract* would be lower, or both).

4.7.11

FCA

A

- (1) In assessing whether the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer* for the purposes of ■ MCOB 4.7.4 R(1)(b), a *firm* should give due regard to the following:
  - (a) whether the *customer's* requirements meet the eligibility criteria for the *regulated mortgage contract* (for example, the amount that the *customer* wishes to borrow, or the loan-to-value ratio);
  - (b) whether the *customer* should have an *interest-only mortgage*, a *repayment mortgage*, or a combination of the two;
  - (c) whether the *customer* has a preference for a particular term;
  - (d) whether the *customer* has a preference or need for stability in the amount of required payments, especially having regard to the impact on the *customer* of significant interest rate changes in the future;
  - (e) whether the *customer* has a preference or need for payments to be reduced at the outset (for example, a loan with an initial discount rate period);
  - (f) whether the *customer* intends to make early repayments; and

4.7.12

FCA

G

(g) whether the *customer* has a preference or need for any other features of a *regulated mortgage contract* (for example, payment holidays).

(2) Compliance with (1) may be relied upon as tending to show compliance with ■ MCOB 4.7.4 R(1)(b).

(1) ■ MCOB 4.7.11 E(1)(b) does not require a *firm* to provide *advice on investments*. Whether such *advice* should be given will depend upon the individual needs and circumstances of the *customer*. Where considered relevant, MCOB 4 does not restrict the ability of an adviser to refer the *customer* to another source of *investment advice* (for example, where the adviser is not qualified to provide *advice on investments*).

(2) Where the scope of the *advice* provided is based on a selection of *regulated mortgage contracts* from a single or limited number of lenders, the assessment of suitability should not be limited to the types of *regulated mortgage contracts* which the *firm* offers. A *firm* cannot recommend the 'least worst' *regulated mortgage contract* where the *firm* does not have access to products appropriate to the *customer's* needs and circumstances. This means, for example, that a *firm* dealing solely in the sub-prime market should not recommend one of these *regulated mortgage contracts* if approached for advice by a *customer* with an unblemished credit record.

4.7.13

FCA

A

(1) A *firm* should, out of all the *regulated mortgage contracts* identified as being appropriate for that *customer*, recommend the one that is the least expensive for that *customer* taking into account those pricing elements identified by the *customer* as being most important to him.

(2) Compliance with (1) may be relied upon as tending to show compliance with ■ MCOB 4.7.4 R(1)(c).

4.7.14

FCA

G

(1) With regard to ■ MCOB 4.7.13 E(1) different *customers* are likely to identify different pricing elements as being of most importance. For example, it may be the overall cost, the cost over the first five years, or the absence of *early repayment charges* that a *customer* considers most important.

(2) ■ MCOB 4.7.13 E(1) does not prevent a *firm* from making a recommendation on other grounds. For example, it would be open to a *firm* to have regard to the speed or quality of service of different *mortgage lenders*, the policies of *mortgage lenders* on further lending or capital repayments, the underwriting stance of *mortgage lenders* or the *customer's* wish for a *regulated mortgage contract* that is compliant with Islamic law. The obligation to satisfy ■ MCOB 4.7.4 R(1)(c) remains the same in such cases.

(3) If circumstances arise in which a *firm* has reasonable grounds to conclude that there are several *regulated mortgage contracts* that would satisfy the suitability requirement in ■ MCOB 4.7.4 R, the *firm* will act in conformity with that *rule* if it recommends only one of those *regulated mortgage contracts*.

- (4) If for any reason a *customer* rejects a recommendation made by a *firm* (for example, on the grounds that the *mortgage lender* selected is unknown to him), the *firm* can make a further recommendation (in accordance with the requirements of ■ MCOB 4.7) where there remains a *regulated mortgage contract* that is appropriate to the needs and circumstances of the *customer*.

### Rejected recommendations

4.7.15

FCA

R

- (1) If a *customer* has:
- (a) rejected all of the *personal recommendations* made by a *firm* and requested information instead on a *regulated mortgage contract* that the *firm* does not consider suitable (and therefore could not recommend to the *customer* in accordance with ■ MCOB 4.7.2 R); and
  - (b) been issued with a new initial disclosure document in accordance with ■ MCOB 4.4.1 R or ■ MCOB 4.4.7 R;
- the *firm* may be able to provide information on that *regulated mortgage contract* in the light of the information on which the *personal recommendations* in (1) were made.
- (2) If the *firm* needs to ask further questions regarding the needs and circumstances of the *customer* to be able to provide information on that *regulated mortgage contract*, the *firm* must obtain that information by asking scripted questions (in accordance with ■ MCOB 4.8.1 R).

4.7.16

FCA

G

A *firm* may consider it prudent to record any cases where, after all *personal recommendations* it has made to a *customer* have been rejected, it changes the nature of the service it provides (as in ■ MCOB 4.7.15 R) and provides the *customer* with information about a *regulated mortgage contract*.

### Record keeping

4.7.17

FCA

R

- (1) A *firm* must make and retain a record:
- (a) of the *customer* information, including that relating to the *customer's* needs and circumstances, that it has obtained for the purposes of ■ MCOB 4.7; and
  - (b) that explains why the *firm* has concluded that any *personal recommendation* given in accordance with ■ MCOB 4.7.2 R satisfies the suitability requirements in ■ MCOB 4.7.4 R(1). This explanation must include, where this is the case, the reasons why a *personal recommendation* has been made on a basis other than that described in ■ MCOB 4.7.13 E(1).
- (2) The record in (1) must be retained for a minimum of three years from the date on which the *personal recommendation* was made.



**4.7A [Not yet in force]**





## 4.8 Non-advised sales

4.8.1

FCA

R

- (1) If a *firm* arranges a *regulated mortgage contract* or a variation to an existing *regulated mortgage contract* without giving a *personal recommendation*, it must ensure that all the questions it asks the *customer* about the *customer's* needs and circumstances are scripted in advance.
- (2) In the remainder of ■ MCOB 4.8, a reference to a *firm* providing information to a *customer* in relation to a *regulated mortgage contract* is to be read as including a reference to providing information in relation to varying the terms of an existing *regulated mortgage contract* if the context so requires.

4.8.2

FCA

G

- (1) ■ MCOB 2.2.6 (Clear, fair and not misleading communications) applies to information provided to a *customer* in a non-advised sale, that is a sale of a *regulated mortgage contract* by a *firm* where the *firm* has not made a *personal recommendation* to the *customer* to enter into that particular *regulated mortgage contract*. In providing information on only a selection of the *regulated mortgage contracts* that it deals with, a *firm* will need to ensure that the selection is fair and unbiased. Where the non-advised sales process leads to the identification of only one *regulated mortgage contract*, a *firm* should have regard to the *guidance* on scripted questions in ■ PERG 4.6.21 G to ■ 4.6.25 G.
- (2) In the course of a non-advised sale a *firm* may decide that a *customer* is considering a *regulated mortgage contract* that is inappropriate for that particular *customer*. *Firms* should note that, in such circumstances, although they are not providing *advice* to the *customer*, they are still conducting a *regulated activity* and are subject to the high-level standards, including *PRIN. Principle 6* (Customers' interests) requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. A *firm* selling what it considered to be an inappropriate product, would be in breach of *Principle 6* as it would be conducting a *regulated activity* without regard to the *customer's* interests. In the *FCA's* opinion, the appropriate course in such cases would be for the *firm* to tell the *customer* to seek *advice*.

PAGE  
27

4.8.3

FCA

R

Where ■ MCOB 4.8.1 R applies, the *firm* must ensure that staff using the scripted questions are:

- (1) trained in the use of the script;

- (2) trained in the difference between what constitutes a *personal recommendation* and what does not; and
- (3) instructed not to give a *personal recommendation* unless they meet the TC requirements for *advising on regulated mortgage contracts*.

4.8.4  
FCA

R

A *firm* must take reasonable steps to supervise staff who do not meet the TC requirements for *advising on regulated mortgage contracts* so that:

- (1) they do not give *personal recommendations*; and
- (2) when using scripted questions to comply with ■ MCOB 4.8.1 R, they adhere to the script in all material respects.

4.8.5  
FCA

G

- (1) Scripted questions should be clear, fair and not misleading.
- (2) A *firm* should ensure that the number of supervisory staff should be adequate for the size of the sales team, and supervisors should have the technical knowledge, assessment skills and coaching skills to act as a supervisor.

4.8.6  
FCA

G

A *firm* which, after using scripted questions to help a *customer* select a *regulated mortgage contract*, makes a *personal recommendation* about a *regulated mortgage contract* to that *customer* will need to follow the *rules* governing the provision of *advice* in ■ MCOB 4 (including, but not limited to, the suitability requirements in ■ MCOB 4.7).

**Record keeping**

4.8.7  
FCA

R

- (1) A *firm* must make, and keep up to date, a record of the scripted questions required by ■ MCOB 4.8.1 R. The record must be made on the date on which the scripted questions are first used.
- (2) The record in (1) must be retained for one year from the date on which it was superseded by a more up-to-date record.



**4.8A [Not yet in force]**



## 4.9 Business loans

**4.9.1** **R** For the purposes of the *rules* in ■ MCOB 4 there is one market in *regulated mortgage contracts* for a business purpose. Within this market, a *firm* should describe its scope of service in accordance with ■ MCOB 4.3.1 R.

**4.9.1A** **G** *Firms* are reminded that in accordance with ■ MCOB 1.2.3 R, they should either comply in full with MCOB or comply with all tailored provisions in MCOB that relate to business loans. Therefore, a *firm* may only follow the tailored provisions in ■ MCOB 4.9 if it also follows all other tailored provisions in MCOB.

**4.9.2** **G** Where a *personal recommendation* is provided in connection with a *regulated mortgage contract* for a business purpose it is recognised that there may be additional considerations beyond those described in ■ MCOB 4.7.11 E as part of the assessment of whether the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer*.

### Initial disclosure document

**4.9.3** **G** As explained in ■ MCOB 4.4.3 G(1) the requirement to provide an initial disclosure document is only triggered where the *firm* has identified the possibility that it will be giving personalised information or *advice* to a *customer* on a *regulated mortgage contract* for a business purpose.

- 4.9.4** **G**
- (1) *Firms* are reminded that ■ MCOB 1.2.7 R enables them to substitute an alternative for 'mortgage' in the initial disclosure document (except in relation to sections 6 and 8 of any *initial disclosure document* or sections 5 and 8 of any *combined initial disclosure document*).
  - (2) ■ MCOB 1.2.7 R also means that a *firm* must amend any *initial disclosure document* so that the final sentence of prescribed text in section 4 states: 'You will receive an illustration which will tell you about any fees relating to a particular [term used by the firm to describe the borrowing, for example "mortgage "]'.
  - (3) Where the initial disclosure document makes reference to the permitted business of a *firm* (for example, sections 6 and 8 of the initial disclosure document may refer to a *firm advising* on or *arranging regulated mortgage contracts*) a *firm* can add text explaining the relevance of these descriptions. One approach may be to add an additional sentence such as: 'Secured

overdrafts are referred to here as "mortgages" because they involve a charge being taken over your property'.

**Non-advised sales**

4.9.5

FCA

**R**

■ MCOB 4.8.1 R does not apply in relation to a *regulated mortgage contract* for a business purpose.

4



## 4.10 Home purchase plans

### Scope of service provided

4.10.1

FCA

R

A firm must comply with the scope of service requirements at ■ MCOB 4.3.1 R and ■ MCOB 4.3.2 R (Providing services within and beyond scope), ■ MCOB 4.3.4A R (Whole of market) and ■ MCOB 4.3.10 R (Appointed representatives).

### Initial disclosure requirements

4.10.2

FCA

R

- (1) A *firm* must, on first making contact with a *customer* when it anticipates giving personalised information or *advice* on *entering into* a new *home purchase plan*, ensure that the *customer* is, or has been, provided with an appropriate *initial disclosure document* or *combined initial disclosure document* in a *durable medium*.
- (2) If the initial contact in (1) is by telephone, a *firm* must:
  - (a) (if the call is with a view to concluding a *distance home purchase mediation contract*) give the following information before proceeding further:
    - (i) the name of the *firm* and (if initiated by the *firm*) the commercial purpose of the call;
    - (ii) the scope of the service provided by the *firm*; and
    - (iii) whether or not the *firm* will provide the *customer* with *advice* on those *home purchase plans* within its scope; and
  - (b) ensure that the *customer* is, or has been, provided with such a document in a *durable medium* as soon as is practicable.
- (3) A *firm* must not use a *combined initial disclosure document* in relation to a combination of *home purchase plans* and *equity release transactions*.

4.10.3

FCA

G

In accordance with *Principle 7*, where a *firm* is likely to provide services in relation to both *regulated mortgage contracts* and *home purchase plans*, it should provide a

combined *initial disclosure document* rather than two separate *initial disclosure documents*.

4.10.4  
FCA

G

The guidance on initial disclosure requirements at ■ MCOB 4.4.2 G to ■ MCOB 4.4.4 G may be relevant .

**Additional requirements for distance home purchase mediation contracts with retail customers**

**Note:** The rules regarding additional disclosure requirements for, and cancellation of, *distance home purchase mediation contracts* are set out in ■ MCOB 4.5 and ■ MCOB 4.6 respectively.

**Advised sales: suitability**

4.10.5  
FCA

G

In accordance with *Principle 9*, a *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant to ensuring the suitability of its advice.

4.10.6  
FCA

R

**A *firm*, before making a *personal recommendation* on a *home purchase plan*, must take reasonable steps to ensure that it is:**

- (1) affordable;
- (2) appropriate to the *customer's* needs and circumstances; and
- (3) the most suitable of those *home purchase plans* that the *firm* has available to it within the scope of the service provided to the *customer*.

4.10.7  
FCA

G

The guidance on suitability at ■ MCOB 4.7.8 G to ■ MCOB 4.7.10 G and ■ MCOB 4.7.16 G may be relevant.

**Non-advised sales**

4.10.8  
FCA

R

**If a *firm* arranges a *home purchase plan* or a variation to an existing *home purchase plan* without giving a *personal recommendation*, it must ensure that the questions it asks about the *customer's* needs and circumstances are scripted in advance.**

4.10.9  
FCA

G

The guidance on non-advised sales at ■ MCOB 4.8.2 G and on scripted questions at ■ MCOB 4.8.5 G and ■ MCOB 4.8.6 G may be relevant.

**Risks and features statement and tariff of charges**

PAGE  
33

4.10.10  
FCA

R

**A *firm* must, before making a *personal recommendation* to a *customer* of, or when a *customer* requests or selects, a *home purchase plan*, ensure that the *customer* is, or has been, provided with an appropriate risks and features statement about that plan.**

4.10.11

FCA

R

A risks and features statement need not be personalised to the *customer's* circumstances but must:

- (1) include the keyfacts logo in a prominent position at the top of the statement;
- (2) state that the *FCA* requires a *firm* to provide the statement;
- (3) state that mortgages are available and that the *customer* should think carefully about the product appropriate to his needs;
- (4) describe the significant features of the plan, including:
  - (a) how the *home purchase plan* works;
  - (b) the nature of the *customer's* commitment;
  - (c) when and how a *customer's* commitment is reviewed;
  - (d) any significant restrictions of the plan; and
  - (e) the charges that a *customer* may incur under the plan, including the reason for, and amount of, each charge, when they are payable, whether they will be reimbursed and, if so, when;
- (5) describe the risks associated with the plan, including:
  - (a) the risks to the *customer* if he fails to keep up repayments and the circumstances in which this might occur; and
  - (b) risks to the *customer* of the *home purchase provider* failing or disposing of any of its obligations or rights (including its interest in the property) to a third party (taking into account steps that will be taken by the *home purchase provider* to mitigate such risks); and
- (6) state the importance of obtaining independent legal advice.

4.10.12

FCA

R

A *firm* may omit details of the charges that a *customer* may incur under a *home purchase plan* from the risks and features statement if they are included in a separate *tariff of charges* provided to the *customer* at the same time.





## 4.11 Sale and rent back: advising and selling standards

### Initial disclosure requirements

4.11.1

FCA

R

- (1) A *regulated sale and rent back firm*, on first making contact with a potential *SRB agreement seller* for whom it might reasonably be expected to carry on any *regulated sale and rent back activity*, must make the following disclosures to him, both orally and in writing :
  - (a) the service the *firm* is offering the *customer*, making it clear whether the *firm* will be acting as a *SRB agreement provider*, a *SRB adviser* or a *SRB arranger* and the particular *regulated sale and rent back activities* for which the *firm* has a *Part 4A permission*;
  - (b) if the *firm* is acting as an intermediary, whether it deals with a single or a range of *SRB agreement providers* and whether or not those providers are authorised under the *Act*; and
  - (c) how much the *firm* will receive in connection with the transaction, whether by way of fees, commissions, charges, retentions or otherwise and whether any such sum will be payable out of the sale proceeds of the property, paid directly by the *customer* or provider or otherwise and whether or not any of these will be payable if the *customer* decides not to enter into a *regulated sale and rent back agreement*.
- (2) If the precise fees, commissions, charges, retentions or other sums in (1)(c) are not known in advance, the *firm* should estimate the amount likely to apply in respect of the transaction.

### FCA consumer factsheet on sale and rent back

4.11.2

FCA

R

- (1) As soon as the *customer* expresses an interest in becoming a *SRB agreement seller*, a *regulated sale and rent back firm* must provide him with the Money Advice Service consumer factsheet on sale and rent back in a *durable medium* which may be accessed through <http://www.moneyadviceservice.org.uk>.
- (2) The *firm* on providing the Money Advice Service consumer factsheet in (1) to the *customer* must give him an oral explanation

of it, so as to ensure that the *customer* fully understands its contents.

**Affordability and appropriateness**

4.11.3

FCA

R

A regulated sale and rent back firm must not permit a potential SRB agreement seller to become contractually committed to enter into a regulated sale and rent back agreement unless it has reasonable grounds to be satisfied that:

- (1) the *customer* can afford the payments he will be liable to make under the agreement; and
- (2) the proposed regulated sale and rent back agreement is appropriate to the needs, objectives and circumstances of the *customer*.

4.11.4

FCA

A

(1) In assessing whether a *customer* can afford to enter into a particular regulated sale and rent back agreement, a firm should use the following information:

- (a) the rental payments that will be due under the tenancy agreement which confers the right of the *customer* (or trust beneficiary or related party) to continue residing in the property, stress tested to take account of possible future rental increases during the fixed term of the tenancy agreement by reference to the circumstances in which the agreement permits increases or changes to the initial rent;
- (b) adequate information, obtained from the *customer* to establish his income and expenditure calculated on a monthly basis, and any other resources that he has available, and verified by the firm using evidence provided by the *customer*;
- (c) the *customer's* net disposable income, which a firm should establish using the information referred to in (b);
- (d) the *customer's* entitlement to means-tested benefits and housing benefits; and
- (e) the effect of any likely future change to the *customer's* income, expenditure or resources during the period of the regulated sale and rent back agreement.

(2) The firm should explain to the *customer* that it will base its assessment on whether he can afford to enter into the particular regulated sale and rent back agreement on the information he provides to the firm about his income, expenditure and resources.

(3) In assessing affordability under (1) the firm:

- (a) must not rely to a material extent on the capital of, or income from, any lump sum the *customer* receives which represents the net sale proceeds of the property; and
- (b) must disregard any discount or any future sum that may be payable to the *customer* under the terms of the *regulated sale and rent back agreement*.

(4) Contravention of (1), (2) or (3) may be relied upon as tending to show contravention of ■ MCOB 4.11.3R (1).

4.11.5



FCA

(1) In assessing whether a particular *regulated sale and rent back agreement* is appropriate to the needs, objectives and circumstances of a potential *SRB agreement seller*, a *firm* should have due regard to the following:

- (a) whether the benefits to the *customer* in entering into the proposed *regulated sale and rent back agreement* outweigh any adverse effects it may have for him, including on his entitlement to means-tested benefits and housing benefits; and
- (b) the feasibility of the *customer* raising funds by alternative methods other than by a sale of his property.

(2) Contravention of (1) may be relied upon as tending to show contravention of ■ MCOB 4.11.3R (2).

4.11.6



FCA

In considering the *customer's* entitlement to the means-tested benefits and housing benefits for the affordability and appropriateness assessment, a *firm* may rely on information provided to it by the *customer*, provided it is satisfied on reasonable grounds that the customer has received advice from the appropriate HM Government department or other appropriate source of independent advice as to his position.

4.11.7



FCA

(1) A consideration of the *customer's* benefits position will need to focus on whether, by entering into the proposed *regulated sale and rent back agreement*, his entitlement to means-tested benefit will be adversely affected because of his receipt of the net proceeds of sale (if any) of the property. The *customer's* possible loss of entitlement to claim housing benefit should also be assessed. Where a *firm* has insufficient knowledge of means-tested and housing benefits to reach a conclusion on this, it should advise the customer to contact the appropriate HM Government department or other appropriate source of independent advice to establish the position. The *firm* should then wait for the customer to obtain the relevant information before proceeding with its assessment.

(2) The *firm* should consider whether a *customer* in *arrears* under his *regulated mortgage contract* or *home purchase plan* has contacted his *mortgage lender* or *home purchase provider* to discuss possible forbearance options that may be available. Other possible alternative methods of raising funds will include the availability of local authority or other government rescue schemes that might apply in the *customer's* circumstances.

- (3) *Firms* are reminded that under ■ MCOB 4.11.2R they are required to provide the *customer* with the *FCA* consumer factsheet on sale and rent back and give him an oral explanation of its contents. The *FCA* expects this to be done in the course of a face-to-face meeting. *Firms* will be expected in the course of this discussion with the *customer* to explain alternative options that may be available to him, such as liaising with his *mortgage lender* or *home purchase provider* to negotiate a forbearance strategy or approaching his local authority about the availability of mortgage rescue schemes.

**Record keeping**

4.11.8

FCA

R

- (1) A *firm* must make and retain a record of the *customer* information that has been provided to it, including that relating to:
- (a) the *customer's* income, expenditure and other resources that it has obtained from him for the purpose of assessing affordability, together with the stress testing of the rental payments;
  - (b) the *customer's* needs, objectives and individual circumstances that it has obtained from him for the purpose of assessing appropriateness; and
  - (c) the *customer's* entitlement to means-tested benefits and housing benefits, including any evidence provided by the *customer*, that it has obtained from him for the affordability and appropriateness assessment;

and which explains why the *firm* concluded that the *customer* could afford, and why it was appropriate for him, to enter into the proposed *regulated sale and rent back agreement*.

- (2) The record in (1) must be retained for a minimum of five years from the date on which the assessment of affordability and appropriateness was made, or one year after the end of the fixed term of the tenancy agreement under the *regulated sale and rent back agreement*, if later.

**Reliance on another firm**

4.11.9

FCA

R

A *firm* need not comply with the requirements imposed on a *regulated sale and rent back firm* in this section to the extent that it is satisfied on reasonable grounds that another *firm* has already done so.

4.11.10

FCA

G

The effect of ■ MCOB 4.11.9R is that a *SRB agreement provider* is expected to carry out its own assessments of affordability and appropriateness in relation to a particular *regulated sale and rent back agreement*, unless it is reasonable for it to rely on another *firm* to have done so in relation to a particular transaction.

---

## Initial disclosure document

**FCA**

This Annex belongs to ■ MCOB 4.4.1 R (1) and ■ MCOB 4.10.2 R.

This annex consists only of one or more forms. Forms are to be found through the following address:

*Initial disclosure document* MCOB 4 Annex 1



---

**Combined initial disclosure document ■ [deleted - see ■ COBS 6 Annex 2]**





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

**FCA**

This table belongs to ■ MCOB 4.5.2 R

**Additional information for distance contracts with retail customers consumers**

**All the contractual terms and conditions on which the service will be provided including, in particular, the following information:**

- (1) where the *firm* has a representative established in the *consumer's EEA State* or other country of residence, the identity of that representative and the geographical address relevant to the *consumer's* relations with him;**
- (2) where the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant to the *consumer's* relations with that professional;**
- (3) in relation to the contract:**
  - (a) any limitations of the period for which the information provided is valid;**
  - (b) in relation to services performed permanently or recurrently, the minimum duration of the contract;**
- (4) in relation to the cost of the service:**
  - (a) notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it; and**
  - (b) any specific additional cost to the *consumer*, if any, for using a means of distance communication;**
- (5) the existence or absence of a right to cancel. Where there is such a right:**
  - (a) its duration and the conditions for exercising the right to cancel, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) if the contract is terminated early or unilaterally under its terms;**
  - (b) the consequences of not exercising the right to cancel; and**
  - (c) practical instructions for exercising the right to cancel, including as a minimum the method in MCOB 4.6.5 R (1), details of the address to which the cancellation notice should be sent and the fact that the notice must clearly indicate, however expressed, the *consumer's* intention to cancel the contract; and**

Additional information for distance contracts with retail customers consumers

**(6) details of:**

**(a) the *EEA State* or States whose laws are taken by the *firm* as a basis for the establishment of relations with the *customer* prior to the conclusion of the *regulated mortgage contract, home purchase plan or regulated sale and rent back agreement* ;**

**(b) any contractual clause on law applicable to the *regulated mortgage contract, home purchase plan or regulated sale and rent back agreement* or on competent court, or both; and**

**(c) the language in which the contract is supplied and in which the *firm* will communicate during the course of the *regulated mortgage contract, home purchase plan or regulated sale and rent back agreement* .**

## Chapter 5

# Pre-application disclosure



## 5.1 Application

### Who?

5.1.1  
FCA

**R** This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 5.1.2 R in accordance with column (2) of that table.

5.1.2  
FCA

**R** Table This table belongs to ■ MCOB 5.1.1 R

| (1) Category of firm          | (2) Applicable section   |
|-------------------------------|--|
| <i>mortgage lender</i>        | <b>whole chapter except MCOB 5.8</b>   |
| <i>mortgage adviser</i>       |  |
| <i>mortgage arranger</i>      |  |
| <i>home purchase provider</i> | <b>MCOB 5.1.1 R to MCOB 5.1.3 R, MCOB 5.1.6 R to MCOB 5.1.8 G, MCOB 5.2, MCOB 5.3 and MCOB 5.8.</b>  |
| <i>home purchase adviser</i>  |  |
| <i>home purchase arranger</i> | <b>MCOB 5.5 and MCOB 5.6 in accordance with MCOB 5.8</b>   |
| <i>reversion provider</i>     | <b>see MCOB 9.3 for the application of this chapter</b>  |
| <i>reversion adviser</i>      |  |
| <i>reversion arranger</i>     |  |
| <i>SRB adviser</i>            | <b>MCOB 5.1.1 R to MCOB 5.1.3 R, MCOB 5.2 and MCOB 5.9</b>   |
| <i>SRB agreement provider</i> | <b>MCOB 5.1.1 R to MCOB 5.1.3 R, MCOB 5.2, MCOB 5.9.1 R to MCOB 5.9.2 R (including MCOB 5.9.1A G to MCOB 5.9.1F R), MCOB 5.9.6 R and MCOB 5.9.7G</b> |
| <i>SRB arranger</i>           | <b>MCOB 5.1.1 R to MCOB 5.1.3R, MCOB 5.2 and MCOB 5.9</b>  |

**What?**

5.1.3

FCA

**R**

- (1) This chapter applies if a *firm*:
  - (a) makes a *personal recommendation* to a *customer* to enter into a *home finance transaction* ; or
  - (b) provides information to a *customer* that is specific to the amount to be provided on a particular *home finance transaction* , including information provided in response to a request from a *customer*; or
  - (c) provides the means for a *customer* to make an application to it;

in connection with entering into, or agreeing to enter into, a *home finance transaction* provided by a *home finance provider*, other than an *equity release transaction* or a variation to an existing *home finance transaction* .
- (2) In relation to further advances and other variations, ■ MCOB 5 is modified by ■ MCOB 7 (Disclosure at start of contract and after sale), regardless of whether they are variations to an existing *home finance transaction* , or are such that they involve the *customer* entering into a new *home finance transaction* .
- (3) In relation to an *equity release transaction*, ■ MCOB 5 is modified by ■ MCOB 9 ( Equity release : product disclosure).

5.1.4

FCA

**G**

The table in ■ MCOB 5.1.5 G shows how the relevant *rules* and *guidance* in ■ MCOB 5.6 apply to certain types of *regulated mortgage contracts*.

5.1.5

FCA

**G**

Table This table belongs to MCOB 5.1.4G

| Type of mortgage                                 | Requirements that do not apply | Additional or alternative requirements |
|--|--------------------------------|--|
| Multi-part mortgages                             | MCOB 5.6.42 R (3)              | MCOB 5.6.28 R                          |
|  | MCOB 5.6.46 R                  | MCOB 5.6.54 R - MCOB 5.6.57 G          |
| Foreign currency mortgages                       | N/A                            | MCOB 5.6.127 R - MCOB 5.6.128 R        |
| Shared appreciation mortgages                    | N/A                            | MCOB 5.6.129 R - MCOB 5.6.131 R        |
| Deferred interest rate mortgages                 | N/A                            | MCOB 5.6.132 R                         |
| Mortgages without a term or regular payment plan | MCOB 5.6.31 R                  | MCOB 5.6.32 R                          |
|  | MCOB 5.6.40 R - MCOB 5.6.57 G  | MCOB 5.6.134 R - MCOB 5.6.145 R        |
|  | MCOB 5.6.59 R - MCOB 5.6.65 R  |  |

5.1.6  
FCA

**R** In this chapter, references to a *home finance transaction* include, where the context requires, references to arrangements which are capable of becoming a *home finance transaction* .

5.1.7  
FCA

- G**
- (1) ■ MCOB 5.1.3 R means that this chapter applies where the *customer* can apply to enter into a *home finance transaction*. This includes circumstances where, for example, the means to apply is provided in person, by telephone, through a website or through an application pack sent through the post.
  - (2) The effect of this chapter is to require a *customer* to be provided with key information about a *home finance transaction* before he submits an application to a *home finance provider* .

5.1.8  
FCA

**G** Although an *illustration* is a *financial promotion* , the effect of ■ MCOB 3.2.5 R(1), Section 137R(3) of the *Act* (Financial promotion rules) and article 28 of the *Financial Promotion Order* (One-off non-real time communications and solicited real time communications) is that an *illustration* is exempt from the provisions of MCOB 3 (Financial promotion). However, the general requirement to communicate information in a way which is clear, fair and not misleading applies to both an *illustration* and (in relation to a *home purchase plan*) a financial information statement (see ■ MCOB 5.8.1 R).

5.1.9  
FCA

**G** In relation to a *regulated mortgage contract*, where part of the loan is not a *regulated mortgage contract*, for example it is a linked unsecured loan, the details of this loan can be shown in Section 12 of the *illustration* as an additional feature. It should not be added to the *regulated mortgage contract* loan amount in ■ MCOB 5.6.6 R(2).

5.1.10  
FCA

**G** A *firm* that finds any *rule* in ■ MCOB 5.6 (Content of illustrations) inappropriate for the particular kind of *regulated mortgage contract* that the *mortgage lender* provides will need to seek from the *FCA* a *waiver* of that *rule*. ■ SUP 8 contains details of the *waiver* procedure.



**5.2 Purpose**

5.2.1

FCA

G

- (1) ■ MCOB 5 amplifies *Principle 6* and *Principle 7* .
- (2) The purpose of ■ MCOB 5 is to ensure that, before a *customer* submits an application for a particular *home finance transaction*, he is supplied with information that makes clear:
  - (a) (in relation to a *regulated mortgage contract*) its features, any *linked deposits*, any *linked borrowing* and any *tied products*; and
  - (b) the price that the *customer* will be required to pay under that *home finance transaction*, to enable the *customer* to assess whether it is affordable to him.
  - (c) [deleted]
- (3) ■ MCOB 5 requires information to be disclosed in a consistent way to facilitate comparison between products of different providers .

5



**5.3 Applying for a home finance transaction**

5.3.1  
FCA

**R**

*A home finance provider must not enter into a home finance transaction, or agree to do so, with a customer unless the customer has submitted an application for that particular home finance transaction.*

5.3.2  
FCA

**G**

- (1) The purpose of ■ MCOB 5.3.1 R, taken in conjunction with other rules in this chapter, is to ensure that the *customer* has received details of the particular *home finance transaction* for which he has applied, and has had the opportunity to satisfy himself that it is appropriate for him.
- (2) In relation to a *regulated mortgage contract*, the application should identify the type of interest rate, rate of interest, and the *mortgage lender* at the point it is submitted by the *customer* (for how to describe interest rates see ■ MCOB 5.6.26 R and ■ MCOB 5.6.27 R).



## 5.4 Mortgage illustrations: general

### Clear, fair and not misleading

5.4.1  
FCA

R

A *firm* must be able to show that it has taken reasonable steps to ensure that any *illustration* it issues is clear, fair and not misleading.

### Accuracy

5.4.2  
FCA

R

An *illustration* on a particular *regulated mortgage contract* issued by, or on behalf of, a *mortgage lender*, must be an accurate reflection of the costs of the *regulated mortgage contract*.

5.4.3  
FCA

R

A *mortgage intermediary* must take reasonable steps to ensure that an *illustration* which it issues, or which is issued on its behalf, other than that provided by a *mortgage lender*:

- (1) is accurate within the following tolerances:
  - (a) no more than one percent or £1, whichever is the greater, below the actual figures charged by the *mortgage lender* for the following:
    - (i) the *total amount payable* in Section 5 of the *illustration*;
    - (ii) the amount payable for every £1 borrowed in Section 5 of the *illustration*;
    - (iii) the amounts that the *customer* must pay by regular instalment in Section 6 of the *illustration* (or in Section 7 of the *illustration* for an interest rate with a floor or a ceiling); and
    - (iv) the amount by which the regular instalment (or the *total amount payable* for loans without a term or a regular repayment plan) would increase following a one percentage point increase in interest rates in Section 7;
  - (b) the *APR* in Section 5 of the *illustration* cannot be understated by more than 0.1%; and
- (2) except in the case of conveyancing fees and insurance premiums (where estimates may be used), is accurate in respect of other figures

quoted in the *illustration* including fees payable to the *mortgage lender* or *mortgage intermediary* in Section 8 of the *illustration* and cash examples of *early repayment charges*, calculated in accordance with the rules in ■ MCOB 5.6.84 R to ■ MCOB 5.6.88 R, in Section 10.

5.4.4  
FCA

G

Given that the *APR* is presented as a percentage, and must be rounded to one decimal place in accordance with ■ MCOB 10 (Annual Percentage Rate), *firms* should note that the tolerance allowed for the *APR* in ■ MCOB 5.4.3 R(1)(b) means that, for example, where the actual *APR* is 5.0% the quoted *APR* must be no lower than 4.9%, or where the actual *APR* is 16.0%, the quoted *APR* must be no lower than 15.9%.

5.4.5  
FCA

G

There are no restrictions on figures which are quoted as higher than those actually charged by the *mortgage lender* although this should not be purposely done in order to make one *regulated mortgage contract* look more expensive than another.

5.4.6  
FCA

G

It is the responsibility of a *mortgage intermediary* to ensure compliance with ■ MCOB 5.4.3 R. However, where a *firm* can show that it was reasonable for it to rely on information provided to it by another *person*, other than the *mortgage lender*, that an *illustration* was within the tolerances described in ■ MCOB 5.4.3 R, he may be able to rely on ■ MCOB 2.5.2 R, if this turns out not to be the case.

5.4.7  
FCA

G

An *offer document* may not always exactly match the *illustration* provided before application even when the loan requirements have not changed. For example, where a fixed rate has a defined end date, the *total amount payable* may be different because the number of payments at the fixed rate has reduced assuming a later date at which the *regulated mortgage contract* will start.

**Illustrations where customer ineligible**

5.4.8  
FCA

R

A *firm* must not issue an *illustration* to a *customer* for a *regulated mortgage contract* for which the *customer* is clearly ineligible on the basis of the information that the *firm* has obtained from the *customer* or the *mortgage lender's* lending criteria.

5.4.9  
FCA

G

The purpose of ■ MCOB 5.4.8 R is not to require a *firm* to ascertain whether a *customer* is eligible for a particular *regulated mortgage contract* before providing an *illustration*. Instead, the purpose is to ensure that the *firm* takes into account the information it has obtained from the *customer* before providing an *illustration* to the *customer*.

**Explaining the importance of an illustration**

5.4.10  
FCA

R

In providing an *illustration* to a *customer*, a *firm* must explain to the *customer* the importance of reading the *illustration* and understanding it.

5.4.11  
FCA

G

A *firm* may satisfy ■ MCOB 5.4.10 R by drawing the *customer's* attention orally to the importance of reading and understanding the *illustration*, for example in a face-to-face meeting, or by referring to its importance in a covering letter or electronic communication or other written information that accompanies the *illustration*.

**Form of an illustration**

5.4.12

FCA

R

Any *illustration* provided to a *customer* by a *firm* must be in a *durable medium*.

**Restriction on provision of information**

5.4.13

FCA

R

A *firm* must not provide a *customer* with information that is specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract* except in the following circumstances:

- (1) when it is in the form of an *illustration*;
- (2) when it is provided on screen, for example a computer screen;
- (3) when supplementary information which is not contained within an *illustration* is provided after or at the same time as an *illustration*; or
- (4) when it is provided orally, for example by telephone.

5.4.14

FCA

R

Where ■ MCOB 5.4.13 R(2) applies:

- (1) if the *customer* initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed prominently on each page on screen: 'This information does not contain all of the details you need to choose a mortgage. Make sure that you read the separate key facts illustration before you make a decision.'; and
- (2) a *firm* must not provide a customised print function where the information on the screen would not be in the form of an *illustration* if the information were printed in hard copy.

5.4.15

FCA

R

Where ■ MCOB 5.4.13 R(3) applies, supplementary information must only be provided when it does not significantly duplicate information provided in the *illustration*.

5.4.16

FCA

G

■ MCOB 5.4.13 R places no restrictions on the provision of information that is not specific to the amount the *customer* wants to borrow, for example, marketing literature including generic mortgage repayment tables or graphs illustrating the benefits of making a regular overpayment on a flexible mortgage. Such literature may, however, constitute a *financial promotion* and be subject to the provisions of ■ MCOB 3 (Financial promotion).

5.4.17

FCA

G

Where ■ MCOB 5.4.13 R(2) and ■ MCOB 5.4.13 R(4) apply, *firms* should encourage the *customer* to obtain a copy of an *illustration* in a *durable medium*. This could be done, for example, if the information was contained on the *firm's* website, by a prompt which asked the *customer* whether he wished to print off an *illustration*.

5.4.18  
FCA

R

- (1) Unless (2) applies, where ■ MCOB 5.4.13 R(2) or ■ MCOB 5.4.13 R(4) apply, a *firm* must provide the means for the *customer* to obtain an *illustration* as soon as practicable, through a delivery channel acceptable to the *customer*.
- (2) A *firm* does not need to provide an *illustration* if the *customer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the provision of an *illustration* is not appropriate, for example, because on the basis of discussions undertaken the *customer* is ineligible given the *mortgage lender's* lending criteria, or is not interested in pursuing the enquiry.

**Record keeping**

5.4.19  
FCA

R

A *firm* must make an adequate record of each *illustration* that it issues to a *customer* in accordance with ■ MCOB 5.5.1 R where the *customer* applies for that particular *regulated mortgage contract*.

5.4.20  
FCA

R

The record required by ■ MCOB 5.4.19 R must be retained for a year from the date of the application made by the *customer*.

5.4.21  
FCA

G

■ MCOB 5.4.19 R does not require a *firm* to keep records of *illustrations* that are issued to a *customer* where the *customer* does not apply to enter into that particular *regulated mortgage contract*.

5.4.22  
FCA

G

The record maintained in accordance with ■ MCOB 5.4.19 R should contain or refer to matters such as:

- (1) the date on which the *illustration* was provided to the *customer*;
- (2) the date of the application made by the *customer*; and
- (3) details of the medium through which the *illustration* was provided.

**Tied products**

5.4.23  
FCA

R

Where the *illustration* provided to the *customer* does not contain an accurate quotation or a reasonable estimate of the payments the *customer* will need to make in connection with any *tied product* that the *customer* must take out with the *regulated mortgage contract*, and the *customer* applies for that *regulated mortgage contract*:

- (1) the *firm* must provide the *customer* with an accurate quotation as soon as possible after he has applied, and in good time before the *offer document* is provided;
- (2) the *customer* has a right to withdraw his application for the *regulated mortgage contract* for a period of seven days from receipt of the quotation referred to in (1);

- (3) the quotation for the  *tied product*  must be accompanied by a notice explaining that the  *customer*  can withdraw his application and receive a full refund of any fees paid in connection with the application for that  *regulated mortgage contract*  (excluding any fees paid in respect of the  *regulated activity of arranging or advising on a regulated mortgage contract*  by a  *mortgage lender*  or a  *mortgage intermediary* ) for a period of seven days from receipt of the quotation or acceptance of the  *mortgage lender's*  offer if sooner; and
- (4) the  *firm*  must refund any fees paid by the  *customer*  (excluding any fees paid in respect of any advice provided by a  *mortgage lender*  or a  *mortgage intermediary* ) if the  *customer*  decides to exercise his right to withdraw his application in accordance with (2).

5.4.24

FCA

G

The  *rules*  on the content of an  *illustration*  at ■ MCOB 5.6 (Content of illustrations) mean that if the  *regulated mortgage contract*  requires the  *customer*  to take out a  *tied product* , the  *illustration*  must include an accurate quotation or a reasonable estimate of the payments the  *customer*  would need to make for the  *tied product*  (see ■ MCOB 5.6.52 R(2) on a  *repayment vehicle*  that is a  *tied product*  and ■ MCOB 5.6.74 R on insurance that is a  *tied product* ). If it is not possible to include this cost information in the  *illustration* , ■ MCOB 5.4.23 R requires that the  *customer*  be provided with an accurate quotation of the payments associated with the  *tied product*  as soon as possible. If the quotation is provided after the  *customer*  has applied for the  *regulated mortgage contract*  the  *customer*  has the right to a refund of fees if he withdraws his application.

5

## 5.5 Provision of illustrations

### Timing

5.5.1

FCA

R

- (1) A *firm* must provide the *customer* with an *illustration* for a *regulated mortgage contract* before the *customer* submits an application for that particular *regulated mortgage contract* to a *mortgage lender*, unless an *illustration* for that particular *regulated mortgage contract* has already been provided.
- (2) A *firm* must provide the *customer* with an *illustration* for a *regulated mortgage contract* when any of the following occurs, unless an *illustration* for that *regulated mortgage contract* has already been provided:
  - (a) the *firm* makes a *personal recommendation* to the *customer* to enter into one or more *regulated mortgage contracts*, in which case an *illustration* must be provided at the point the recommendation is made (and *illustrations* for all recommended *regulated mortgage contracts* must be provided), unless the *personal recommendation* is made by telephone, in which case the *firm* must provide an *illustration* within 5 *business days*;
  - (b) the *firm* provides written information that is specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract*; or
  - (c) the *customer* requests written information from the *firm* that is specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract*, unless the *firm* does not wish to do business with the *customer*.
- (3) Subject to ■ MCOB 5.5.4 R, the *firm* may comply with (1) and (2) by providing an *offer document* containing an *illustration*, if this can be done as quickly as providing an *illustration*.

5.5.2

FCA

G

The effect of the requirements at ■ MCOB 5.3.1 R and ■ MCOB 5.5.1 R(1) is that if a *customer's* application to enter into a *regulated mortgage contract* with a *mortgage lender*, made via a *mortgage intermediary*, is subsequently passed by that *mortgage intermediary* to another *mortgage lender*, then the *mortgage intermediary* must ensure

that the application is amended and the *customer* is provided with an *illustration* for the other *mortgage lender's regulated mortgage contract* before the application is passed to the other *mortgage lender*.

5.5.3

FCA

G

If a *firm* chooses to issue an *offer document* in place of an *illustration* in accordance with ■ MCOB 5.5.1 R(3), it will need to comply with ■ MCOB 6.4 (Content of the offer document), and in particular with ■ MCOB 6.6 (Offer documents in place of illustrations).

5.5.4

FCA

R

**A *firm* must not accept fees, commission a valuation, or undertake any other action that commits the *customer* to an application until the *customer* has had the opportunity to consider an *illustration*.**

5.5.5

FCA

G

The effect of the requirements at ■ MCOB 5.5.1 R(1) and ■ MCOB 5.5.4 R is that a *customer* will be deemed to be committed to an application if, for example, he pays a product related fee (including a valuation fee) or provides electronic or verbal authority to process an application. It is not necessary for a *customer* to provide a *mortgage lender* with a completed application form to submit an application for a *regulated mortgage contract*.

5.5.6

FCA

G

Subject to ■ MCOB 5.5.1 R and ■ MCOB 5.5.15 R when an *illustration* is requested without delay, a *firm* may perform an internal credit score and obtain information on the *customer's* credit record from a credit reference agency (subject to the consent of the *customer*), in order to provide a *customer* with an approval in principle for a *regulated mortgage contract*, without having to provide an *illustration*.

5.5.7

FCA

R

**The *firm* dealing directly with the *customer* is responsible for ensuring compliance with the content and timing requirements, that is, a *mortgage lender* is not responsible for ensuring that a *customer* has received an *illustration* before accepting an application from a *mortgage intermediary*.**

5.5.8

FCA

R

**Where a *firm* has already provided an *illustration* in accordance with ■ MCOB 5.5.1 R and the terms for the proposed *regulated mortgage contract* are subsequently materially altered, the *firm* must ensure that the *customer* is provided with a revised *illustration*, before acting on the amendment, when the change occurs at the point at which a *customer* submits an application for the *regulated mortgage contract*.**

5.5.9

FCA

G

What constitutes 'materially altered' requires consideration of the facts of each individual case. For example, a change of product such that the underlying terms and conditions of the *regulated mortgage contract* have changed should normally be regarded as material, as would an additional charge, such as a *higher lending charge*, applying to the *regulated mortgage contract* when it did not previously.

5.5.10

FCA

G

Unless the *customer* requests a revised *illustration*, a *firm* is not required to provide one if the *customer* has already submitted an application, and an amendment is made subsequently. The *mortgage lender* should however ensure that any amendment is reflected in the *offer document*.



**Uncertainty whether a mortgage is regulated**

5.5.11  
FCA

R

- (1) If, at the point an *illustration* must be provided in accordance with ■ MCOB 5.5.1 R, a *firm* is uncertain whether the contract will be a *regulated mortgage contract*, the *firm* must:
  - (a) provide an *illustration*; or
  - (b) seek to obtain from the *customer* information that will enable the *firm* to ascertain whether the contract will be a *regulated mortgage contract*.
  
- (2) Where (1)(b) applies, an *illustration* must be provided, unless, on the basis of the information the *customer* provides, the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract*.

5.5.12  
FCA

G

If the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract* and has not provided an *illustration* before a *customer* submits an application, and it is subsequently found that the contract is a *regulated mortgage contract*, there is no requirement to provide a separate *illustration* at that stage. However, the requirement to integrate an *illustration* into the *offer document* at ■ MCOB 6.4.1 R will apply.

**No preference between repayment and interest-only**

5.5.13  
FCA

R

- If the *customer* expresses no preference between a *repayment mortgage* and an *interest-only mortgage*, the *firm* must:
- (1) provide an *illustration* for a *repayment mortgage* (except where the *firm* does not provide *repayment mortgages*, in which case it must provide only an *illustration* for an *interest-only mortgage*); and
  - (2) make the *customer* aware that it has provided the *illustration* on this basis.

**Providing an illustration without delay in response to a customer request**

5.5.14  
FCA

G

Where the *customer* requests written information from the *firm* that is specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract* under ■ MCOB 5.5.1 R (2)(c), the purpose of ■ MCOB 5.5.15 R, ■ MCOB 5.5.16 R and ■ MCOB 5.5.17 G is to ensure that the *customer* receives an *illustration* without unnecessary delay. These requirements do not restrict the information that the *firm* may obtain from the *customer* after it has provided the *customer* with an *illustration*.

5.5.15  
FCA

R

- In meeting a request under ■ MCOB 5.5.1 R (2)(c), the *firm* must not delay the provision of the *illustration* by requesting information other than:
- (1) the information necessary to personalise the *illustration* in accordance with ■ MCOB 5.6.6 R, if the *firm* does not already know it;



- (2) where the *firm* acts in accordance with ■ MCOB 5.5.11 R(2), such information as is necessary to ascertain whether or not the contract will be a *regulated mortgage contract*;
- (3) where the *regulated mortgage contract* involves any *linked deposits* and the *firm* chooses to provide an example in the *illustration* in accordance with ■ MCOB 5.6.109 R(2) or ■ MCOB 5.6.110 R(2), or both, such information as is necessary to produce the example;
- (4) where the interest rates, payments or any other terms and conditions to be included in the *illustration* are dependent on the *customer's* credit record, such information as is necessary to produce an *illustration*;
- (5) where the *firm* includes a quotation for any *tied products* or compulsory insurance in the *illustration*, such information as is necessary to produce those quotations;
- (6) where the *customer* agrees to receive a quotation for insurance in the *illustration* (other than that provided for in (5)), such information as is necessary to produce those quotations; and
- (7) any of the following information where it affects the availability of the *regulated mortgage contract* that the *customer* has requested information on or affects the information to be included in the *illustration*:
  - (a) whether the *customer* is a first-time buyer, a subsequent buyer moving home or entering into a *regulated mortgage contract* without moving home;
  - (b) whether the *regulated mortgage contract* is required for a right-to-buy purchase or for a shared ownership purchase;
  - (c) whether the *customer* needs to self-certify his income;
  - (d) the location of the property to be purchased, where known; and
  - (e) whether the terms are dependent on a third party guarantee.

5.5.16

FCA

**R**

Where ■ MCOB 5.5.15 R(4) applies:

- (1) a *firm* must ask the *customer* relevant questions about his credit history or obtain information on his credit record from a credit reference agency;
- (2) a credit reference agency must not be used unless:
  - (a) it would be quicker than asking the *customer* the relevant questions about his credit history; or

(b) the *customer* is not able to provide sufficient information on his credit history.

5.5.17

FCA

G

A *firm* may use information that it already holds on the *customer* for the purpose of producing the *illustration* (for example, if it already holds the *customer's* credit record), providing the use of this information does not delay the *customer* receiving the *illustration* and the *customer's* consent is obtained where appropriate.

5.5.18

FCA

R

If, on the basis of the information obtained from the *customer* or on the basis of information that the *firm* already holds on the *customer*, the *firm* would do business with the *customer*, but not on the terms requested, the *firm* may provide the *customer* with an *illustration* in respect of a different *regulated mortgage contract* if it chooses to do so.



## 5.6 Content of illustrations

### Purpose

5.6.1  
FCA

G

■ MCOB 5.6 sets out the required content of an *illustration* provided to a *customer* by a *firm*.

### Content, order, format etc

5.6.2  
FCA

R

An *illustration* provided to a *customer* must:

- (1) contain the material set out in ■ MCOB 5 Annex 1 R in the order and using the numbered section headings, sub-headings and prescribed text in ■ MCOB 5 Annex 1 R, except where provided for in ■ MCOB 5.6;
- (2) follow the layout of the template in ■ MCOB 5 Annex 1 R with:
  - (a) prominent use of the keyfacts logo followed by the text 'about this mortgage' ;
  - (b) each section clearly separated;
  - (c) all the amounts to be paid in Sections 5, 6, 8 and 9 in columns that make the amounts of the payments clear; and
  - (d) no section split across different pages except where it is impractical not to do so;
- (3) use font sizes and typefaces consistently throughout the *illustration* which are sufficiently legible so that the *illustration* can be read easily by a typical *customer*;
- (4) ensure that the information within each section is clearly laid out (for example, through the use of bullet points or similar devices to separate information);
- (5) include prominent headings with the numbered section headings clearly differentiated in some way from the other text in the *illustration* (for example, through the use of larger and more prominent fonts, the use of shading or colour);

- (6) replace '[name of *mortgage lender*]' with the name of the *mortgage lender providing the regulated mortgage contract*: a trading name used by the *mortgage lender* may be stated, as long as the name of the *mortgage lender* is also disclosed in Section 4 of the *illustration* in accordance with
  - MCOB 5.6.25 R(1);
- (7) describe any *early repayment charge* as an 'early repayment charge' and not use any other expression to describe such charges; and
- (8) describe any *higher lending charge* as a 'higher lending charge' and not use any other expression to describe such charges.

5.6.3  
FCA

R

Section 13 in ■ MCOB 5 Annex 1 R is required only where the *illustration* is provided to the *customer* by, or on behalf of, a *mortgage intermediary*. If this is not the case, Section 14 must be renumbered Section 13.

5.6.4  
FCA

G

- (1) Further requirements regarding the use of the keyfacts logo and the location of specimens are set out in ■ GEN 5.1 and ■ GEN 5 Annex 1 G.
- (2) ■ MCOB 5.6.2 R(3) does not prevent the use of different fonts and typefaces for headings and risk warnings. Its purpose is to prevent particular sections of the *illustration* from being made less prominent than other sections through the inconsistent use of font sizes and typefaces.
- (3) The *illustration* can contain the *mortgage lender's* or *mortgage intermediary's* logo and other 'brand' information, so long as the requirements of ■ MCOB 5.6 are satisfied.
- (4) The *illustration* can contain page numbers and other references that aid understanding, record keeping and identification of a particular *illustration*, such as the date and time an *illustration* is produced or a unique reference number, provided these do not detract from the content of the *illustration*.
- (5) *Firms* are reminded of their general obligation for communications to *customers* to be clear, fair and not misleading. Sections of the *illustration* may be split across pages where it is practical to do so. When splitting sections, *firms* should split the section at an appropriate place, for example at the end of a sub-section, and not split tables or risk warnings.

5.6.5  
FCA

R

**Content: required information**

The *illustration* provided to *customers* must:

- (1) contain only the material prescribed in ■ MCOB 5.6 and no other material except where provided for elsewhere in ■ MCOB 5.6; and
- (2) be in a document separate from any other material that is provided to the *customer*.

5.6.6

FCA

**R** As a minimum the *illustration* must be personalised to reflect the following requirements of the *customer*:

- (1) the specific *regulated mortgage contract* in which the *customer* is interested;
- (2) the amount of the loan required;
- (3) the price or value of the property on which the *regulated mortgage contract* would be secured (estimated where necessary);
- (4) the term of the *regulated mortgage contract* (where the *customer* is unable to suggest a date at which he expects to repay the loan, for example in the case of an open-ended secured bridging loan , secured overdraft or *mortgage credit card*, then a term of 12 months must be assumed and this assumption stated); and
- (5) whether the *regulated mortgage contract* is to be an *interest-only mortgage* or a *repayment mortgage* or a combination of the two.

5.6.7

FCA

**G** A *firm* should not illustrate more than one *regulated mortgage contract* in the same *illustration*, for example by using one *illustration* to compare alternative products, repayment methods or repayment terms.

5.6.8

FCA

**G** In relation to ■ MCOB 5.6.6 R(3), in order for the *firm* to comply with the principle of 'clear, fair and not misleading' in ■ MCOB 2.2.6, an estimated valuation, where the estimated valuation is not that provided by the *customer*, must be a reasonable assessment based on all the facts available at the time. For example, an overstated valuation could enable a more attractive *regulated mortgage contract* to be illustrated on the basis of a lower ratio of the loan amount to the property value - for example, one with a lower rate of interest, or without a *higher lending charge*.

5.6.9

FCA

**R** The amount referred to in ■ MCOB 5.6.6 R(2) is:

- (1) in cases where on the basis of the information obtained from the *customer* before providing the *illustration* it is clear that the *customer* would not be eligible to borrow the amount he requested, an estimate of the amount that the *customer* could borrow based on the information obtained from the *customer*; or
- (2) where the *regulated mortgage contract* is a revolving credit agreement such as a secured overdraft or *mortgage credit card*:
  - (a) (if it provides for an initial drawdown and *linked borrowing facilities* that would allow the *customer* to increase the amount of the loan without any further approval from the *mortgage lender*) the amount of the initial drawdown; or
  - (b) (in all other cases) the total borrowing that the *firm* is willing to provide under the *regulated mortgage contract*; or

(3) where it is known that the loan will be released in instalments, for example in the case of a self-build mortgage, the total amount of the loan required and not the amount of the initial instalment.

5.6.10  
FCA

G

Firms are reminded that they must comply with ■ MCOB 7.6.5 R in respect of the release of loan instalments after the start of the *regulated mortgage contract*.

5.6.11  
FCA

G

■ MCOB 5.6.6 R sets out minimum requirements. The *illustration* may be personalised to a greater degree if the *mortgage lender* or *mortgage intermediary* wishes, subject to the restrictions on the information that can be obtained from the *customer* in ■ MCOB 5.5.15 R when the *illustration* is provided in accordance with ■ MCOB 5.5.1 R(2)(c).

5.6.12  
FCA

G

■ MCOB 5.6.9 R(1) does not require information to be obtained from the *customer* before providing an *illustration* in order to ascertain the amount the *customer* is eligible to borrow. Instead, its purpose is to avoid a *firm* being in a position where it would otherwise have to provide a *customer* with an *illustration* for an amount it knew the *customer* would not be eligible for, based on whatever information it had obtained from the *customer* before providing the *illustration*.

5.6.13  
FCA

R

Where the *illustration* relates to a *regulated mortgage contract* that is sub-divided into different parts with different types of interest rate or different rates of interest or different conditions, or a combination of these, the requirements in ■ MCOB 5.6 may be adapted to accommodate this. The adaptations made must be limited to those that are necessary.

5.6.14  
FCA

G

- (1) ■ MCOB 5.6.13 R applies where, for example, the *illustration* covers a *regulated mortgage contract* that is:
  - (a) divided so that a certain amount of the loan is payable on a fixed interest rate, and a certain amount on a discounted interest rate; or
  - (b) a combination of a *repayment mortgage* and an *interest-only mortgage* and the loan is subdivided into different types of interest rate and/or different rates of interest.
- (2) ■ MCOB 5.6.13 R does not apply where an *illustration* covers a *regulated mortgage contract* that is a combination of a *repayment mortgage* and an *interest-only mortgage* and the rate of interest charged, mortgage term and other conditions are the same. The treatment of such mortgages is covered in the relevant rules.

**Information to be included at the head of the illustration**

5.6.15  
FCA

R

At the head of the *illustration*, the following information must be included:

- (1) the *customer's* name;

- (2) the date of issue of the *illustration*;
- (3) details of how long the *illustration* is valid and whether there is any date by which the *regulated mortgage contract* covered by the *illustration* needs to commence (for example, where a fixed interest rate is only available if the *regulated mortgage contract* commences before a certain date); and
- (4) the prescribed text at the head of the illustration in
  - MCOB 5 Annex 1 R.

**Section 1: 'About this illustration'**

5.6.16  
FCA

R

Under the section heading 'About this illustration', the prescribed text in ■ MCOB 5 Annex 1 R under this heading must be included.

**Section 2: 'Which service are we providing you with?'**

5.6.17  
FCA

R

- (1) Unless (2) applies, under the section heading 'Which service are we providing you with?' the prescribed text in ■ MCOB 5 Annex 1 R under this heading must be included, with a 'check box' for each statement, one of which must be marked prominently to indicate the level of service provided to the *customer*.
- (2) If the level of service described in the *illustration* is provided by another *firm*, (1) may be replaced by the following: Under the section heading 'Which service are we providing you with?' the following text should be presented as two options, with a 'check box' for each option, one of which must be marked prominently to indicate the level of service provided to the *customer*: '[name of *firm*] recommends, having assessed your needs, that you take out this mortgage. [name of *firm*] is not recommending a particular mortgage for you. However, based on your answers to some questions, it is giving you information about this mortgage so that you can make your own choice'.

**Section 3: 'What you have told us'**

5.6.18  
FCA

R

- (1) Under the section heading 'What you have told us', the *illustration* must state the information that has been obtained from the *customer* under ■ MCOB 5.6.6 R (apart from ■ MCOB 5.6.6 R(1) which is provided for in Section 4 of the *illustration*), and can include brief details of any other information that has been obtained from the *customer* and used to produce the *illustration*.
- (2) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow plus charges and other payments that have been added to the loan:
  - (a) except where (b) applies, this section must include the following text after the loan amount from ■ MCOB 5.6.6 R(2): 'plus £[insert total amount of fees and other charges added to the loan] for



- fees that will be added to the loan - see Section 8 for details.';  
or
- (b) where there are other fees or charges that the *customer* must pay that have not been added to the loan, this section must include the following text after the loan amount from ■ MCOB 5.6.6 R(2): 'plus £[insert total amount of fees and other charges added to the loan] for fees that will be added to the loan. These and the additional fees that you need to pay are shown in Section 8.'
- (3) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow plus insurance premiums or insurance-related charges (other than a *higher lending charge*) that have been added to the loan:
- (a) except where (b) applies, this section must include the following text after the loan amount from ■ MCOB 5.6.6 R(2) (which may be combined with the prescribed text in (2) if applicable): 'plus £[insert amount of premium or charges, or both, to be added to the loan] for insurance [premiums] [and] [charges] that will be added to the loan - see Section 9 for details.'; or
- (b) where there are other insurance premiums or insurance-related charges, or both, that the *customer* must pay that have not been added to the loan, this section must include the following text after the loan amount from ■ MCOB 5.6.6 R(2) (which may be combined with the prescribed text in (2) if applicable): 'plus £[insert amount of premium or charges, or both, to be added to the loan] for insurance [premiums] [and] [charges] that will be added to the loan. These and any additional insurance [premiums] [and] [charges] that you need to pay are shown in Section 9.'
- (4) If the amount on which the *illustration* is based does not involve any charges or payments being added to the amount to be borrowed, but there are charges that must be paid by the *customer*, Section 3 of the *illustration* must include the following text after the loan amount from ■ MCOB 5.6.6 R(2): 'No fees have been added to this amount but the fees you need to pay are shown in Section 8. For details of any insurance charges, see Section 9.'
- (5) If the *regulated mortgage contract* on which the *illustration* is based has no charges that must be paid by the *customer*, and no insurance premiums are being added to the loan, Section 3 of the *illustration* must include the following text after the loan amount from ■ MCOB 5.6.6 R(2):



'We do not charge any fees for this mortgage.'

5.6.19

FCA

R

Where the same *illustration* covers a *regulated mortgage contract* that is a combination of a *repayment mortgage* and an *interest-only mortgage*, either:

- (1) Section 3 of the *illustration* must state the amount the *customer* wishes to borrow as a *repayment mortgage* and the amount required as an *interest-only mortgage*; or
- (2) Section 3 of the *illustration* must summarise the repayment method as partly an *interest-only mortgage* and partly a *repayment mortgage*, and Section 4 of the *illustration* must state the amount the *customer* wishes to borrow as a *repayment mortgage* and the amount required as an *interest-only mortgage*.

5.6.20

FCA

R

Where the same *illustration* covers a *regulated mortgage contract* that has different parts of the loan over a different term (that is, the final repayment date of the loan parts are different), either:

- (1) Section 3 of the *illustration* must state the amount repayable over each term; or
- (2) Section 3 of the *illustration* must state the longest term that applies and Section 4 of the *illustration* must state the amount repayable over each term.

5.6.21

FCA

R

For the purpose of illustrating to the *customer* the repayment method in Section 3 or Section 4 of the *illustration*, or the cost of the *regulated mortgage contract* in Section 5 of the *illustration*, if the *illustration* covers a *regulated mortgage contract* that is a combination of more than one interest-only part on the same product terms but with different repayment dates, the *illustration* must either treat it as one part by assuming the longest term, or alternatively treat it as a multi-part loan.

5.6.22

FCA

R

At the end of Section 3 of the *illustration* a statement must be included making clear that changes to any of the information obtained from the *customer*, and where appropriate to the valuation of the property, could alter the details elsewhere in the *illustration*, and encouraging the *customer* to ask for a revised *illustration* in this event.

5.6.23

FCA

G

An example of the type of statement that would satisfy ■ MCOB 5.6.22 R is: 'The valuation that will be carried out on the property and changes to any of the information you have given us could alter the information in this illustration. If this is the case please ask for a revised illustration.'

5.6.24

FCA

G

The purpose of the *illustration* is to provide the *customer* with details of the cost of borrowing the amount required over the term specified in ■ MCOB 5.6.6 R(2) and ■ MCOB 5.6.6 R(4). Section 12 has been designed specifically to illustrate any additional

features of the *regulated mortgage contract* such as a linked current account, a linked savings account or the availability of *unsecured lending*. These features should therefore be shown in section 12 and not in section 3 of the *illustration*.

**Section 4: 'Description of this mortgage'**

5.6.25

FCA

R

Under the section heading 'Description of this mortgage' the *illustration* must:

- (1) state the name of the *mortgage lender* providing the *regulated mortgage contract* to which the *illustration* relates (a trading name used by the *mortgage lender* may also be stated in accordance with ■ MCOB 5.6.2 R(6)), and the name, if any, used to market the *regulated mortgage contract*;
- (2)
  - (a) provide a description of the interest rate type and rate of interest that applies in accordance with the format described in ■ MCOB 5.6.26 R and ■ MCOB 5.6.27 R;
  - (b) where there is more than one interest rate type or rate of interest, specify the amount of the loan to which each interest rate type and rate of interest applies;
  - (c) unless the interest rate applies for the full term of the loan, confirm what interest rate will apply, when it will apply and for how long it will apply after any initial interest rate ends, in accordance with the format described in ■ MCOB 5.6.26 R and ■ MCOB 5.6.27 R; and
  - (d) provide a clear explanation of the charging approach where different interest rates are applied to different items of debt (for example, for a *mortgage credit card* where a different interest rate applies to balances that are transferred from that charged on any additional borrowing);
- (3) where ■ MCOB 5.6.20 R(2) applies, state the different amounts repayable and the different terms over which the amounts are repayable;
- (4) where ■ MCOB 5.6.19 R(2) applies, state the amount repayable under an *interest-only mortgage* and the amount repayable under a *repayment mortgage*;
- (5) include the following text if the *regulated mortgage contract* meets the Government's mortgage CAT standards: 'This mortgage meets the Government's CAT standards. ';
- (6) if the *customer* is obliged to buy any *tied products* or to take out a linked current account, a linked savings account or any *linked borrowing* under the *regulated mortgage contract*, include:

- (a) details of the products required; and
  - (b) the following text: 'You are obliged to take out [insert details of the product(s)] through [insert name of *mortgage lender* or if relevant, name of *mortgage intermediary*] as a condition of this mortgage. Please refer to Section [insert applicable section number e.g. 6 or 9] of this illustration for further details.'
- (7) state very briefly any restrictions that apply to the availability of the *regulated mortgage contract* (for example, if it is only available to certain types of *customer* or for certain types of loan);
- (8) where the interest rate, payments or terms and conditions of the *regulated mortgage contract* in the *illustration* reflect a *customer's* adverse credit history, include the following text: 'The terms of this mortgage reflect past or present financial difficulties.'; and
- (9) where the intention of the *regulated mortgage contract* is solely to provide the *customer* with a *mortgage credit card* (rather than the *mortgage credit card* being an additional feature of a *regulated mortgage contract*) include the warning about the loss of statutory rights from ■ MCOB 5.6.102 R(2) in Section 4 of the *illustration* rather than Section 12.

5.6.26

FCA

R

■ MCOB 5.6.27 R sets out some examples of descriptions of interest rate types and rates of interest which must be used in the *illustration* to comply with ■ MCOB 5.6.25 R(2). If an interest rate is not described in ■ MCOB 5.6.27 R, it must be presented in the *illustration* in a way that is consistent with the descriptions in ■ MCOB 5.6.27 R.

5.6.27

FCA

R

**Table Description of interest rate types and rates of interest. This table belongs to MCOB 5.6.26R:**

| Description of the interest rate   | Amount payable in each instalment            |
|--|--|
| <b>Lender's base mortgage rate - must be described as the [Lender]'s standard variable rate, currently X%, [where applicable insert the date at which the interest rate ends or period for which the interest rate applies].</b> | <b>Amount based on X%.</b>                   |
| <b>Fixed rate - must be described as a fixed rate of X% [where applicable insert the date at which the interest rate ends or the period for which the interest rate applies].</b>  | <b>Amount based on the fixed rate of X%.</b> |
| <b>Discounted rate - must be described as a variable rate, currently X%, with a discount of Y% [where applicable insert the date at which the discount ends or the period</b>  | <b>Amount based on Z%.</b>                   |

| Description of the interest rate   | Amount payable in each instalment                               |
|--|---|
| for which the discount applies], giving a current rate payable of Z%.  |   |
| <b>Capped rate - must be described as a variable rate, currently X%, which will not go above a ceiling of Y% [where applicable insert the date at which the capped interest rate ends or the period for which the capped interest rate applies].</b>   | <b>Amount based on the current interest rate payable (X%).</b>  |
| <b>Capped and collared - must be described as a variable rate, currently X%, which will not go below a floor of Y%, or above a ceiling of Z% [where applicable insert the date at which the capped and collared interest rate ends or the period for which the capped and collared interest rate applies].</b>   | <b>Amount based on the current interest rate payable (X%).</b>  |
| <b>Tracker rate - must be described as a variable rate which is [X% above/X% below/the same as] [insert interest rate tracked, currently Z%,] [where applicable insert the date at which the rate ends or the period for which the interest rate applies], to give a current rate payable of Y%. Details should also be provided of how soon after an interest rate change the mortgage interest rate is adjusted.</b> | <b>Amount based on Y%.</b>                                      |
| <b>Deferred rate - must be described as a variable rate, currently X%, where Y% is not paid now but is added to your mortgage [where applicable insert the date at which the deferred interest rate ends or the period for which the deferred interest rate applies], to give a current rate payable of Z%.</b>  | <b>Amount based on Z%.</b>                                      |
| <b>Stepped rate where different interest rates apply over different time periods (for example, fixed interest rate in year 1 changes in year 2). Each element should be dealt with individually as above.</b>  | <b>Amount for each of the 'steps'.</b>                          |
| <b>Combinations of the above must be treated in the same way as the descriptions above, (for example, if a discounted interest rate has a 'floor' then it must be described as such).</b>  | <b>Follow the above treatment depending on the combination.</b> |

5.6.28  
FCA

**R**

Where the loan under the *regulated mortgage contract* is divided into more than one part (for example where part of the loan is a fixed interest rate and part of the loan is a discounted variable interest rate) and the *firm* displays this in a tabular format in the *illustration*:

- (1) the following text must be used to introduce the table 'As this mortgage is made up of more than one part, these parts are summarised below:';
- (2) each part must be numbered for ease of reference in the *illustration*;
- (3) the 'initial rate payable' must be displayed separately from the interest rate description;
- (4) the loan amounts must be totalled; and
- (5) immediately following the table, a statement of what interest rates will apply to each part, (and when they will apply) after any initial interest rate ends in accordance with ■ MCOB 5.6.25 R(2)(c).

5.6.29

FCA

R

Further information about the *regulated mortgage contract* may be included in Section 4 of the *illustration* as long as it does not significantly:

- (1) duplicate information contained elsewhere in the *illustration*; and
- (2) extend the length of this section.

5.6.30

FCA

G

An example of further information that may be included in accordance with ■ MCOB 5.6.29 R might be that an 'approval in principle' has been granted subject to valuation and satisfactory credit reference.

### Section 5: 'Overall cost of this mortgage'

5.6.31

FCA

R

Under the section heading 'Overall cost of this mortgage' where the *regulated mortgage contract* has an agreed term for repayment and a regular payment plan (that is, it is not a revolving credit agreement such as a secured overdraft or *mortgage credit card*, or a *regulated mortgage contract* where all of the interest rolls up, such as an open-ended bridging loan ):

- (1) the following text must be included in the *illustration*: 'The overall cost takes into account the payments in Sections 6 and 8 below.';
- (2) if all of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*, the following text must follow the text in (1): 'However, it excludes any payments that you may need to make into a separate savings plan, to build up a lump sum to repay the amount borrowed, but assumes that you pay off the amount borrowed as a lump sum at the end of the mortgage.';
- (3) where all of the *regulated mortgage contract* is a *repayment mortgage*, the following text must follow the text in (1): 'With a repayment mortgage you gradually pay off the amount you have borrowed, as well as the interest, over the life of the mortgage.';

- (4) if part of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*, and part is a *repayment mortgage*, the following text must follow the text in (1): 'However, it excludes any payments that you may need to make into a separate savings plan to build up a lump sum to repay the amount borrowed on an interest-only basis, but assumes that you pay off the amount borrowed on an interest-only basis, as a lump sum at the end of the mortgage.'; and
- (5) reference must be made to any other payments that have been included in the *APR* but not included in Sections 6 and 8 of the *illustration* if these are relevant to the *regulated mortgage contract* that is the subject of the *illustration*.

**R** Under the section heading 'Overall cost of this mortgage' where the *regulated mortgage contract* has no agreed term for repayment, (and a 12 month term has been assumed), or no regular payment plan, or both (for example, a revolving credit agreement such as a secured overdraft or *mortgage credit card* or a *regulated mortgage contract* where all the interest rolls up such as an open-ended bridging loan ):

- (1) the following text must be included in the *illustration*: 'The overall cost takes into account the payments in Sections 6 and 8 below.';
- (2) where all the interest on the *regulated mortgage contract* rolls up and is repaid as a lump sum at the end of the *regulated mortgage contract*, for example a secured bridging loan , then the following text must follow the text in (1): 'It assumes that you pay back the total amount owing as a lump sum at the end of the mortgage term.';
- (3) where the *regulated mortgage contract* is a revolving credit agreement and no regular payments are made, for example a secured overdraft, then the following text must follow the text in (1): 'It assumes that you borrow the maximum amount available, and pay back the total amount owing, as a lump sum at the end of the mortgage term.';
- (4) where the *regulated mortgage contract* is a revolving credit agreement and regular minimum payments are made, for example, a *mortgage credit card*, then the following text must follow the text in (1): 'It assumes that you borrow the maximum amount available, make regular payments of the minimum amount, and pay back the remaining amount owing as a lump sum at the end of the mortgage term.'; and

5.6.32

FCA



- (5) reference must be made to any other payments that have been included in the *APR* but not included in Sections 6 and 8 of the *illustration* if these are relevant to the *regulated mortgage contract* that is the subject of the *illustration*.

5.6.33

FCA

G

■ MCOB 5.6.31 R(5) and ■ MCOB 5.6.32 R(5) would require, for example, a reference to the fact that the overall cost takes into account mortgage payment protection insurance where this is required as a condition of the *regulated mortgage contract* to which the *illustration* relates. The requirement to take out such insurance must be stated in Sections 4 and 9 of the *illustration* in accordance with ■ MCOB 5.6.25 R(6), ■ MCOB 5.6.74 R or ■ MCOB 5.6.77 R.

5.6.34

FCA

R

The following text must be included after the text required by ■ MCOB 5.6.31 R or ■ MCOB 5.6.32 R with the relevant cost measures shown in the right-hand column of Section 5 in accordance with the layout shown in ■ MCOB 5 Annex 1 R:

- (1) 'The total amount you must pay back, including the amount borrowed is £[insert *total amount payable*];
- (2) 'This means you pay back £[insert the *total amount payable*] divided by the amount on which the *illustration* is based from ■ MCOB 5.6.6 R(2) plus all fees, charges and insurance premiums added to the loan in accordance with ■ MCOB 5.6.18 R(2) and ■ MCOB 5.6.18 R(3)] for every £1 borrowed'; and
- (3) 'The overall cost for comparison is [insert the *APR*] % *APR*'.

5.6.35

FCA

R

- (1) The *APR* and the *total amount payable* in ■ MCOB 5.6.34 R must be calculated on the basis of information obtained from the *customer* under ■ MCOB 5.6.6 R.
- (2) Where there is a charge to be included in the *APR* and *total amount payable* and the precise amount of that charge is not known at the time that the *illustration* is provided, ■ MCOB 10.3 (Formula for calculating the *APR*) sets out a number of relevant assumptions to be used. If the method for including the charge is not addressed in MCOB 10 (Annual Percentage Rate), the charge must be estimated based on information which is known to be representative of the *regulated mortgage contract* to which the *illustration* relates.
- (3) [deleted]
- (4) Where the *regulated mortgage contract* is a revolving credit agreement and regular payments are made, for example, a *mortgage credit card*, then the *APR* and *total amount payable* must be based on the maximum amount that the *customer* could borrow and take into account any amounts that must be paid in regular instalments.

5.6.36  
FCA

G

In relation to ■ MCOB 5.6.35 R(2), the cost of conveyancing would be an example of a charge for which representative information may need to be used in the calculation of the APR and the *total amount payable*.

5.6.37  
FCA

R

At the end of Section 5 of the *illustration* the following text must be included:

- (1) unless the interest rate is fixed throughout the term of the *regulated mortgage contract*: 'The figures in this section will vary following interest rate changes and if you do not keep the mortgage for [insert term from ■ MCOB 5.6.6 R(4)].'; and
- (2) (a) where the *regulated mortgage contract* is a *repayment mortgage*: 'Only use the figures in this section to compare the cost with another repayment mortgage.'; or
- (b) where the *regulated mortgage contract* is an *interest-only mortgage*: 'Only use the figures in this section to compare the cost with another interest-only mortgage.'; or
- (c) where the *regulated mortgage contract* is a combination of a *repayment mortgage* and an *interest-only mortgage*: 'Only use the figures in this section to compare the cost with another mortgage that has the same proportions of the loan on repayment and interest-only as this one.'

5.6.38  
FCA

G

The purpose of the *illustration* is to provide the *customer* with details of the cost of borrowing the amount required over the term specified from ■ MCOB 5.6.6 R(2) and ■ MCOB 5.6.6 R(4). Section 12 has been designed specifically to allow examples of the effect of any additional features of the *regulated mortgage contract* such as a linked current account or a linked savings account. Examples of these features should therefore be shown in Section 12 and not in Section 5 or Section 6 of the *illustration*.

**Section 6: 'What you will need to pay each [insert frequency of payments from MCOB 5.6.40R]'**

5.6.39  
FCA

R

■ MCOB 5.6.40 R to ■ MCOB 5.6.57 G do not apply to loans without a term or regular payment plan where some or all of the interest rolls up, for example secured bridging loans, secured overdrafts or *mortgage credit cards*. In these cases, ■ MCOB 5.6.134 R to ■ MCOB 5.6.138 G apply.

5.6.40  
FCA

R

The heading for Section 6 of the *illustration* and the heading of the column on the right-hand side of this section must state the frequency with which payments must be made by the *customer*. (For example, if payments are to be made on a monthly basis, the heading for this section must be 'What you will need to pay each month' and the column must be headed 'Monthly payments'.)



5.6.41 **R** All the payments in Section 6 of the *illustration* must be calculated based on the frequency used for the purposes of the headings in ■ MCOB 5.6.40 R and must be shown in the column on the right-hand side of this section.

FCA

5.6.42 **R** Section 6 of the *illustration* must contain the following information:

FCA

- (1) the loan amount on which the *illustration* is based. This figure should include all fees, charges and insurance premiums that have been added to the loan in accordance with ■ MCOB 5.6.18 R(2) and ■ MCOB 5.6.18 R(3), and the following text must follow the loan amount: 'and include[s] the [fees] [and] [insurance premiums] that are shown in [Section 8] [and] [Section 9] as being added to your mortgage.'
- (2) the assumed start date that has been used in the *illustration* to estimate the number of payments to be charged at given interest rates;
- (3) except where ■ MCOB 5.6.54 R applies, for each of the interest rates charged on the *regulated mortgage contract*:
  - (a) the number of payments at that interest rate;
  - (b) whether the interest rate is fixed or variable;
  - (c) the interest rate charged on the *regulated mortgage contract* at the time the *illustration* is issued; and
  - (d) the amount that the *customer* must pay in each instalment at that interest rate, which must be recorded in the right-hand column of this section (see ■ MCOB 5.6.48 R).

5

5.6.43 **R** Where the *illustration* covers a *regulated mortgage contract* that automatically converts from one repayment method to another after a specified period, then the *illustration* must show the effect of this change on the regular payment, in the same way as the requirements in ■ MCOB 5.6.42 R(3).

FCA

5.6.44 **G** If appropriate, the two statements required by ■ MCOB 5.6.42 R(1) and ■ MCOB 5.6.42 R(2) may be merged, for example 'These payments are based on a loan amount of £x and assume that the mortgage will start on [dd/mm/yy]'.

FCA

5.6.45 **G** ■ MCOB 5.6.42 R(3) applies to each interest rate charged on the *regulated mortgage contract* covered by the *illustration*. This means that it applies to different interest rates charged at different times, for example, where the interest rate changes at the end of any initial discounted, fixed or other special interest rate period.

FCA

5.6.46

FCA

**R** The following information must be included in the description of the interest rate required by ■ MCOB 5.6.42 R(3)(c) except where ■ MCOB 5.6.54 R applies:

- (1) where the interest rate can change, the word 'currently' must be used to illustrate the current interest rate payable; and
- (2) where the interest rate changes after a given period the words 'followed by' must be used to indicate this.

5.6.47

FCA

**G** An example of how the information required by ■ MCOB 5.6.42 R(3) and ■ MCOB 5.6.46 R may be presented when there is an initial fixed interest rate for a period of 22 months followed by the *mortgage lender's* standard variable interest rate for a period of 278 months is as follows: '22 payments at a fixed rate of [...] % followed by 278 payments at a variable rate, currently [...] %'.

5.6.48

FCA

**R** The information required by ■ MCOB 5.6.42 R(3)(d) must exclude:

- (1) the cost of repaying the capital if the *regulated mortgage contract* is an *interest-only mortgage*: where part of the *regulated mortgage contract* is an *interest-only mortgage*, the cost of repaying the capital must be excluded only for that part; and
- (2) the cost of any products which may be sold in conjunction with the *regulated mortgage contract* (whether *tied products* or not), unless the cost has been added to the mortgage.

5.6.49

FCA

**R** If, because of the assumed start date of the *regulated mortgage contract*, the initial payment differs from the subsequent payments, the initial payment must be shown in this section in accordance with ■ MCOB 5.6.42 R(3)(d).

5.6.50

FCA

**R** Where the *illustration* covers a *regulated mortgage contract* that is a combination of a *repayment mortgage* and an *interest-only mortgage*, the payment amounts in ■ MCOB 5.6.42 R(3)(d) must be the combination of the amount to be paid on the *repayment mortgage* and the amount to be paid on the *interest-only mortgage*, unless ■ MCOB 5.6.13 R or ■ MCOB 5.6.54 R apply in which case they must be stated separately.

5.6.51

FCA

**R** Where the interest is deferred on the *regulated mortgage contract*, the following text must be included under the information on the deferred interest rate included in the *illustration* in accordance with ■ MCOB 5.6.42 R(3): "The interest deferred will be added to your mortgage. The table at Section [insert 6a or 6b if ■ MCOB 5.6.55 R applies] of this illustration shows how this will affect the amount you owe."

5.6.52

FCA

**R** Where all or part of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*:

- (1) the *illustration* must include the sub-heading 'Cost of repaying the capital' with the following text under it: 'You will still owe [insert amount of loan on an interest-only basis] at the end of the mortgage term. You will need to make separate arrangements to repay this. When comparing the payments on this mortgage with a repayment mortgage, remember to add any money that you may need to pay into a separate savings plan to build up a lump sum to repay this amount.';
- (2) if the *regulated mortgage contract* requires the *customer* to take out a *repayment vehicle* that is a *tied product* either through the *mortgage lender* or *mortgage intermediary* then:
  - (a) include a sub-heading 'Savings plan that you must take out through [insert name of *mortgage lender* or *mortgage intermediary*]';
  - (b) include an accurate quotation or a reasonable estimate of the payments the *customer* will need to make for the *repayment vehicle* ; and
  - (c) if a quotation cannot be provided under (b), state that a quotation is not available at present, that a quotation will be provided as soon as possible and that in the event that this is provided after an application is made, and is found to be unacceptable to the *customer*, that the application may be cancelled with a full refund of all fees (in accordance with ■ MCOB 5.4.23 R(3)).
- (3) if the *illustration* includes a quotation for the payments that would need to be made into the *repayment vehicle* by the *customer*:
  - (a) unless (2) applies, the *illustration* must include the sub-heading 'Savings plan that you do not have to take out through [insert name of *mortgage lender* or *mortgage intermediary*]';
  - (b) the *illustration* must provide a brief description only of the type of *repayment vehicle* illustrated (full details of the *repayment vehicle* may be provided separately);
  - (c) the quotation must be based on the frequency of payments in ■ MCOB 5.6.40 R and must be included in the column for payments alongside the description required by (b); and
  - (d) the *illustration* must refer the *customer* to the individual product disclosure documentation required by the Conduct of Business sourcebook (*COBS*).

- (4) if a quotation for the *repayment vehicle* is not provided in the *illustration*, the *illustration* must include a '£' sign in the column for payments alongside the following text, which follows the text in (1): 'When you have found out what payments you need to make into a savings plan you may find it helpful to add these to your mortgage payments and put the total payment in the column opposite.';
- (5) unless ■ MCOB 5.6.55 R applies, if a quotation for the *repayment vehicle* has been included in the *illustration*, Section 6 must be extended to illustrate the monthly cost inclusive of the savings plan and must have the sub-heading 'What you will need to pay each [insert frequency of payments from ■ MCOB 5.6.40 R] including the cost of a savings plan to repay the capital' and must include:
  - (a) the information required by ■ MCOB 5.6.42 R(3) for each interest rate charged on the *regulated mortgage contract*; and
  - (b) the sum of what the *customer* would need to pay in each instalment for the *regulated mortgage contract* and for the *repayment vehicle* in the payments column. For example if payments are made monthly, this would be the amount that the *customer* would need to pay each month for the *regulated mortgage contract* and the *repayment vehicle*. Where different interest rates are charged on the *regulated mortgage contract* the amount payable in each instalment at each interest rate must be shown in the payments column.

5

5.6.53  
FCA

G

Table An example of how the information required by ■ MCOB 5.6.52 R (1), ■ MCOB 5.6.52 R (3) and ■ MCOB 5.6.52 R (5) may be presented is as follows:

|  |                         |
|--|-------------------------|
| <b>Cost of repaying the capital</b>  |                         |
| You will still owe £Z at the end of the mortgage term. You will need to make separate arrangements to repay this. When comparing the payments on this mortgage with a repayment mortgage, remember to add any money that you may need to pay into a separate savings plan to build up a lump sum to repay this amount. |                         |
| <b>Savings plan that you do not have to take out through [insert name of mortgage lender or mortgage intermediary]</b>   | <b>Monthly payments</b> |
| XYZ savings plan (see separate product disclosure document)  | £C                      |
| <b>What you will need to pay each month including the cost of a savings plan to repay the capital</b>  |                         |
| 36 payments at a fixed rate currently x% followed by:  | £(A+C)                  |
| 264 payments at a variable rate currently y%.  | £(B+C)                  |

PAGE  
34

5.6.54  
FCA

R

**Multi-part mortgages**

Where the loan under the *regulated mortgage contract* is divided into more than one part (for example, where part of the loan is on a fixed

interest rate and part on a discounted variable interest rate) and the *firm* displays the initial cost of all parts, and the total cost, in a tabular format in the *illustration*, ■ MCOB 5.6.42 R(3) and ■ MCOB 5.6.46 R do not apply; instead:

- (1) each part must be numbered for ease of reference in the *illustration*;
- (2) the loan amounts must be totalled;
- (3) the number and frequency of each payment must be stated;
- (4) the repayment method for each part must be stated;
- (5) the 'initial interest rate payable' for each part must be stated ;
- (6) whether the interest rate payable is fixed or variable for each part must be stated; and
- (7) the regular payment for each part must be stated and the total payment for all parts highlighted (excluding the information listed in ■ MCOB 5.6.48 R).

5.6.55

FCA

R

Unless all of the interest rates described in ■ MCOB 5.6.54 R(5) apply for the term of the loan part to which they apply, then an additional section numbered as 6a and titled 'What you will need to pay in future' must be included to indicate the future stepped payments (if ■ MCOB 5.6.51 R also applies then the section on deferred interest must be numbered 6b). This section must:

- (1) state when a change in payment will occur;
- (2) state the reason for the change in payment; and
- (3) confirm that the payment illustrated assumes interest rates will not change.

5.6.56

FCA

R

Where ■ MCOB 5.6.55 R applies and part of the *regulated mortgage contract* is an *interest-only mortgage*:

- (1) if a quotation for the *repayment vehicle* has been included in the *illustration* in accordance with ■ MCOB 5.6.52 R(3) then ■ MCOB 5.6.52 R(5) does not apply.
- (2) a statement is required to indicate that these payments do not include the cost of any savings plan.

PAGE  
35

5.6.57

FCA

G

An example of a statement which would meet the requirements of ■ MCOB 5.6.56 R(2) would be 'Remember to add the cost of any savings plan to these monthly payments'.

## Section 7: 'Are you comfortable with the risks?'

5.6.58

FCA

R

■ MCOB 5.6.59 R to ■ MCOB 5.6.65 R do not apply to loans without a term or regular repayment plan where some or all of the interest rolls up, for example, secured bridging loans, secured overdrafts or *mortgage credit cards*. In these cases ■ MCOB 5.6.140 R to ■ MCOB 5.6.145 R apply.

5.6.59

FCA

R

Under the section heading 'Are you comfortable with the risks?':

- (1) under the sub-heading 'What if interest rates go up?' the *illustration* must include the following:
  - (a) if the interest rate is fixed throughout the term of the *regulated mortgage contract*, an explanation that the payments will not vary because the interest rate is fixed;
  - (b) if the interest rate is fixed for part of the term of the *regulated mortgage contract*, an explanation of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the *customer's* payments;
  - (c) if the interest rate cannot go above a certain level or below a certain level, or both, and this applies throughout the term of the *regulated mortgage contract*, an explanation that this is the case;
  - (d) if the interest rate cannot go above or below a certain level for part of the term of the *regulated mortgage contract*, an explanation that this is the case and of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the *customer's* payments;
  - (e) (i) if (c) or (d) apply, the maximum or minimum interest rate, or both, and the payments at each of these interest rates; and
    - (ii) where a *repayment vehicle* has been included in the *illustration* in accordance with ■ MCOB 5.6.52 R(3), the payments quoted in (i) must include the cost of the *repayment vehicle* and state that this is the case;
  - (f) if the *regulated mortgage contract* is made up of a number of different parts including different types of interest rate and different rates of interest, an explanation of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the *customer's* payments for each part (or combination of parts);
  - (g) except where (2)(a) or (2)(b) apply, the following text: 'The [frequency of payments from ■ MCOB 5.6.40 R] payments shown in this illustration could be considerably different if interest rates change. For example, for one percentage point increase in [describe the interest rate that applies], your



[insert frequency of payments] payment will increase by around £[insert amount by which payment will increase]'; and

- (h) except where (2)(a) or (2)(b) apply, if (f) applies the following additional text after the text in (g), for each part (or combination of parts), where the amounts by which the *customer's* payments would increase are different: 'After the [describe the interest rate that applies, the part (or parts) to which it applies, and date or period for which it applies] then for one percentage point increase in [describe the interest rate that applies], your [insert frequency of payments] payment will increase by around £[insert amount by which payment will increase].'

- (2) paragraphs (1)(g) and (1)(h) do not apply where:

- (a) the interest rate is fixed throughout the term of the *regulated mortgage contract*; or
- (b) the difference between the interest rate included in the *illustration* in accordance with ■ MCOB 5.6.42 R and the maximum interest rate that can be charged on the *regulated mortgage contract* is less than one percentage point.

- (3) under the sub-heading 'What if your income goes down?': 'You will still have to pay your mortgage if you lose your job or if illness prevents you from working. Think about whether you could do this.'

5.6.60

FCA

R

The amount by which the *customer's* payments would increase in accordance with ■ MCOB 5.6.59 R(1)(g) and (h) must be calculated as follows:

- (1) the *firm* must use the total amount borrowed, or assume that all payments due on the *regulated mortgage contract* have actually been paid, all additional fees and payments due have been paid, and no underpayments or overpayments have been made;
- (2) where all or part of the *regulated mortgage contract* is a *repayment mortgage*, the calculation must be based on:
- (a) the total amount borrowed; or
- (b) the amount of the loan outstanding from the earliest point at which the interest rate charged on the *regulated mortgage contract* can vary (for example, if the *regulated mortgage contract* has an initial fixed interest rate, this will be from the point at which the fixed interest rate ends); and
- (3) the interest rate from which the increase is calculated must be the variable interest rate charged on the *regulated mortgage contract*

at the date that the *illustration* is issued (that is, the variable interest rate quoted in Section 4 of the *illustration*); where the variable interest rate changes after a set period or on a set date, it must be based on the initial variable interest rate charged on the *regulated mortgage contract* at the date the *illustration* is issued (for example, if the initial interest rate is discounted, it must be based on the discounted rate).

5.6.61  
FCA

**G** Although the effect of a one percentage point increase in interest rates on the *customer's* payments is not completely linear, the purpose of ■ MCOB 5.6.59 R(1)(g) and (h) is to show the approximate effect of such an increase.

**Risk warning**

5.6.62  
FCA

**R** Unless ■ MCOB 5.6.59 R(2)(a) or (b) apply, the following words must be prominently displayed at the end of the sub-section 'What if interest rates go up?': 'Rates may increase by much more than this so make sure you can afford the [insert frequency of payments from ■ MCOB 5.6.40 R] payment'.

5.6.63  
FCA

**R** The following words must be prominently displayed at the end of the sub-section 'What if your income goes down?': 'Make sure you can afford your mortgage if your income falls'.

5.6.64  
FCA

**G** For guidance on prominence see ■ MCOB 2.2.9 G.

5.6.65  
FCA

**R** The following text must be included at the end of Section 7 'Are you comfortable with the risks?': The *Money Advice Service* information sheet "You can afford your mortgage now, but what if...?" will help you consider the risks. You can get a free copy from <http://www.moneyadviceservice.org.uk>, or by calling 0300 500 5000.'

**Section 8: 'What fees must you pay?'**

5.6.66  
FCA

**R** Under the section heading 'What fees must you pay?' the *illustration* must:

- (1) itemise all the fees that are included in the calculation of the *APR* in accordance with ■ MCOB 10 (Annual Percentage Rate), excluding any charges for insurance set out in Section 9 in accordance with ■ MCOB 5.6.73 R; and
- (2) include a statement at the end of the section using the following text: 'You may have to pay other taxes or costs in addition to any fees shown here.'

5.6.67  
FCA

**G** An example of a fee that would normally be included in Section 8 would be a fee to re-inspect a property after completion of works if it is known that this fee will be charged at the time the *illustration* is produced. An example of a fee that would not be included would be a fee payable by the *customer* to insure their property elsewhere



(however this would need to be stated in Section 9 of the *illustration* 'Insurance', as required by ■ MCOB 5.6.77 R(2)). Fees payable upon repayment of the *regulated mortgage contract* at the end of the mortgage term would need to be included. Where fees are payable only on early repayment of the *regulated mortgage contract*, they should not be stated here (however these fees would need to be stated in Section 10 of the *illustration* 'What happens if you do not want this mortgage any more', as required by ■ MCOB 5.6.88 R(2)).

5.6.68

FCA

R

The fees included in this section in accordance with ■ MCOB 5.6.66 R must be itemised under the relevant sub-headings as follows:

- (1) the fees that are payable by the *customer* to the *mortgage lender* must be itemised under the sub-heading 'Fees payable to [name of mortgage lender]';
- (2) the remaining fees must be itemised under the sub-heading 'Other fees'; and
- (3) (a) if there are no fees to be itemised in accordance with (1), the sub-heading must be retained and a statement must be included stating that no fees apply; and  
 (b) if there are no fees to be itemised in accordance with (2), then the sub-heading must be retained and only the text in ■ MCOB 5.6.66 R(2) applies.

5.6.69

FCA

R

The following information must be provided for each fee included in this section of the *illustration* in accordance with ■ MCOB 5.6.66 R(1):

- (1) a description of the fee;
- (2) the amount payable by the *customer* recorded in a column headed 'Fee amount' on the right-hand side of this section;
- (3) for fees included under the sub-heading 'Other fees', to whom the fee is payable;
- (4) when the fee is payable;
- (5) whether or not the fee is refundable, and if so, the extent to which it is refundable; and
- (6) which fees (if any) are estimated in accordance with ■ MCOB 5.6.35 R(2) and based on representative information; and
- (7) if any fee is payable after the start of the *regulated mortgage contract* and subject to change in the future, for example a fee payable on final repayment of the *regulated mortgage contract*,

5.6.70  
FCA

R

the amount of that fee, along with a statement that this is the 'current fee'.

- (1) If a *higher lending charge* is payable by the *customer*, the following text must be used to describe such a charge for the purposes of ■ MCOB 5.6.69 R: 'A higher lending charge is payable because you are borrowing [insert the ratio of the mortgage amount (from ■ MCOB 5.6.6 R(2)) to the property's price or value (from ■ MCOB 5.6.6 R(3))] of the property's [estimated] [price/value].'
- (2) If the *customer* has asked for any fees to be added to the loan, this must be stated alongside each fee.
- (3) If the *customer* has the option of adding to the loan amount any of the fees included in this section, the following text must be included: 'If you wish you can add [this/these/the {type of fee}] fee(s) to the mortgage. This would increase the amount you borrow to [insert amount of the mortgage with the fee(s) included] and would increase the payments shown in Section 6. If you want to do this, you should ask for another illustration that shows the effect of this on your [insert frequency of payments from ■ MCOB 5.6.40 R] payments.'
- (4) Any fees that are estimated based on representative information in accordance with ■ MCOB 5.6.35 R(2) must include an appropriate explanation of what the fee represents. For example, if this section includes an estimated fee for the legal work that a *customer* might be charged by his conveyancer for carrying out work on behalf of the *mortgage lender*, the *illustration* must explain that the fee is estimated, and that it only covers part of the costs of legal work that the *customer* might need to pay.

5.6.71  
FCA

G

'Other fees' will include any fee charged by a *mortgage intermediary*, or another third party, for *advising on* or *arranging* a *regulated mortgage contract* but not commission or *procurator fees* (which are dealt with in Section 13 of the *illustration*).

5.6.72  
FCA

R

A *mortgage lender* must provide a *tariff of charges* to the *customer*, if the *customer* so requests.

**Section 9: 'Insurance'**

5.6.73  
FCA

R

- (1) Under the section heading 'Insurance' the *illustration* must include details of:
  - (a) insurance which is a *tied product*; and
  - (b) insurance which is required as a condition of the *regulated mortgage contract* which is not a *tied product*.

- (2) A *firm* may also provide details of insurance which it is optional for the *customer* to take out under this section heading.
- (3) It must be clear to the *customer* which products he is required to purchase under which circumstances (for example, where both a *tied product* and a *mortgage intermediary* are involved, whether the policy must be purchased from the *mortgage lender* or the *mortgage intermediary*).

5.6.74

FCA

R

Under the sub-heading 'Insurance you must take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]' the following information must be included if the *regulated mortgage contract* requires the *customer* to take out insurance that is a *tied product* either through the *mortgage lender* or where relevant the *mortgage intermediary*:

- (1) details of which insurance is a *tied product*;
- (2) for how long the *customer* is obliged to purchase the insurance;
- (3) an accurate quotation or a reasonable estimate of any payments the *customer* needs to make for the insurance;
- (4) where a quotation is provided for insurance in accordance with (3) on the basis of an estimated sum insured, because the actual required sum insured is unknown, the fact that it is estimated should be stated along with confirmation of the level of cover that has been assumed;
- (5) details of when the *customer's* payments for such insurance change, for example, if premiums are reviewed annually; and
- (6) where a quotation is not provided in accordance with (3) a statement of when and how a quotation will be provided (for example, separately and as soon as possible).

5.6.75

FCA

G

*Firms* are reminded that ■ MCOB 5.4.23 R requires a *firm* to provide a *customer* with an accurate quotation for any *tied products*. Where the level of cover the *firm* requires the *customer* to take up is known at the outset, then the quotation should reflect that level of cover.

5.6.76

FCA

R

If the *regulated mortgage contract* does not require the *customer* to take out insurance as a *tied product*, the sub-heading 'Insurance you must take out through [insert the name of the *mortgage lender*, and where relevant the name of the *mortgage intermediary*]' must be retained and a statement must be provided under this heading that the *customer* is not obliged to take out any insurance through the *mortgage lender* or, where relevant, the *mortgage intermediary*.

5.6.77

FCA

**R** The following information must be included under the sub-heading 'Insurance you must take out as a condition of this mortgage but that you do not have to take out through [insert the name of the *mortgage lender*, or where relevant the name of the *mortgage intermediary*, or both]':

- (1) if the *regulated mortgage contract* requires the *customer* to take out an insurance policy (other than that which is a *tied product* which the *customer* is obliged to purchase through the *mortgage lender*, or where relevant the *mortgage intermediary*), a brief statement of the type of insurance the *firm* requires; a quotation for the insurance that the *firm* issuing the *illustration* wishes to promote to the *customer* may be included in the *illustration* (estimated where necessary);
- (2) if the *mortgage lender* or the *mortgage intermediary* makes a charge in cases where the *customer* does not arrange insurance that is a condition of the *regulated mortgage contract* through the *mortgage lender* or the *mortgage intermediary*, this must be stated, together with the amount of the charge and the frequency with which this charge is payable; and
- (3) if no insurance policies are required (other than that which is a *tied product*), the sub-heading 'Insurance you must take out as a condition of this mortgage but that you do not have to take out through [insert name(s) of *mortgage lender* and, where relevant the *mortgage intermediary*]' must be retained in the *illustration* and a statement must be provided under this heading that no such insurance is required.

5.6.78

FCA

**G** Under the sub-heading 'Insurance you must take out as a condition of this mortgage but that you do not have to take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]' the *illustration* should not include any insurance policy that may be taken out by a *mortgage lender* itself to protect its own interests rather than the *customer's* interests, for example, because of the ratio of the loan amount to the property value.

5.6.79

FCA

**G** If the cost of any insurance that the *mortgage lender* might take out to protect its own interests, because of the ratio of the loan amount to the property value, is passed on to the *customer*, it will be shown elsewhere in the *illustration*, for example, as a *higher lending charge* or in the interest rate charged.

5.6.80

FCA

**R** A *firm* may include in the *illustration*, under the sub-heading 'Optional insurance', quotations (estimated where necessary) for any insurance products (other than the insurance products covered elsewhere in the *illustration* in accordance with ■ MCOB 5.6.74 R and ■ MCOB 5.6.77 R) that the *firm* issuing the *illustration* wishes to promote to the *customer*.

**5.6.81** **R** If no quotations are included in the *illustration* in accordance with **FCA** ■ MCOB 5.6.80 R, the sub-heading 'Optional insurance' must not be included in the *illustration*.

**5.6.82** **R** (1) If any quotations for insurance are included in the *illustration* in accordance with ■ MCOB 5.6.74 R(3), ■ MCOB 5.6.77 R(1) or ■ MCOB 5.6.80 R, the *illustration*:

(a) must include a brief description only of the type of insurance (full details of the insurance cover may however be provided separately); and

(b) (i) must include the total price to be paid by the *customer* in a column on the right hand side of the *illustration* under the heading '[insert frequency of payments quoted] payments'; and

(ii) may refer the *customer* to the individual insurance product disclosure documentation.

(2) If the *customer* has asked to add any insurance premiums or insurance-related charges to the amount borrowed in accordance with ■ MCOB 5.6.18 R(3), the illustration must state that this is the case.

**5.6.83** **G** The terms on which an insurance premium has been calculated should be presented to the *customer* in the format determined by the relevant regulatory requirements. **FCA**

**Section 10: 'What happens if you do not want this mortgage any more?'**

**5.6.84** **R** Under the heading 'What happens if you do not want this mortgage any more?', the *illustration* must include the following information on the *regulated mortgage contract*: **FCA**

- (1) under the sub-heading 'Early repayment charges':
- (a) an explanation that the *customer* cannot repay the *regulated mortgage contract* early, if this is the case;
  - (b) an explanation of whether *early repayment charges* are payable;
  - (c) an explanation of when *early repayment charges* are payable;
  - (d) an explanation of any other fees that are payable if the *regulated mortgage contract* is repaid early, and the current level of these fees;
  - (e) a basic explanation of the basis on which *early repayment charges* are calculated (for example, as a percentage of the loan or as so many months' interest), including where appropriate details of any *cashback* or other incentives that must be repaid.

5

The *illustration* may refer to a separate document for full details of all terms and conditions relating to the charges that apply if the *regulated mortgage contract* is repaid early;

- (f) example cash amounts of any *early repayment charges* indicating the range of charges that apply over the period during which such charges apply calculated in accordance with ■ MCOB 5.6.88 R, which must be described in the *illustration* as cash examples;
- (g) the maximum *early repayment charge* that the *customer* could be charged in accordance with ■ MCOB 12.3 (Early repayment charges), plus the cost of any other fees, which must be shown as cash amounts and described in the *illustration* as 'the maximum charge you could pay' [add if applicable, 'plus (a) fee(s) which (is/are) currently £x']; and

- (2) under the sub-heading 'What happens if you move house?': details of whether or not the *regulated mortgage contract* is portable on moving house and a brief explanation of any conditions or restrictions that apply including whether there are any restrictions on changing the terms of the *regulated mortgage contract* during the period in which any *early repayment charges* apply (a reference to another document may be made in order to provide the *customer* with further details of the conditions or restrictions).

5.6.85

FCA

G

The requirements in ■ MCOB 5.6.84 R(1) may be presented in a tabular format.

5.6.86

FCA

R

Where ■ MCOB 5.6.84 R(1)(f) would result in more than three cash amounts being shown in the *illustration*, the cash amounts shown in the *illustration* may be restricted to three examples. These examples must be representative of the full range of charges that apply and not be limited to the lowest charges that apply. These three examples are in addition to:

- (1) any statement of the amount of any fees described in ■ MCOB 5.6.84 R(1)(d); and
- (2) the maximum *early repayment charge* required by ■ MCOB 5.6.84 R(1)(g).

5.6.87

FCA

G

An example which would comply with ■ MCOB 5.6.86 R would be if a five year fixed rate mortgage had a charge which reduced linearly by 1% each year from 5% in the first year to 1% in the final year and cash examples were used based on 5% in year 1, 3% in year 3 and 1% in year 5.

5.6.88

FCA

R

- (1) In calculating example cash amounts in accordance with ■ MCOB 5.6.84 R(1)(f), it must be assumed that:



- (a) the *regulated mortgage contract* is repaid in full;
- (b) unless the original amount borrowed is used, that all payments due on the *regulated mortgage contract* are actually paid;
- (c) additional fees and charges such as insurance premiums have been paid; and
- (d) no underpayments or overpayments have been made.

(2) If:

- (a) *cashbacks* or other incentives need to be repaid; or
- (b) fees need to be paid;

the amounts that would need to be repaid or paid must be included in the example cash amounts.

(3) Where the calculation of the *early repayment charge* is based on the interest rate charged on the *regulated mortgage contract* or on interest rates generally, the interest rates used for the calculation of the example cash amounts must be those in force at the date that the *illustration* is issued to the *customer*.

(4) The example cash amounts must reflect the maximum charge in a particular year. Where it is possible to state exact *early repayment charges* (that is, where all such charges are based on the original amount borrowed), the *illustration* must do so.

5.6.89

FCA

R

Where the cash examples from ■ MCOB 5.6.88 R included in the *illustration* would vary either if the interest rate charged on the *regulated mortgage contract* changed or with changes in interest rates generally, an appropriate warning that the *early repayment charges* may vary from the cash examples must be included in the *illustration*.

**Section 11: 'What happens if you want to make overpayments?'**

5.6.90

FCA

R

(1) Under the section heading 'What happens if you want to make overpayments?', the *illustration* must include details of any restrictions on lump sum and regular overpayments on the *regulated mortgage contract*, together with a statement as to whether or not the amount on which the interest charged is recalculated is reduced immediately on receipt of any lump sum or regular overpayment.

(2) Where such recalculation does not take place immediately (for example, if an annual rest method is used), then this statement must be accompanied by an explanation of when the amount on which the interest charged is recalculated is reduced following a lump sum or regular overpayment.

- (3) Where *early repayment charges* apply, this section must not repeat the details provided in Section 10 of the *illustration*, but may refer to Section 10.

5.6.91

FCA

G

Where the interest recalculation described in ■ MCOB 5.6.90 R takes place immediately, *firms* may add a statement in this section explaining that the *customer* will get the benefit of the overpayment immediately, and *firms* may refer to supplementary information to illustrate further, the benefits of making regular overpayments.

**Section 12: 'Additional features'**

5.6.92

FCA

R

Under the section heading 'Additional features' the *illustration* must include, where relevant, details of any additional features or facilities under the various sub-headings in ■ MCOB 5.6.94 R.

5.6.93

FCA

R

- (1) If none of the features at ■ MCOB 5.6.94 R are applicable to the *regulated mortgage contract* to which the *illustration* relates, the section headed 'Additional features' must be retained, but the sub-headings must not be included and a statement must be added to explain that there are no additional features.
- (2) Only those features available on the *regulated mortgage contract* need be included in the *illustration*.
- (3) If a *firm* provides a *customer* with supplementary information about any additional features or facilities over and above the information required under ■ MCOB 5.6.92 R to ■ MCOB 5.6.112 G, the *firm* may include a reference to that supplementary information in Section 12.

5.6.94

FCA

R

The relevant sub-headings are as follows:

- (1) 'Underpayments';
- (2) 'Payment holidays';
- (3) 'Borrow back';
- (4) 'Incentives';
- (5) 'Additional borrowing available without further approval';
- (6) 'Additional secured borrowing';
- (7) 'Credit card';
- (8) 'Unsecured borrowing';
- (9) 'Linked current account'; and



(10) 'Linked savings account'.

5.6.95

FCA

R

Under the sub-heading 'Underpayments', the *illustration* must include details of circumstances in which the *customer* can make underpayments and a brief statement of any conditions that apply.

5.6.96

FCA

R

Under the sub-heading 'Payment holidays', the *illustration* must include details of circumstances in which the *customer* can take *payment holidays* and a brief statement of any conditions that apply.

5.6.97

FCA

R

Under the sub-heading 'Borrow back', the *illustration* must include details of circumstances in which the *customer* can *borrow back* any monies overpaid and a brief statement of any conditions that apply.

5.6.98

FCA

R

Under the sub-heading 'Incentives', the *illustration* must include:

- (1) any incentives including *cashbacks*; and
- (2) if a *cashback* is provided, the amount of the *cashback* and details of when it is paid to the *customer*.

5.6.99

FCA

R

Under the sub-heading 'Additional borrowing available without further approval', the *illustration* must provide details of circumstances in which there are any *linked borrowing* facilities that would allow the *customer* to increase the amount of the loan on which the *illustration* is based without any further approval from the *mortgage lender* (for example, if there are additional drawdown facilities).

5.6.100

FCA

R

Under the sub-heading 'Additional secured borrowing', the *illustration* must provide details of circumstances in which additional *secured lending* is offered with the *regulated mortgage contract* that would allow the *customer*, subject to certain conditions, to increase the amount of the loan on which the *illustration* is based.

5.6.101

FCA

R

Under the sub-heading 'Unsecured borrowing', the *illustration* must provide details of circumstances in which *unsecured lending* is offered with the *regulated mortgage contract* that would allow the *customer* to increase the amount of the loan on which the *illustration* is based.

5.6.102

FCA

R

Under the sub-heading 'Credit card', the *illustration* must:

- (1) state if a credit card is offered with *the regulated mortgage contract*; and
- (2) if a credit card is offered and it is a *mortgage credit card*:
  - (a) unless (b) applies, include the following text: 'This card will not give you a number of the statutory rights associated with traditional credit cards. Your mortgage offer will tell you more about the differences.'; or

- (b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than those provided under the Consumer Credit Act 1974, include the following text: 'This card will not give you a number of the statutory rights associated with traditional credit cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your mortgage offer will tell you more about this.'

5.6.103

FCA

R

Where any of the additional features under ■ MCOB 5.6.99 R to ■ MCOB 5.6.102 R inclusive apply, then the following must also be stated if the amount of additional borrowing that would be available to the *customer* is stated in the *illustration*:

- (1) the maximum additional amount available;
- (2) if the interest rate payable on any additional borrowing is different to the interest rate in Section 4 and Section 6 of the *illustration*, the interest rate and the *APR* charged on the additional borrowing. The *APR* must be calculated in accordance with ■ MCOB 10 (Annual Percentage Rate), based on the maximum amount of additional borrowing that would be permitted for the *customer* and the term of the loan from ■ MCOB 5.6.6 R(4);
- (3) the total resulting debt the *customer* could incur (including the original loan amount);
- (4) (where there is a regular payment plan) the payments on this total debt based on the frequency of payments in ■ MCOB 5.6.40 R and the current interest rate(s) applying on the date the *illustration* is issued;
- (5) whether this additional borrowing must be repaid in full if the original loan is repaid in full, along with details of any conditions that apply;
- (6) if *early repayment charges* apply to the additional amount borrowed:
  - (a) that *early repayment charges* are payable;
  - (b) an explanation of when *early repayment charges* are payable; and
  - (c) the maximum *early repayment charge* that the *customer* could be charged in accordance with ■ MCOB 12.3 (Early repayment charges) which must be shown as a cash amount; and

- (7) if it is the case, that the maximum amount of borrowing available, or the terms and conditions, may change depending on factors such as ratio of the loan amount to the property value.

5.6.104

FCA

R

Where more than one additional borrowing facility from ■ MCOB 5.6.99 R to ■ MCOB 5.6.102 R applies, the total debt and total payments due under all these *linked borrowing* facilities must be included under a separate sub-section titled 'Total additional borrowing'.

5.6.105

FCA

G

The purpose of ■ MCOB 5.6.104 R is to show the total amount of any additional borrowing facilities that would be available to the *customer* and the cost of utilising these facilities. It must combine the amount available under any *linked borrowing* facilities including additional *secured lending*, credit cards and *unsecured lending*.

5.6.106

FCA

R

- (1) Where additional features are included in accordance with ■ MCOB 5.6.92 R and these are credit facilities that do not meet the definition of a *regulated mortgage contract*, the relevant parts of Section 12 of the *illustration* must include the following text:

'This additional feature is not regulated by the *FCA*'.

- (2) Where additional features are included in accordance with ■ MCOB 5.6.92 R and these are credit facilities regulated by the Consumer Credit Act 1974, the relevant parts of Section 12 of the *illustration* must include the following text after the text in (1): 'but is regulated under the Consumer Credit Act 1974. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available.'

5.6.107

FCA

R

Where all or part of the maximum amount of additional borrowing is secured on the *customer's* home, a prominent warning must be included that additional borrowing increases the amount of credit secured on the *customer's* home.

5.6.108

FCA

G

Suitable wording for the warning contained in ■ MCOB 5.6.107 R would be: 'This will increase the amount of borrowing secured on your home'.

5.6.109

FCA

R

- (1) Under the sub-heading 'Linked current account', the *illustration* must include the following information:
  - (a) whether a linked current account is a compulsory or optional product (if the current account is a compulsory product this must also be stated in Section 4 of the *illustration* in accordance with ■ MCOB 5.6.25 R(6));
  - (b) an explanation of the interest rates that apply under different circumstances to the linked current account, if different from the interest rate charged on the *regulated mortgage contract*

(for example, if a different interest rate applies if the account is overdrawn); and

(c) the *firm* providing the linked current account if it is not the *mortgage lender*.

(2) If an example to show the effect of the linked current account on the *regulated mortgage contract* is included in the *illustration*, it must be based on the actual or likely amount that the *customer* intends to pay into the linked current account on a regular basis and the actual or likely expenditure profile of the *customer* concerned.

5.6.110

FCA

R

(1) Under the sub-heading 'Linked savings account', the *illustration* must include the following information:

(a) whether a linked savings account is a compulsory or optional product (if the savings account is a compulsory product this must also be stated in Section 4 of the *illustration* in accordance with ■ MCOB 5.6.25 R(6));

(b) the interest rate paid on the linked savings account if it differs from the interest rate charged on the *regulated mortgage contract*; and

(c) the *firm* providing the linked savings account if it is not the *mortgage lender*.

(2) If an example to show the effect of the linked savings account on the *regulated mortgage contract* is included in the *illustration*, it must be based on the actual or likely level of relevant savings for the *customer* concerned.

5.6.111

FCA

G

If an example is included in the *illustration* in accordance with ■ MCOB 5.6.109 R(2) or ■ MCOB 5.6.110 R(2), it must be based on information obtained from the *customer* and the amounts that are intended to be paid into the current or savings account on a regular basis; the amounts that it is intended are saved; and the actual or likely expenditure profile. The amounts involved and the expenditure profile should not be standard assumptions made by the *firm*, but should be those of the *customer* or the relevant person who would hold the accounts, or both, and be of a conservative nature. These assumptions should be stated in the *illustration*. For example, it should not be assumed that the *customer* will make lump sum payments unless he has indicated that he intends to do so, and in the case of linked current accounts it should not be assumed that the *customer* or person holding the account leaves monies in the current account at the end of each month unless he actually does so, or intends to do so. In this case, a conservative assumption might be that the *customer* spends all the money paid into his current account evenly over the month.

5.6.112

FCA

G

If a linked current account and a linked savings account are offered as part of the *regulated mortgage contract*, the examples in ■ MCOB 5.6.109 R(2) and ■ MCOB 5.6.110 R(2) can be combined into one example.

**Section 13: 'Using a mortgage intermediary'**

5.6.113

FCA

R

Where the *illustration* is issued to a *customer* by, or on behalf of, a *mortgage intermediary*, Section 13 'Using a mortgage intermediary' must be included in the *illustration* and must include the following:

- (1) unless ■ MCOB 5.6.114 R applies, a clear statement of the amount payable (either directly or indirectly) by the *mortgage lender* to the *mortgage intermediary*, or to any third parties; and
- (2) the name of the *mortgage lender* who will make the payment, the name of the *mortgage intermediary* and the names of any third parties who will be paid.

5.6.114

FCA

R

If the amount payable by the *mortgage lender* to the *mortgage intermediary* and to third parties is £250 or less, the *mortgage intermediary* need only state that the amount of the payment is 'no more than £250', unless the *customer* requests the actual amount.

5.6.115

FCA

R

If the *mortgage intermediary* will pass to the *customer* all or part of the amount payable to the *mortgage intermediary* under ■ MCOB 5.6.113 R(1) or ■ MCOB 5.6.114 R, that fact may be stated in this section, along with the amount payable to the *customer*.

5.6.116

FCA

R

If the *mortgage lender* will make no payment to the *mortgage intermediary* or any third party, this section may state that the *mortgage intermediary* will receive no payment.

5.6.117

FCA

R

The amount payable in ■ MCOB 5.6.113 R(1) or ■ MCOB 5.6.114 R must include, but is not limited to:

- (1) any *procurator fee*; and
- (2) a cash value for any material non-cash inducements that the *mortgage lender* provides to a *mortgage intermediary* or third party, whether payable directly or indirectly.

5.6.118

FCA

G

■ MCOB 2.3.7 R requires any material inducements provided by a *mortgage lender*, whether directly or indirectly, to a *mortgage intermediary* or third party (unless the payment only reflects the cost of outsourcing work relating to the processing of mortgage applications by a *firm* unconnected to the *mortgage intermediary*) to be quantified in cash terms, which will enable the cash values to be included in the *illustration* in accordance with

■ MCOB 5.6.117 R.

PAGE  
51

5.6.119

FCA

G

An example of a statement which would comply with ■ MCOB 5.6.113 R and ■ MCOB 5.6.117 R would be: '[name of *mortgage lender*] will pay [name of *mortgage intermediary*] an amount of £350 in cash and benefits if you take out this mortgage.'

**Section 14: 'Where can you get more information about mortgages?'**

5.6.120  
FCA

**R** This section must be renumbered Section 13 if the *illustration* is not provided by, or on behalf of, a *mortgage intermediary*.

5.6.121  
FCA

**R** Under the section heading 'Where can you get more information about mortgages?', the prescribed text under this heading in ■ MCOB 5 Annex 1 R must be included.

**Contact details**

5.6.122  
FCA

**R** This section must follow the section 'Where can you get further information about mortgages?' and must include the name, address and contact point of the *firm* providing the *illustration*.

5.6.123  
FCA

**G** An example of wording which would comply with ■ MCOB 5.6.122 R would be: 'If you wish to discuss this mortgage illustration please contact [name of *firm*] at [address] or on [telephone number]'.

**Risk warning**

5.6.124  
FCA

- R**
- (1) The following words must be prominently displayed in the *illustration*, after the contact details: 'Your home may be repossessed if you do not keep up repayments on your mortgage'.
  - (2) If the loan may be secured on property which is not the *customer's* home the statement in (1) may be amended but only to the extent necessary in order to reflect that fact.

5.6.125  
FCA

**G** For guidance on prominence see ■ MCOB 2.2.9 G.

**Amortisation table**

5.6.126  
FCA

- G**
- (1) An amortisation table may be added to the end of the *illustration* after the information required by ■ MCOB 5.6.124 R if the *mortgage lender* or *mortgage intermediary* wishes. A *firm* may find that this is particularly appropriate to illustrate certain types of *regulated mortgage contract*, for example, a *regulated mortgage contract* with more than one part.
  - (2) The purpose of (1) is to permit a *firm* to add an amortisation table in accordance with the European Commission's 'Recommendation of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans' (C(2001) 477 final).



**Foreign currency mortgages**

5.6.127

FCA

**R**

If the *customer's* liability under a *regulated mortgage contract* is in a currency other than sterling, ■ MCOB 5.6 applies to the *illustration* for that *regulated mortgage contract* with the following amendments:

- (1) all cash amounts must be given in the relevant currency except where otherwise required in (2)(a) and (3);
- (2) the following information must be stated under Section 4 'Description of this mortgage':
  - (a) the amount in sterling on which the *illustration* is based from ■ MCOB 5.6.6 R(2) based on the exchange rate in (2)(b);
  - (b) the exchange rate used; and
  - (c) when the exchange rate quoted applied;
- (3) the following text must be added at the end of Section 4 'Description of this mortgage': 'This illustration is based on the sterling equivalent of [insert details from (2)(a)] based on [insert details from (2)(b)] as at [insert details from (2)(c)]. Exchange rates can vary significantly. The effect of a 5% decrease in the value of sterling to the [insert name of relevant currency] would increase your total borrowing to [insert amount to which the amount borrowed from ■ MCOB 5.6.6 R(2) would increase in sterling]. This would increase your [insert frequency of payments from ■ MCOB 5.6.40 R] payments by the sterling equivalent of £[insert amount in sterling].' The following information must be added to this text:
  - (a) the cash amount to which the amount borrowed would increase in sterling if there was a decline of 5% in the value of sterling when compared to the relevant currency; and
  - (b) the amount by which (2)(b) would increase the *customer's* payments based on the frequency of payments from ■ MCOB 5.6.40 R, shown as a sterling equivalent cash amount.

**Risk warning**

5.6.128

FCA

**R**

The text at ■ MCOB 5.6.124 R must be immediately followed by the following additional text, prominently displayed (see ■ MCOB 2.2.9 G): 'Changes in the exchange rate may increase the sterling equivalent of your debt.'

5.6.129

FCA

R

**Shared appreciation mortgages**

If the *regulated mortgage contract* is a *shared appreciation mortgage*,  
 ■ MCOB 5.6 applies to the *illustration* with the following amendments:

- (1) Section 4 'Description of this mortgage' must contain the following additional information and text in this order after the details required by ■ MCOB 5.6.25 R to ■ MCOB 5.6.29 R:
  - (a) 'This mortgage involves [name of *mortgage lender*] taking a percentage share in any increase in the value of your property [insert details of all occasions when the share will be payable to the *mortgage lender*, for example, "after x years, or when this mortgage comes to an end or is terminated early"]. The amount [name of *mortgage lender*] will take depends on any increase in the value of your property.' [Include if relevant: 'If your property falls in value between now and the end of this mortgage you will be required to pay [add details of what the *customer* will need to pay the *mortgage lender* if the property falls in value.'];
  - (b) (i) a basic explanation of how the amount of the share payable to the *mortgage lender* is calculated including the proportions of any given increase in the value of the property and whether this is dependent on the level of growth (for example, that the share payable to the *mortgage lender* is all of the increase in value of the property for the first 5% increase in value, plus half of the additional increase in the value of the property above this);
  - (ii) a reference to a separate document for full details of the terms and conditions relating to the amount of the share payable followed by: 'The example below shows how this works. EXAMPLE: Based on the current [estimated] value of your property of [insert details from ■ MCOB 5.6.6 R(3)], the example(s) below show(s) what your property value would be and what share of that value [name of *mortgage lender*] would take after [insert term of the loan in accordance with ■ MCOB 5.6.6 R(4) or the term after which the equity share becomes payable if less] if the value of your property increased. [Include if relevant: "and what would happen if your property decreased in value." ] Please note that you should add this payment to the amount of any early repayment charges that may be payable - see Section 10';
- (c) except where (g) applies, example cash amounts for the value of the property and the corresponding amount of the equity share payable assuming an average annual increase, in the value of the property secured by the *regulated*



- mortgage contract* of 1%, 5% and 10% over the term from (i);
- (d) if the *customer* would be required to pay the *mortgage lender* an amount because the value of the property on which the *regulated mortgage contract* would be secured had decreased from its value at the start of the term of the *regulated mortgage contract*, include example cash amounts for the value of the property and the corresponding amount payable assuming an average annual decrease, in the value of the property secured by the *regulated mortgage contract* of 1%, 5% and 10% over the term from (i);
  - (e) if the amount of the equity share payable cannot go above or below a certain level, an explanation that this is the case along with a cash example described as 'the maximum amount you could pay';
  - (f) include this text after the cash examples in (c) (or, if applicable, after the cash examples in (d) or (e)): 'This is not an indication of how the actual value of your property may change.';
  - (g) where (c) or (d) apply and the maximum percentage equity share payable is less than the example percentages in (c) or (d), only cash examples for those percentages required by (c) or (d) which are below this maximum need be quoted, along with the maximum in accordance with (e);
  - (h) if there are no restrictions on the amount of the equity share payable, the following text should follow the text in (f): 'The amount you will need to pay could be much higher than this.'; and
  - (i) for the purposes of the examples required by (c) or (d), the term used must be stated and must be the term of the *regulated mortgage contract* in accordance with ■ MCOB 5.6.6 R(4) or the term after which the equity share becomes payable, if less;
- (2) Section 5 'Overall cost of this mortgage' of the *illustration* must contain the following text at the end of the section: 'The APR and the total amount you must pay do not take account of the share that [insert name of *mortgage lender*] takes in any increase in the value of your property as described in Section 4. So you should not use these measures to compare this mortgage with other mortgages that do not involve [insert name of *mortgage lender*] taking a share in any increase in the value of your property.'; and
- (3) Section 10 'What happens if you do not want this mortgage any more?' must contain the following text at the end of the first sub-heading 'Early repayment charges': 'Remember to add the cost of paying any share in the value of the property to [insert name of *mortgage lender*] - see Section 4.'

5.6.130

FCA

G

The requirements in ■ MCOB 5.6.129 R(1)(c) and (d) may be presented in a tabular format.

**Risk warning**

5.6.131

FCA

R

The requirements at ■ MCOB 5.6.129 R(1) must be immediately followed by the following additional text, prominently displayed (see ■ MCOB 2.2.9 G): 'You will need to pay this share in the value of your property either as a lump sum or through extra loan payments. Think carefully about whether you can afford this.'

**Deferred interest rate mortgages**

5.6.132

FCA

R

If the interest rate charged on the *regulated mortgage contract* is deferred, ■ MCOB 5.6 applies with the following additions:

- (1) A section headed: 'Effect of deferring interest on the amount you owe' must be included in the *illustration* after Section 6.
- (2) This section must be numbered 6a so that the numbering follows on consecutively from the preceding section unless ■ MCOB 5.6.55 R applies in which case it should be numbered 6b.
- (3) Under the section heading the following text must be included: 'This table shows the effect of the deferred interest being added to the amount you owe'; and if the interest rate is variable: 'The amounts shown in this table could be considerably different if the interest rate changes.'
- (4) Under the text in (3), a table must be included showing each year or part year that the interest rate charged on the *regulated mortgage contract* is deferred, in the format set out in ■ MCOB 5 Annex 1 R and containing the following information in the columns under the following headings:
  - (a) 'Year': This must list the years as 1, 2, 3 and so on for each year or part year that the interest charged on the *regulated mortgage contract* is deferred. Where the interest rate charged on the *regulated mortgage contract* changes at a particular date rather than annually, the table may be adapted to accommodate this (for example, by including details of more than one interest rate each year).
  - (b) 'Interest deferred': This must show the percentage of interest deferred based on the rates charged on the *regulated mortgage contract* at the date the *illustration* is issued.
  - (c) 'Amount of deferred interest added to the mortgage': This must show the cumulative amount that is added to the loan

5

as a cash amount as a result of deferring the payment of interest.

- (d) 'Remaining debt before deferred interest is added': This must show the amount of loan outstanding on the *regulated mortgage contract* before any deferred interest is added.
- (e) 'Remaining debt with deferred interest added': This must show the amounts from (4)(c) and (4)(d) added together.

**Alternative requirements for loans without a term or a regular repayment plan Section 6: 'What you will need to pay each [insert frequency of payments from MCOB 5.6.40R]'**

5.6.133  
FCA

R

■ MCOB 5.6.134 R to ■ MCOB 5.6.138 G apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example secured bridging loans , secured overdrafts or *mortgage credit cards*.

5.6.134  
FCA

R

The heading for Section 6 of the *illustration* and the heading of the column on the right-hand side of this section must state the frequency with which payments must be made by the *customer*. (For example, if payments were to be made on a monthly basis, the heading for this section would be 'What you will need to pay each month' and the column would be headed 'Monthly payments'). Where no regular payments are required on the *regulated mortgage contract*, for example where all interest is rolled-up on a secured bridging loan , then this section must be retained and the frequency of payments assumed must be 'monthly'.

5.6.135  
FCA

R

All the payments in Section 6 of the *illustration* must be calculated based on the frequency used for the purposes of the headings in ■ MCOB 5.6.40 R and must be shown in the column on the right-hand side of this section. If no payments are required, for example on a secured bridging loan or secured overdraft, then this column should be marked on the *illustration* as nil.

5.6.136  
FCA

R

Section 6 of the *illustration* must contain the following information:

- (1) the loan amount on which the *illustration* is based. Where fees are being added to the loan then this figure should include all fees, charges and insurance premiums that have been added to the loan in accordance with ■ MCOB 5.6.18 R(2) and ■ MCOB 5.6.18 R(3), and the following text must follow the loan amount:'and include[s] the fees [and insurance premiums] that are shown in Section 8 [and Section 9] as being added to your mortgage.';
- (2) the assumed start date that has been used in the *illustration* must be stated using the following text:'This illustration assumes that the mortgage will start on [insert assumed start date].';

- (3) where no payments are required (or no payments are allowed), for example a secured bridging loan or secured overdraft, then section 6 of the *illustration* should state if no payments are required or no payments can be made; or
- (4) where a minimum payment is required, for example on a *mortgage credit card*:
  - (a) a statement that a minimum payment will be required;
  - (b) an explanation of the basis on which this has been calculated, for example a percentage of the loan amount;
  - (c) if this monthly payment is insufficient on its own to repay the *regulated mortgage contract* over the term specified, the following text: 'This payment will not be sufficient to repay the mortgage over the term specified'; and
  - (d) the amount that the *customer* must pay, recorded in the right-hand column of this section.

5

5.6.137  
FCA

**G** An example of the statement required by ■ MCOB 5.6.136 R(3) would be: 'You [do not need to/cannot] make regular payments on this mortgage.'

5.6.138  
FCA

**G** An example of ■ MCOB 5.6.136 R(4) would be: 'You need to make minimum payments as follows: 3% of the amount outstanding £x.xx This payment will not be sufficient to repay the mortgage over the term specified.'

**Section 7: 'Are you comfortable with the risks?'**

5.6.139  
FCA

**R** ■ MCOB 5.6.140 R to ■ MCOB 5.6.145 R apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example secured bridging loans , secured overdrafts or *mortgage credit cards*.

5.6.140  
FCA

**R** Under the section heading 'Are you comfortable with the risks?':

- (1) under the sub-heading 'What if interest rates go up?' the *illustration* must include the following:
  - (a) if the interest rate is fixed throughout the term of the *regulated mortgage contract*, an explanation that the interest rate will not vary because the interest rate is fixed;
  - (b) if the interest rate is fixed for part of the term of the *regulated mortgage contract*, an explanation of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the amount the *customer* must pay back;

- (c) if the interest rate cannot go above or below a certain level, or both, throughout the term of the *regulated mortgage contract*, an explanation that this is the case;
- (d) if the interest rate cannot go above or below a certain level for part of the term of the *regulated mortgage contract*, an explanation that this is the case and of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the amount the *customer* must pay back;
- (e) except where (2)(a) or (2)(b) apply, Section 7 of the *illustration* must include the following text: 'The total amount you must pay back shown in this illustration could be considerably different if interest rates change. For example, for one percentage point increase in [describe the interest rate that applies], the total amount you must pay back will increase by around £[insert amount by which the *total amount payable* will increase].'

(2) paragraph (1)(e) does not apply:

- (a) where the interest rate is fixed throughout the term of the *regulated mortgage contract*; or
- (b) where the difference between the interest rate included in the *illustration* in accordance with ■ MCOB 5.6.25 R(2) and the maximum interest rate that can be charged on the *regulated mortgage contract* is less than one percentage point.

(3) under the sub-heading 'What if your income goes down?': 'You will still have to pay your mortgage if you lose your job or if illness prevents you from working. Think about whether you could do this.'

5.6.141

FCA

R

The amount by which the *total amount payable* would increase in accordance with ■ MCOB 5.6.140 R(1)(e) must be calculated as follows:

- (1) unless the total amount borrowed is used, it must be assumed that all payments due on the *regulated mortgage contract* have actually been paid, all additional fees and payments due have been paid, and no under or overpayments have been made;
- (2) unless the total amount borrowed is used, the calculation must be based on the amount of the loan outstanding from the earliest point at which the interest rate charged on the *regulated mortgage contract* can vary; for example, if the *regulated mortgage contract* has an initial fixed interest rate, this will be from the point at which the fixed interest rate ends;

(3) the interest rate from which the increase is calculated must be the variable interest rate charged on the *regulated mortgage contract* at the date that the *illustration* is issued (that is, the variable interest rate quoted in Section 4 of the *illustration*); where the variable interest rate changes after a set period or on a set date, it must be based on the initial variable interest rate charged on the *regulated mortgage contract* at the date the *illustration* is issued. (For example, if the initial interest rate is discounted, it must be based on the discounted rate.)

**Risk warning**

5.6.142

FCA

**R**

Unless ■ MCOB 5.6.140 R(2)(a) or (b) applies, the following words must be prominently displayed at the end of the sub-section 'What if interest rates go up?': 'Rates may increase by much more than this so make sure you can afford this loan.'

5.6.143

FCA

**R**

The following words must be prominently displayed at the end of the sub-section 'What if your income goes down?': 'Make sure you can afford your mortgage if your income falls'.

5.6.144

FCA

**G**

For guidance on prominence see ■ MCOB 2.2.9 G.

5.6.145

FCA

**R**

The following text must be included at the end of Section 7 'Are you comfortable with the risks?': The *Money Advice Service* information sheet "You can afford your mortgage now, but what if...?" will help you consider the risks. You can get a free copy from <http://www.moneyadvice.service.org.uk>, or by calling 0300 500 5000.'

## 5.7 Business loans

5.7.1

FCA

R

Where the *regulated mortgage contract* is for a business purpose, a *firm* may choose to provide a *business illustration* (in compliance with ■ MCOB 5.7.2 R) instead of complying with ■ MCOB 5.6.

5.7.1A

FCA

G

*Firms* are reminded that, in accordance with ■ MCOB 1.2.3 R, they should either comply in full with *MCOB* or comply with all tailored provisions in *MCOB* that relate to business loans. Therefore, a *firm* may only follow the tailored provisions in ■ MCOB 5.7 if it also follows all other tailored provisions in *MCOB*.

5.7.2

FCA

R

A *business illustration* provided to a *customer* must:

- (1) use the headings and prescribed text in ■ MCOB 5 Annex 1 R (except as provided in ■ MCOB 5.7) but need not follow the format;
- (2) include the content required by ■ MCOB 5.6.3 R to ■ MCOB 5.6.130 G (except ■ MCOB 5.6.5 R, ■ MCOB 5.6.101 R, ■ MCOB 5.6.109 R to ■ MCOB 5.6.112 G, ■ MCOB 5.6.120 R and ■ MCOB 5.6.121 R);
- (3) use the key facts logo followed by the text 'about this [term used by the *firm* to describe the borrowing, for example 'mortgage']';
- (4) use font sizes and typefaces consistently throughout the *business illustration* which are sufficiently legible so that the *business illustration* can be easily read by a typical *customer*;
- (5) ensure that the information is clearly laid out (for example, through the use of bullet points or similar devices to separate information);
- (6) describe any *early repayment charge* as an 'early repayment charge' and not use any other expression to describe such charges;
- (7) describe any *higher lending charge* as a 'higher lending charge' and not use any other expression to describe such charges; and



5.7.3

FCA

G

(8) include the risk warning described in ■ MCOB 5.6.124 R, or an equally clear and effective variation of this reflecting the nature of the *regulated mortgage contract*.

- (1) ■ MCOB 5.7.2 R(1) means that *firms* do not have to follow the ordering of sections set down in ■ MCOB 5.6, although they may choose to do so.
- (2) In accordance with ■ MCOB 5.7.2 R(8) an example of an appropriate variation to the risk warning would be: 'Your home may be repossessed if you are unable to fulfil the terms of this secured overdraft'.
- (3) A *firm* may also choose to include other information beyond that required by ■ MCOB 5.6. However, when adding additional material a *firm* should have regard to:
  - (a) the intended use of the *business illustration* as an aid to comparison by *customers*; and
  - (b) the requirement in ■ MCOB 2.2.6 that any communication should be clear, fair and not misleading.
- (4) The *business illustration* provided in accordance with ■ MCOB 5.7.2 R should be based upon the total borrowing that the *firm* is willing to provide under the *regulated mortgage contract*. This means that there is no requirement for a *firm* to provide a further *business illustration* (or *business offer document*) where a *customer* redraws against payments made under the *regulated mortgage contract*, providing this redrawing does not exceed the borrowing described in the original *business offer document*.
- (5) ■ MCOB 5.6.6 R(4) requires that where the term of the *regulated mortgage contract* is open-ended, the *business illustration* must be based on an assumed term of 12 months and that this assumption must be stated. This does not mean that a *firm* is limited in the actual term of the *regulated mortgage contract*. A *firm* is able to include in the *business illustration* an explanation that while a 12-month term has been assumed for the purpose of the *business illustration*, the *regulated mortgage contract* itself will be open-ended.

5.7.4

FCA

R

Any *business illustration* provided by a *firm* must be limited to facilities provided under a *regulated mortgage contract*.

5.7.5

FCA

R

■ MCOB 5.6.31 R(2), ■ MCOB 5.6.52 R(1) and ■ MCOB 5.6.52 R(4) prescribe text that should be used to remind a *customer* with an *interest-only mortgage* that there is a need to separately arrange for the repayment of capital. The options for repayment of capital may be different where the *regulated mortgage contract* is for a business purpose, and a *firm* must vary the prescribed wording in the *business illustration* to reflect this. One approach may be for the *firm* to revise the wording to reflect how the *customer* has said he will repay the capital.

5.7.6

FCA

R

- (1) When providing a *business illustration* in accordance with ■ MCOB 5.7.2 R a *firm* should describe facilities provided under



the *regulated mortgage contract* that are not a loan within section 12 (Additional features) of the *business illustration*.

- (2) In complying with (1), a *firm* should follow the requirements in ■ MCOB 5.6.92 R ■ MCOB 5.6.108 G where these are relevant. Where the facility is of a type not considered in ■ MCOB 5.6.92 R ■ MCOB 5.6.108 G the *firm* should provide in section 12:
  - (a) a brief description of the facility involved;
  - (b) the term of the facility if different from the term described elsewhere in the *business illustration*; and
  - (c) a summary of any charges, including any *early repayment charges*, which apply to the operation of the facility.
  
- (3) Full information on any facility described in section 12 must be provided in supplementary materials that accompany the *business illustration* .

5.7.7  
FCA

G

- (1) In accordance with ■ MCOB 5.7.6 R(1), where the *regulated mortgage contract* includes a loan, the facilities described in section 12 of the *business illustration* should include the existence of, and a simple explanation of, any all monies charge, any contingent liabilities such as guarantees and so on.
  
- (2) Where the *regulated mortgage contract* includes more than one loan facility (such as a secured loan and a separate secured overdraft facility) the *business illustration* should be based upon the primary facility and describe any other loan within section 12.

5



## 5.8 Home purchase plans

### 5.9 Applying for a home purchase plan

Note: The rules regarding applying for a *home purchase plan* are set out in ■ MCOB 5.3.

#### Financial information statement: timing

5.8.1  
FCA

**R** A *firm* dealing directly with a *customer* must ensure that the *customer* is, or has been, provided with an appropriate financial information statement for a *home purchase plan* in a *durable medium*:

- (1) before the *customer* submits an application for that particular plan to a *home purchase provider*; and
- (2) without undue delay when any of the following occurs:
  - (a) the *firm* makes a *personal recommendation* to the *customer* to enter into a *home purchase plan* (unless the *personal recommendation* is made by telephone, in which case a *firm* must ensure the financial statement is or has been provided as soon as practicable after the telephone call);
  - (b) the *firm* provides written information that is specific to the amount of finance to be provided on a particular plan; or
  - (c) the *customer* requests written information from the *firm* that is specific to the amount of finance to be provided on a particular plan, unless the *firm* does not wish to do business with the *customer*.
- (3) A *firm* may comply with (1) and (2) by providing an *offer document* if this can be done as quickly as providing a financial information statement.

5.8.2  
FCA

**G** In ensuring that the *customer* is provided with an appropriate financial information statement, a *firm* need not provide another when one that remains appropriate has already been provided for that particular *home purchase plan*. If a financial information statement ceases to be appropriate, for example because the terms of the proposed plan are subsequently materially altered, a new appropriate statement must be provided.

5.8.3

FCA

G

The guidance on the timing of mortgage *illustrations* may be relevant (see ■ MCOB 5.5).

#### **Financial information statement: format**

5.8.4

FCA

R

A financial information statement must:

- (1) be personalised to reflect the *customer's* requirements;
- (2) contain only the material prescribed or permitted in this section;
- (3) contain that material in the order set out in this section; and
- (4) present the material concisely, clearly and consistently.

5.8.5

FCA

R

A financial information statement, if not set out in a separate document, must be:

- (1) in a prominent place within the other document and clearly identifiable as key information that the *customer* should read; and
- (2) separate from the other content of the document in which it is included.

5.8.6

FCA

G

The guidance on the content, order and format of *illustrations* may be relevant (see ■ MCOB 5.6.4 G).

#### **Financial information statement: content**

5.8.7

FCA

R

A financial information statement must contain:

- (1) a prominent keyfacts logo at the top of the statement;
- (2) the term of the *home purchase plan*;
- (3) the overall cost of the plan, comprising:
  - (a) the purchase price of the property;
  - (b) the deposit payable;
  - (c) the amount of the plan required;
  - (d) the amount of any *fees* added to the plan;
  - (e) the total amount payable; and
  - (f) the amount the *customer* must pay per £1 provided under the plan;
- (4) details of the payments the *customer* must make, including:
  - (a) the assumed start date;

- (b) all rental rates that will apply;
- (c) when the rental rates will apply and for how long;
- (d) for each rental rate, the number, frequency and amount of the periodic payments that will apply;
- (e) in relation to the first periodic payment, the amount of the purchase payment and of the rental payment;
- (f) the amount of any insurance rent payments;
- (g) a summary total; and
- (h) details of when the summary total will change.

5.8.8  
FCA

**R** A financial information statement may contain a figure equivalent to an *APR* after the amount the *customer* must pay per £1 provided under the *home purchase plan*. A *firm* must use an approach equivalent to the *APR rules* when calculating an *APR* equivalent.

5.8.9  
FCA

**G** See the *keyfacts logo provisions* for further requirements regarding the use of the *keyfacts logo* and the location of specimens.

5.8.10  
FCA

**G** The details of the rental rate charged should be based on information available to a *firm* at the time of producing the financial information statement. For example, if a rental rate cannot be ascertained at that time because it is based on a fluctuating rate of interest, a *firm* should base the information on the current fluctuating rate.

**Opportunity to consider pre-application disclosure**

5.8.11  
FCA

**R** A *firm* must ensure that the *customer* has had a reasonable opportunity to consider the financial information statement and risks and features statement before committing the *customer* to an application.

## 5.9 Pre-sale disclosure for regulated sale and rent back agreements

### Pre-sale disclosure

5.9.1

FCA

R

- (1) A *firm* must, as soon as a *customer* expresses an interest in becoming a *SRB agreement seller*, ensure that the disclosures and warnings set out in (1A) are made to the *customer*, both orally and confirmed in writing, and he is given an adequate opportunity to consider them. The *firm* must not demand or accept any fees, charges or other sums from the *customer*, or undertake any action that commits the *customer* in any way to entering into a specific agreement, until:
- (a) the written pre-offer document that is required by ■ MCOB 6.9.3 R has been provided to the *customer*; and
  - (b) the written offer document for signing (Stage Two) that is required by ■ MCOB 6.9.10 R (1) has been returned to the *firm* duly signed by the *customer*.
- (1A) The disclosures and warnings referred to in (1) are the following:
- (a) where a valuation of the property that is the subject matter of the *regulated sale and rent back agreement* has already been carried out in accordance with ■ MCOB 2.6A.12 R, a statement of its market value or, if a valuation of the property has not yet been carried out, the price or value of the property on which the proposed *regulated sale and rent back agreement* would be based (estimated if necessary);
  - (b) [deleted]
  - (c) any fees, charges or retentions that the *firm* will deduct from the purchase price for the property, net of any fees or charges otherwise payable, and whether there are any fees, charges or other sums that are payable to any *SRB intermediary* that is involved in the proposed transaction or to a third party;
  - (d) the purchase price that the *firm* is prepared to pay the *SRB agreement seller* for the property, net of any fees, charges or retentions;

- (e) the percentage of the figure in (a) for the market value of the property that the figure in (d) for the purchase price represents;
- (ea) that the *SRB agreement seller* should in his own best interests independently seek whatever information he can on the market value of his property, as explained in the *FCA* consumer factsheet provided to the *customer*, before proceeding with the proposed transaction and how and from where information on its value may be available;
- (f) brief details of the main terms of the tenancy under the proposed *regulated sale and rent back agreement*, including its type, the letting period including the fixed term and the security of tenure the *SRB agreement seller* (or trust beneficiary or related person) will be given under it, an explanation that the seller (or trust beneficiary or related person) cannot be evicted unless the *SRB agreement provider* obtains a possession order from the court and an explanation of the seller's (or trust beneficiary's or related person's) ability to terminate the tenancy;
- (g) [deleted]
- (h) [deleted]
- (i) a prominent warning that once the fixed term under (f) expires, the *SRB agreement seller* and his family may be required to leave the property;
- (ia) where the *SRB agreement seller* is to be given an option under the proposed agreement to buy back the property at some future date from the *SRB agreement provider*, a statement confirming that this is the case, together with details of the option, including how it may be exercised and any restrictions such as time limits that will apply to it, and a clear explanation as to how the repurchase price is to be determined;
- (j) the initial rent due under the proposed agreement;
- (k) the circumstances in which the rent in (j) can be increased or changed in any way under the terms of the tenancy agreement;
- (l) the risks associated with the transaction from the *SRB agreement seller's* perspective, including in particular:
  - (i) that failure to abide by the terms of the tenancy may result in the loss of the right to occupy the property; and
  - (ii) that failure to obtain legal or professional advice may mean his interests are not fully protected;

- (m) whether there are any other features or restrictions in the *regulated sale and rent back agreement* which the *SRB agreement seller* would reasonably need to know about for the purpose of making an informed judgment about the merits of entering into the proposed agreement;
  - (n) information on what the *SRB agreement seller* should do if he wishes to make a complaint against the *firm* arising out of or in connection with the proposed *regulated sale and rent back agreement*, including provision of an address and phone number at which the *firm* may be contacted should the customer wish to pursue a complaint and that if he cannot settle his complaint with the *firm*, that he may be entitled to refer it to the *Financial Ombudsman Service*; and
  - (o) information on the circumstances in which the *SRB agreement seller* might be entitled to compensation under the Financial Services Compensation Scheme, depending on the type of business and the circumstances of the claim, and, if so, details of the relevant coverage.
- (2) The *firm* must make the written disclosures and warnings specified in (1) to the *SRB agreement seller* in a clear, fair and not misleading way before he enters into the proposed *regulated sale and rent back agreement* and in doing so must ensure that:
- (a) the information is set out in the same order as set out in (1);
  - (b) the disclosures and warnings are made in a separate and standalone document; and
  - (c) the disclosures and warnings are accompanied by a prominent written statement from the *firm* drawing the *SRB agreement seller's* attention to the importance of the information.
- (3) In making the disclosures in writing to the *SRB agreement seller* that are required by (1) and (1A), the *firm* must make prominent use of the key facts logo in accordance with ■ GEN 5.1 (Application and purpose), followed by the text "about this sale and rent back agreement".

**Compliance with the pre-sale disclosure requirement**

A *firm* may comply with the requirement in ■ MCOB 5.9.1 R (Pre-sale disclosure) for disclosures and warnings to be confirmed in writing by providing the potential *SRB agreement seller* with the written pre-offer document that is required by ■ MCOB 6.9.3 R (Written pre-offer document: Stage One) if this can be done as quickly as providing the pre-sale disclosures, provided that (in accordance with ■ MCOB 5.9.1 R) the *firm* does not demand or accept any fees, charges or other sums from the *customer* or undertake any action that commits the *customer* to the proposed *regulated sale and rent back agreement* until:

5.9.1A

FCA

G

- (1) the written pre-offer document that is required by ■ MCOB 6.9.3 R has been provided to the *customer*; and
- (2) the written offer document for signing (Stage Two) that is required by ■ MCOB 6.9.10 R (1) has been returned to the *firm* duly signed by the *customer*.

**Information on valuations and rental values**

5.9.1B  
FCA

R

Where the potential *SRB agreement seller* has not commissioned his own valuation of the property, a *firm* must ensure that he realises that there are other possible sources of information on the property's value that are available to him, including local estate agents, local newspapers which carry advertisements for the sale of residential property in the *customer's* locality and on-line sites where details of recent property sales in the locality may be accessed.

5.9.1C  
FCA

R

A *firm* must ensure that the *SRB agreement seller* realises that there are other possible sources of information on the appropriate rental value for the property available to him, including local estate agents, local newspapers and on-line sites which carry advertisements for the rental of residential property in the *customer's* locality.

5.9.1D  
FCA

G

There is no requirement for the property to be valued before making the pre-sale disclosures. However, ■ MCOB 6.9.2 R requires that an independent valuation of the property be carried out before the provider supplies the *customer* with the written pre-offer document at Stage One (see ■ MCOB 6.9.3 R).

**Disclosure of relevant features or restrictions**

5.9.1E  
FCA

G

Examples of features of a *regulated sale and rent agreement* that a *SRB agreement seller* would reasonably need to know about (see ■ MCOB 5.9.1R (1A)(m)) would include an arrangement under which the seller is to receive from the *SRB agreement provider* a refund of some agreed percentage of the discount (on the market value of the property) that was reflected in the sale price under the *regulated sale and rent back agreement* after the end of the agreed letting term. Should any restrictions or the payment of any costs or fees be attached to the seller's entitlement to exercise such an option, these should be explained clearly.

**Revised pre-sale disclosures**

5.9.1F  
FCA

R

Where a *firm* has already provided the required pre-sale disclosures and the terms for the proposed *regulated sale and rent back agreement* are subsequently materially altered, the *firm* must ensure that, at the *firm's* option, either:

- (1) the pre-sale disclosures are re-issued to the *customer*, incorporating the agreed amendment; or
- (2) the agreed amendment is incorporated in the written pre-offer document at Stage One (see ■ MCOB 6.9.3 R).



5.9.1G

FCA

G

What constitutes "materially altered" requires consideration of the facts of each individual case. For example, a change in the proposed purchase or valuation price of the property should normally be regarded as material, as would the introduction of an additional charge applying to the *regulated sale and rent back agreement* when it did not previously.

**Records of pre-sale disclosure**

5.9.2

FCA

R

A *firm* must keep a record of the disclosures and warnings made to the *SRB agreement seller* under ■ MCOB 5.9.1 R for a period of:

- (1) one year after the end of the fixed term of the tenancy under the *regulated sale and rent back agreement*; or
- (2) five years from the date of the disclosures and warnings;

whichever is the longer.

**Initial disclosure information to SRB agreement sellers: unauthorised SRB agreement providers**

5.9.3

FCA

R

- (1) A *SRB intermediary* must ensure that, on first making contact with a prospective *SRB agreement seller*, whether or not he is the *firm's customer*, who is proposing to enter into a *regulated sale and rent back agreement* with an *unauthorised SRB agreement provider*, it provides him with the written warning in (2) before he enters into any such agreement.

- (2) The warning in (1) is that:
  - (a) the agreement provider is not authorised or regulated by the *FCA*, and that key protections under the *regulatory system* will not apply; and
  - (b) the provider is not subject to the jurisdiction of the *Financial Ombudsman Service*, and that the *SRB agreement seller* will not be entitled to refer complaints against the provider to the *Financial Ombudsman Service*.

**Initial disclosure information to unauthorised SRB agreement providers**

5.9.4

FCA

R

- (1) A *SRB intermediary* must ensure that, on first making contact with a *customer* who is both an individual and an *unauthorised SRB agreement provider*, when it anticipates giving personalised information or advice on a *regulated sale and rent back agreement*, it must provide him with the written warning in (2).

- (2) The warning in (1) is that a *regulated sale and rent back agreement* is a complex legal arrangement and that expert independent legal advice should be obtained before entering into any such agreement.

5.9.5

FCA

G

A *person* may enter into a *regulated sale and rent back agreement* as agreement provider without being regulated by the *FCA* (or an *exempt person*) if the *person* does not do so by way of business. However, a *SRB intermediary* should at all times be conscious of its

obligations under *Principle 6* (Customers' interests). Should the *firm* have any reason to believe or entertain any suspicions that the *SRB agreement seller* may be proposing to enter into a *regulated sale and rent back agreement* with an *unauthorised SRB agreement provider* notwithstanding that the provider appears to be doing so by way of business and therefore appears to require authorisation under the *Act*, the *firm* should warn the seller that he should not be proceeding with the transaction.

**Uncertainty whether the arrangements constitute a sale and rent back agreement**

5.9.6  
FCA

R

- (1) If, at the point that the required pre-sale disclosures must be provided to a potential *SRB agreement seller*, a *firm* is uncertain whether the arrangement will qualify as a *regulated sale and rent back agreement*, the *firm* must:
  - (a) provide the required pre-sale disclosures on the basis that the arrangement might constitute a *regulated sale and rent back agreement*; or
  - (b) seek to obtain from the potential seller information that will enable the *firm* to ascertain whether the contract will qualify as a *regulated sale and rent back agreement*.
- (2) Where (1)(b) applies, pre-sale disclosures must be provided, unless, on the basis of information the potential seller provides, the *firm* has reasonable evidence that the contract would not qualify as a *regulated sale and rent back agreement*.

5.9.7  
FCA

G

If the *firm* has reasonable evidence that the contract is not a *regulated sale and rent back agreement*, for example where at least 40% of the property is not going to be occupied as a dwelling by the seller or his family, and has not provided the required pre-sale disclosures and the *firm* subsequently concludes that the contract does qualify as a *regulated sale and rent back agreement*, there is no requirement to provide separate pre-sale disclosures at the time the *firm* reaches that conclusion. However, the requirement to integrate the pre-sale disclosures into the written pre-offer document at Stage One that is required by ■ MCOB 6.9.3 R will apply.

**Record of sale and rent back providers**

5.9.8  
FCA

R

- (1) A *SRB intermediary* must for each *regulated sale and rent back agreement* in relation to which it carries on *regulated sale and rent back mediation activity* keep a record of the contact details of the provider that enters into or is proposed to enter into the agreement, making it clear whether the provider is a *SRB agreement provider* or an *unauthorised SRB agreement provider*.
- (2) The record in (1) must be retained for a period of one year, or one year from the end of the fixed term of the tenancy under the *regulated sale and rent back agreement*, whichever is the longer.

---

**The mortgage illustration: table of contents, prescribed text and prescribed section headings and subheadings.**

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*The mortgage illustration* MCOB 5 Annex 1



## Chapter 6

# Disclosure at the offer stage



## 6.1 Application

### Who?

6.1.1  
FCA

**R** This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 6.1.2 R in accordance with column (2) of that table.

6.1.2  
FCA

**R** Table This table belongs to MCOB 6.1.1R

| (1) Category of firm          | (2) Applicable section  |
|-------------------------------|---|
| <i>mortgage lender</i>        | whole chapter except MCOB 6.8   |
| <i>home purchase provider</i> | MCOB 6.1 (except MCOB 6.1.6 G), MCOB 6.2 and MCOB 6.8                       |
| <i>reversion provider</i>     | see MCOB 9.5 for the application of this chapter                            |
| <i>SRB agreement provider</i> | MCOB 6.1.1 R to MCOB 6.1.3 R, MCOB 6.1.5 R, MCOB 6.2, MCOB 6.3 and MCOB 6.9 |

### What?

6.1.3  
FCA

**R** This chapter applies with respect to an offer made by a *firm* to a *customer* with a view to the *firm*:

- (1) *entering into a home finance transaction*;
- (2) *varying the terms of a home finance transaction* entered into by the *customer* in any of the following ways:
  - (a) adding or removing a party;
  - (b) making a further advance; or
  - (c) switching all or part of the *regulated mortgage contract* from one interest rate to another;

(whether or not the *customer* agrees to enter into the *home finance transaction* or variation).

6.1.4 **R** In relation to a *lifetime mortgage* , this chapter, ■ MCOB 6, is modified by  
 FCA ■ MCOB 9 ( Equity release : product disclosure).

6.1.5 **R** In ■ MCOB 6, a reference to an offer to enter into a *home finance transaction* is to be read as including a reference to an offer to vary an existing *home finance transaction* in a manner specified in this section if the context so requires.

6.1.6 **G** *Firms* may diverge from the requirements in ■ MCOB 5.6 (Content of *illustrations*) where necessary to reflect the fact that they are providing an illustration for a variation as part of an *offer document*.



## 6.2 Purpose

6.2.1

FCA

G

- (1) ■ MCOB 6 amplifies *Principle 6* and *Principle 7* . The purpose of ■ MCOB 6 is to ensure that a *customer* receives a clear *offer document* to enable him to check the features and price of the *home finance transaction* before he enters into it. The *offer document* should include an updated and suitably adapted *illustration* (for a *regulated mortgage contract*) or financial information statement (for a *home purchase plan*) so that the *customer* can compare it with the one he received before he applied for the *home finance transaction*.
- (2) [deleted]





**6.3 General**

**6.3.1**

**FCA**

**G**

■ MCOB 2.2.6 R (Clear, fair and not misleading communication) applies to information provided to a *customer* by a *firm* in accordance with this chapter.

**6.3.2**

**FCA**

**R**

**Any communication required by ■ MCOB 6 to be provided to a *customer* by a *firm* must be in a *durable medium*.**

**6**



## 6.4 Mortgages: content of the offer document

6.4.1  
FCA

R

- (1) If a *firm* offers to entering into a regulated mortgage contract with a *customer*, it must provide the *customer* with an *offer document* containing an *illustration*.
- (2) The *firm's* offer in the *offer document* must be on the basis of the information set out in the *illustration* provided in accordance with (1).

### Accuracy of the offer document

6.4.2  
FCA

G

■ MCOB 5.4.7 G acknowledges that the *offer document* and *illustration* provided before an application may not always be the same, even where the *customer's* requirements have not changed. However, the *FCA* expects the *offer document* to be an accurate reflection of the actual costs of the *regulated mortgage contract*.

### Records

6.4.3  
FCA

R

- (1) A *firm* must make an adequate record of each *offer document* which it issues to a *customer* in accordance with ■ MCOB 6.
- (2) The record required by (1) must be retained for a year from the date that the *offer document* is issued to the *customer*.
- (3) If, in accordance with ■ MCOB 6.5 (Information to be provided in the offer document or separately), information is included in a separate document that is sent with the *offer document*, that information must also be retained as part of the record required by (1).

### Modifications to the illustration

6.4.4  
FCA

R

The *illustration* provided as part of the *offer document* in accordance with ■ MCOB 6.4.1 R (1) must meet the requirements of ■ MCOB 5.6 (Content of illustrations) with the following modifications:

- (1) the *illustration* must be suitably adapted and revised to reflect the fact that the *firm* is making an offer to a *customer* and updated to reflect changes to, for example, the interest rate,

charges, the exchange rate or the APR required by ■ MCOB 10 (Annual Percentage Rate), at the date the *illustration* is issued;

- (2) ■ MCOB 5.6.2 R (2) (a) does not apply;
- (3) ■ MCOB 5.6.15 R (Information to be included at the head of the illustration) does not apply;
- (4) ■ MCOB 5.6.16 R (Section 1: 'About this illustration') is replaced by the following: "Section 1: 'About this offer document': Under the section heading 'About this offer document', the following text must be included:
  - (a) 'You are not bound by the terms of this offer document until [insert relevant circumstances, including the names of any documents that must be signed. For example "you have signed the legal charge and the funds are released for your mortgage"]. We are required by the Financial Conduct Authority (FCA) - the independent watchdog that regulates financial services - to provide you with this offer document.'; and
  - (b) (unless ■ MCOB 6.6.1 R applies) "You should compare this offer document with the key facts illustration given to you before you applied for this mortgage, to see how the details may have changed.";
- (5) Unless (b) applies, ■ MCOB 5.6.17 R (Section 2: 'Which service are we providing you with?') is replaced with the following: "Section 2: 'Which service did we provide you with?'
  - (a) Under the section heading 'Which service did we provide you with?' the following text should be presented as two options each with a 'check box', one of which must be marked prominently to indicate the level of service provided to the *customer*: 'We have recommended, having assessed your needs, that you take out this mortgage. We have not recommended a particular mortgage for you. You must make your own choice whether to accept this mortgage offer.';
  - (b) If the service described in ■ MCOB 5.6.17 R (Section 2: 'Which service are we providing you with?') was provided by another *firm*, ■ MCOB 5.6.17 R is replaced by the following: "Section 2: 'Which service were you provided with?' Under the section heading 'Which service were you provided with?' the following text should be presented as two options each with a 'check box' one of which must be marked prominently to indicate the level of service provided to the *customer*: '[name of firm] recommended that you take out this mortgage. [name of firm] did not recommend a particular mortgage for you. You must make your own choice whether to accept this mortgage offer.';

- (6) ■ MCOB 5.6.29 R (2) does not apply;
- (7) ■ MCOB 5.6.52 R to ■ MCOB 5.6.53 G is replaced by the following: Where all or part of the *regulated mortgage contract* is an *interest-only mortgage*, the *illustration* in the *offer document* must:
  - (a) clearly state that the payments on the *regulated mortgage contract* cover only interest, and not the capital borrowed;
  - (b) state the *repayment vehicle* the *customer* intends to use where the *firm* knows details of the specific *repayment vehicle* from the application by the *customer*; if the *firm* does not know how the *customer* intends to repay the capital borrowed, the *firm* must clearly state that the *repayment vehicle* is unknown, and must provide the *customer* with a clear reminder of the need to put suitable arrangements in place; and
  - (c) include a statement reminding the *customer* to check regularly the performance of any *investment* used as a *repayment vehicle* , to see whether it is likely to be adequate to repay the capital at the end of the term of the *regulated mortgage contract*;
- (8) the fees recorded in the *illustration* that is part of the *offer document* in accordance with ■ MCOB 5.6.66 R (1) must include any fees paid or payable by the *customer*;
- (9) ■ MCOB 5.6.69 R (5) is replaced by the following: '(where the fee is payable or has been paid to the *mortgage lender*), whether or not the fee is refundable, and if so, the extent to which it is refundable;'
- (10) [deleted]
- (11) where additional features are included in accordance with ■ MCOB 5.6.92 R and these are credit facilities regulated by the Consumer Credit Act 1974, the relevant parts of Section 12 of the *illustration* that is part of the *offer document* must include the following text: "This credit facility is regulated under the Consumer Credit Act 1974. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available";
- (12) The text required by ■ MCOB 5.6.102 R (2) (a) or (b) should be adapted to include, or tell the *customer* where they can find, the information required by ■ MCOB 6.5.4 R; and

6.4.5  
FCA

G

(13) ■ MCOB 5.6.113 R applies to the *illustration* that is part of the *offer document* if the *illustration* given out in accordance with ■ MCOB 5 (Pre-application disclosure) was issued by, or on behalf of, a *mortgage intermediary*.

- (1) One consequence of ■ MCOB 6.4.4 R(5)(b) is that the *mortgage lender* will need to know, for each individual transaction *arranged* by a *mortgage intermediary*, whether or not the *customer* has received *advice* from that *mortgage intermediary*.
- (2) When complying with ■ MCOB 6.4.4 R(5)(b), *mortgage lenders* may wish to include a statement after the level of service in Section 2 confirming that the level of service described was given by another *firm*, and explaining that they, as the *mortgage lender*, are not responsible for the level of service given, and that the *customer* should contact the other *firm* if they have any queries about the level of service provided. For example: "If you have any queries about this service, you should contact [Name of firm]. [Name of lender] is not responsible for the advice or information you received."

6.4.6  
FCA

R

In adapting and revising the *illustration* that is part of the *offer document* in accordance with ■ MCOB 6.4.4 R(1) a *firm* must:

- (1) avoid amending the format of the information required by ■ MCOB 5.6 (Content of illustrations) where possible, since this could result in the *illustration* in the *offer document* being difficult to compare with the *illustration* originally provided to the *customer* in accordance with ■ MCOB 5.5.1 R;
- (2) use, where possible, the same headings, ordering of information, and language that appeared in the *illustration* provided in accordance with ■ MCOB 5.6 (Content of illustrations); and
- (3) only change section headings where necessary (for example 'What you have told us' could be renamed 'Your mortgage requirements').

6.4.7  
FCA

R

In adapting and revising the *illustration* in accordance with ■ MCOB 6.4.4 R(1), a *firm* may:

- (1) add extra information at the beginning and end of the *illustration*, such as conditions which are not covered by the *illustration*;
- (2) include greater detail within each of the specified sections than that included in an *illustration* provided in accordance with ■ MCOB 5 (Pre-application disclosure); and
- (3) leave blank, except for the text 'not applicable', sections that are irrelevant, such as:
  - (a) the section on insurance (see ■ MCOB 5.6.73 R to ■ MCOB 5.6.83 G), where the *customer* is not buying insurance

from the *firm* and the *firm* does not require insurance to be in place; and

- (b) the section and sub-sections on additional features (see ■ MCOB 5.6.92 R to ■ MCOB 5.6.112 G) if there are no additional features available.

6.4.8  
FCA

**G** Examples of the additional information that should be included in the *offer document* in accordance with ■ MCOB 6.4.7 R (1) or ■ MCOB 6.4.7 R (2) is information about any retentions or reinspections that will be required by the *firm*.

6.4.9  
FCA

**R** A *firm* must ensure that the *illustration* forms the main, and an integral, part of the *offer document*.

6.4.10  
FCA

**G** ■ MCOB 6.4.9 R prevents a *firm* from preparing a separate *illustration* and simply adding it to the existing material provided to the *customer* at the offer stage.

**Other information contained in the offer**

6.4.11  
FCA

**R** A *firm* must ensure that the *offer document* contains a prominent statement:

- (1) of the period for which the offer is valid;
- (2) explaining, where the *regulated mortgage contract* contains features, such as additional unsecured borrowing facilities, which could result in the *customer* borrowing more money, that where such features are used, the amount of the *customer's* debt will increase;
- (3) explaining when any interest rate change on the *regulated mortgage contract* takes effect. This statement must be used, for example, to explain cases where an annual review system is used;
- (4) explaining the consequences that might arise from the *customer* not entering into the *regulated mortgage contract*, including any fees that the *customer* has paid which will not be reimbursed;
- (5) explaining that once the *regulated mortgage contract* is concluded there will be no right of withdrawal; and
- (6) explaining that although no right of withdrawal exists the *customer* will have a right to repay the *regulated mortgage contract* in accordance with the terms of the *regulated mortgage contract*.

- 6.4.12**  
**FCA** **G** In complying with ■ MCOB 6.4.11 R (6) the *firm* is not required to repeat in this section of the *offer document* the cash amounts of the *early repayment charges* set out in the *illustration* provided as part of the *offer document*. The *firm* may instead insert a reference to the relevant section of that *illustration*.
- 6.4.13**  
**FCA** **R** A *firm* must ensure that the contact details section of the *offer document* (as required by ■ MCOB 5.6.122 R) also includes information on how to complain to the *firm* about the services provided by the *firm* in relation to the *regulated mortgage contract* and whether or not complaints may subsequently be referred to the *Financial Ombudsman Service*.
- 6.4.14**  
**FCA** **G** ■ DISP 1 requires a *firm* to deal promptly and fairly with *complaints*, including referring to another *firm* *complaints* about that other *firm's* services.
- 6.4.15**  
**FCA** **G** In addition to the information required by ■ MCOB 6.4.13 R, a *firm* may include information about how to complain to any other *firm* about the services that *firm* provided to the *customer* in relation to the *regulated mortgage contract*. For example, where the *customer* received advice from another *firm*, a *mortgage lender* may include contact details for the *firm* that provided the advice.
- 6.4.16**  
**FCA** **R** If the *firm* knows at the point that the offer is made to the *customer* that its interest in the *regulated mortgage contract* will be assigned (by sale or transfer) and the *firm* will no longer be responsible for setting interest rates and charges, the *offer document* must:
- (1) state this; and
  - (2) state, where known, who will be responsible for setting interest rates and charges after the sale or transfer.
- 6.4.17**  
**FCA** **R** Where ■ MCOB 6.4.16 R applies, if the name of the party who will be responsible for setting interest rates and charges after the sale or transfer is not known at the point the offer is made, the *firm* must notify the *customer* of this as soon as it becomes known.
- 6.4.18**  
**FCA** **G** ■ MCOB 6.4.16 R and ■ MCOB 6.4.17 R could apply where the ownership of a *regulated mortgage contract* is transferred to a third party through *securitisation*.



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

### Tariff of charges

6.5.1  
FCA

**R** If a *firm* makes an offer to a *customer* with a view to *entering into a regulated mortgage contract*, it must provide the *customer*, along with the *offer document*, with a *tariff of charges* that could be incurred on the *regulated mortgage contract*.

6.5.2  
FCA

**R** If the *regulated mortgage contract* has any *linked borrowing* or *linked deposits*, details of the charges on these linked facilities, for example charges payable on a linked current account, must be included in the *firm's tariff of charges*.

6.5.3  
FCA

**G** A *firm* may include the *tariff of charges* as an integral part of the *offer document*, or provide it separately along with the *offer document*.

### Mortgage credit cards

6.5.4  
FCA

**R** If a *firm* makes an offer to a *customer* with a view to *entering into a regulated mortgage contract* that includes a *mortgage credit card*, it must provide the *customer* with information explaining that the card will not give the *customer* the statutory rights associated with traditional credit cards.

6.5.5  
FCA

**G** A *firm* may include the information described in ■ MCOB 6.5.4 R as an integral part of the *offer document*, or provide it separately along with the *offer document*.

### Distance contracts with retail customers

6.5.6  
FCA

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

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



- (2) any contractual clause on law applicable to the *regulated mortgage contract* or on competent court, or both;
- (3) the language in which the contract is supplied and in which the *firm* will communicate during the course of the *regulated mortgage contract*; and
- (4) if not provided previously:
  - (a) all of the contractual terms and conditions of the *regulated mortgage contract* to which the *offer document* relates; and
  - (b) (i) confirmation that the *mortgage lender* is *authorised* and regulated by the *FCA*;  
(ii) the *mortgage lender's Financial Services Register* number; and  
(iii) confirmation that the *customer* can check the *Financial Services Register* on the *FCA's* website [www.fca.org.uk/firms/systems-reporting/register](http://www.fca.org.uk/firms/systems-reporting/register) or by contacting the *FCA* on 0800 111 6768.



**6.6 Mortgages: offer documents in place of illustrations**

6.6.1

FCA

**R**

If a *firm* provides a *customer* with an *offer document* in place of an *illustration* in accordance with ■ MCOB 5.5.1 R (3), it must take reasonable steps to ensure that it provides the *offer document* in accordance with the requirements for providing an *illustration* in ■ MCOB 5.4 (Illustrations: general) and ■ MCOB 5.5 (Provision of illustrations).

6



## 6.7 Business loans

6.7.1  
FCA

R

- (1) Where the *regulated mortgage contract* is for a business purpose, a *firm* may choose to provide a *customer* with a *business offer document* instead of the *offer document* referred to in
  - MCOB 6.4.1 R.
- (2) If a *firm* provides a *customer* with a *business offer document* in accordance with (1), it must ensure that:
  - (a) an updated *business illustration* , as required by ■ MCOB 5.7 (Pre-application disclosure for business loans) , forms part of the *business offer document*; and
  - (b) subject to the tailoring required by ■ MCOB 5.7 (Pre-application disclosure for business loans) , the *business offer document* complies with ■ MCOB 6.4 (Content of the offer document).

6.7.1A  
FCA

G

*Firms* are reminded that in accordance with ■ MCOB 1.2.3 R, they should either comply in full with *MCOB* or comply with all tailored provisions in *MCOB* that relate to business loans . Therefore, a *firm* may only follow the tailored provisions in ■ MCOB 6.7 if it also follows all other tailored provisions in *MCOB* .

6.7.2  
FCA

G

■ MCOB 6.7.1 R (2) means, for example, that the required text in ■ MCOB 6.4.4 R (7) should be replaced by text that satisfies the requirements for *business illustrations* in ■ MCOB 5.7.5 R

6.7.3  
FCA

G

A *firm* may supplement the first paragraph of text prescribed in ■ MCOB 6.4.4 R (5)(a) to clarify that, while the *regulated mortgage contract* is not binding until the relevant mortgage document has been signed and funds have been released, the *business offer document* may form part of a wider set of negotiated facilities and that the *customer* is separately bound by these.

## 6.8 Home purchase plans

### Offer document

6.8.1  
FCA

R

- (1) If a *firm* offers to *enter into a home purchase plan* with a *customer*, it must ensure that the *customer* is, or has been provided with an appropriate *offer document* in a *durable medium* which includes:
  - (a) the period for which the offer is valid;
  - (b) an explanation of the consequences that might arise from the *customer* not entering into the *home purchase plan* including details of any *fees* that the *customer* has paid which will not be refunded;
  - (c) an explanation of when the *customer* will become bound by the offer and the implications of this;
  - (d) the charges that a *customer* may incur under the plan, including the reason for, and amount of, each charge, when they are payable, whether they will be refunded and, if so, when;
  - (e) a financial information statement;
  - (f) the *firm's* contact details, including its name and address; and
  - (g) how to complain to the *firm* and whether or not complaints may subsequently be referred to the *Financial Ombudsman Service*.
- (2) A *firm* may omit details of the charges that a customer may incur under a *home purchase plan* from the *offer document* if they are included in a separate *tariff of charges* provided to the customer at the same time.

6.8.2  
FCA

G

Although an *offer document* may not match information given in a financial information statement before an offer is made, an *offer document* should be an accurate reflection of the actual costs of the *home purchase plan*.

6.8.3

FCA

G

A *firm* should bear in mind its obligations under *Principle 6*. For example, if a *firm* knows that its interest in a *home purchase plan* will be assigned and the *firm* will no longer be responsible for setting rental payments and charges, the *offer document* should state this fact and who will become responsible after the assignment (if this is not known at the offer stage the *customer* should be notified as soon as it becomes known).

6.8.4

FCA

R

A *firm* must ensure that the financial information statement forms the main, and an integral, part of the *offer document*.

**Distance contracts with retail customers**

6.8.5

FCA

R

- (1) A *firm* must communicate to a *consumer* the *distance marketing information* in a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer to *enter into a home purchase plan*.
- (2) If the *distance contract* or offer has been concluded at the *consumer's* request using a means of distance communication which does not enable providing the information in accordance with (1) then it must be communicated no later than immediately after the conclusion of the *home purchase plan*.

6.8.5A

[Note: article 5 *Distance Marketing Directive*]

6.8.6

FCA

G

*Distance contract* information may be included in an *offer document* provided that it does not significantly increase its length.



## 6.9 Regulated sale and rent back agreements

### Process for concluding regulated sale and rent back agreements

6.9.1  
FCA

R

A *SRB agreement provider* must not enter into a *regulated sale and rent back agreement* unless it follows the process outlined in this section.

### Valuation of the property

6.9.2  
FCA

R

- (1) A *SRB agreement provider* intending to enter into a specific *regulated sale and rent back agreement* with a *SRB agreement seller* and before it complies with the other requirements in this section, must ensure that the property is properly valued by a valuer:
  - (a) that meets the competence and independence requirements (see ■ MCOB 2.6A.12 R, ■ MCOB 2.6A.12A R and ■ MCOB 2.6A.13 E ); and
  - (b) using the definition of "market value" set out in the Valuation Standard of the Royal Institution of Chartered Surveyors from time to time.
- (2) Where the *SRB agreement provider* has applied to a *mortgage lender* for financing for a proposed *regulated sale and rent back agreement* and the relevant lender in accordance with its standard lending practices requires its own valuation of the property to be carried out, the valuation will only satisfy the requirements of (1) if the property is properly valued by a valuer that meets the competence and independence requirements (see ■ MCOB 2.6A.12 R and ■ MCOB 2.6A.13 E).
- (3) The *firm* must ensure that a copy of the valuation report accompanies the written pre-offer document at Stage One (see ■ MCOB 6.9.3 R).
- (4) This *rule* does not apply if the *SRB agreement seller* has already obtained his own recent valuation of the property from a valuer that meets the competence and independence requirements (see ■ MCOB 2.6A.12 R and ■ MCOB 2.6A.13 E).

**Written pre-offer document: Stage One**

6.9.3  
FCA

R

- (1) As soon as a *SRB agreement provider* agrees the key terms of a proposed *regulated sale and rent back agreement* with a *SRB agreement seller* and before he becomes contractually committed to enter into the agreement, the *SRB agreement provider* must provide the seller with a written pre-offer document summarising its key terms (Stage One).
- (2) The written pre-offer document must be in the form prescribed by ■ MCOB 6 Annex 2 R and must be adapted by the *firm*, as appropriate, to the extent specified.
- (3) The written pre-offer document must be accompanied by the Money Advice Service consumer factsheet on sale and rent back (even if the *firm* has already provided this) which the *firm* must provide to the *customer* in a *durable medium* and which may be accessed through [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.org.uk).
- (4) On providing the Money Advice Service consumer factsheet to the *SRB agreement seller*, the *firm* must give him an oral explanation of what it contains, so as to ensure that he understands its contents, unless the *firm* has already done so.
- (5) The *firm* must ensure that the written pre-offer document is accompanied by all associated legal documents in draft form that the seller will need to sign at Stage Two (■ MCOB 6.9.10 R) to give effect to the proposed *regulated sale and rent back agreement*.

**Cooling-off: No contact between SRB agreement provider and SRB agreement seller**

6.9.4  
FCA

R

The *SRB agreement provider* must not instigate any contact or otherwise seek to communicate with the *SRB agreement seller* or a member of his family for a period of 14 *days* from the time that he has been supplied with the written pre-offer document at Stage One, together with the associated legal documentation in draft form.

6.9.5  
FCA

R

If the *SRB agreement seller* or a member of his family makes contact with the *SRB agreement provider* during the 14 *day* cooling-off period, for example because he wants to query a term of the written pre-offer document, the provider must endeavour to answer the query in as factual a manner as the circumstances permit but avoid any language or conduct which could be interpreted as amounting to an attempt to exert pressure on the *SRB agreement seller* to enter into the proposed agreement.

**Exercise of cooling-off rights: costs and expenses**

6.9.6  
FCA

R

The *SRB agreement provider* must not charge or seek to charge a potential *SRB agreement seller* for any fee, cost, or expense unless and until the seller

has entered into the *regulated sale and rent back agreement* following the 14 *day* cooling-off period.

**Responsibility of SRB agreement provider during cooling-off period**

6.9.7  
FCA

R

The *SRB agreement provider* must not offer to or *enter into a regulated sale and rent back agreement* with the seller until the 14 *day* cooling off period has elapsed and must not allow the seller to become contractually committed to enter into any such agreement by signing any associated legal documentation to give effect to it within that period.

**Requirement to notify the mortgage lender or home purchase provider where the seller is in arrears**

6.9.8  
FCA

R

As soon as a *SRB agreement provider* has provided the written pre-offer document at Stage One to a *SRB agreement seller* who is in *arrears* under his *regulated mortgage contract* or *home purchase plan* on the property to which the proposed *regulated sale and rent back agreement* relates, it must, in a *durable medium*, immediately notify the *mortgage lender*, *home purchase provider* or the providers of other loans that may be secured on the property:

- (1) explaining that the *firm* is proposing to enter into a *regulated sale and rent back agreement* with the seller and that, as required by the *FCA*, he will be given a cooling-off period of 14 days before deciding whether he wishes to enter into the proposed agreement;
- (2) summarising the key terms of the proposed agreement;
- (3) advising the lender or provider that the proposed agreement is likely to be relevant to any repossession action or other forbearance option the lender or provider may already be, or may be contemplating, taking with respect to the property; and
- (4) giving the *firm's* contact details should the lender or provider wish for any further information.

**Data protection**

6.9.9  
FCA

G

*Firms* will need to consider the implications of the Data Protection Act 1998 under which personal data that a *firm*, as data controller, holds about its *customer* cannot be disclosed to a third party without his consent. In practice the *firm* is likely to need the *SRB agreement seller's* consent to disclosing the matters covered by ■ MCOB 6.9.8 R to the relevant *mortgage lender* or *home purchase provider*.

**Written offer document for signing: Stage Two**

6.9.10  
FCA

R

- (1) No sooner than 14 *days* after the *SRB agreement provider* has supplied the *SRB agreement seller* with the written pre-offer at Stage One, the provider must provide him with a written offer document for signing (Stage Two), accompanied by any formal



legal documentation that the parties will need to sign to give effect to the proposed *regulated sale and rent back agreement*.

- (2) The written offer document for signing (Stage Two) must be in the form prescribed by ■ MCOB 6 Annex 3 R and must be adapted by the *firm*, as appropriate, to the extent specified.

**Records of written pre-offer documents and written offer documents for signing**

6.9.11

FCA

R

The *SRB agreement provider* must keep a record of the written pre-offer document at Stage One and the written offer document for signing at Stage Two for a period of:

- (1) one year after the end of the fixed term of the tenancy under the *regulated sale and rent back agreement*; or
- (2) five years from the date of the disclosures and warnings, written offer documents and cooling-off period notices;

whichever is the longer.

6



**Distance home purchase plans: information to be provided to retail customers.****FCA**This table belongs to **MCOB 6.8.5 R**.**1.1 R Distance home purchase plans: information to be provided to retail customers**

- (1) the identity and the main business of the *home purchase provider*, the geographical address at which the *home purchase provider* is established and any other geographical address relevant for the *consumer's* relations with the *home purchase provider*;**
- (2) the identity of the representative of the *home purchase provider* established in the *consumer's EEA State* of residence and the geographical address relevant for the customer's relations with the representative, if such a representative exists;**
- (3) when the *consumer's* dealings are with any professional other than the *home purchase provider*, the identity of this professional, the capacity in which he is acting vis-a-vis the *consumer*, and the geographical address relevant for the *customer's* relations with this professional;**
- (4) Details of the *Financial Services Register* and any other trade register in which the *home purchase provider* is entered and his registration number or an equivalent means of identification in that register;**
- (5) confirmation that the *home purchase provider* is authorised and regulated by the *FCA*;**
- (6) the total price to be paid by the *consumer* to the *home purchase provider* for the financial service, including all related fees, charges and expenses, and all taxes paid via the *home purchase provider* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it;**
- (7) notice of the possibility that other taxes and/or costs may exist that are not paid via the *home purchase provider* or imposed by him;**
- (8) any specific additional cost for the *consumer* of using the means of distance communication , if such additional cost is charged;**
- (9) the absence of a right of withdrawal;**
- (10) information on any rights the parties may have to terminate the contract early or unilaterally by virtue of the terms of the *distance contract*, including any penalties imposed by the contract in such cases;**
- (11) the *EEA State* or *States* whose laws are taken by the *home purchase provider* as a basis for the establishment of relations with the *retail customer* prior to the conclusion of the *distance contract*;**

- (12) any contractual clause on law applicable to the *distance contract* and/or on competent court;
- (13) in which language, or languages, the contractual terms and conditions, and the prior information referred to in this table are supplied, and furthermore in which language, or languages, the *home purchase provider*, with the agreement of the *consumer*, undertakes to communicate during the duration of this *distance contract*; and
- (14) whether or not there is an out-of-court complaint and redress mechanism for the *consumer* that is party to the *distance contract* and, if so, the methods for having access to it;
- (15) whether or not compensation may be available from the *compensation scheme* should the *firm* be unable to meet its liabilities, and information about any other applicable named compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained; and
- (16) all the contractual terms and conditions of the *home purchase plan* to which the *offer document* relates.

[Note: articles 3 and 5 *Distance Marketing Directive*]

FCA

- 1.2 G A *firm* is not required to provide this information if it has already done so, for example in an initial disclosure document, and that information remains accurate.

---

**- Written Pre-offer Document of a regulated sale and rent back agreement.**

**FCA**

**MCOB 6 Annex 2R - Written Pre-offer Document of a regulated sale and rent back agreement.**



---

**- Cooling-Off Document of a regulated sale and rent back agreement.**

**FCA**

**MCOB 6 Annex 3R - Cooling-Off Document of a regulated sale and rent back agreement.**





## Chapter 7

# Disclosure at start of contract and after sale



## 7.1 Application

### Who?

7.1.1  
FCA

**R** This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 7.1.2 R in accordance with column (2) of that table.

7.1.2  
FCA

**R** Table This table belongs to MCOB 7.1.1R

| (1) Category of firm                                    | (2) Applicable section   |
|---|--|
| <i>mortgage lender</i>                                  | whole chapter except MCOB 7.8  |
| <i>mortgage administrator</i>                           | MCOB 7.1 - MCOB 7.3 and MCOB 7.5 - MCOB 7.7.   |
| <i>mortgage adviser and mortgage arranger</i>           | MCOB 7.1 - MCOB 7.3 and MCOB 7.6.7 R - MCOB 7.7.4 R                                      |
| <i>home purchase provider</i>                           | MCOB 7.1.1 R to MCOB 7.1.4 R, MCOB 7.2, MCOB 7.3 and MCOB 7.8                            |
| <i>home purchase administrator</i>                      | As for a <i>home purchase provider</i> except MCOB 7.8.1 R and MCOB 7.8.2 G do not apply |
| <i>home purchase adviser and home purchase arranger</i> | MCOB 7.1.1 R to MCOB 7.1.4 R, MCOB 7.2 and MCOB 7.8.7 G                                  |
| <i>reversion provider</i>                               | see MCOB 9.6 for the application of this chapter   |
| <i>reversion administrator</i>                          |  |
| <i>reversion adviser</i>                                |  |
| <i>reversion arranger</i>                               |  |
| <i>SRB administrator</i>                                | MCOB 7.9   |
| <i>SRB agreement provider</i>                           | MCOB 7.1 to MCOB 7.3 and MCOB 7.9  |

**What?**

7.1.3

FCA

**R**

This chapter applies if a *firm*:

- (1) enters into a *home finance transaction* with a *customer*; or
- (2) administers a *home finance transaction* which was entered into with a *customer*; or
- (3) *arranges or advises on* or makes a further advance or other variation to the terms of a *home finance transaction* entered into with a *customer*.

7.1.4

FCA

**R**

This chapter applies in relation to further advances and other variations (as specified in ■ MCOB 7.6.7 R - ■ MCOB 7.7.4 R in relation to a *regulated mortgage contract* ) regardless of whether they are variations to an existing *home finance transaction* or are such that they involve the customer entering into a new *home finance transaction* .

7.1.5

FCA

**R**

This chapter also applies in relation to *regulated mortgage contracts* in circumstances where the original *mortgage lender* has passed on ownership of the loan to a third party through *securitisation*. In such a case, the rules in ■ MCOB 7.5 - ■ MCOB 7.7.4 R will apply to the *firm* which *administers* the *regulated mortgage contract*.

7.1.6

FCA

**R**

In ■ MCOB 7.6.7 R (Further advances), ■ MCOB 7.6.18 R (Rate switches) and ■ MCOB 7.6.22 R (Addition or removal of a party to the contract), if a *customer* submits an informal application as his first contact with a *firm*, the *illustration* required to be provided to a *customer* in accordance with those *rules* must be provided and the transaction must not proceed until the *customer* has made a formal application confirming that it should proceed.

7.1.7

**G**

[deleted]

7.1.8

FCA

**R**

In relation to a *lifetime mortgage* , this chapter is modified by ■ MCOB 9 ( Equity release : product disclosure).



## 7.2 Purpose

### 7.2.1

FCA

G

- (1) This chapter amplifies *Principle 6* and *Principle 7*.
- (1A) This chapter requires information to be supplied to *customers* at the start of a *regulated mortgage contract* to enable them to check that the *regulated mortgage contract* has been set up in accordance with their requirements and to notify them of the first and subsequent payments.
- (2) Where a *firm* provides services to a *customer* in relation to a further advance, rate switch, or addition or removal of a party to a *regulated mortgage contract*, this chapter also requires that the *customer* is provided with an *illustration* to make clear the price and features associated with that variation.
- (3) This chapter also ensures that *customers* are supplied with information which enables them to check the payments and charges on a *home finance transaction*, to keep track of the transactions on, and the features of, a *home finance transaction* and to be kept informed of material changes.
- (4) To ensure that a *customer* has a record of the information required by this chapter, ■ MCOB 7.3.2 R requires the information to be provided to the *customer* in a *durable medium*.



7.3 General

7.3.1  
FCA

G

■ MCOB 2.2.6 (Clear, fair and not misleading communication) applies to information provided to a *customer* by a *firm* in accordance with this chapter.

7.3.2  
FCA

R

A *firm* must provide all of the information required by this chapter in a *durable medium*.

**Information provided in more than one document**

7.3.3  
FCA

R

The information required by this chapter, ■ MCOB 7 , may be provided in more than one document, provided the use of several documents does not materially diminish the significance of any information the *firm* is required to give the *customer*, or the ease with which this can be understood.



## 7.4 Mortgages: disclosure at the start of the contract

### Disclosure requirements

7.4.1  
FCA

R

(Subject to ■ MCOB 7.7.5 R) a *firm* that enters into a regulated mortgage contract with a *customer* must provide the *customer* with the following information before the *customer* makes the first payment under that regulated mortgage contract:

- (1) the amount of the first payment required;
- (2) the amount of the subsequent payment(s) if different from the first payment;
- (3) the method by which the payment will be collected (for example, by direct debit) and the date of collection of the first and subsequent payment;
- (4) confirmation of whether, in connection with the regulated mortgage contract, insurance or investments (such as a repayment vehicle, term assurance, buildings and contents insurance or payment protection insurance) have been purchased through the *firm*;
- (5) the first premium (and subsequent premium where different) for any insurance or investments purchased through the *firm* in connection with the regulated mortgage contract;
- (6) confirmation of whether the insurance or investment premiums in (5) are to be collected with the mortgage payment or separately (where the latter applies, the *firm* must give details or state that these will be confirmed separately);
- (7) confirmation of whether the regulated mortgage contract is a repayment mortgage or interest-only mortgage, or a combination of both;
- (8) if all or part of the regulated mortgage contract is an interest-only mortgage, a reminder to the *customer* to check

that a *repayment vehicle* is in place, if the *repayment vehicle* is not provided by the *firm*;

- (9) what to do if the *customer* falls into *arrears* , explaining the benefit of making early contact with the *firm*, providing the address and telephone number of a contact point for the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the *tariff of charges*;
- (10) confirmation of any *linked borrowing* and *linked deposits*; and
- (11) whether the *regulated mortgage contract* permits the *customer* to make any overpayments or underpayments of the amounts due.

7.4.2  
FCA

**R** The information in ■ MCOB 7.4.1 R must be provided to the customer in a single communication, except (4), (5) and (6) which may be provided separately.

7.4.3  
FCA

**G** In the case of a *regulated mortgage contract* under which the loan is advanced to the *customer* in separate tranches, the amount required under ■ MCOB 7.4.1 R(1) will be the repayment relating to the first tranche. The amount(s) required under ■ MCOB 7.4.1 R(2) will need to reflect the fact that when each subsequent tranche is advanced, the payment that the *customer* will need to make will change.

**Record keeping**

7.4.4  
FCA

- R**
- (1) A *firm* must make and retain an adequate record of the information that it provides to each *customer* at the start of the *regulated mortgage contract* in accordance with this section.
  - (2) The record required by (1) must be maintained for a year from the date that the information is provided to the *customer*.



## 7.5 Mortgages: statements

### Annual statement: requirement

7.5.1  
FCA

R

Subject to ■ MCOB 7.5.2 R, a *firm* must provide the *customer* with a statement at least once a year (or, in relation to the first statement, within the first 13 months):

- (1) covering the *regulated mortgage contract* and any *tied product* purchased through the *firm*; and
- (2) giving information about the existence of any *linked borrowing* or *linked deposits*, or any other products purchased through the *firm* where the payments for those products are combined with the payments on the *regulated mortgage contract*.

7.5.2  
FCA

R

Where a *tied product* is operated separately from the *regulated mortgage contract*, for example where the premiums on a tied insurance product are not combined with payments on the *regulated mortgage contract*, the statement required by ■ MCOB 7.5.1 R in relation to *the tied product* may be provided in a separate communication.

### Annual statement: content

7.5.3  
FCA

R

The statement required by ■ MCOB 7.5.1 R must contain the following:

- (1) except in the case of *mortgage credit cards*, information on the type of *regulated mortgage contract*, including:
  - (a) a clear statement of whether the *regulated mortgage contract* is an *interest-only mortgage*, or *repayment mortgage*, or a combination of both; and
  - (b) a prominent reminder, where all of the *regulated mortgage contract* is an *interest-only mortgage*, that:
    - (i) the *customer's* payments to the *firm* do not include the costs of any *repayment vehicle* (if that is the case); and
    - (ii) the *customer* should have in place arrangements to pay off the capital, and should check the performance of



any *investments* they might have in place for this purpose; using the following text: 'This is an interest-only mortgage. Your mortgage payments [include the costs of a savings plan/an investment that you] [do not include the costs of any savings plan or other investment you may] have arranged to build up a lump sum to repay the amount you borrowed. It is important to check regularly that your savings plan or other investment is on track to repay this mortgage at the end of the term.'

- (c) a prominent reminder, where only part of the *regulated mortgage contract* is an *interest-only mortgage*, that:
  - (i) the *customer's* payments to the *firm* do not include the costs of any *repayment vehicle* (if that is the case); and
  - (ii) the *customer* should have in place arrangements to pay off the amount of the loan that is on an *interest-only* basis, and should check the performance of any *investments* they might have in place for this purpose;

using the following text: 'This mortgage includes [insert amount] borrowed on interest-only terms. Your mortgage payments [include the costs of a savings plan/an investment that you] [do not include the costs of any savings plan or other investment you may] have arranged to build up a lump sum to repay this amount. It is important to check regularly that your savings plan or other investment is on track to repay the interest-only part of your mortgage at the end of the term.'

- (2) details of the following transactions and information on the *regulated mortgage contract* during the period since the last statement (or, where the statement is the first statement, since the *customer* entered into the *regulated mortgage contract*):
  - (a) the date and amount of each payment made;
  - (b) the amount of each payment that was due during the statement period;
  - (c) the rate(s) of interest applicable to the *regulated mortgage contract* during the statement period and, if applicable, the date(s) on which the rate(s) of interest changed;
  - (d) the amount of interest charged under the *regulated mortgage contract* during the statement period; and
  - (e) any other amounts charged under the *regulated mortgage contract* during the statement period, including fees and any amounts due in relation to *tied products*;

- (3) a reminder that the *customer* should contact the *firm* if they are unable to make their regular payments under the *regulated mortgage contract*; and
- (4) information at the date the statement is issued on:
  - (a) the amount owed by the *customer* under the *regulated mortgage contract*;
  - (b) the actual remaining term of the *regulated mortgage contract* (but if the term of the *regulated mortgage contract* is open-ended this should be clearly stated);
  - (c) the date at which any *early repayment charges* on the *regulated mortgage contract* cease to apply;
  - (d) where applicable, the *early repayment charge* that applies, expressed as a monetary amount (see ■ MCOB 5.6.84 R);
  - (e) the cost of redeeming the *regulated mortgage contract* (this must be shown as the sum of ■ MCOB 7.5.3 R(4)(a) and ■ MCOB 7.5.3 R(4)(d) plus any *linked borrowing* that cannot be retained (including the outstanding balances) plus any other charges that can be quantified at the date the statement is issued); if additional charges are payable that cannot be quantified at the point that the statement is issued (for example if the *customer* is in *arrears* ) a warning must be included to that effect; and
  - (f) where applicable, the date on which the requirement for the *customer* to purchase any *tied products* from the *firm* comes an end.

7.5.3A  
FCA

R

- (1) ■ MCOB 7.5.3 R (1)(b) does not apply where as a result of the *customer* having payment difficulties:
  - (a) the *regulated mortgage contract* has changed to an *interest-only mortgage*; and
  - (b) interest is being deferred and capitalised by the *firm*.
- (2) Paragraph (1) applies only where the *customer* continues to have payment difficulties.

7.5.4  
FCA

R

In the limited circumstances where it would be unlikely for a *repayment vehicle* to be set up for an *interest-only mortgage* (for example, a short term bridging loan) the text in ■ MCOB 7.5.3 R(1)(b)(ii) or ■ MCOB 7.5.3 R(1)(c)(ii) is replaced with the following: "As all or part of your mortgage is an interest-only mortgage, it assumes that you pay back the total amount borrowed on an interest-only basis as a lump sum at the end of the mortgage term."

**7.5.5** **R** Where a *firm* provides a *customer* with a statement containing the information set out in ■ MCOB 7.5.3 R(2) more frequently than once a year, the information set out in ■ MCOB 7.5.3 R(1), ■ MCOB 7.5.3 R(3) and ■ MCOB 7.5.3 R(4) may be provided in a separate communication, but must be provided at least once a year.

**7.5.6** **G** Whether a *firm* is likely to provide the information set out in ■ MCOB 7.5.3 R(2) more frequently than once a year will depend on the nature of the *regulated mortgage contract*. In determining how frequently to provide that information, a *firm* should take into account the need to keep the *customer* informed of any changes in the amount they owe, the *customer's* expectations and, where appropriate, the duration of the loan. For example, for a *mortgage credit card* the information might be provided monthly.

**7.5.7** **R** [deleted]

**Annual statement - additional content for customers in arrears**

**7.5.8** **G** If a *firm* chooses to use the annual statement to provide a *customer* with a regular written statement in accordance with ■ MCOB 13.5.1 R (Statements of charges), as described in ■ MCOB 13.5.2 G(4), it will need to include the actual payment shortfall in the annual statement.

**7.5.9** **G** In some circumstances, a *firm* may agree a temporary payment plan with a *customer* that does not involve the *customer* paying the full amount he owes in each payment period. Where an account in *arrears* is subject to such a payment plan, and the amount that falls due each payment period is greater than the agreed payment, the *firm* will still need to show the payments that were due in accordance with ■ MCOB 7.5.3 R (2)(b). However, in these circumstances, the *firm* may wish to add information to acknowledge that a temporary payment plan is in place.

**Annual statement: additional content if tariff of charges has changed**

**7.5.10** **R** If the *tariff of charges* has changed since the last annual statement was sent to the *customer* (or, where the annual statement is the first statement, since the *customer* entered into the *regulated mortgage contract*) and a *firm* has not already sent a revised *tariff of charges* to the *customer*, it must include one with the annual statement.

7



## 7.6 Mortgages: event-driven information

### Notification of payment changes and other material changes to terms and conditions

7.6.1  
FCA

**R** A *firm* must give the *customer* reasonable notice, in advance, of:

- (1) any changes to the payments that the *customer* is required to make resulting from interest rate changes; and
- (2) any material change by the *firm* (other than changes which come within **■** MCOB 7.6.2 R) to the terms and conditions of the *regulated mortgage contract*, where that change is permitted without the *customer's* prior consent.

### Notification where the regulated mortgage contract is sold, assigned or transferred

7.6.2  
FCA

**R** A *firm* must notify a *customer*, as soon as the details are known, of who will be responsible for setting interest rates and charges on the *regulated mortgage contract* if any interest in the *regulated mortgage contract* is to be sold, assigned, or transferred, and the *firm* will no longer be responsible for this.

7.6.3  
FCA

**R** For the purposes of **■** MCOB 7.6.2 R the *firm* may be treated as continuing to be responsible for setting interest rates and charges if, under the terms of the sale, assignment or transfer, it is expected that the rates and charges will continue to be set by reference to, and be no higher than, those set by the *firm* for other contracts of the same kind.

7.6.4  
FCA

**G** **■** MCOB 7.6.2 R and **■** MCOB 7.6.3 R may be relevant where a *regulated mortgage contract* is transferred to a third party through *securitisation*.

### Notification where additional borrowing taken up

7.6.5  
FCA

**R** Where the *customer* has, in accordance with the terms of the *regulated mortgage contract*, taken up an additional tranche of borrowing on a mortgage that is released in tranches and this did not require any further approval of the *mortgage lender*, a *firm* must provide confirmation as soon as possible of:

- (1) the new amount owed by the *customer* under the *regulated mortgage contract*;
- (2) the amount of each payment that is due; and
- (3) the interest rate charged.

**7.6.6**  
**FCA**

**G**

Examples of where ■ MCOB 7.6.5 R will apply are the release of tranches of money to the *customer* in relation to a self-build mortgage or other instalment mortgage.

**Further advances**

**7.6.7**  
**FCA**

**R**

Before a *customer* submits an application to a *firm* for a further advance on an existing *regulated mortgage contract* or for a further advance that is a new *regulated mortgage contract*, if the further advance requires the approval of the *mortgage lender*, the *firm* must provide the *customer* with an *illustration* that complies with the requirements of ■ MCOB 5 (Pre-application disclosure) and ■ MCOB 7.6.9 R to ■ MCOB 7.6.17 R for the further advance, unless an *illustration* has already been provided or the *regulated mortgage contract* is for a business purpose (see ■ MCOB 7.7 (Business loans)).

**7.6.8**  
**FCA**

**G**

If a number of different *firms* are involved in relation to the transaction referred to in ■ MCOB 7.6.7 R, having regard to ■ MCOB 2.5.4 R(2), those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* required by ■ MCOB 7.6.7 R.

**7.6.9**  
**FCA**

**R**

The *illustration* provided in accordance with ■ MCOB 7.6.7 R must:

- (1) be based on the amount of the further advance only;
- (2) use the term 'additional borrowing' in place of the term 'mortgage' where appropriate throughout the titles and text of the *illustration*;
- (3) include an additional section headed: 'Total borrowing' and numbered '7a' after Section 7, including the following text:
  - (a) "This section gives you information about how your mortgage will be affected by taking out this additional borrowing. Talk to [your mortgage lender] [insert name of mortgage lender] if you are not sure of the details of your current mortgage."; and
  - (b) a clear statement explaining the total amount that the *customer* will owe if he takes out the additional borrowing and what the *customer's* new payments will be.
- (4) include a clear statement, where all or part of the *regulated mortgage contract* is an *interest-only mortgage* and the amount paid in each instalment does not include the cost of a *repayment*

*vehicle* , to indicate that these payments do not include the cost of any savings plan or other investment.

**7.6.10**  
**FCA**

**G**

In order to comply with ■ MCOB 7.6.9 R (1), a *firm* should calculate the *APR* required by ■ MCOB 5.6.34 R on the basis of the further advance amount only.

**7.6.11**  
**FCA**

**G**

For the purposes of ■ MCOB 7.6.9 R(3) and (4):

- (1) a *customer's* existing mortgage includes a mortgage entered into prior to 31 October 2004 as well as a *regulated mortgage contract*;
- (2) the frequency of payments is that in ■ MCOB 5.6.40 R; and
- (3) a *firm* may generally rely on information provided by the *customer* unless, taking a common-sense view of this information, it has reason to doubt it.

**7.6.12**  
**FCA**

**G**

An example of the total borrowing section referred to in ■ MCOB 7.6.9 R(3) is in ■ MCOB 7 Annex 1 G.

**7.6.13**  
**FCA**

**R**

Where not all of the mortgage interest rates described in accordance with ■ MCOB 5.6.25 R(2)(a) apply for the term of the loan part to which they apply, the *firm* must disclose the amount that will be paid in each instalment when complying with ■ MCOB 7.6.9 R (3)(b), including the following information:

- (1) when a change in payment will occur;
- (2) the reason for the change in payment; and
- (3) confirmation that the payment illustrated assumes rates will not change.

**7.6.14**  
**FCA**

**R**

The *illustration* provided in accordance with ■ MCOB 7.6.7 R may diverge from the requirements of ■ MCOB 5 (Pre-application disclosure) where it is necessary to do so in order to reflect the fact that the *illustration* is being provided for a further advance.

**7.6.15**  
**FCA**

**G**

■ MCOB 7.6.14 R allows the *firm* to make changes to wording and to add, remove or alter information that would otherwise be misleading for the *customer*. For example, the *firm* may add text to let the *customer* know if conditions applying to the original mortgage do not apply to the additional borrowing, such as 'The early repayment charges applying to your existing loan do not apply to this additional borrowing.'

**7.6.16**  
**FCA**

**R**

- (1) (In the case of a *business illustration*), ■ MCOB 5.6.16 R is replaced with the following: "Section 1: 'About this illustration' Under the section heading 'About this illustration', the following text must be included: 'We are required by the Financial Conduct Authority (FCA) - the independent watchdog

that regulates financial services - to provide you with this illustration.' "

- (2) (In all other cases), ■ MCOB 5.6.16 R is replaced with the following;"Section 1: 'About this illustration'Under the section heading 'About this illustration, the following text must be included:'We are required by the Financial Conduct Authority (FCA) - the independent watchdog that regulates financial services - to provide you with this illustration.All firms selling mortgages are required to give illustrations like this one, that contain similar information presented in the same way.' "

7.6.17

FCA

R

- (1) Where the further advance for which the *customer* has applied is in the form of an annual insurance premium secured by a first legal charge, a *firm*:
- (a) may, instead of providing an *illustration* in accordance with ■ MCOB 7.6.7 R, provide confirmation of the matters required by ■ MCOB 7.6.5 R ; and
  - (b) where (a) applies use the following text:"Your annual insurance premium has been/will be added to your mortgage account [unless you pay it by dd/mm/yy]. If you choose to pay it in full on or before dd/mm/yy there will be no extra cost. If you do not, interest will be charged on the amount outstanding at [insert details of the applicable interest rate e.g. 'the same rate as your mortgage' or 'the standard variable rate which is currently x%']."
- (2) If the insurance premium described in (1) is not an annual premium, (1)(a) and (b) apply but a *firm* must amend the text in (1)(b) to reflect the length of the contract.

**Rate switches**

7.6.18

FCA

R

Before a *customer* submits an application to a *firm* to change all or part of a *regulated mortgage contract* from one interest rate to another (for example, a transfer from a variable rate *regulated mortgage contract* to a fixed rate *regulated mortgage contract*, or from one fixed rate *regulated mortgage contract* to another fixed rate *regulated mortgage contract*), the *firm* must provide the *customer* with an *illustration* for the whole loan that complies with the requirements of ■ MCOB 5 (Pre-application disclosure), unless such an *illustration* has already been provided.

7.6.19

FCA

G

If a number of different *firms* are involved in relation to the transaction referred to in ■ MCOB 7.6.18 R, having regard to ■ MCOB 2.5.4 R(2), those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* required by ■ MCOB 7.6.18 R.



7.6.20  
FCA

R

The *illustration* provided in accordance with ■ MCOB 7.6.18 R may diverge from the requirements of ■ MCOB 5 where it is necessary to do so in order to reflect the fact that the *illustration* is being provided for a rate switch.

7.6.21  
FCA

G

■ MCOB 7.6.20 R allows a *firm* to make changes to wording and to add, remove or alter information that would otherwise be misleading to the *customer*. For example, a *firm* could replace the statement in Section 3 of the *illustration*, explaining that if information provided by the *customer* changes, the *illustration* may be affected, with a statement explaining that the *illustration* is based on information gathered in the past, which may no longer be accurate.

**Addition or removal of a party to the contract**

7.6.22  
FCA

R

Before a *customer* submits an application to add or remove a party to a *regulated mortgage contract*, a *firm* must provide any *customer* who will remain or become a party to the contract with an *illustration* for the whole loan that complies with the requirements of ■ MCOB 5 (Pre-application disclosure).

7.6.23  
FCA

G

The FCA would not view:

- (1) a simple notification of the death of a party to the *regulated mortgage contract* as an application for the purposes of ■ MCOB 7.6.22 R ; or
- (2) a guarantor as a party to a *regulated mortgage contract*;

so ■ MCOB 7.6.22 R does not mean that someone becoming a surviving joint borrower on or a guarantor to the *regulated mortgage contract* should receive an *illustration*.

7.6.24  
FCA

G

If a number of different *firms* are involved in relation to the transaction referred to in ■ MCOB 7.6.22 R, having regard to ■ MCOB 2.5.4 R(2), those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* required by ■ MCOB 7.6.22 R.

7.6.25  
FCA

R

The *illustration* provided in accordance with ■ MCOB 7.6.22 R may diverge from the requirements of ■ MCOB 5 (Pre-application disclosure) where it is necessary to do so in order to reflect the fact that the *illustration* is being provided in respect of the addition or removal of a party to the contract.

7.6.26  
FCA

G

■ MCOB 7.6.25 R allows the *firm* to make changes to wording and to add, remove or alter information that would otherwise be misleading to the *customer*. For example, a *firm* may choose not to include a property valuation in the 'What you have told us' section of the *illustration* if the property value does not have a bearing on the terms of the *regulated mortgage contract*.

7.6.27

R

[deleted]



**Changes to the amount of each payment due**

7.6.28

FCA

**R**

If a *customer* requests, or agrees to, a change to a *regulated mortgage contract* (other than a change as described in ■ MCOB 7.6.7 R to ■ MCOB 7.6.26 G ) that changes the amount of each payment due, a *firm* must provide the *customer* with the following information, in a single communication (subject to ■ MCOB 7.6.28AR (3)) , before the change takes effect:

- (1) the amount outstanding on the *regulated mortgage contract* at the date the change is requested;
- (2) the payment due and the frequency of payments; where it is known that the payment will change (for example at the end of a fixed rate period), the new payment and the date of the change must also be shown;
- (3) the rate of interest applying to the *regulated mortgage contract*; where it is known that the rate of interest will change, the new rate and the date of the change must also be shown;
- (4) the type of interest rate (for example fixed, or discounted); where it is known that the type of interest rate will change the new type and the date of the change must also be shown;
- (5) where the *regulated mortgage contract* will change to an *interest-only mortgage*, a prominent reminder that the *customer* should have in place arrangements to repay the capital, using the following text: 'You will still owe [insert amount borrowed or, where part of the *regulated mortgage contract* is an *interest-only mortgage*, insert the amount borrowed under the *interest-only mortgage*] at the end of the mortgage term. You will need to make separate arrangements to repay this. When comparing the new payments on this mortgage with your previous payments, remember to add any money you may need to pay into a separate savings plan to build up a lump sum to repay the amount you have borrowed.'; and
- (6) details of any charges that apply for changing the *regulated mortgage contract*.

7.6.28A

FCA

**R**

- (1) ■ MCOB 7.6.28 R (5) does not apply where the *regulated mortgage contract* is changing to an *interest-only mortgage* and interest is being deferred and capitalised by the *firm* as a result of the *customer* having payment difficulties.
- (2) Where (1) applies, the *firm* must instead provide a prominent reminder to the *customer* of the amount outstanding together with an explanation of the implications of deferred payments being

capitalised, before the change in the *regulated mortgage contract* takes effect.

(3) The reminder in (2) may be provided in a separate communication.

**7.6.29**  
**FCA**

**G**

Examples of where ■ MCOB 7.6.28 R will apply are where the *customer* requests a change from an *interest-only mortgage* to a *repayment mortgage*, requests a change to the term of his mortgage or agrees to his *arrears* being capitalised.

**7.6.30**  
**FCA**

**G**

If a number of different *firms* are involved in relation to the transaction referred to in ■ MCOB 7.6.28 R, having regard to ■ MCOB 2.5.4 R(2), those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the information required by ■ MCOB 7.6.28 R.

**Use of illustrations in place of information under MCOB 7.6.28R**

**7.6.31**  
**FCA**

**R**

Where ■ MCOB 7.6.28 R applies, a *firm* may issue an *illustration* in accordance with ■ MCOB 5 (Pre-application disclosure) in place of the information set out in ■ MCOB 7.6.28 R .

**7.6.32**  
**FCA**

**R**

Where ■ MCOB 7.6.28 R applies and the *customer* simultaneously requests a rate switch or the addition or removal of a party to the contract, a *firm* will not be required to provide the information in accordance with ■ MCOB 7.6.28 R where it is provided as part of an *illustration* issued in accordance with ■ MCOB 7.6.18 R or ■ MCOB 7.6.22 R.

**Simultaneous request for a rate switch and addition or removal of a party to a contract**

**7.6.33**  
**FCA**

**G**

Where a *customer* simultaneously requests a rate switch and the addition or removal of a party to the loan, a *firm* will not be required to provide the *customer* with a separate *illustration* for each in accordance with ■ MCOB 7.6.18 R and ■ MCOB 7.6.22 R. The *firm* may provide the *customer* with a single *illustration* that complies with the requirements of ■ MCOB 5 (Pre-application disclosure) for both.



## 7.7 Business loans

### Further advances

7.7.1

FCA

R

- (1) Where, in relation to a *regulated mortgage contract* for a business purpose, a *customer* either:
  - (a) seeks an immediate increase in the borrowing provided under the *regulated mortgage contract*; or
  - (b) overdraws on the borrowing under the *regulated mortgage contract*;the further advance rules in ■ MCOB 7.6.7 R to ■ MCOB 7.6.17 R do not apply.
- (2) Where (1) applies, the *firm* must within five *business days* provide the *customer* with either:
  - (a) a *business illustration* for the new total borrowing; or
  - (b) the following information, in a single communication:
    - (i) the new amount outstanding on the *regulated mortgage contract*;
    - (ii) details of any changes in the repayment arrangements or interest rate charged as a result of the change;
    - (iii) where there is a new *early repayment charge* or a change to the existing *early repayment charge*, the maximum amount payable as an *early repayment charge* in respect of the *regulated mortgage contract*; and
    - (iv) details of any charges that apply for changing the *regulated mortgage contract*.

7

PAGE  
19

7.7.1A

FCA

G

*Firms* are reminded that in accordance with ■ MCOB 1.2.3 R, they should either comply in full with MCOB or comply with all tailored provisions in MCOB that relate to business loans. Therefore, a firm may only follow the tailored provisions in ■ MCOB 7.7 if it also follows all other tailored provisions in MCOB.

7.7.2  
FCA

G

Where a *customer* remains in breach, for more than one month, of an agreed borrowing limit ■ MCOB 7.7 or of an obligation to repay where the *regulated mortgage contract* does not have a regular repayment plan, *firms* are reminded that ■ MCOB 13 (Arrears and repossessions) applies.

7.7.3  
FCA

R

Where a *customer* applies for a further advance that is a *regulated mortgage contract* for a business purpose and ■ MCOB 7.7.1 R does not apply:

- (1) the *business illustration* must be based upon the total borrowing; and
- (2) ■ MCOB 7.6.9 R to ■ MCOB 7.6.10 G and ■ MCOB 7.6.12 G do not apply.

**Arrangements to repay capital**

7.7.4  
FCA

R

Where ■ MCOB 7.6.28 R(5) applies, a *firm* may omit the final sentence of the required text where it is aware, in the context of an *interest-only mortgage*, that the *customer's* intention is not to use a savings plan as a *repayment vehicle* .

**Disclosure**

7.7.5  
FCA

R

■ MCOB 7.4 (Disclosure at the start of the contract) does not apply in relation to a *regulated mortgage contract* that is for a business purpose.



## 7.8 Home purchase plans

7.9

### General

**Note:** The rules in this chapter regarding how a *firm* must provide information required by this section apply (see ■ MCOB 7.3).

### Post-sale disclosure

---

7.8.1

**R**

A *firm* that enters into a home purchase plan with a *customer* must ensure that before making the first payment the *customer* is provided with a prominent reminder that the *customer* should check that his right to occupy the property has been properly safeguarded.

FCA

7.8.2

**G**

A *firm* is reminded of its obligation to ensure that its *customer's* interests are protected to a reasonable standard (see ■ MCOB 2.6A).

FCA

### Annual statement

---

7.8.3

**R**

A *firm* must provide the *customer* with a statement at least once a year (or, in relation to the first statement, within the first 13 months of the plan term) covering the *home purchase plan* and including information about:

FCA

- (1) payments due and made during the period since the last statement (or, where the statement is the first statement, since the *customer* entered into the *home purchase plan*), including:
  - (a) whether the payment is a rental payment or a purchase payment;
  - (b) the applicable rental rate(s);
  - (c) where relevant, the *customer's* beneficial interest in the property;
- (2) the remaining acquisition amount;
- (3) the actual remaining term;
- (4) the ability of the *customer* to terminate it early and sell the property, together with any charges that would apply.

**Annual statement - additional content for customers in arrears**

7.8.4  
FCA

G

If a *firm* uses the annual statement to provide a *customer* with a written statement relating to *arrears*, it will need to include the actual payment shortfall in the annual statement (see ■ MCOB 13.5.2 G (4)).

7.8.5  
FCA

G

In some circumstances, a *firm* may agree a temporary payment plan with a *customer* that does not involve the customer paying the full amount he owes in each payment period. Where an account in *arrears* is subject to such a payment plan, and the amount that falls due each payment period is greater than the agreed payment, the *firm* will still need to show the payments that were due during the period since the last statement. However, in these circumstances, the *firm* may wish to add information to acknowledge that a temporary payment plan is in place.

**Tariff of charges**

7.8.6  
FCA

R

A *firm* must include a *tariff of charges* with the annual statement if it has changed since the previous version provided.

**Event-driven information**

7.8.7  
FCA

G

When a post-sale variation of the *home purchase plan* is proposed or takes place, a *firm* should have regard to the *Principles* (in particular, *Principles 6* and *7*) in determining the action it should take and what information to provide to the *customer*.



**7.9 Post-sale disclosure for regulated sale and rent back agreements**

7.9.1

FCA

**R**

Where the terms of a *regulated sale and rent back agreement* include a provision conferring upon the *SRB agreement seller* a right to receive any sum, or exercise any option, in relation to the transaction after it has been concluded, the *SRB agreement provider* must take reasonable steps to inform the *SRB agreement seller* in good time of any steps which the *SRB agreement seller* must take if he wishes to receive the sum or exercise the option.

7





**An example of the Total Borrowing section.**

**FCA**

This Annex belongs to MCOB 7.6.12G

**7a. Total Borrowing**

This section gives you information about how your mortgage will be affected by taking out this additional borrowing. Talk to your mortgage lender if you are not sure of the details of your current mortgage.

When this additional borrowing is added to your existing mortgage, the total amount you owe will be £ x and your monthly payments based on this amount will be

**Monthly Payment**

Initial monthly payment £a

After 12 months the discount period on your further borrowing will end, and assuming rates do not change, your new monthly payment will be £b

After 26 months the fixed rate period on a portion of your mortgage will end, and assuming rates do not change, your new monthly payment will be £c

Remember to add the cost of any savings plan to these monthly payments

7



## Chapter 8

# Equity release: advising and selling standard



## 8.1 Application

### Who?

8.1.1  
FCA

**R** This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 8.1.2 R in accordance with column (2) of that table.

8.1.2  
FCA

**R** Table This table belongs to ■ MCOB 8.1.1 R

| (1) Category of firm           | (2) Applicable section  |
|--------------------------------|---|
| <i>equity release provider</i> | whole chapter except MCOB 8.5 and MCOB 8.7  |
| <i>equity release adviser</i>  | whole chapter except MCOB 8.6 . MCOB 8.7 does not apply in relation to a <i>lifetime mortgage</i> |
| <i>equity release arranger</i> | whole chapter except MCOB 8.5. MCOB 8.7 does not apply in relation to a <i>lifetime mortgage</i>  |

### What?

8.1.3  
FCA

- R**
- (1) This chapter applies to a *firm* in the course of carrying on an *equity release activity* :
    - (a) makes, or anticipates making, a *personal recommendation* about; or
    - (b) gives, or anticipates giving, personalised information relating to;
 

*the customer:*
    - (c) entering into an *equity release transaction*; or
    - (d) varying the terms of an *equity release transaction* entered into by the *customer*.
  
  - (2) In respect of *arranging* or *advising on a home reversion plan* for a *customer* who is acting in his capacity as an *unauthorised*

8.1.4

FCA

R

*reversion provider*, only ■ MCOB 8.1, ■ MCOB 8.2 and ■ MCOB 8.7 apply.

- (1) Initial disclosure requirements apply only in relation to varying the terms of an *equity release transaction* entered into by the *customer* in any of the following ways:
  - (a) adding or removing a party;
  - (b) taking out a further advance; or
  - (c) switching all or part of the *lifetime mortgage* from one interest rate to another.
  
- (2) Otherwise, this chapter applies in relation to any form of variation of an *equity release transaction*.

8.1.5

FCA

G

If a *firm* is an *authorised professional firm*, ■ MCOB 1.2.10 R (3) has the effect that when the *firm* conducts *non-mainstream regulated activities* with a customer, ■ MCOB 4.4 (Initial disclosure requirements) (as modified by ■ MCOB 8) applies. The *firm* is only required to provide the initial disclosure information in section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme (FSCS)?) of the *initial disclosure document* or *combined initial disclosure document*.



## 8.2 Purpose

8.2.1

FCA

G

The purpose of this chapter for *equity release transactions* is the same as that for *regulated mortgage contracts* and *home purchase plans* in ■ MCOB 4.

## 8.3 Application of rules in MCOB 4

8.3.1

FCA

R

- (1) (a) Subject to (c), ■ MCOB 4.1 to ■ MCOB 4.6 and ■ MCOB 4.8 (with the modifications stated in ■ MCOB 8.3.3 R and ■ MCOB 8.3.4 R) apply to a *firm* where the *home finance transaction* is a *lifetime mortgage*.
  - (b) ■ MCOB 4.1 to ■ MCOB 4.4 and ■ MCOB 4.8 (with the modifications stated in ■ MCOB 8.3.3 R and ■ MCOB 8.3.4 R) apply to a *firm* where the *home finance transaction* is a *home reversion plan*, except for those provisions that by their nature are only relevant to *regulated mortgage contracts*.
- (2) The table in ■ MCOB 8.3.3 R shows how the relevant *rules* and *guidance* in ■ MCOB 4 must be modified by replacing the cross-references in that chapter with the relevant cross-references to *rules* and *guidance* in ■ MCOB 8.
- (3) The table in ■ MCOB 8.3.4 R replaces certain *rules* and *guidance* in ■ MCOB 4 with *rules* and *guidance* from ■ MCOB 8.
- (4) The terms that by their nature are relevant only to *regulated mortgage contracts* must be replaced with the appropriate equivalent terms and expressions for *home reversion plans*.

8.3.1A

FCA

G

The *rules* and *guidance* that are not relevant to *home reversion plans* are those related, for example, to interest rates, *APR*, *higher lending charge*, *mortgage credit cards*, multi-part mortgages and foreign currency mortgages.

8.3.1B

FCA

G

*Firms* should substitute equivalent home reversion terminology for *lifetime mortgage* terminology, where appropriate. Examples of terms and expressions that should be replaced in relation to *home reversion plans* are 'loan' or 'amount borrowed', which should be replaced with 'amount released' or 'amount to be released', as appropriate, and '*mortgage lender*' and '*mortgage intermediary*' which should be replaced with '*reversion provider*' and '*reversion intermediary*'.

PAGE  
5

8.3.2

FCA

R

In applying initial disclosure requirements to *equity release transactions*, the market for *equity release transactions* should be treated as one single market with two separate sectors. References to the 'whole market' must

be read as references to the whole market for *equity release transactions*. This is unless the *firm* only gives personalised information or *advice* to *customers* on products in one market sector, in which case references to the 'whole market' must be read as references to the whole market for *lifetime mortgages* or *home reversion plans* as the case may be.

**8.3.2A**  
**FCA**

**G**

The effect of the *rules* on independence is that a *firm* that sells *lifetime mortgages* and *home reversion plans* from the whole market and enables the *customer* to pay a fee for the provision of the service, can hold itself out as being 'independent' for the equity release market (see ■ MCOB 4.3.7 R). If the *firm* offers a service on this basis for only one of these market sectors, then it can only describe itself as 'independent' for that sector.

**8.3.3**  
**FCA**

**R**

**Table Table of modified cross-references to other rules: This table belongs to ■ MCOB 8.3.1 R.**

| Subject   | Rule or guidance                 | Reference in rule or guidance | To be read as a reference to:              |
|---|----------------------------------|-------------------------------|--|
| Advice or information from the whole market   | <i>MCOB</i> 4.3.4R(2)            | <i>MCOB</i> 4.7.2R            | <i>MCOB</i> 8.5.2R                         |
| Initial disclosure requirement (for <i>equity release transactions</i> only)  | <i>MCOB</i> 4.4.1R(1)(c) and (3) | <i>MCOB</i> 4 Ann 1R          | <i>MCOB</i> 8 Ann 1R                       |
| Initial disclosure requirements   | <i>MCOB</i> 4.4.3G               | <i>MCOB</i> 4                 | <i>MCOB</i> 4 as modified by <i>MCOB</i> 8 |
| Initial disclosure requirements where initial contact is by telephone (for <i>equity release transactions</i> only) | <i>MCOB</i> 4.4.7R(2)            | <i>MCOB</i> 4 Ann 1R          | <i>MCOB</i> 8 Ann 1R                       |
| Additional disclosure for <i>distance mortgage mediation contracts</i>  | <i>MCOB</i> 4.5                  | <i>MCOB</i> 4                 | <i>MCOB</i> 4 as modified by <i>MCOB</i> 8 |
| Non-advised sales   | <i>MCOB</i> 4.8.6G               | <i>MCOB</i> 4.7               | <i>MCOB</i> 8.5                            |

**8.3.4**  
**FCA**

**R**

**Table Table of rules in ■ MCOB 4 replaced by rules in ■ MCOB 8: This table belongs to ■ MCOB 8.3.1 R.**

| Subject       | Rule(s)         | Rule(s) replaced by |
|---------------|-----------------|---------------------|
| Advised sales | <i>MCOB</i> 4.7 | <i>MCOB</i> 8.5     |





**8.4** [deleted]

**8.4.1**

**R**

[deleted]

**8**



## 8.5 Advised sales

### Suitability: general

8.5.1  
FCA

G

*Principle 9* requires a *firm* to take reasonable care to ensure the suitability of its advice. In accordance with that *principle*, a *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant for the purposes of ■ MCOB 8.5.

8.5.2  
FCA

R

A *firm* must take reasonable steps to ensure that it does not make a *personal recommendation* to a *customer* to enter into an *equity release transaction*, or to vary an existing *equity release transaction*, unless it is, or after the variation will be, suitable for that *customer* (see ■ MCOB 4.3.4 R(2), ■ MCOB 4.3.5 G and ■ MCOB 4.3.6 G).

8.5.3  
FCA

R

In this section, a reference to a recommendation to enter into an *equity release transaction* is to be read as including a reference to a recommendation to vary an existing *equity release transaction* if the context so requires.

8.5.4  
FCA

R

- (1) An *equity release transaction* will be suitable if, having regard to the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or should reasonably be aware, the *firm* has reasonable grounds to conclude that:
  - (a) the benefits to the *customer* outweigh any adverse effect on:
    - (i) the *customer's* entitlement (if any) to means-tested benefits; and
    - (ii) the *customer's* tax position (for example the loss of an Age Allowance);
  - (b) alternative methods of raising the required funds such as, in particular:
    - (i) an *equity release transaction* from the other market sector; or
    - (ii) (where relevant) a local authority (or other) grant; are less suitable;

- (c) where the *equity release transaction* requires that payments are made to the *equity release provider* (for example an *interest-only mortgage*), the *customer* can afford to enter into the transaction;
  - (d) the *equity release transaction* is appropriate to the needs, objectives and circumstances of the *customer*; and
  - (e) the *equity release transaction* is the most suitable of those that the *firm* has available to it within the scope of the service provided to the *customer*;
- (2) No recommendation must be made if there is no *equity release transaction* from within the scope of the service provided to the *customer* which is appropriate to his needs and circumstances; and
- (3) If a *firm* is dealing with an existing *customer* in *arrears* and has concluded that there is no suitable *lifetime mortgage* for the purposes of ■ MCOB 8.5.2 R, the *firm* must nonetheless have regard to ■ MCOB 13.3.2 E(1)(a), (e) and (f) (see also ■ MCOB 13.3.4 G(1)(a) and (b)).

**Suitability: means-tested benefits, customer's tax position and alternative methods of finance**

8.5.5

FCA

R

In determining whether ■ MCOB 8.5.4 R(1)(a) applies, where a *firm* has insufficient knowledge of means-tested benefits and tax allowances to reach a conclusion, the *firm* must refer a *customer* to an appropriate source or sources such as the Pension Service, HM Revenue and Customs or Citizens Advice Bureau (or other similar agency) to establish the required information.

8.5.6

FCA

A

- (1) In determining whether ■ MCOB 8.5.4 R(1)(b)(ii) applies a *firm* should:
- (a) establish, on the basis of information given by the *customer* about his needs and objectives, whether these appear to be within the general scope of a local authority (or other) grant (for example where the *customer* requires funds for essential repairs to his property); and
  - (b) refer a *customer* to an appropriate source such as his local authority or Citizens Advice Bureau (or other similar agency) to identify whether such a grant is available to him.
- (2) Compliance with (1) may be relied upon as tending to show compliance with ■ MCOB 8.5.4 R(1)(b)(ii).

8.5.7

FCA

**R** If for any reason a *customer*:

- (1) declines to seek further information on means-tested benefits, tax allowances or the scope for local authority (or other) grants; or
- (2) rejects the conclusion of a *firm* that alternative methods of raising the required funds are more suitable;

a *firm* can make a *personal recommendation* (in accordance with the remaining requirements of this chapter ) where there is an *equity release transaction* (or more than one *equity release transaction*) that is appropriate to the needs and circumstances of the *customer*, but must confirm to the *customer*, in a *durable medium*, the basis on which the *personal recommendation* has been made.

8.5.8

FCA

**R** In determining whether an *equity release transaction* from the other market sector is less suitable, and the appropriateness of the transaction to the *customer's* needs, objectives and circumstances , a *firm* must consider:

- (1) whether the *customer's* requirements meet the eligibility criteria for the *equity release transaction* (for example, the amount that the *customer* wishes to borrow or to release, the loan-to-value ratio, the age of the *customer*, the value of the property, as appropriate);
- (2) the *customer's* preferences for his estate (for example, whether the *customer* wishes to be certain of leaving a bequest to his family or others);
- (3) the *customer's* health and life expectancy;
- (4) the *customer's* future plans and needs (for example, whether the *customer* is likely to need to raise further funds or is likely to move house);
- (5) whether the *customer* has a preference or need for stability in the amount of payments (where payments are required) especially having regard to the impact on the *customer* of significant interest rate changes in the future; and
- (6) whether the *customer* has a preference or need for any other features of a an *equity release transaction*.

8.5.9

FCA

**G** Where a *firm* sells only *lifetime mortgages* it is not required to assess the suitability of individual *home reversion plans*, and vice-versa. However, where a *firm* sells products from both market sectors, it should assess the suitability of all *equity release transactions* within its range.

**Suitability: affordability**

8.5.10

FCA

R

In relation to ■ MCOB 8.5.4 R(1)(c), a *firm* must explain to the *customer* that the assessment of whether he can afford to enter into a *lifetime mortgage* is based on:

- (1) current interest rates, which might rise in the future; and
- (2) the *customer's* current circumstances, which might change in the future.

8.5.11

FCA

R

In relation to whether the *equity release transaction* is affordable and appropriate to the *customer's* needs, objectives and circumstances, where a *firm* makes a *personal recommendation* to a *customer* to enter into an *equity release transaction* where a main purpose is to consolidate existing debts, it must also take account of the following, where relevant, in assessing whether the *equity release transaction* is suitable for the *customer*:

- (1) the costs associated with increasing the period over which a debt is to be repaid;
- (2) whether it is appropriate for the *customer* to secure a previously unsecured loan; and
- (3) where the *customer* is known to have payment difficulties, whether it would be more appropriate for the *customer* to negotiate an arrangement with his creditors than to enter into an *equity release transaction*.

8.5.12

FCA

E

(1) In assessing whether a *customer* can afford to enter into a particular *equity release transaction*, a *firm* should give due regard to the following:

- (a) information that the *customer* provides about his income and expenditure, and any other resources that he has available;
- (b) any likely change to the *customer's* income, expenditure or resources; and
- (c) the costs that the *customer* will be required to meet once any discount period in relation to the *lifetime mortgage* comes to an end (on the assumption that interest rates remain unchanged).

(2) Contravention of ■ MCOB 8.5.12 E(1) may be relied upon as tending to show contravention of ■ MCOB 8.5.4 R(1)(c).

8.5.13

FCA

G

A *firm* may generally rely on any information provided by the *customer* for the purposes of ■ MCOB 8.5.4 R(1)(c) and (d) and ■ MCOB 8.5.8 R(2) to ■ MCOB 8.5.8 R(6) unless, taking a common-sense view of this information, it has reason to doubt it.

8.5.14  
FCA

G

Different considerations apply when making a *personal recommendation* to a *customer* in *arrears*. For example, the circumstances of the *customer* may mean that, viewed as a new transaction, a *customer* could not be recommended to enter into an *equity release transaction*. In such cases, a *firm* will still be able to make a *personal recommendation* to that *customer* where this recommendation is, in the circumstances, a more suitable one than the *customer's* existing *equity release transaction*.

8.5.15  
FCA

G

In complying with ■ MCOB 8.5.4 R a *firm* is not required to consider whether it would be preferable for the *customer* to:

- (1) trade down (that is release funds by selling his existing property and purchasing a less expensive property) rather than enter into an *equity release transaction*;
- (2) rent a property, rather than purchase one or enter into an *equity release transaction* on his existing property; or
- (3) delay entering into an *equity release transaction* until a later date on the grounds that property prices would have changed in the intervening period, or that the interest rate in relation to a *lifetime mortgage* would be lower, or both.

**Suitability: appropriate to the customer's needs, objectives and circumstances**

8.5.16  
FCA

G

- (1) ■ MCOB 8.5.4 R(1)(d) does not require a *firm* to provide *advice on investments*. Whether such *advice* should be given will depend upon the individual needs and circumstances of the *customer*. Where considered relevant, ■ MCOB 8 does not restrict the ability of an adviser to refer the *customer* to another source of *investment advice* (for example, where the adviser is not qualified to provide *advice on investments*).
- (2) Where the scope of the *advice* provided is based on a selection of *equity release transactions* from a single or limited number of providers, the assessment of suitability should not be limited to the *equity release transactions* which the *firm* offers. A *firm* cannot recommend the 'least worst' *equity release transaction* where the *firm* does not have access to products appropriate to the *customer's* needs and circumstances. This means, for example, that a *firm* dealing solely in the sub-prime market should not recommend one of these *equity release transactions* if approached for *advice* by a *customer* with an unblemished credit record.

8.5.16A  
FCA

G

In assessing whether a *home reversion plan* is appropriate to the needs, objectives and circumstances of its *customer*, matters that a *firm* should take into account include:

- (1) the duration of the right to occupy the property; and
- (2) where an *unauthorised reversion provider* will provide the plan, the loss of those protections of the *regulatory system* that apply when a *customer* enters into a *home reversion plan* with an authorised *reversion provider*.

**Suitability: most suitable**

8.5.17

**A**

FCA

- (1) A *firm* should, out of all the *equity release transactions* identified as being appropriate for that *customer*, recommend the one that is the least expensive for that *customer* taking into account those pricing elements identified by the *customer* as being most important to him.
- (2) Compliance with (1) may be relied upon as tending to show compliance with ■ MCOB 8.5.4 R(1)(e).

8.5.18

**G**

FCA

- (1) With regard to ■ MCOB 8.5.17 E(1) different *customers* are likely to identify different pricing elements as being of most importance. For example, it may be the overall cost, a fixed or capped rate of interest, the inclusion of a 'no negative equity' guarantee, or the absence of *early repayment charges* that a *customer* considers most important.
- (2) A *firm* is not prevented from making a recommendation on grounds other than price. For example, it would be open to a *firm* to have regard to the speed or quality of service of different *equity release providers*, the policies of *equity release providers* on further lending or capital repayments, the underwriting stance of *equity release providers* or the *customer's* wish for an *equity release transaction* that is compliant with Islamic law. The obligation to have reasonable grounds to conclude that the transaction is the most suitable remains the same in such cases.

8.5.19

**G**

FCA

- (1) If circumstances arise in which a *firm* has reasonable grounds to conclude that there are several *equity release transactions* that would be suitable, the *firm* may recommend only one of those *equity release transactions*.
- (2) If for any reason a *customer* rejects a recommendation made by a *firm* (for example, on the grounds that the *equity release provider* selected is unknown to him), the *firm* can make a further suitable recommendation where there remains an *equity release transaction* that is appropriate to the needs and circumstances of the *customer*.

**Rejected recommendations**

8.5.20

**R**

FCA

- (1) If a *customer* has:
  - (a) rejected all of the *personal recommendations* made by a *firm* and requested information instead on an *equity release transaction* that the *firm* does not consider suitable (and therefore could not recommend to the *customer*); and
  - (b) been issued with a new *initial disclosure document* or *combined initial disclosure document*;

the *firm* may be able to provide information on that *equity release transaction* in the light of the information on which the *personal recommendations* in (1) were made.
- (2) If the *firm* needs to ask further questions regarding the needs and circumstances of the *customer* to be able to provide information

on that *equity release transaction*, the *firm* must obtain that information by asking scripted questions (in accordance with the *rules* on non-advised sales).

8.5.21

FCA

G

A *firm* may consider it prudent to record any cases where, after all *personal recommendations* it has made to a *customer* have been rejected, it changes the nature of the service it provides and provides the *customer* with information about an *equity release transaction*.

### Record keeping

8.5.22

FCA

R

- (1) A *firm* must make and retain a record:
  - (a) of the *customer* information, including that relating to the *customer's* needs and circumstances, that it has obtained for the purposes of ■ MCOB 8.5; and
  - (b) that explains why the *firm* has concluded that any *personal recommendation* given in accordance with ■ MCOB 8.5.2 R satisfies the suitability requirements in ■ MCOB 8.5.4 R(1). This explanation must include, where this is the case, the reasons why a *personal recommendation* has been on a basis other than that described in ■ MCOB 8.5.17 E(1).
- (2) The record in (1) must be retained for a minimum of three years from the date on which the *personal recommendation* was made.





**8.5A [Not yet in force]**



## 8.6 Non-advised sales

8.6.1  
FCA

R

The questions used to help a *customer* select an *equity release transaction* must cover the following:

- (1) the matters regarding eligibility criteria, *customer's* preferences for his estate, *customer's* health and life expectancy, *customer's* future plans and needs, *customer's* preference or need for stability in the amount of payments, and whether the *customer* has a preference or need for any other features, set out in ■ MCOB 8.5.8 R;
- (2) whether the *customer* has considered alternative methods of raising the required funds, and in particular;
  - (a) an *equity release transaction* from the other market sector; and
  - (b) where relevant, grant assistance from his local authority (or other provider); and
- (3) whether the *customer* has established whether either his entitlement to means-tested benefits or his tax position or both will be adversely affected.

8.6.2  
FCA

G

A *firm* should encourage a *customer* to seek *advice* on an *equity release transaction* if the *customer* is unsure about making their own choice. In relation to grant assistance, means-tested benefits and the *customer's* tax position, a *firm* should, where relevant, encourage the *customer* to seek further information from an appropriate source such as their local authority or Citizens Advice Bureau (or other similar agency).

8.6.3  
FCA

G

Firms are reminded that the Training and Competence sourcebook sets out requirements for:

- (1) *employees* designing scripted questions for use with *customers* in non-advised sales of *equity release transactions* ; and
- (2) *employees* overseeing on a day-to-day basis the non-advised sales to *customers* of *equity release transactions* .



**8.6A [Not yet in force]**



## 8.7 Initial disclosure information: unauthorised reversion provider

8.7.1  
FCA

**R**

A *firm* must ensure that, on first making contact with a *customer* who is an individual and an *unauthorised reversion provider*, when it anticipates giving personalised information or advice on a *home reversion plan*, it must provide the *customer* with the following warnings in a *durable medium*:

- (1) that a *home reversion plan* is a long-term investment; and
- (2) that a *home reversion plan* is a complex legal arrangement, and that expert independent legal advice should be obtained before entering into any agreement.

---

## **Initial disclosure document**

**FCA**

This annex belongs to **■ MCOB 4.4.1 R** (as modified by **■ MCOB 8** )

This annex consists only of one or more forms. Forms are to be found through the following address:

*Initial Disclosure Document MCOB 8 Annex 1*



---

**Combined initial disclosure document [deleted]**

[deleted]





## Chapter 9

# Equity release: product disclosure



## 9.1 Application

### Who?

9.1.1  
FCA

R

This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 9.1.2 R in accordance with column (2) of that table , except that those provisions that by their nature are only relevant to *regulated mortgage contracts* do not apply to *home reversion plans* .

9.1.2  
FCA

R

Table This table belongs to ■ MCOB 9.1.1 R

| (1) Category of firm                         | (2) Applicable section   |
|--|--|
| <i>mortgage lender</i>                       | MCOB 9.1 - MCOB 9.4.132 R, MCOB 9.5 - MCOB 9.8                           |
| <i>mortgage administrator</i>                | MCOB 9.1, MCOB 9.2, MCOB 9.6 and MCOB 9.8                                |
| <i>mortgage adviser ; mortgage arranger</i>  | MCOB 9.1 - MCOB 9.4.132 R and MCOB 9.8.5 R - MCOB 9.8.10 R               |
| <i>reversion provider</i>                    | MCOB 9.1 - MCOB 9.4.17A R, MCOB 9.4.133 R - MCOB 9.6; MCOB 9.9           |
| <i>reversion administrator</i>               | MCOB 9.1, MCOB 9.6 and MCOB 9.9  |
| <i>reversion adviser; reversion arranger</i> | MCOB 9.1 - MCOB 9.4.17A R, MCOB 9.4.133 R - MCOB 9.4.176 G; MCOB 9.9.8 R |

9.1.2A  
FCA

G

The *rules* and *guidance* that are not relevant to *home reversion plans* are those related, for example, to interest rates, *APR*, *higher lending charge*, *mortgage credit cards*, multi-part mortgages and foreign currency mortgages.

9.1.3  
FCA

R

### What?

This chapter applies in the circumstances set out in other *rules* in this sourcebook, but in relation to an *equity release transaction* , in accordance with the table in ■ MCOB 9.1.4 R.

9.1.4

FCA

R

Table This table belongs to ■ MCOB 9.1.3 R

| Section of MCOB 9  | Applies in relation to an <i>equity release transaction</i> as set out in the following rules: |
|--------------------|--|
| MCOB 9.1, MCOB 9.2 | <b>all of the rules below in this column</b>   |
| MCOB 9.3, MCOB 9.4 | MCOB 5.1.3 R   |
| MCOB 9.5           | MCOB 6.1.3 R   |
| MCOB 9.6           | MCOB 7.1.3 R   |

9.1.5

FCA

R

In this chapter, references to an *equity release transaction* include, where the context requires, references to arrangements which are capable of becoming an *equity release transaction* .

9.1.6

FCA

R

This chapter does not apply in relation to *arranging, advising on or administering a home reversion plan* for a customer acting in his capacity as an *unauthorised reversion provider*.



## 9.2 Purpose

9.2.1  
FCA

G

The purpose of the requirements in this chapter is the same as that in ■ MCOB 5.2, ■ MCOB 6.2 and ■ MCOB 7.2 in respect of *equity release transactions* .



## 9.3 Pre-application disclosure

9.3.1

FCA

R

- (1) ■ MCOB 5.1 to ■ MCOB 5.5 (with the modifications stated in ■ MCOB 9.3.2 R to ■ MCOB 9.3.12 R) apply to a *firm* where the *home finance transaction* is an *equity release transaction*, except that those provisions that by their nature are only relevant to *regulated mortgage contracts* do not apply to *home reversion plans* (see ■ MCOB 9.1.2A G).
- (2) The table in ■ MCOB 9.3.2 R shows how the relevant *rules* and *guidance* in MCOB 5 must be modified by replacing the cross-references with the relevant cross-references to *rules* and *guidance* in ■ MCOB 9.3 and ■ MCOB 9.4.
- (3) The table in ■ MCOB 9.3.3 R replaces certain *rules* and *guidance* in MCOB 5 with *rules* and *guidance* from ■ MCOB 9.3 and ■ MCOB 9.4.
- (4) The table in ■ MCOB 9.3.4 R disapplies certain *rules* in MCOB 5 for the purposes of MCOB 9.
- (5) The terms that by their nature are relevant only to *regulated mortgage contracts* must be replaced with the appropriate equivalent terms and expressions for *home reversion plans*.

9.3.1A

FCA

G

The provisions in this sourcebook that apply to *home reversion plans* should be read in a purposive way. This means that *firms* should substitute equivalent home reversion terminology for *lifetime mortgage* terminology, where appropriate. Examples of terms and expressions that must be replaced are 'loan' or 'amount borrowed', which should be replaced with 'amount released' or 'amount to be released', as appropriate, and '*mortgage lender*' and '*mortgage intermediary*' which should be replaced with '*reversion provider*' and '*reversion intermediary*'.

PAGE  
5

9.3.2

FCA

R

### Table Table of modified cross-references to other rules.

This table belongs to ■ MCOB 9.3.1 R.

| Subject  | Rule or guidance      | Reference in rule or guidance        | To be read as a reference to:                      |
|--|-----------------------|--------------------------------------|--|
| Variations                                       | <i>MCOB 5.1.3R(2)</i> | <i>MCOB 7</i>                        | <i>MCOB 7 as modified by MCOB 9</i>                |
| Part of loan not an equity release transaction   | <i>MCOB 5.1.9G</i>    | <i>MCOB 5.6.6R(2)</i>                | <i>MCOB 9.4.6R(2)</i>                              |
| Waiver of provisions                             | <i>MCOB 5.1.10G</i>   | <i>MCOB 5.6</i>                      | <i>MCOB 9.4.</i>                                   |
| Purpose  | <i>MCOB 5.2.1G</i>    | <i>MCOB 5</i>                        | <i>MCOB 5 as modified by MCOB 9</i>                |
| Applying for a lifetime mortgage                 | <i>MCOB 5.3.2G</i>    | <i>MCOB 5.6.26R and MCOB 5.6.27R</i> | <i>MCOB 9.4.26R and MCOB 9.4.27R</i>               |
| Tied products                                    | <i>MCOB 5.4.24G</i>   | <i>MCOB 5.6.74R</i>                  | <i>MCOB 9.4.73R or MCOB 9.4.160R</i>               |
| Issue of offer document in place of illustration | <i>MCOB 5.5.3G</i>    | <i>MCOB 6.4 and MCOB 6.6</i>         | <i>MCOB 6.4 and MCOB 6.6 as modified by MCOB 9</i> |
| Customer's credit record                         | <i>MCOB 5.5.16R</i>   | <i>MCOB 5.5.15R(4)</i>               | <i>MCOB 9.3.12R(3)</i>                             |

9

9.3.3  
FCA

**R** Table Table of rules in *MCOB 5* replaced by rules in *MCOB 9*: This table belongs to *MCOB 9.3.1R*

| Subject                                 | Rule(s) or guidance              | Rule(s) or guidance replaced by:  |
|---|----------------------------------|-----------------------------------|
| Accuracy of the illustration            | <i>MCOB 5.4.2R - MCOB 5.4.7G</i> | <i>MCOB 9.3.5R - MCOB 9.3.10G</i> |
| Information that is not an illustration | <i>MCOB 5.4.14R</i>              | <i>MCOB 9.3.11R</i>               |
| Providing an illustration               | <i>MCOB 5.5.15R -</i>            | <i>MCOB 9.3.12R -</i>             |
| Content of illustration                 | <i>MCOB 5.6</i>                  | <i>MCOB 9.4</i>                   |

9.3.4  
FCA

**R** Table Table of rules in *MCOB 5* which do not apply to *MCOB 9*: This table belongs to *MCOB 9.3.1R*.

| Subject   | Rule(s)      |
|---|--------------|
| Illustrations for repayment mortgages and interest-only mortgages | MCOB 5.5.13R |
| Business loans  | MCOB 5.7     |

9.3.5  
FCA

**R** An *illustration* on a particular *equity release transaction* issued by, or on behalf of an *equity release provider*, must be an accurate reflection of the costs of the *equity release transaction*.

9.3.6  
FCA

**R** A *mortgage intermediary* must take reasonable steps to ensure that an *illustration* which it issues, or which is issued on its behalf, other than that provided by a *mortgage lender*:

- (1) is accurate within the following tolerances:
  - (a) no more than one percent or 1, whichever is the greater, below the actual figures charged by the *mortgage lender* for the following:
    - (i) the *total amount payable* in Section 15 of the *illustration*;
    - (ii) the amounts that the *customer* must pay by regular instalment (where payments are required), or the amounts of interest charged, in Section 8 of the *illustration*; and
    - (iii) the amount by which the regular instalment, or the estimated amount owed, would increase following a one percentage point increase in interest rates in Section 9 of the *illustration*.
  - (b) the *APR* in Section 15 of the *illustration* cannot be understated by more than 0.1%; and
- (2) except in the case of conveyancing fees and insurance premiums (where estimates may be used), is accurate in respect of other figures quoted in the *illustration* including fees payable to the *mortgage lender* or *mortgage intermediary* in Section 11 and cash examples of *early repayment charges*, calculated in accordance with the rules at ■ MCOB 9.4.83 R to ■ MCOB 9.4.88 R, in Section 13.

9.3.6A  
FCA

**R** A *reversion intermediary* must take reasonable steps to ensure that an *illustration* which it issues, or which is issued on its behalf, other than that provided by an *reversion provider*, is accurate, except in the case of conveyancing fees and insurance premiums (where estimates may be used).

PAGE  
7

9.3.7  
FCA

**G** Given that the *APR* is presented as a percentage, and must be rounded to one decimal place in accordance with MCOB 10 (Annual Percentage Rate), *firms* should note that the tolerance allowed for the *APR* in ■ MCOB 9.3.6 R(1)(b) means that, for example, where the actual *APR* is 5.0%, the quoted *APR* must be no lower than 4.9%, or where the actual *APR* is 16.0%, the quoted *APR* must be no lower than 15.9%.

9.3.8  
FCA

G

There are no restrictions on figures which are quoted as higher than those actually charged by the *equity release provider* although this should not be purposely done in order to make one *equity release transaction* look more expensive than another.

9.3.9  
FCA

G

It is the responsibility of an *equity release intermediary* to ensure an *illustration* is accurate. However, where a *firm* can show that it was reasonable for it to rely on information provided to it by another *person*, other than the *equity release provider*, he may be able to rely on that *person* (see ■ MCOB 2.5.2 R).

9.3.10  
FCA

G

An *offer document* may not always exactly match the *illustration* provided before application even when the equity release requirements have not changed. For example, where a fixed rate has a defined end date, the *total amount payable* may be different because the number of payments at the fixed rate has reduced, or the estimated amount of interest to be charged has changed, assuming a later date at which the *lifetime mortgage* will start.

9.3.11  
FCA

R

Where a *firm* provides a *customer* with information specific to an *equity release transaction* on a screen :

- (1) if the *customer* initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed equally prominently on each page on screen: This information does not contain all of the details you need to choose an equity release product . Make sure that you read the separate key facts illustration before you make a decision.
- (2) a *firm* must not provide a customised print function where the information on the screen would not be in the form of an *illustration* if the information were printed in hard copy.

9.3.12  
FCA

R

In meeting a request for written information specific to the *customer's* requirements on a particular *equity release transaction* (see ■ MCOB 5.5.1 R (2)(c)) , the *firm* must not delay the provision of the *illustration* by requesting information other than:

- (1) the information necessary to personalise the *illustration* , if the *firm* does not already know it;
- (2) where the *firm* is uncertain whether the transaction will be an *equity release transaction*, such information as is necessary to ascertain this;
- (3) where the interest rates, payments (if required) or any other terms and conditions to be included in the *illustration* are dependent on the *customer's* credit record, such information as is necessary to produce an *illustration*;



- (4) where the *firm* includes a quotation for any *tied products* or compulsory insurance in the *illustration*, such information as is necessary to produce those quotations; and
- (5) where the *customer* agrees to receive a quotation for insurance in the *illustration* (other than that provided for in (4)), such information as is necessary to produce those quotations



## 9.4 Content of illustrations

### Purpose

9.4.1  
FCA

G

This section sets out the required content of an *illustration* for an *equity release transaction* provided to a *customer* by a *firm*. The template of an *illustration* for a *lifetime mortgage* is set out in ■ MCOB 9 Annex 1 R and for a *home reversion plan*, in ■ MCOB 9 Annex 2 R.

### Content, order, format etc

9.4.2  
FCA

R

An *illustration* provided to a *customer* must:

- (1) contain the material set out in the relevant annex to this chapter in the order and using the numbered section headings, sub-headings and text prescribed, except where this section provides otherwise;
- (2) follow the format of the template in the relevant annex to this chapter , with:
  - (a) prominent use of the keyfacts logo followed by the text 'about this lifetime mortgage' or 'about this home reversion plan' ;
  - (b) each section clearly separated;
  - (c) all the amounts set out in Sections 6, 8, 11, 12 and 15 in columns that make the amounts clear; and
  - (d) no section split across different pages except where it is impractical not to do so;
- (3) use font sizes and typefaces consistently throughout the *illustration* which are sufficiently legible so that the *illustration* can be read easily by a typical *customer*;
- (4) ensure that the information within each section is clearly laid out (for example, through the use of bullet points or similar devices to separate information);

- (5) include prominent headings with the numbered section headings clearly differentiated in some way from the other text in the *illustration* (for example, through the use of larger and more prominent fonts, the use of shading or colour);
- (6) replace "[name of *mortgage lender*]" or "[name of *reversion provider*]" with the name of the *equity release provider*; a trading name used by the *equity release provider* may be stated;
- (7) describe any *early repayment charge* as an "early repayment charge" and not use any other expression to describe such charges;
- (8) describe any *higher lending charge* as a "higher lending charge" and not use any other expression to describe such charges; and
- (9) describe any *lifetime mortgage* as a "lifetime mortgage" and any *home reversion plan* as a "home reversion plan" and not use any other expression to describe such a mortgage or plan or omit that description from the name given to any product that meets the definition.

9.4.3

FCA

G

- (1) Further requirements regarding the use of the keyfacts logo and the location of specimens are set out in ■ GEN 5.1 and ■ GEN 5 Annex 1 G.
- (2) ■ MCOB 9.4.2 R(3) does not prevent the use of different fonts and typefaces for headings and risk warnings. Its purpose is to prevent particular sections of the *illustration* from being made less prominent than other sections through the inconsistent use of font sizes and typefaces.
- (3) The *illustration* can contain the *equity release provider's* or *equity release intermediary's* logo and other "brand" information.
- (4) The *illustration* can contain page numbers and other references that aid understanding, record keeping and identification of a particular *illustration* such as the date and time an *illustration* is produced or a unique reference number, provided these do not detract from the content of the *illustration*.
- (5) *Firms* are reminded of their general obligation for communications to *customers* to be clear, fair and not misleading. Sections of the *illustration* may be split across pages where it is practical to do so. When splitting sections, *firms* should split the section at an appropriate place, for example at the end of a sub-section, and not split risk warnings or tables (unless the length of the table is greater than one page).

9

9.4.4

FCA

R

A *firm* must include in the *illustration* all prescribed section headings , except that:

- (1) in Section 8 of the *lifetime mortgage illustration* (What you owe and when):
  - (a) Section 8 (A) (details of mortgage payments) is only required where the *customer* is required to make payments to the

*mortgage lender* in respect of the capital or all or part of the interest charged on the *lifetime mortgage*;

(b) Section 8(B) (projection of roll-up of interest) is only required where all or part of the interest on the *lifetime mortgage* is rolled-up;

(2) Section 16 of the *lifetime mortgage illustration* (Using a mortgage intermediary) or section 12 of the *home reversion plan illustration* (Using a home reversion intermediary) is required only where the *illustration* is provided to the *customer* by, or on behalf of, an *equity release intermediary* ; and

(3) where the *illustration* is issued in connection with a further advance , an additional section "Total borrowing" must be inserted after Section 8 of a *lifetime mortgage illustration* , and must be numbered "9", with all subsequent sections renumbered accordingly.

**Content: required information**

9.4.5  
FCA

**R**

The *illustration* provided to a *customer* must:

- (1) contain only the material specified in ■ MCOB 9.4 and no other material except where provided for elsewhere in ■ MCOB 9.4; and
- (2) be in a document separate from any other material that is provided to the *customer*.

9.4.6  
FCA

**R**

As a minimum the *illustration* must be personalised to reflect the following:

- (1) the specific *equity release transaction* in which the *customer* is interested;
- (2) the amount of the loan or equity required by the *customer*, or for *drawdown mortgages* and *instalment reversion plans*, the amount the *customer* wishes to draw down or to receive on a monthly (or such frequency that amounts are available) basis. Where the amount the *customer* can draw down is variable, the *firm* must agree with the *customer* an expected amount to be drawn down per year (see ■ MCOB 9.4.13 R);
- (3) the price or value of the property on which the equity release amount is based (estimated where necessary);
- (4) such information relating to the *customer*, or the property, or both as is necessary to determine that the *customer* would qualify for the *equity release transaction* in question; and

- (5) the term of the *instalment reversion plan* or, in the case of a *lifetime mortgage* and an open-ended *instalment reversion plan*, the estimated term.

9.4.7

FCA

G

A *firm* should not illustrate more than one *equity release transaction* in the same *illustration*, for example by using one *illustration* to compare alternative products.

9.4.8

FCA

G

These are minimum requirements. The *illustration* may be personalised to a greater degree if the *equity release provider* or *equity release intermediary* wishes, subject to the restrictions on the information that can be obtained from the *customer* when he requests written information on a particular transaction (see ■ MCOB 5.5.1 R (2)(c)).

9.4.9

FCA

G

In relation to the price or value of the property, in order for the *firm* to comply with the principle that an *illustration* should be clear, fair and not misleading, an estimated valuation, where the estimated valuation is not that provided by the *customer*, must be a reasonable assessment based on all the facts available at the time. For example, an overstated valuation could enable a more attractive *lifetime mortgage* to be illustrated on the basis of a lower ratio of the loan amount to the property value - for example, one with a lower rate of interest.

9.4.10

FCA

R

- (1) In estimating the term of a *lifetime mortgage* or an open-ended *instalment reversion plan*, a *firm* must:
- (a) use the following mortality table: PMA92(C=2010) and PFA92(C=2010) for males and females respectively, derivable from the Continuous Mortality Investigation Report 17, published by the Institute of Actuaries and the Faculty of Actuaries in 1999; and
  - (b) for the purposes of the *illustration*, where the table does not result in a life expectancy expressed in whole years, the term should be rounded up to the next whole year (for example, if the result is between fifteen and sixteen years, an estimated term of sixteen years should be used in the *illustration*).
- (2) Where the term estimated using the mortality table set out in (1) is less than fifteen years, the *firm* should use a term of fifteen years in preparing the *illustration*.

9.4.11

FCA

R

Where the *illustration* is issued to two or more *customers* who intend to borrow jointly, or who own the property jointly, the term estimated should be based on the longest life expectancy.

9.4.12

FCA

R

If the *customer* requests an *illustration* showing a term of the *customer's* choice, that *illustration* must be issued in addition to the *illustration* showing the term calculated in accordance with these *rules*. The term chosen should be stated in Section 4 of the *illustration* "What you have told us" .

9.4.13

FCA

R

The amount to be specified in the *illustration* and referred to in ■ MCOB 9.4.6 R(2) is:

- (1) the amount that the *customer* has asked to borrow, release or draw down; or
- (2) where the *lifetime mortgage* is a revolving credit agreement such as a secured overdraft or *mortgage credit card* :
  - (a) (if it provides for an initial drawdown and *linked borrowing facilities* that would allow the *customer* to increase the amount of the loan without any further approval from the *mortgage lender*) the amount of the initial drawdown; or
  - (b) (in all other cases) the total borrowing that the *firm* is willing to provide under the *lifetime mortgage*; or
- (3) in cases where, on the basis of the information obtained from the *customer* before providing the *illustration*, it is clear that the *customer* would not be eligible to borrow , release or draw down the amount he requested, an estimate of the amount that the *customer* could borrow, release or draw down, based on the information obtained from the *customer*.

9.4.14

FCA

G

■ MCOB 9.4.13 R(3) does not require information to be obtained from the *customer* before providing an *illustration* in order to ascertain the amount the *customer* is eligible to borrow or to release from the property . Instead, its purpose is to avoid a *firm* being in a position where it would otherwise have to provide a *customer* with an *illustration* for an amount it knew the *customer* would not be eligible for, based on whatever information it had obtained from the *customer* before providing the *illustration*.

9.4.15

FCA

R

Where the *illustration* relates to a *lifetime mortgage* that is sub-divided into different parts with different types of interest rate or different rates of interest or different conditions, or a combination of these, the requirements in ■ MCOB 9.4 may be adapted to accommodate this. The adaptations made must be limited to those that are necessary.

9.4.16

FCA

G

■ MCOB 9.4.15 R applies where, for example, the *lifetime mortgage* is divided so that a certain amount is payable on a fixed interest rate, and a certain amount on a discounted interest rate.

#### Information to be included at the head of the illustration

9.4.17

FCA

R

The following information must be included at the head of the *illustration*:

- (1) the *customer's* name;
- (2) the date of issue of the *illustration*;

- (3) details of how long the *illustration* is valid for, and whether there is any date by which the *equity release transaction* covered by the *illustration* needs to commence (for example, where a fixed interest rate is only available if the *lifetime mortgage* commences before a certain date); and
- (4) the prescribed text at the head of the *illustration* .

9.4.17A  
FCA

R

- (1) The requirements for a *lifetime mortgage illustration* are set out in ■ MCOB 9.4.18 R to ■ MCOB 9.4.132 R.
- (2) The requirements for a *home reversion plan illustration* are set out in ■ MCOB 9.4.133 R to ■ MCOB 9.4.176 G.

**Section 1 of a lifetime mortgage illustration: "About this information"**

9.4.18  
FCA

R

Under the section heading "About this information", the prescribed text in ■ MCOB 9 Annex 1 R under this heading must be included.

**Section 2 of a lifetime mortgage illustration: "Which service are we providing you with?"**

9.4.19  
FCA

R

- (1) Unless (2) applies, under the section heading "Which service are we providing you with?" the prescribed text in ■ MCOB 9 Annex 1 R under this heading must be included with a "check box" for each statement, one of which must be marked prominently to indicate the level of service provided to the *customer*:
- (2) If the level of service described in the *illustration* is provided by another *firm*, (1) may be replaced by the following: Under the section heading "Which service are we providing you with?" the following text should be presented as two options with a "check box" for each option, one of which must be marked prominently to indicate the level of service provided to the *customer*: "[name of *firm*] recommends, having assessed your needs, that you take out this lifetime mortgage. [name of *firm*] is not recommending a particular lifetime mortgage for you. However, based on your answers to some questions, it is giving you information about this lifetime mortgage so that you can make your own choice, or find out about other ways in which you may be able to release equity from your home."

**Section 3 of a lifetime mortgage illustration: "What is a lifetime mortgage?"**

9.4.20  
FCA

R

Under the section heading "What is a lifetime mortgage?", the prescribed text in ■ MCOB 9 Annex 1 R under this heading must be included.

**Section 4 of a lifetime mortgage illustration: "What you have told us"**

9.4.21  
FCA

R

- (1) Under the section heading "What you have told us", the *illustration* must state the information that has been obtained from the *customer* under ■ MCOB 9.4.6 R and ■ MCOB 9.3.12 R (apart



from ■ MCOB 9.4.6 R(1) and ■ MCOB 9.4.6 R(5) which are provided for in Section 5 of the *illustration* ), and can include brief details of any other information that has been obtained from the *customer* and used to produce the *illustration*.

- (2) Where the *customer* requests an additional *illustration* showing a term of their choice, the term chosen by the *customer* must be stated in this section, together with a statement to the effect that the term is the *customer's* choice.
- (3) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow or draw down plus charges and other payments that have been added to the loan or amount to be drawn down:
  - (a) except where (b) applies, this section must include the following text after the loan amount or amount to be drawn down from ■ MCOB 9.4.13 R(1): "plus ? [insert total amount of fees and other charges added to the loan] for fees that have been added to the loan [or amount drawn down] - see Section 11 for details."; or
  - (b) where there are other fees or charges that the *customer* must pay that have not been added to the loan this section must include the following text after the loan amount or amount to be drawn down from ■ MCOB 9.4.13 R(1): "plus ? [insert total amount of fees and other charges added to the loan] for fees that have been added to the loan [or amount drawn down]. These and the additional fees that you need to pay are shown in Section 11."
- (4) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow plus insurance premiums or insurance-related charges (other than a *higher lending charge*) that have been added to the loan or amount to be drawn down:
  - (a) except where (b) applies, this section must include the following text after the loan amount or amount to be drawn down from ■ MCOB 9.4.13 R(1) (which may be combined with the prescribed text in (3) if applicable): "plus ?[insert amount of premium or charges, or both, to be added to the loan] for insurance [premiums] [and] [charges] that have been added to the loan [or amount drawn down] " see Section 12 for details."; or
  - (b) where there are other insurance premiums or insurance-related charges, or both, that the *customer* must pay that have not been added to the loan this section must include the following text after the loan amount or amount to be drawn down from ■ MCOB 9.4.13 R(1) (which may be



combined with the prescribed text in (3) if applicable): "plus ? [insert amount of premium or charges, or both, to be added to the loan] for insurance [premiums] [and] [charges] that have been added to the loan [or amount drawn down]. These and any additional insurance [premiums] [and] [charges] that you need to pay are shown in Section 12."

- (5) If the amount on which the *illustration* is based does not involve any charges or payments being added to the amount to be borrowed or amount to be drawn down, but there are charges that must be paid by the *customer*, Section 4 of the *illustration* must include the following text after the loan amount from
  - MCOB 9.4.13 R(1): "No fees have been added to this amount but the fees you need to pay are shown in Section 11. For details of any insurance charges, see Section 12."
- (6) If the *lifetime mortgage* on which the *illustration* is based has no charges that must be paid by the *customer*, and no insurance premiums are being added to the loan, Section 4 of the *illustration* must include the following text after the loan amount from
  - MCOB 9.4.13 R(1): "We do not charge any fees for this lifetime mortgage."

9.4.22  
FCA

**R** At the end of Section 4 of the *illustration* a statement must be included making clear that changes to any of the information obtained from the *customer*, and where appropriate to the valuation of the property, could alter the details elsewhere in the *illustration* and encouraging the *customer* to ask for a revised *illustration* in this event.

9.4.23  
FCA

**G** An example of the type of statement that would satisfy ■ MCOB 9.4.22 R is: "The valuation that will be carried out on the property, and changes to any of the information you have given us, could alter the information in this illustration. If this is the case please ask for a revised illustration."

**Section 5 of a lifetime mortgage illustration: "Description of this mortgage"**

9.4.24  
FCA

**R** Under the section heading "Description of this mortgage" the *illustration* must:

- (1) state the name of the *mortgage lender* providing the *lifetime mortgage* to which the *illustration* relates (a trading name used by the *mortgage lender* may also be stated in accordance with ■ MCOB 9.4.2 R(6)), and the name, if any, used to market the *lifetime mortgage*;
- (2) include a statement describing the *lifetime mortgage*;

- (3) if the *lifetime mortgage* is linked to an *investment*, and payments required on the *lifetime mortgage* will be deducted from the income from the *investment*, include a statement that this is the case;
- (4)
  - (a) provide a description of the interest rate type and rate of interest that applies in accordance with the format described in ■ MCOB 9.4.26 R and ■ MCOB 9.4.27 R;
  - (b) where there is more than one interest rate type or rate of interest, specify the amount of the loan to which each interest rate type and rate of interest applies;
  - (c) unless the interest rate applies for the full life of the loan, confirm what interest rate will apply, when it will apply and for how long it will apply after any initial interest rate ends, in accordance with the format described in ■ MCOB 9.4.26 R and ■ MCOB 9.4.27 R; and
  - (d) provide a clear explanation of the charging approach where different interest rates are applied to different items of debt (for example, for a *mortgage credit card* where a different interest rate applies to balances that are transferred from that charged on any additional borrowing);
- (5) include a statement regarding the term of the *lifetime mortgage* using the following text: "We have based this illustration on an estimated term of [insert number of years] years, but remember that the term of this lifetime mortgage is not fixed and could be longer or shorter than [insert number of years] years. If you are still living in your home at the end of [insert number of years] years, the lifetime mortgage will continue to run.";
- (6) include a statement of the maximum amount the *customer* may borrow from the *mortgage lender* and the circumstances (if any) in which the *customer* may be able to borrow additional funds at a future date;
- (7) if the *customer* is obliged to buy any *tied products* under the *lifetime mortgage* include the following information:
  - (a) details of the *tied products* required;
  - (b) the following text: "You are obliged to take out [insert details of the *tied product(s)*] through [insert name of *mortgage lender* or if relevant, name of *mortgage intermediary*] as a condition of this lifetime mortgage. Please refer to Section 12 of this illustration for further details.";

- (8) state very briefly any restrictions that apply to the availability of the *lifetime mortgage* (for example, if it is only available to certain types of *customer*);
- (9) where the interest rate, payments (if required) or terms and conditions of the *lifetime mortgage* in the *illustration* reflect a *customer's* adverse credit history, include the following text: "The terms of this lifetime mortgage reflect past or present financial difficulties."; and
- (10) where the intention of the *lifetime mortgage* is solely to provide the *customer* with a *mortgage credit card* (rather than the *mortgage credit card* being an additional feature of a *lifetime mortgage* ) include the warning about the loss of statutory rights from ■ MCOB 9.4.102 R(2)(a) or (b) in Section 5 of the *illustration* rather than Section 14.

9.4.25

FCA

G

Examples of types of statement that would satisfy ■ MCOB 9.4.24 R(2) are as follows (more than one may apply to particular types of *lifetime mortgage* ):

- (1) For a *roll-up of interest mortgage*: "You do not have to make any repayments during the life of this lifetime mortgage. The loan, all of the interest and charges due to [name of *mortgage lender*] will be repaid from the sale of your home. This will happen on your death [or the death of the last borrower] or if you move home (either into another property or into sheltered accommodation or residential care). Any money left over would be paid to you or your beneficiaries." [If only a part of the interest is rolled up the statement should specify the amount or proportion of the loan on which the interest will be rolled-up].
- (2) For a *drawdown mortgage*: "This lifetime mortgage provides you with a cash sum every month [or such other frequency as is applicable, including "on request"] until it is repaid. [Include if applicable: You will also receive a lump sum payment at the start of the lifetime mortgage]."
- (3) For an *interest-only mortgage*: "This is an interest only lifetime mortgage, which means that you have to make [insert frequency of payments] payments to [name of *mortgage lender*] until the lifetime mortgage is repaid. The amount you owe will stay the same over the life of the mortgage unless fees or charges have to be added. The mortgage will be repaid from the sale of your home on your death [or the death of the last borrower] or if you move home (either into another property or into sheltered accommodation or residential care). Any money left over would be paid to you or your beneficiaries."

9.4.26

FCA

R

■ MCOB 9.4.27 R sets out some examples of descriptions of interest rate types and rates of interest that must be used in the *illustration* to comply with ■ MCOB 9.4.24 R(4). If an interest rate is not described in ■ MCOB 9.4.27 R, it must be presented in the *illustration* in a way that is consistent with the descriptions in ■ MCOB 9.4.27 R.

9.4.27

FCA

R

Table Description of interest rate types and rates of interest. This table belongs to MCOB 9.4.26R:

| Description of the interest rate   | Amount payable in each instalment (if applicable)                     |
|--|---|
| <p><b>Lender's base mortgage rate - must be described as the [Lender]'s standard variable rate, currently X%, [where applicable insert the date at which the interest rate ends or period for which the interest rate applies].</b></p>  | <p><b>Amount based on X%.</b></p>                                     |
| <p><b>Fixed rate - must be described as fixed rate of X% [where applicable insert the date at which the interest rate ends or the period for which the interest rate applies].</b></p>   | <p><b>Amount based on the fixed rate of X%.</b></p>                   |
| <p><b>Discounted rate - must be described as a variable rate, currently X%, with a discount of Y% [where applicable insert the date at which the discount ends or the period for which the discount applies], giving a current rate payable of Z%.</b></p>   | <p><b>Amount based on Z%.</b></p>                                     |
| <p><b>Capped rate - must be described as a variable rate, currently X%, which will not go above a ceiling of Y% [where applicable insert the date at which the capped interest rate ends or the period for which the capped interest rate applies].</b></p>  | <p><b>Amount based on the current interest rate payable (X%).</b></p> |
| <p><b>Capped and collared - must be described as a variable rate, currently X%, which will not go below a floor of Y% or above a ceiling of Z% [where applicable insert the date at which the capped and collared interest rate ends or the period for which the capped and collared interest rate applies].</b></p>   | <p><b>Amount based on the current interest rate payable (X%).</b></p> |
| <p><b>Tracker rate - must be described as a variable rate which is [X% above/X% below/the same as] [insert interest rate tracked, currently Z%], [where applicable insert the date at which the interest rate ends or the period for which the interest rate applies], to give a current rate payable of Y%. Details should also be provided of how soon after an interest rate change the mortgage interest rate is adjusted.</b></p> | <p><b>Amount based on Y%.</b></p>                                     |
| <p><b>Deferred rate - must be described as a variable rate, currently X%, where Y% is not paid now but is added to your mortgage [where applicable insert the date at which the deferred interest rate ends or the period for which the deferred</b></p>   | <p><b>Amount based on Z%.</b></p>                                     |

| Description of the interest rate   | Amount payable in each instalment (if applicable)        |
|--|--|
| interest rate applies], to give a current rate payable of Z%.  |  |
| Stepped rate where different interest rates apply over different time periods (for example, fixed interest rate in year 1 changes in year 2). Each element should be dealt with individually as above. | Amount for each of the 'steps'.                          |
| Combinations of the above must be treated in the same way as the descriptions above, (for example, if a discounted interest rate has a 'floor' then it must be described as such).                     | Follow the above treatment depending on the combination. |

9.4.28  
FCA

R

Where the loan under the *lifetime mortgage* is divided into more than one part (for example where part of the loan is a fixed interest rate and part of the loan is a discounted variable interest rate) and the *firm* displays this in a tabular format in the *illustration*:

- (1) the following text must be used to introduce the table "As this lifetime mortgage is made up of more than one part, these parts are summarised below:";
- (2) each part must be numbered for ease of reference in the *illustration*;
- (3) the "initial rate payable" must be displayed separately from the interest rate description;
- (4) the loan amounts must be totalled; and
- (5) immediately following the table, a statement of what interest rates will apply to each part, (and when they will apply) after any initial interest rate ends in accordance with ■ MCOB 9.4.24 R(4)(c).

9.4.29  
FCA

R

Further information about the *lifetime mortgage* may be included in Section 5 of the *illustration* as long as it does not significantly:

- (1) duplicate information contained elsewhere in the *illustration*; and
- (2) extend the length of this section.

PAGE  
21

9.4.30  
FCA

G

An example of further information that may be included in accordance with ■ MCOB 9.4.27 R might be that an "approval in principle" has been granted subject to valuation and satisfactory credit reference.

**Section 6 of a lifetime mortgage illustration: "Benefits"**

9.4.31

FCA

**R**

Under the section heading "Benefits", the *illustration* must include:

- (1) a description of the monetary amount(s), and in a box aligned to the right of the document, the monetary amount(s) that the *customer* will receive as a lump sum and/or as a monthly [or such other frequency as is applicable] payment;
- (2) where the *lifetime mortgage* is linked to an *investment* and the payments required on the *lifetime mortgage* will be deducted from the income from the *investment*, the monetary amount of the net income the *customer* will receive. This must be shown in a box immediately underneath that required in (1) and containing the subheading "Your net income"; and
- (3) if applicable, statements of any other benefits, incentives and guarantees that apply to the *lifetime mortgage*. This must be shown under the subheading "Other benefits and incentives'.

9.4.32

FCA

**G**

Examples of text that would satisfy ■ MCOB 9.4.31 R(1), depending on the nature of the *lifetime mortgage*, are:

- (1) "This lifetime mortgage will provide a lump sum of ?[x].";
- (2) "The amount you are borrowing will automatically be used to purchase a [name of linked *investment* product] from [name of provider]. The amount is ?[x]."; and
- (3) "You will receive a monthly [or such other frequency as is applicable] payment from the start of your lifetime mortgage. This will be ? [state amount].".

**Section 7 of a lifetime mortgage illustration: "Risks - important things you must consider"**

9.4.33

FCA

**R**

The *illustration* must include under the heading "Risks - important things you must consider" statements and warnings on the following:

- (1) a brief statement of the specific circumstances in which the *mortgage lender* is able to *repossess* the property;
- (2) a statement of how the *mortgage lender* will treat any negative equity arising during the life of the *lifetime mortgage* and at the time the amount borrowed under the *lifetime mortgage* is due to be repaid in full;
- (3) a statement of the effect of the *customer* wanting or needing to move home (either into another property or into sheltered accommodation or long term care or residential care), covering the circumstances in which the *lifetime mortgage* is portable,

and whether *early repayment charges* are payable (the *illustration* is not required to include under this heading the exact amount of any *early repayment charges*);

- (4) a statement of the effect on the *lifetime mortgage* of another party moving into the property (for example on marriage or the formation of a civil partnership or where a family member acts as a carer);
- (5) a brief statement of the *mortgage lender's* requirements for repair and maintenance of the property, including the *mortgage lender's* right (if any) to enter the property to effect essential repairs, and the circumstances in which this may occur;
- (6) a warning that taking out this *lifetime mortgage* may affect the *customer's* tax and welfare benefits position, that tax and welfare benefits can change and that the *customer* should consider seeking further information from HM Revenue and Customs, Benefits Agency or another source of advice such as a Citizens' Advice Bureau;
- (7) a brief statement as to whether the *customer* can secure borrowing from any other source on the property in the future (and if applicable a warning that an increasing debt may mean that it may not be possible to borrow more in the future); and
- (8) a statement included prominently at the end of Section 7: "Risks - important things you must consider" using the following specified text: "Check that this mortgage will meet your needs if you want your family or others to inherit your home. If you are in doubt, seek independent legal and financial advice".

9.4.34

G

For guidance on prominence see ■ MCOB 2.2.9 G.

FCA

9.4.35

R

Under the heading "Risks - important things you must consider" the *illustration* must also include the following if they apply:

FCA

- (1) for *drawdown mortgages* where there is a monthly (or such other frequency as may apply) cash sum payable, a statement that inflation can erode the value of the cash sum over time;
- (2) where:
  - (a) the *lifetime mortgage* is linked to an *investment*; and
  - (b) the payments required on the *lifetime mortgage* will be deducted from the income from the *investment*; and
  - (c) the *customer* will receive a fixed net income;



a statement that inflation can erode the value of the cash sum over time;

- (3) for *drawdown mortgages*, details of any circumstances where the *mortgage lender* may alter or discontinue payments to the *customer* without their prior consent; and
- (4) for *alllifetime mortgage*, a statement or warning with regard to any material issue not covered elsewhere in ■ MCOB 9.4.33 R and ■ MCOB 9.4.35 R.

**Section 8 of a lifetime mortgage illustration: 'What you will owe and when' (A) 'Details of mortgage payments'**

9.4.36  
FCA

G

The section headed "What you will owe and when" (A) 'Details of mortgage payments' will apply only where the *customer* is required to make payments to the *mortgage lender* during the life of the *lifetime mortgage* in respect of all or part of the interest, or part of the capital, charged on the *lifetime mortgage*. This will include those cases where the interest payment is deducted from the income provided by a linked *investment product* (such as an annuity) such that the *customer* receives the net income.

9.4.37  
FCA

R

The heading of the column on the right-hand side of Section 8 of the *illustration* must state the frequency with which payments must be made by the *customer*. (For example, if payments are to be made on a monthly basis, the heading for this section must be "What you will owe and when" and the column must be headed "Monthly payments".

9.4.38  
FCA

R

All the payments in Section 8 of the *illustration* must be calculated based on the frequency used for the purposes of the heading in ■ MCOB 9.4.37 R and must be shown in the column on the right-hand side of this section.

9.4.39  
FCA

R

Section 8 of the *illustration* must contain the following information:

- (1) the loan amount on which the *illustration* is based. This figure should include all fees, charges and insurance premiums that have been added to the loan in accordance with ■ MCOB 9.4.21 R(3) and ■ MCOB 9.4.21 R(4), and the following text must follow the loan amount: "which include[s] the [fees] [and] [insurance premiums] that are shown in [Section 11] [and] [Section 12] as being added to your lifetime mortgage.";
- (2) the assumed start date that has been used in the *illustration* to estimate the number of payments to be charged at given interest rates;
- (3) except where ■ MCOB 9.4.47 R applies, for each of the interest rates charged on the *lifetime mortgage*:
  - (a) the number of payments at that interest rate;
  - (b) whether the interest rate is fixed or variable;



- (c) the interest rate charged on the *lifetime mortgage* at the time the *illustration* is issued; and
  - (d) the amount that the *customer* must pay in each instalment at that interest rate, which must be recorded in the right-hand column of this section (see ■ MCOB 9.4.38 R); and
- (4) where the payment due to the *mortgage lender* is to be deducted from the income provided by a linked *investment product* (such as an annuity) such that the *customer* receives the net income, a clear statement to this effect.

**9.4.40** FCA G If appropriate, the two statements required by ■ MCOB 9.4.39 R(1) and ■ MCOB 9.4.39 R(2) may be merged, for example "These payments are based on a loan amount of ?x and assume that the lifetime mortgage will start on [dd/mm/yy].".

**9.4.41** FCA G ■ MCOB 9.4.39 R(3) applies to each interest rate charged on the *lifetime mortgage* covered by the *illustration*. This means that it applies to different interest rates charged at different times, for example, where the interest rate changes at the end of any initial discounted, fixed or other special interest rate period.

**9.4.42** FCA G The *firm* may determine the assumed start date in ■ MCOB 9.4.39 R(2).

**9.4.43** FCA R The following information must be included in the description of the interest rate required by ■ MCOB 9.4.39 R(3)(c) except where ■ MCOB 9.4.47 R applies:

- (1) where the interest rate can change, the word "currently" must be used to illustrate the current interest rate payable; and
- (2) where the interest rate changes after a given period the words "followed by" should be used to indicate this.

**9.4.44** FCA G An example of how the information required by ■ MCOB 9.4.39 R(3) and ■ MCOB 9.4.43 R may be presented when there is an example term of fifteen years, and an initial fixed interest rate for a period of 22 months followed by the *mortgage lender's* standard variable interest rate for a period of 158 months, is as follows: "22 payments at a fixed rate of [...] % followed by 158 payments at a variable rate, currently [...] %".

**9.4.45** FCA R The information required by ■ MCOB 9.4.39 R(3)(d) must exclude the cost of any products which may be sold in conjunction with the *lifetime mortgage* (whether *tied products* or not) unless the cost has been added to the *lifetime mortgage*

**9.4.46** FCA R If, because of the assumed start date of the *lifetime mortgage*, the initial payment differs from the subsequent payments, the initial payment must be shown in this section in accordance with ■ MCOB 9.4.39 R(3)(d).

**Multi-part mortgages**

9.4.47  
FCA

**R**

Where the loan under the *lifetime mortgage* is divided into more than one part (for example, where part of the loan is on a fixed interest rate and part on a discounted variable interest rate) and the *firm* displays the initial cost of all parts, and the total cost, in a tabular format in the *illustration*, ■ MCOB 9.4.39 R(3) and ■ MCOB 9.4.43 R do not apply; instead:

- (1) each part must be numbered for ease of reference in the *illustration*;
- (2) the loan amounts must be totalled;
- (3) the number and frequency of each payment must be stated;
- (4) the "initial interest rate payable" for each part must be displayed;
- (5) whether the interest rate payable is fixed or variable for each part must be stated; and
- (6) the regular payment for each part must be stated and the total payment for all parts highlighted (excluding the information listed in ■ MCOB 9.4.45 R).

9.4.48  
FCA

**R**

Unless all of the interest rates described in ■ MCOB 9.4.47 R(4) apply for the life of the loan part to which they apply, then an additional subsection titled "What you will owe in future" must be included to indicate the future stepped payments. This section must:

- (1) state when a change in payment will occur;
- (2) state the reason for the change in payment; and
- (3) confirm that the payment illustrated assumes that interest rates will not change.

**Section 8 of a lifetime mortgage illustration: "What you will owe and when" (B) Projection of roll-up of interest**

9.4.49  
FCA

**G**

Section 8 headed "What you will owe and when" (B) "Projection of roll-up of interest" applies only where all or part of the interest due over the life of the *lifetime mortgage* is added to the loan and paid to the *mortgage lender* on repayment of the loan. The projection should be based on the term of the *lifetime mortgage* estimated in accordance with ■ MCOB 9.4.10 R (and if required, ■ MCOB 9.4.12 R).

9.4.50  
FCA

**R**

An explanation of the table required in accordance with ■ MCOB 9.4.51 R must be shown in a box immediately under the heading using the following text: "This shows how the amount(s) paid to you and the

interest and any fees that we charge mount up over [insert number of years estimated in accordance with ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R] years. It has been calculated using the current interest rate(s) of [insert interest rate(s)]. Interest is added to the amount you owe [insert frequency of roll-up of interest - e.g. monthly]. Remember that the mortgage could run for a longer or shorter time than [insert number of years estimated in accordance with ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R] years, and if it runs for longer, the amount you owe will carry on increasing."

9.4.51

FCA

R

The table showing the projection in the section headed "Projection of roll-up of interest" should show annual details in columns under the following headings:

- (1) "Year": this should list the years as 1,2,3... etc. The start date for year one must be an assumed date of completion of the *lifetime mortgage*. The table must show each year of the term estimated in accordance with ■ MCOB 9.4.10 R (or if required, ■ MCOB 9.4.12 R).
- (2) "Balance at start of year": this must show the estimated amount outstanding on the *lifetime mortgage* at the beginning of each year. For year one this balance would include any lump sum advanced on completion.
- (3) (where the *lifetime mortgage* is a *drawdown mortgage*) "Amount paid to you during the year": this must include all amounts to be drawn down during the year in question. Where the amount the *customer* can draw down is variable, the *mortgage lender* must agree with the *customer* an expected amount to be drawn down per year.
- (4) "Interest charged at [insert percentage(s)]": this must be the interest charge for the year in question, calculated on the balance at the start of the year plus the amount drawn down (if applicable) and any fees added to the loan during the year. The percentage(s) used must be as follows:
  - (a) for a fixed interest rate that applies throughout the term, the fixed interest rate available at the date the *illustration* is issued;
  - (b) for a variable interest rate, the interest rate that is available at the time the *illustration* is issued; and
  - (c) for a capped interest rate, the actual interest rate that is available at the time the *illustration* is issued, where this is lower than the interest rate at which the cap is set.

Where more than one interest rate applies (e.g. fixed for part of the term, followed by variable), the *mortgage lender* must use the rates that are available at the time the *illustration* is issued.

- (5) "Fees charged during the year": this must include all fees that can be added to the loan during the life of the *lifetime mortgage*. In year one this will include any fees due to the *mortgage lender* unless the *customer* has confirmed that he wishes to pay them separately. The fees for the final year shown must include any fees required on repayment in full of the *lifetime mortgage*.
- (6) "What you owe at the end of the year": this is the total of:
  - (a) the balance at start of the year;
  - (b) total drawn down (if applicable);
  - (c) interest charged for the year; and
  - (d) fees for the year.

The balance at the end of the final year of the term (estimated in accordance with ■ MCOB 9.4.10 R (or if required, ■ MCOB 9.4.12 R)) must therefore be the estimated amount required to repay in full the *lifetime mortgage* at the end of that year.

9.4.52  
FCA

**G** The firm may determine the assumed date of completion in ■ MCOB 9.4.51 R(1).

**Section 9 of a lifetime mortgage illustration: "Will the interest rate change?"**

9.4.53  
FCA

**R** Where the *customer* is required to make payments to the *mortgage lender* on the *lifetime mortgage*, the *illustration* must include the following under the section heading "Will the interest rate change?":

- (1) if the interest rate is fixed throughout the life of the *lifetime mortgage*, an explanation that the payments will not vary because the interest rate is fixed;
- (2) if the interest rate is fixed for part of the life of the *lifetime mortgage*, an explanation of when or how increases in the interest rate charged on the *lifetime mortgage* affect the *customer's* payments;
- (3) if the interest rate cannot go above a certain level or below a certain level, or both, and this applies throughout the life of the *lifetime mortgage*, an explanation that this is the case;
- (4) if the interest rate cannot go above a certain level for part of the life of the *lifetime mortgage*, an explanation that this is the case and of when or how increases in the interest rate charged on the *lifetime mortgage* affect the *customer's* payments;
- (5) if (3) or (4) apply the maximum or minimum interest rate, or both, and the payments at each of these interest rates; and

9.4.54

FCA

R

(6) if the *lifetime mortgage* is made up of a number of different parts including different types of interest rate and different rates of interest, an explanation of when or how increases in the interest rate charged on the *lifetime mortgage* affect the *customer's* payments for each part (or combination of parts).

(1) Except where (3) applies, where the *customer* is required to make payments to the *mortgage lender* on the *lifetime mortgage*, and the *customer's* payments can vary with changes in interest rates at any time during the life of the *lifetime mortgage*, Section 9: "Will the interest rate change?" must also contain the following text: "The [frequency of payments from ■ MCOB 9.4.37 R] payments shown in this illustration could be considerably different if interest rates change. For example, for one percentage point increase in [describe the interest rate that applies], your [frequency of payments] payment will increase by around ? [insert amount by which payment will increase].".

(2) If ■ MCOB 9.4.53 R(6) applies the following additional text must be included after the text in (1), for each part (or combination of parts), where the amounts by which the *customer's* payments would increase are different: "After the [describe the type of interest rate that applies, the part (or parts) to which it applies and date or period for which it applies] then for one percentage point increase in [describe the interest rate that applies], your [insert frequency of payments] payment will increase by around ? [insert amount by which payment will increase].".

(3) Paragraph (1) does not apply where the difference between the interest rate included in the *illustration* in accordance with ■ MCOB 9.4.39 R and the maximum interest rate that can be charged on the *lifetime mortgage* is less than one percentage point.

9.4.55

FCA

R

The amount by which the *customer's* payments would increase in accordance with ■ MCOB 9.4.54 R(1) must be calculated as follows:

- (1) the firm must use the total amount borrowed, or assume that all payments due on the *lifetime mortgage* have actually been paid, all additional fees and payments due have been paid, and no underpayments or overpayments have been made; and
- (2) the interest rate from which the increase is calculated must be the variable interest rate charged on the *lifetime mortgage* at the date that the *illustration* is issued (that is, the variable interest rate quoted in Section 5 of the *illustration*); where the variable interest rate changes after a set period or on a set date it must be based on the initial variable interest rate charged on the *lifetime mortgage* at the date the *illustration* is issued (for example, if the initial interest rate is discounted, it must be based on the discounted rate).

9.4.56

FCA

G

Although the effect of a one percentage point increase in interest rates on the *customer's* payments is not completely linear, the purpose of ■ MCOB 9.4.54 R(1) and (2) is to show the approximate effect of such an increase.

9.4.57

FCA

R

Where the *customer* is not required to make payments to the *mortgage lender* on the *lifetime mortgage* and therefore all or part of the interest is rolled up, the following information must be included under the section heading "Will the interest rate change?":

- (1) if the interest rate is fixed throughout the life of the *lifetime mortgage*, an explanation that the estimated debt shown in accordance with ■ MCOB 9.4.51 R(6) will not vary because the interest rate is fixed;
- (2) if the interest rate is fixed for part of the life of the *lifetime mortgage*, an explanation of when or how increases in the interest rate charged on the *lifetime mortgage* affect the estimated debt shown in accordance with ■ MCOB 9.4.51 R(6);
- (3) if the interest rate cannot go above a certain level or below a certain level, or both, and this applies throughout the life of the *lifetime mortgage*, an explanation that this is the case; and
- (4) if the interest rate cannot go above a certain level for part of the life of the *lifetime mortgage*, an explanation of when or how increases in the interest rate charged on the *lifetime mortgage* affect the estimated debt shown in accordance with ■ MCOB 9.4.51 R(6).

9.4.58

FCA

R

Where the *customer* is not required to make payments to the *mortgage lender* on the *lifetime mortgage* and therefore all or part of the interest is rolled up, Section 9: "Will the interest rate change?" must also contain (if applicable):

- (1) if the interest rate is variable, the following text: "If the interest rate increases, the amount you owe will also increase. If the interest rate was [one percentage point higher than shown ■ MCOB 9.4.51 R(4)(b)] throughout the example term of [insert number of years " see ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R] years, the amount you would owe us at the end of that time would be: [insert amount]."; or
- (2) if the interest rate will become variable at the end of a fixed or capped rate period, the following text: "If the interest rate increases after the [insert as applicable: fixed rate period or capped rate period] ends, the amount you owe will also increase. If the interest rate was [one percentage point higher than shown in ■ MCOB 9.4.51 R(4)(b) above] throughout the remainder of the example term of [insert number of years - see



■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R] years, the amount you would owe us at the end of that time would be: [insert amount]."; or

- (3) if a capped rate applies throughout the life of the *lifetime mortgage* and the interest rate at the date of issue of the *illustration* is lower than the capped rate, the following text: "If the interest rate increases, the amount you owe will also increase. The interest rate on this lifetime mortgage cannot be higher than [rate at which interest is capped] If the interest rate was [rate at which interest is capped] throughout the example term of [insert number of years - see ■ MCOB 9.4.10 R and ■ MCOB 9.4.12 R] years, the amount you would owe us at the end of that time would be: [insert amount].".

**Risk warning**

9.4.59  
FCA

**R** Where ■ MCOB 9.4.54 R(1) applies, the following words must also be prominently displayed at the end of the sub-section "Will the interest rate change?" "Rates may increase by much more than this so make sure you can afford the [insert frequency of payments from ■ MCOB 9.4.37 R] payment."

9.4.60  
FCA

**R** Where ■ MCOB 9.4.58 R(1) or (2) applies, the following words must also be prominently displayed at the end of the sub-section "Will the interest rate change?" "Your debt may increase significantly."

9.4.61  
FCA

**G** For guidance on prominence see ■ MCOB 2.2.9 G.

**Section 10 of a lifetime mortgage illustration: "How the value of your home could change"**

9.4.62  
FCA

**R** Where the *customer* is required to make payments to the *mortgage lender* on the *lifetime mortgage* in respect of the interest payable, and therefore the amount outstanding on the *lifetime mortgage* will broadly remain unchanged, Section 10: "How the value of your home could change" must contain the following text: "The amount you owe will usually stay the same over the life of the mortgage so the amount due to [name of *mortgage lender*] when the mortgage is repaid will be [amount of loan], unless charges have to be added."

9.4.63  
FCA

**R** Where the *customer* is not required to make payments to the *mortgage lender* on the *lifetime mortgage* and therefore all or part of the interest is rolled up, Section 10: "How the value of your home could change" must contain the following text: "When you look at how the amount you owe goes up, remember also that property prices can go up or down, and this can affect the amount of money left over for you or your estate after the mortgage is repaid to [name of mortgage lender]."

9.4.64  
FCA

**R** Section 10: "How the value of your home could change" must contain the following text in addition to the text in accordance with ■ MCOB 9.4.62 R or ■ MCOB 9.4.63 R: "Based on the estimated value of your home now of

[insert amount from ■ MCOB 9.4.6 R(3)] this example shows what the value of your home would be after [insert term from ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R] years if the value went up by 1% each year or went down by 1% each year. Remember also that the mortgage may run for more or less than [insert term from ■ MCOB 9.4.10 R, or ■ MCOB 9.4.12 R] years. This is an example only and gives no guide to how much the value of your home will actually change. If your home went up in value by 1% each year it would be worth [insert amount] after [insert term from ■ MCOB 9.4.10 R, or ■ MCOB 9.4.12 R] years. If your home went down in value by 1% each year - it would be worth [insert amount] after [insert term from ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R] years."

**Section 11 of a lifetime mortgage illustration: "What fees must you pay?"**

9.4.65  
FCA

**R**

Under the section heading "What fees must you pay?" the *illustration* must:

- (1) itemise all the fees that are included in the calculation of the *APR* in accordance with ■ MCOB 10 (Annual Percentage Rate), excluding any charges for insurance set out in Section 12 in accordance with ■ MCOB 9.4.72 R; and
- (2) include a statement at the end of the section using the following text: "You may have to pay other taxes or costs in addition to any fees shown here."

9.4.66  
FCA

**G**

An example of a fee that would be included in Section 11 would be an administrative charge to redeem the *lifetime mortgage*. An example of a fee that would not be included would be a fee payable by the *customer* to insure their property elsewhere (however this would need to be stated in the separate "Insurance" section as required by ■ MCOB 9.4.72 R). Where fees are payable only on early repayment of the *lifetime mortgage*, they should not be stated here (however these fees would need to be stated in Section 13 of the *illustration* "What happens if you do not want this mortgage any more", as required by ■ MCOB 9.4.83 R(1)(c)).

9.4.67  
FCA

**R**

The fees included in this section in accordance with ■ MCOB 9.4.65 R must be itemised under the relevant sub-headings as follows:

- (1) the fees that are payable by the *customer* to the *mortgage lender* must be itemised under the sub-heading "Fees payable to [name of *mortgage lender*]";
- (2) the remaining fees must be itemised under the sub-heading "Other fees"; and
- (3) (a) if there are no fees to be itemised in accordance with (1), the sub-heading must be retained and a statement must be included that no fees apply;



- (b) if there are no fees to be itemised in accordance with (2), the sub-heading must be retained and only the text in
  - MCOB 9.4.65 R(2) applies.

9.4.68

FCA

R

The following information must be provided for each fee included in this section of the *illustration* in accordance with ■ MCOB 9.4.65 R(1):

- (1) a description of the fee;
- (2) the amount payable by the *customer* recorded in a column headed "Fee amount" on the right-hand side of this section;
- (3) for fees included under the sub-heading "Other fees", to whom the fee is payable;
- (4) when the fee is payable;
- (5) whether or not the fee is refundable, and if so, the extent to which it is refundable;
- (6) which fees (if any) are estimated in accordance with
  - MCOB 9.4.114 R(2) and based on representative information; and
- (7) if any fee is payable after the start of the *lifetime mortgage* and subject to change in the future, for example a fee payable on final repayment of the *lifetime mortgage*, the amount of that fee, along with a statement that this is the 'current fee'.

9.4.69

FCA

R

- (1) If a *higher lending charge* is payable by the *customer*, the following text must be used to describe such a charge for the purposes of
  - MCOB 9.4.68 R: "A higher lending charge is payable because you are borrowing [insert the ratio of the mortgage amount (from ■ MCOB 9.4.13 R) to the property's price or value (from ■ MCOB 9.4.6 R(3))] of the property's [estimated] [price/value]."
- (2) If the *customer* has asked for any fees to be added to the loan, this must be stated alongside each fee.
- (3) If the *customer* has the option of adding to the loan amount any of the fees included in this section, the following text must be included: "If you wish you can add [this/these/the {type of fee}] fee(s) to the lifetime mortgage. This will increase the amount you owe to [insert amount of the lifetime mortgage with the fee(s) included] and will increase the amount you owe shown in Section 8. If you want to do this, you should ask for another illustration that shows the effect of this on the amount you owe"
- (4) Any fees that are estimated based on representative information in accordance with ■ MCOB 9.4.114 R(2) must include an

appropriate explanation of what the fee represents. For example, if this section includes an estimated fee for the legal work that the *customer* might be charged by his conveyancer for carrying out work on behalf of the *mortgage lender*, the *illustration* must explain that the fee is estimated, and that it only covers part of the costs of legal work that the *customer* might need to pay.

9.4.70  
FCA

**G** "Other fees" will include any fee charged by a *mortgage intermediary*, or another third party, for *advising on* or *arranging* a *lifetime mortgage*, but not commission or *procuration fees* (which are dealt with in Section 16 of the *illustration*).

9.4.71  
FCA

**R** A *mortgage lender* must provide a *tariff of charges* to the *customer*, if the *customer* so requests.

**Section 12 of a lifetime mortgage illustration: "Insurance"**

9.4.72  
FCA

- R**
- (1) Under the section heading "Insurance" the *illustration* must include details of:
    - (a) insurance which is a *tied product* and
    - (b) insurance which is required as a condition of the *lifetime mortgage* which is not a *tied product*
  - (2) Under this section heading a *firm* may also provide details of insurance which is optional for the *customer* to take out.
  - (3) It must be clear to the *customer* which products he is required to purchase under which circumstances (for example, where both a *tied product* and a *mortgage intermediary* are involved, whether the policy must be purchased from the *mortgage lender* or the *mortgage intermediary*).

9.4.73  
FCA

**R** Under the sub-heading 'Insurance you must take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]' the following information must be included if the *lifetime mortgage* requires the *customer* to take out insurance that is a *tied product* either through the *mortgage lender* or where relevant the *mortgage intermediary*:

- (1) details of which insurance is a *tied product*;
- (2) for how long the *customer* is obliged to purchase the insurance;
- (3) an accurate quotation or a reasonable estimate of any payments the *customer* needs to make for the insurance;
- (4) where a quotation is provided for insurance in accordance with (3) on the basis of an estimated sum insured, because the actual required sum insured is unknown, the fact that it is estimated

should be stated along with confirmation of the level of cover that has been assumed;

- (5) details of when the *customer's* payments for such insurance change, for example, if premiums are reviewed annually; and
- (6) where a quotation is not provided in accordance with (3), a statement of when and how a quotation will be provided (for example, separately and as soon as possible).

9.4.74

FCA

G

*Firms* are reminded that ■ MCOB 5.4.23 R requires a *firm* to provide a *customer* with an accurate quotation for any *tiered products*. Where the level of cover the *firm* requires the *customer* to take up is known at the outset, then the quotation should reflect that level of cover.

9.4.75

FCA

R

If the *lifetime mortgage* does not require the *customer* to take out insurance as a *tiered product*, the sub-heading "Insurance you must take out through [insert name of *mortgage lender* and where relevant the name of the *mortgage intermediary*]" must be retained and a statement must be provided under this heading that the *customer* is not obliged to take out any insurance through the *mortgage lender* or, where relevant, the *mortgage intermediary*.

9.4.76

FCA

R

The following information must be included under the sub-heading "Insurance you must take out as a condition of this mortgage but that you do not have to take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]":

- (1) if the *lifetime mortgage* requires the *customer* to take out an insurance policy (other than that which is a *tiered product* which the *customer* is obliged to purchase through the *mortgage lender* or where relevant the *mortgage intermediary*), a brief statement of the type of insurance the *firm* requires; a quotation for such insurance may be included in the *illustration*, estimated where necessary;
- (2) if the *mortgage lender* or the *mortgage intermediary* makes a charge in cases where the *customer* does not arrange insurance that is a condition of the mortgage through the *mortgage lender* or the *mortgage intermediary*, this must be stated, together with the amount of the charge and the frequency with which this charge is payable; and
- (3) if no insurance policies are required (other than that which is a *tiered product*), the sub-heading "Insurance you must take out as a condition of this mortgage but that you do not have to take out through [insert name of *mortgage lender* and, where relevant the *mortgage intermediary*]" must be retained in the *illustration* and

a statement must be provided under this heading that no such insurance is required.

9.4.77

FCA

G

Under the sub-heading "Insurance you must take out as a condition of this mortgage but that you do not have to take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]", the *illustration* should not include any insurance policy that may be taken out by a *mortgage lender* itself to protect its own interests rather than the *customer's* interests, for example, because of the ratio of the loan amount to the property value.

9.4.78

FCA

G

If the cost of any insurance that the *mortgage lender* might take out to protect its own interests because of the ratio of the loan to the property value is passed on to the *customer*, it will be shown elsewhere in the *illustration*, for example as a *higher lending charge* or in the interest rate charged.

9.4.79

FCA

R

A *firm* may include in the *illustration*, under the sub-heading "Optional insurance", quotations (estimated where necessary) for any insurance products (other than the insurance products covered elsewhere in the *illustration* in accordance with ■ MCOB 9.4.72 R and ■ MCOB 9.4.76 R) that the *firm* issuing the *illustration* wishes to sell to the *customer*.

9.4.80

FCA

R

If no quotations are included in the *illustration* in accordance with ■ MCOB 9.4.79 R, the sub-heading "Optional insurance" must not be included in the *illustration*.

9.4.81

FCA

R

- (1) If any quotations for insurance are included in the *illustration* in accordance with ■ MCOB 9.4.73 R(3), ■ MCOB 9.4.76 R(1) or ■ MCOB 9.4.79 R, the *illustration*:
  - (a) must include a brief description only of the type of insurance (full details of the insurance cover may however be provided separately); and
  - (b) (i) must include the total price to be paid by the *customer* in a column on the right hand side of the *illustration* under the heading "[insert frequency of payments quoted] payments"; and
    - (ii) may refer the *customer* to the individual insurance product disclosure documentation.
- (2) If the *customer* has asked to add any insurance premiums or insurance-related charges to the amount borrowed in accordance with ■ MCOB 9.4.21 R(4), the *illustration* must state that this is the case.

9.4.82

FCA

G

The terms on which an insurance premium has been calculated should be presented to the *customer* in the format determined by the relevant regulatory requirements.

**Section 13 of a lifetime mortgage illustration: "What happens if you do not want this mortgage any more?"**

9.4.83

FCA

**R**

Under the heading "What happens if you do not want this mortgage any more?", the *illustration* must include the following information on the *lifetime mortgage*:

- (1) under the sub-heading "Early repayment charges":
  - (a) an explanation of whether *early repayment charges* are payable;
  - (b) an explanation of when *early repayment charges* are payable;
  - (c) an explanation of any other fees that are payable if the *lifetime mortgage* is repaid early, and the current level of these fees;
  - (d) a basic explanation of the basis on which *early repayment charges* are calculated (for example, as a percentage of the loan or as so many months' interest), including, where appropriate, details of any *cashback* or other incentives that must be repaid. The *illustration* may refer to a separate document for full details of all terms and conditions relating to the charges that apply if the *lifetime mortgage* is repaid early;
  - (e) example cash amounts of any *early repayment charges* indicating the range of charges that apply over the period during which such charges apply calculated in accordance with **MCOB 9.4.88 R**, which must be described in the *illustration* as "cash examples";
  - (f) the maximum *early repayment charge* that the *customer* could be charged in accordance with **MCOB 12.3** (Early repayment charges), which must be shown as a cash amount and described in the *illustration* as "the maximum charge you could pay" [add if applicable, "plus (a) fee(s) which (is/are) currently ?x"]; and
  - (g) details of whether or not the *lifetime mortgage* is portable on moving house and a brief explanation of any conditions or restrictions that apply including whether there are any restrictions on changing the terms of the *lifetime mortgage* during the period in which any *early repayment charges* apply (a reference to another document may be made in order to provide the *customer* with further details of the conditions or restrictions);
  
- (2) under the sub-heading "Circumstances in which early repayment charges do not apply", a clear statement of the circumstances in which no *early repayment charges* will be payable by the *customer*. (This may include moving to another property, or into sheltered accommodation or residential care.) Where the *lifetime mortgage* is portable on moving house but no *early repayment charges* are

payable by the customer, the remaining information required by ■ MCOB 9.4.83 R(1)(g) should be included here.

**9.4.84**  
**FCA**

**G** The requirements in ■ MCOB 9.4.83 R(1) may be presented in a tabular format.

**9.4.85**  
**FCA**

**G** Where a *firm* does not impose an *early repayment charge*, it may delete the sub heading 'Circumstances in which early repayment charges do not apply'.

**9.4.86**  
**FCA**

**R** Where ■ MCOB 9.4.83 R(1)(e) would result in more than three cash amounts being shown in the *illustration*, the cash amounts shown in the *illustration* may be restricted to three examples. These three examples are in addition to the maximum *early repayment charge* required by ■ MCOB 9.4.83 R(1)(f). These examples must be representative of the full range of charges that apply and not be limited to the lowest charges that apply. These three examples are in addition to:

- (1) any statement of the amount of any fees described in ■ MCOB 9.4.83 R(1)(c); and
- (2) the maximum *early repayment charge* required by ■ MCOB 9.4.83 R(1)(f).

**9.4.87**  
**FCA**

**G** An example which would comply with MCOB 9.4.86R would be if a five year fixed rate mortgage had a charge which reduced linearly by 1% each year from 5% in the first year to 1% in the final year and cash examples were used based on 5% in year 1, 3% in year 3 and 1% in year 5.

**9.4.88**  
**FCA**

**R**

- (1) In calculating example cash amounts in accordance with ■ MCOB 9.4.83 R(1)(e), it must be assumed that:
  - (a) the *lifetime mortgage* is repaid in full;
  - (b) all payments due (if applicable) on the *lifetime mortgage* are actually paid;
  - (c) additional fees and charges such as insurance premiums have been paid; and
  - (d) no underpayments or overpayments (if applicable) have been made.
- (2) If:
  - (a) *cashbacks* or other incentives need to be repaid; or
  - (b) fees need to be paid;
 the amounts that would need to be repaid or paid must be included in the example cash amounts.



- (3) Where the calculation of the *early repayment charge* is based on the interest rate charged on the *lifetime mortgage*, or on interest rates generally, the interest rate(s) used for the calculation of the example cash amounts must be those in force at the date that the *illustration* is issued to the *customer*.
- (4) The example cash amounts must reflect the maximum charge in a particular year. Where it is possible to state exact *early repayment charges* (that is, where all such charges are based on the original amount borrowed), the *illustration* must do so.

9.4.89

FCA

R

Where the cash examples from ■ MCOB 9.4.88 R included in the *illustration* would vary either if the interest rate charged on the *lifetime mortgage* changed or with changes in interest rates generally, an appropriate warning that the *early repayment charges* may vary from the cash examples must be included in the *illustration*.

9.4.90

FCA

R

Where the *early repayment charge* could be higher than those stated in the *illustration* if the *lifetime mortgage* continued after the end of the term estimated in accordance with ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R, Section 13 of the *illustration* must include a clear statement to that effect.

**Section 14 of a lifetime mortgage illustration: "Additional features"**

9.4.91

FCA

R

Under the section heading "Additional features" the *illustration* must include, where relevant, details of how the *mortgage lender* would treat any payments by the *customer* in excess of those required, and details of any additional features or facilities under the various sub-headings in ■ MCOB 9.4.93 R.

9.4.92

FCA

R

- (1) If none of the features at ■ MCOB 9.4.93 R are applicable to the *lifetime mortgage* to which the *illustration* relates, the section headed 'Additional features' must be retained, but the sub-headings must not be included and a statement must be added to explain that there are no additional features.
- (2) Only those features available on the *lifetime mortgage* need be included in the *illustration*.
- (3) If a *firm* provides a *customer* with supplementary information about any additional features or facilities over and above the information required under ■ MCOB 9.4.91 R to ■ MCOB 9.4.110 R, the *firm* may include a reference to that supplementary information in Section 14.

PAGE  
39

9.4.93

FCA

R

The relevant sub-headings are as follows:

- (1) "Overpayments"
- (2) "Underpayments"

- (3) "Payment holidays"
- (4) "Borrow back"
- (5) "Additional borrowing available without further approval"
- (6) "Additional secured borrowing"
- (7) "Credit card"
- (8) "Unsecured borrowing"
- (9) "Linked current account" and
- (10) "Linked savings account".

9.4.94

FCA

R

- (1) Under the sub-heading 'Overpayments', the *illustration* must include details of any restrictions on lump sum and regular overpayments (if payments are required) on the *lifetime mortgage*, together with a statement as to whether or not the amount on which the interest is recalculated is reduced immediately on receipt of any lump sum or regular overpayment.
- (2) Where such recalculation does not take place immediately (for example, if an annual rest method is used), this statement must be accompanied by an explanation of when the amount on which the interest is recalculated is reduced following a lump sum or regular overpayment.
- (3) Where *early repayment charges* apply, this section must not repeat the details provided in Section 13 of the *illustration*, but may refer to Section 13.

9.4.95

FCA

G

Where the interest recalculation described in ■ MCOB 9.4.94 R takes place immediately, *firms* may add a statement in this section explaining that the *customer* will get the benefit of the overpayment immediately.

9.4.96

FCA

R

Under the sub-heading "Underpayments", the *illustration* must include details of whether the *customer* can make underpayments and a brief statement of any conditions that apply.

9.4.97

FCA

R

Under the sub-heading "Payment holidays", the *illustration* must include details of circumstances in which the *customer* can take *payment holidays* and a brief statement of any conditions that apply.

9.4.98

FCA

R

Under the sub-heading "Borrow back", the *illustration* must include details of circumstances in which the *customer* can *borrow back* any monies overpaid and a brief statement of any conditions that apply.



- 9.4.99** **R** Under the sub-heading "Additional borrowing available without further approval", the *illustration* must provide details of circumstances in which additional *secured lending* is offered with the *lifetime mortgage* that would allow the *customer*, subject to certain conditions, to increase the amount of the loan on which the *illustration* is based.
- FCA**
- 9.4.100** **R** Under the sub-heading "Additional secured borrowing", the *illustration* must provide details of circumstances in which additional *secured lending* is offered with the *lifetime mortgage* that would allow the *customer*, subject to certain conditions, to increase the amount of the loan on which the *illustration* is based.
- FCA**
- 9.4.101** **R** Under the sub-heading "Unsecured borrowing", the *illustration* must provide details of circumstances in which *unsecured lending* is offered with the *lifetime mortgage* that would allow the *customer* to increase the amount of the loan on which the *illustration* is based.
- FCA**
- 9.4.102** **R** Under the sub-heading "Credit card", the *illustration* must:
- FCA**
- (1) state whether a credit card is offered with the *lifetime mortgage*; and
  - (2) if a credit card is offered and it is a *mortgage credit card*:
    - (a) unless (b) applies, include the following text: "This card will not give you a number of the statutory rights associated with traditional credit cards. Your lifetime mortgage offer will tell you more about the differences." or
    - (b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than those provided under the Consumer Credit Act 1974, include the following text: "This card will not give you a number of the statutory rights associated with traditional credit cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your lifetime mortgage offer will tell you more about this."
- 9.4.103** **R** Where any of the additional features under **MCOB 9.4.99 R** to **MCOB 9.4.102 R** inclusive apply, then the following must also be stated if the amount of additional borrowing that would be available to the *customer* is stated in the *illustration*:
- FCA**
- (1) the maximum additional amount available;
  - (2) if the interest rate payable on any additional borrowing is different to the interest rate in Section 5 and Section 8 of the *illustration*, the interest rate and the *APR* charged on the additional borrowing. The *APR* must be calculated in accordance with *MCOB 10* (Annual

- Percentage Rate), based on the maximum amount of additional borrowing that would be permitted for the *customer* and the term of the loan from ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R;
- (3) the total resulting debt the *customer* could incur (including the original loan amount);
  - (4) the payments on this total debt based on the frequency of payments in ■ MCOB 9.4.37 R (if payments are required) and the current interest rate(s) applying on the date the *illustration* is issued;
  - (5) whether this additional borrowing must be repaid in full if the original loan is repaid in full, along with details of any conditions that apply;
  - (6) if *early repayment charges* apply to the additional amount borrowed:
    - (a) that *early repayment charges* are payable;
    - (b) an explanation of when *early repayment charges* are payable; and
    - (c) the maximum *early repayment charge* that the customer could be charged in accordance with ■ MCOB 12.3 which must be shown as a cash amount; and
  - (7) if it is the case, that the maximum amount of borrowing available, or the terms and conditions, may change depending on other factors such as ratio of the loan amount to the property value.

9.4.104

FCA

R

Where more than one additional borrowing facility from ■ MCOB 9.4.99 R to ■ MCOB 9.4.102 R applies, the total debt and total payments due (if payments are required) under all these *linked borrowing* facilities must be included under a separate sub-section titled 'Total additional borrowing'.

9.4.105

FCA

G

The purpose of ■ MCOB 9.4.104 R is to show the total amount of any additional borrowing facilities that would be available to the *customer* and the cost of utilising these facilities. It must combine the amount available under any *linked borrowing* facilities including additional *secured lending*, credit cards and *unsecured lending*.

9.4.106

FCA

R

- (1) Where additional features are included in accordance with ■ MCOB 9.4.91 R and these are credit facilities that do not meet the definition of a *regulated mortgage contract*, the relevant parts of Section 14 of the *illustration* must include the following text:

"This additional feature is not regulated by the *FCA*."

- (2) Where additional features are included in accordance with ■ **MCOB 9.4.91 R** and these are credit facilities regulated by the Consumer Credit Act 1974, the relevant parts of Section 14 of the *illustration* must include the following text after the text in (1): "but is regulated under the Consumer Credit Act 1974. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available."

**9.4.107**  
**FCA**

**R** Where all or part of the maximum amount of additional borrowing is secured on the *customer's* home, a prominent warning must be included that additional borrowing increases the amount of credit secured on the *customer's* home.

**9.4.108**  
**FCA**

**G** Suitable wording for the warning contained in ■ **MCOB 9.4.107 R** would be: "This will increase the amount of borrowing secured on your home."

**9.4.109**  
**FCA**

**R** Under the sub-heading "Linked current account" the *illustration* must include the following information:

- (1) whether a linked current account is a compulsory or optional product (if the current account is a compulsory product this must also be stated in Section 5 of the *illustration* in accordance with ■ **MCOB 9.4.24 R(7)**);
- (2) an explanation of the interest rates that apply under different circumstances to the linked current account, if different from the interest rate charged on the *lifetime mortgage* (for example, if a different interest rate applies if the account is overdrawn); and
- (3) the *firm* providing the linked current account if it is not the *mortgage lender*.

**9.4.110**  
**FCA**

**R** Under the sub-heading "Linked savings account" the *illustration* must include the following information:

- (1) whether a linked savings account is a compulsory or optional product (if the savings account is a compulsory product this must also be stated in Section 5 of the *illustration* in accordance with ■ **MCOB 9.4.24 R(7)**);
- (2) the interest rate paid on the linked savings account if it differs from the interest rate charged on the *lifetime mortgage*; and
- (3) the *firm* providing the linked savings account if it is not the *mortgage lender*.

**Section 15 of a lifetime mortgage illustration: "Overall cost of this mortgage"**

9.4.111

FCA

R

Under the section heading "Overall cost of this mortgage":

- (1) the following text must be included in the illustration: "The APR helps you to compare lifetime mortgages by giving you one rate that shows the overall cost of the mortgage. It takes into account some fees and charges as well as the interest due, and this means that the APR may be higher than the interest rate shown in Sections 5 and 8. Only use the APR to compare lifetime mortgages of the same type, and where the same example term is used."
- (2) where the *customer* is required to make payments on the *lifetime mortgage* the following text must also be included in the *illustration*: "The overall cost takes into account the payments in Sections 8 and 11 above."; and
- (3) reference must be made to any other payments that have been included in the *APR* but not included in Sections 8 and 11 of the *illustration* if these are relevant to the *lifetime mortgage* that is the subject of the *illustration*.

9.4.112

FCA

G

■ MCOB 9.4.111 R(3) would require, for example, a reference to the fact that the overall cost takes into account mortgage payment protection insurance where this is required as a condition of the *lifetime mortgage* to which the *illustration* relates. The requirement to take out such insurance must be stated in Sections 5 and 12 of the *illustration* in accordance with ■ MCOB 9.4.24 R(7), ■ MCOB 9.4.72 R or ■ MCOB 9.4.76 R.

9.4.113

FCA

R

The following text must be included after the text required by ■ MCOB 9.4.111 R with the relevant cost measures shown in the right-hand column of Section 15 in accordance with the layout shown in ■ MCOB 9 Annex 1 R:

(1) "The total amount you would pay back over the example term of [insert number of years in accordance with ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R] including the amount borrowed is ? [insert *total amount payable*]", and

(2) "The overall cost for comparison is [insert the *APR*] % *APR*."

9.4.114

FCA

R

(1) The *APR* and the *total amount payable* in ■ MCOB 9.4.113 R must be calculated on the basis of information obtained from the *customer* in accordance with ■ MCOB 9.4.6 R.

(2) Where there is a charge to be included in the *APR* and *total amount payable* and the precise amount of that charge is not known at the time that the *illustration* is provided, ■ MCOB 10.3

(Formula for calculating the APR) sets out a number of relevant assumptions to be used. If the method for including the charge is not addressed in MCOB 10 (Annual Percentage Rate), the charge must be estimated based on information which is known to be representative of the *lifetime mortgage* to which the *illustration* relates.

- (3) Where the *lifetime mortgage* is a *roll-up of interest mortgage*, the *total amount payable* must be based on the total amount that the *customer* would owe at the end of the example term.

9.4.115  
FCA

G

In relation to ■ MCOB 9.4.114 R(2), the cost of conveyancing would be an example of a charge for which representative information may need to be used in the calculation of the APR and the *total amount payable*.

9.4.116  
FCA

R

At the end of Section 15 the following text must be included, if relevant: "The figures in this section will vary following interest rate changes."

9.4.117  
FCA

G

The prescribed text at ■ MCOB 9.4.116 R would not be relevant if the *illustration* is for a *lifetime mortgage* that has a fixed interest rate throughout the life of the mortgage.

9.4.118  
FCA

G

The purpose of the *illustration* is to provide the *customer* with details of the cost of borrowing the amount required over the example term from ■ MCOB 9.4.6 R and ■ MCOB 9.4.10 R (or ■ MCOB 9.4.12 R). Section 14 has been designed specifically to allow examples of the effect of any additional features of the *lifetime mortgage* such as a linked current account. Examples of these features should therefore be shown in Section 14 and not in Section 15 or Section 8 of the *illustration*.

**Section 16 of a lifetime mortgage illustration: "Using a mortgage intermediary"**

9.4.119  
FCA

R

Where the *illustration* is issued to a *customer* by, or on behalf of, a *mortgage intermediary*, Section 16 "Using a mortgage intermediary" must be included in the *illustration* and must include the following:

- (1) unless ■ MCOB 9.4.120 R applies, a clear statement of the amount payable (either directly or indirectly) by the *mortgage lender* to the *mortgage intermediary*, or to any third parties; and
- (2) the name of the *mortgage lender* who will make the payment, the name of the *mortgage intermediary* and the names of any third parties who will be paid.

PAGE  
45

9.4.120  
FCA

R

If the amount payable by the *mortgage lender* to the *mortgage intermediary* and to third parties is ?250 or less, the mortgage intermediary need only state that the amount of the payment is "no more than ?250", unless the *customer* requests the actual amount.

9.4.121 **R** If the *mortgage intermediary* will pass to the *customer* all or part of the amount payable to the *mortgage intermediary* under ■ MCOB 9.4.119 R(1) or ■ MCOB 9.4.120 R, that fact may be stated in this section, along with the amount payable to the *customer*.  
**FCA**

9.4.122 **R** If the *mortgage lender* will make no payment to the *mortgage intermediary* or any third party, this section may state that the *mortgage intermediary* will receive no payment.  
**FCA**

9.4.123 **R** The amount payable in ■ MCOB 9.4.119 R(1) or ■ MCOB 9.4.120 R must include, but is not limited to:  
**FCA**

- (1) any *procurator fee*; and
- (2) a cash value for any material non-cash inducements that the *mortgage lender* provides to a *mortgage intermediary* or third party, whether payable directly or indirectly.

9.4.124 **G** ■ MCOB 2.3.7 R requires any material inducements provided by a *mortgage lender*, whether directly or indirectly, to a *mortgage intermediary* or third party (unless the payment only reflects the cost of outsourcing work relating to the processing of mortgage applications by a *firm* unconnected to the *mortgage intermediary*) to be quantified in cash terms, which will enable the cash values to be included in the *illustration* in accordance with ■ MCOB 9.4.123 R.  
**FCA**

9.4.125 **G** An example of a statement which would comply with ■ MCOB 9.4.119 R and ■ MCOB 9.4.123 R would be: "[name of *mortgage lender*] will pay [name of *mortgage intermediary*] an amount of ?350 in cash and benefits if you take out this lifetime mortgage."  
**FCA**

**Contact details**  
 .....

9.4.126 **R** This section must:  
**FCA**

- (1) follow Section 15 "Overall cost of this mortgage", unless the *illustration* is issued by a *mortgage intermediary*, in which case it must follow Section 16 "Using a mortgage intermediary"; and
- (2) include the name, address and contact point of the *firm* providing the illustration.

9.4.127 **G** An example of wording which would comply with ■ MCOB 9.4.126 R(2) would be: "If you wish to discuss this lifetime mortgage illustration please contact [name of individual] at [address] or on [telephone number]."  
**FCA**



9.4.128

FCA

R

**Foreign currency mortgages**

If the *customer's* liability under a *lifetime mortgage* is in a currency other than sterling, ■ MCOB 9.4 applies to the *illustration* for that *lifetime mortgage* with the following modifications:

- (1) all cash amounts must be given in the relevant currency except where otherwise required by (2)(a) and (3);
- (2) the following information must be stated under Section 5 "Description of this mortgage"
  - (a) the amount in sterling on which the *illustration* is based from ■ MCOB 9.4.13 R based on the exchange rate in (2)(b);
  - (b) the exchange rate used; and
  - (c) when the exchange rate quoted applied;
- (3) the following text must be added at the end of Section 5 "Description of this mortgage": "This illustration is based on the sterling equivalent of [insert details from (2)(a)] based on [insert details from (2)(b)] as at [insert details from (2)(c)]. Exchange rates can vary significantly. The effect of a 5% decrease in the value of sterling to the [insert name of relevant currency] would increase your total borrowing to [insert amount to which the amount borrowed from ■ MCOB 9.4.13 R would increase in sterling]. [Insert if payments are required: This would increase your [insert frequency of payments from ■ MCOB 9.4.37 R] payments by the sterling equivalent of ? [insert amount in sterling]]." The following information must be added to this text:
  - (a) the cash amount to which the amount borrowed would increase in sterling if there was a decline of 5% in the value of sterling when compared to the relevant currency; and
  - (b) if payments are required, the amount by which (2)(b) would increase the *customer's* payments based on the frequency of payments from ■ MCOB 9.4.37 R, shown as a sterling equivalent cash amount.

9.4.129

FCA

R

**Risk warning**

The text at ■ MCOB 9.4.33 R(8) must be immediately followed by the following additional text, prominently displayed (for guidance on prominence see ■ MCOB 2.2.9 G): "Changes in the exchange rate may increase the sterling equivalent of your debt."

9.4.130

FCA

R

**Shared appreciation mortgages**

If the *lifetime mortgage* is a *shared appreciation mortgage*, ■ MCOB 9.4 applies to the *illustration* with the following modifications:

- (1) Section 5 "Description of this mortgage" must contain the following additional information and text in this order after the details required by ■ MCOB 9.4.24 R to ■ MCOB 9.4.29 R:
  - (a) "This lifetime mortgage involves [name of *mortgage lender*] taking a percentage share in any increase in the value of your property [insert details of all occasions when the share will be payable to the *mortgage lender*, for example, "after x years, or when this lifetime mortgage comes to an end or is terminated early"]. The amount [name of *mortgage lender*] will take depends on any increase in the value of your property." [Include if relevant: "If your property falls in value between now and the end of this lifetime mortgage you will be required to pay [add details of what the *customer* will need to pay the *mortgage lender* if the property falls in value]."
  - (b) (i) a basic explanation of how the amount of the share payable to the *mortgage lender* is calculated including the proportions of any given increase in the value of the property and whether this is dependent on the level of growth (for example, that the share payable to the *mortgage lender* is all of the increase in value of the property for the first 5% increase in value, plus half of the additional increase in the value of the property above this);
  - (ii) a reference to a separate document for full details of the terms and conditions relating to the amount of the share payable followed by: "The example below shows how this works. EXAMPLE: Based on the current [estimated] value of your home of [insert details from ■ MCOB 9.4.6 R(3)], the example(s) below show(s) what the value of your home would be and what share of that value [name of *mortgage lender*] would take after [insert example term of the loan in accordance with ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R or the term after which the equity share becomes payable if less] if the value of your home increased. [Include if relevant: "and what would happen if your home decreased in value".] Please note that you should add this payment to the amount of any *early repayment charges* that may be payable " see Section 13"
  - (c) except where (g) applies, example cash amounts for the value of the property and the corresponding amount of the



- equity share payable, assuming an average annual increase in the value of the property secured by the *lifetime mortgage* of 1%, 5% and 10% over the example term from (i) below;
- (d) if the *customer* would be required to pay the *mortgage lender* an amount because the value of the property on which the *lifetime mortgage* would be secured had decreased from its value at the start of the term of the *lifetime mortgage*, include example cash amounts for the value of the property and the corresponding amount payable assuming an average annual decrease, in the value of the property secured by the *lifetime mortgage* of 1%, 5% and 10% over the term from (i) below;
  - (e) if the amount of the equity share payable cannot go above or below a certain level, an explanation that this is the case along with a cash example described as "the maximum amount you could pay";
  - (f) include this text after the cash examples in (c) (or, if applicable, after the cash examples in (d) or (e)): "This is not an indication of how the actual value of your home may change."
  - (g) where (c) or (d) apply and the maximum percentage equity share payable is less than the example percentages in (c) or (d), only cash examples for those percentages required by (c) or (d) which are below this maximum need be quoted, along with the maximum in accordance with (e);
  - (h) if there are no restrictions on the amount of the equity share payable, the following text should follow the text in (f): "The amount you will need to pay could be much higher than this." and
  - (i) for the purposes of the examples required by (c) or (d), the example term used must be stated and must be the estimated term of the *lifetime mortgage* in accordance with
    - MCOB 9.4.10 R or ■ MCOB 9.4.12 R or the term after which the equity share becomes payable, if less;
- (2) Section 10: "How the value of your home could change" of the *illustration* must contain the following text at the end of the section: "You also need to think about the cost of paying any share in the value of your home to [insert name of *mortgage lender*] - see Section 5."
- (3) Section 13 "What happens if you do not want this mortgage any more?" must contain the following text at the end of the first sub-heading "Early repayment charges": "Remember to add the cost of paying any share in the value of your home to [insert name of *mortgage lender*] " see Section 5."

(4) Section 15 "Overall cost of this mortgage" of the *illustration* must contain the following text at the end of the section: "The APR and the total amount you must pay do not take account of the share that [insert name of *mortgage lender*] takes in any increase in the value of your home as described in Section 3. So you should not use these measures to compare this lifetime mortgage with other lifetime mortgages that do not involve [insert name of *mortgage lender*] taking a share in any increase in the value of your home."

9.4.131

FCA

G

The requirements in ■ MCOB 9.4.130 R(1)(c) and (d) may be presented in a tabular format.

**Risk warning**

9.4.132

FCA

R

The requirements at ■ MCOB 9.4.130 R(1) must be immediately followed by the following additional text, prominently displayed (see ■ MCOB 2.2.9 G): "You will need to pay this share in the value of your home to [name of mortgage lender] [insert time at which share must be paid - for example 'when your lifetime mortgage is repaid']. Think carefully about how this will affect the amount left over for you or your estate."

**Section 1 of a home reversion plan illustration: "About this information"**

9.4.133

FCA

R

Under the section heading "About this information", the prescribed text under this heading in the *home reversion plan illustration* must be included.

**Section 2 of a home reversion plan illustration: "Which service are we providing you with?"**

9.4.134

FCA

R

- (1) Unless (2) applies, under the section heading "Which service are we providing you with?" the prescribed text in the *home reversion plan illustration* under this heading must be included with a "check box" for each statement, one of which must be marked prominently to indicate the level of service provided to the *customer*;
- (2) If the level of service described in the *illustration* is provided by another *firm*, (1) may be replaced by the following: under the section heading "Which service are we providing you with?" the following text should be presented as two options with a "check box" for each option, one of which must be marked prominently to indicate the level of service provided to the *customer*: "[name of the *firm*] recommends, having assessed your needs, that you take out this home reversion plan." "[name of the *firm*] is not recommending a particular home reversion plan for you. However, based on your answers to some questions, it is giving you information about this home reversion plan so that you can make your own choice, or find out about

other ways in which you may be able to release equity from your home.".

**Section 3 of a home reversion plan illustration: "What is a home reversion plan?"**

9.4.135

FCA

R

Under the section heading "What is a home reversion plan?", the prescribed text in the *home reversion plan illustration* under this heading must be included.

**Section 4 of a home reversion plan illustration: "What you have told us"**

9.4.136

FCA

R

- (1) Under the section heading "What you have told us", the *illustration* must state the minimum information a *firm* must obtain from the *customer* (apart from details of the plan that the *customer* is interested in, which is in Section 5 of the *illustration*), and can include brief details of any other information that has been obtained from the *customer* and used to produce the *illustration*.
- (2) For an *instalment reversion plan*, where the *customer* requests an additional *illustration* showing a term of their choice, the term chosen by the *customer* must be stated in this section, together with a statement to the effect that the term is the *customer's* choice.
- (3) If the amount on which the *illustration* is based includes the amount that the *customer* wants to release less charges and other payments that have been deducted from the amount to be released:
  - (a) except where there are some fees or charges that have not been deducted, this section must include the following text after the amount to be released: " less ? [insert total amount of fees and other charges deducted from the amount to be released] for fees that have been deducted from the amount to be released - see Section 9 for details."; or
  - (b) where there are other fees or charges that the *customer* must pay that have not been deducted this section must include the following text after the amount to be released: "less ? [insert total amount of fees and other charges deducted from the amount to be released] for fees that have been deducted from the amount to be released. These and the additional fees that you need to pay are shown in Section 9."
- (4) If the amount on which the *illustration* is based includes the amount that the *customer* wants to release less insurance premiums or insurance-related charges that have been deducted from the amount to be released:
  - (a) except where there are other insurance premiums or insurance-related charges that have not been deducted, this section must include the following text after the amount to be released (which may be combined with the prescribed text in

(3) if applicable): "less ? [insert amount of premium or charges, or both, to be deducted from the amount to be released] for insurance [premiums] [and] [charges] that have been deducted from the amount to be released - see Section 10 for details."; or

(b) where there are other insurance premiums or insurance-related charges, or both, this section must include the following text after the amount to be released (which may be combined with the prescribed text in (3) if applicable): "less ? [insert amount of premium or charges, or both, to be deducted from the amount to be released] for insurance [premiums] [and] [charges] that have been deducted from the amount to be released. These and any additional insurance [premiums] [and] [charges] that you need to pay are shown in Section 10."

(5) If the amount on which the *illustration* is based does not involve any charges or payments being deducted from the amount to be released, but there are charges that must be paid by the *customer*, Section 4 of the *illustration* must include the following text after the amount to be released: "No fees have been deducted from this amount but the fees you need to pay are shown in Section 9. For details of any insurance charges, see Section 10."

(6) If the *home reversion plan* on which the *illustration* is based has no charges that must be paid by the *customer*, and no insurance premiums are being deducted from the amount to be released, Section 4 of the *illustration* must include the following text after the amount to be released: "We do not charge any fees for this home reversion plan."

9.4.137

FCA

R

At the end of Section 4 of the *illustration* a statement must be included making clear that changes to any of the information obtained from the *customer*, and where appropriate to the valuation of the property, could alter the details elsewhere in the *illustration* and encouraging the *customer* to ask for a revised *illustration* in this event.

9.4.138

FCA

G

An example is: "An independent valuation will be carried out and this, or changes to any of the information that you have given us, could alter the information in this illustration. If this is the case please ask for a revised illustration."

**Section 5 of a home reversion plan illustration: "Description of this home reversion plan"**

9.4.139

FCA

**R**

Under the section heading "Description of this home reversion plan" the *illustration* must:

- (1) state the name of the *reversion provider* providing the *home reversion plan* to which the *illustration* relates (a trading name used by the *reversion provider* may also be stated), and the name, if any, used to market the *home reversion plan*;
- (2) include a statement describing the *home reversion plan*;
- (3) if the *home reversion plan* is linked to an *investment*, and payments required from the *customer* on the *home reversion plan* will be deducted from the income from the *investment*, include a statement that this is the case;
- (4) if the *customer* is obliged to buy any *tied products* under the *home reversion plan*, include the following information:
  - (a) details of the *tied products* required;
  - (b) the following text: "You are obliged to take out [insert details of the *tied product(s)*] through [insert name of *reversion provider* or *reversion intermediary*] as a condition of this home reversion plan", and if the *tied product* is an insurance policy, "Please refer to Section 10 of this illustration for further details [of the insurance policies].";
- (5) state the term or estimated term of the *home reversion plan*;
- (6) state very briefly any restrictions that apply to the availability of the *home reversion plan* (for example, it is only available to certain types of *customer* or cannot be transferred to another property).

9.4.140

FCA

**R**

Further information about the *home reversion plan* may be included as long as it does not significantly:

- (1) duplicate information contained elsewhere in the *illustration*; and
- (2) extend the length of this section.

9.4.141

FCA

**G**

An example of further information that may be included might be that an "approval in principle" has been granted subject to valuation.

**Section 6 of a home reversion plan illustration: "Benefits"**

9.4.142

FCA

**R**

Under the section heading "Benefits", the *illustration* must include:

- (1) a description of the monetary amount(s), and in a box aligned to the right of the document, the monetary amount(s), that the *customer* will receive as a lump sum and/or as a regular payment;
- (2) if the *home reversion plan* is linked to an *investment* and the payments required from the *customer* on the *home reversion plan* will be deducted from the income from the *investment*, the monetary amount of the net income the *customer* will receive;
- (3) if applicable, statements of any other benefits, incentives and guarantees that apply to the *home reversion plan*;
- (4) an explanation of how the monetary amount that the *customer* will receive was calculated; and
- (5) if the *home reversion plan* is an *instalment reversion plan*:
  - (a) whether the monetary amount that the *customer* will receive is guaranteed or variable (for example, because it is linked to the performance of another *investment*);
  - (b) an explanation of what happens to the monetary amount(s) not yet paid by the *reversion provider* if the *customer* (and, in the case of a joint plan, the surviving spouse or civil partner) dies; and
  - (c) if the monetary amount that the *customer* will receive is subject to the *customer* selling further parts of a qualifying interest in land to the *reversion provider*, whether these further sales are optional or compulsory.

9.4.143

FCA

**G**

Examples that may be appropriate to describe what the *customer* will receive are:

- (1) "Subject to the independent valuation, this home reversion plan will provide you with a lump sum of ?[x] [or [state number of instalments] lump sums of ?[x]].";
- (2) "The amount you are releasing will automatically be used to purchase a [name of linked *investment* product] from [name of provider]. The amount is ?[x]."; and
- (3) "Subject to the independent valuation, this home reversion plan will provide you with a monthly payment from the start of your plan for [state period]. This will be ?[x]."

9.4.144

FCA

G

An example that may be appropriate to explain how the amount the *customer* will receive was calculated is: "How we calculate this sum: Your property is worth about ?[x]. Taking the information in Section 4 above into consideration, this plan will pay you [x] % [the amount, as a percentage, that the *reversion provider* will pay for the property] of the full market value of any portion of the property you decide to sell. For a lump sum of about ? [x] [insert the amount that the *customer* wants to release from the property], you will need to sell [x]% [state the proportion of the property, as a percentage, that the *customer* needs to sell to release the amount required] of your home. This will leave you with [x]% [state the proportion of the property, as a percentage, that will still be owned by the *customer*] of your property. At current values, this would be worth ?[x] though the value of property may rise or fall in the future."

**Section 7 of a home reversion plan illustration: "Risks - important things you must consider"**

9.4.145

FCA

R

The *illustration* must include under the heading "Risks - important things you must consider" brief statements and warnings on all material risks involving a *home reversion plan*, including:

- (1) prominently at the beginning of the section: "A home reversion is a complex property transaction. You should seek legal advice to ensure that you fully understand all of the implications for you and your home and for anyone who might otherwise inherit the property.";
- (2) the effect of the *customer* wanting or needing to move home (whether into another property, sheltered accommodation, long-term care or residential care), covering the circumstances in which the *home reversion plan* is portable;
- (3) the effect on the *home reversion plan* of another party moving into the property (for example on marriage or the formation of a civil partnership or where a family member acts as a carer);
- (4) the *reversion provider's* requirements for repair and maintenance of the property, including the *reversion provider's* right (if any) to enter the property to effect essential repairs, and the circumstances in which this may occur;
- (5) a warning that taking out the *home reversion plan* may affect the *customer's* tax and welfare benefits position, that tax and welfare benefits can change and that the *customer* should consider seeking further information from HM Revenue and Customs, Benefits Agency or another source of advice such as a Citizens' Advice Bureau;
- (6) a warning that under a *home reversion plan* the *customer* will cease to own any part of the property sold to the *reversion provider*, and so will neither benefit from any increase in the value of that part nor be able to leave his home to his beneficiaries on his death;



- (7) a warning (where appropriate) that the right to occupy the property will depend on the *customer* fulfilling the terms of the *home reversion plan*;
- (8) that the *illustration* contains a statement about the duration of the *home reversion plan*, and that the *customer* should ensure that the duration will be adequate given the *customer's* circumstances;
- (9) whether the *customer* can, in the future, secure borrowing from any other source on the property (and if applicable a warning that an increasing debt may mean that it may not be possible to borrow more in the future); and
- (10) if the provider is an *unauthorised reversion provider*, a warning that:
  - (a) the provider is not authorised or regulated by the *FCA*, and that key protections under the *regulatory system* will not apply; and
  - (b) the provider is not subject to the jurisdiction of the *Financial Ombudsman Service*, and that the *customer* will not be entitled to refer complaints against the provider to the *Financial Ombudsman Service*.

9.4.146

FCA

G

For guidance on prominence see ■ MCOB 2.2.9 G.

9.4.147

FCA

R

Under the heading "Risks - important things you must consider" the *illustration* must also include the following if they apply:

- (1) for an *instalment reversion plan*, a statement that if the customer dies in the early years of the plan, income payments will cease and therefore the full expected benefits of the plan will not be obtained;
- (2) (a) for an *instalment reversion plan* where there is a regular cash sum payable; and
  - (b) where:
    - (i) the *home reversion plan* is linked to an *investment*; and
    - (ii) the payments required from the *customer* on the *home reversion plan* will be deducted from the income from the *investment*; and
    - (iii) the *customer* will receive a fixed net income;

a statement that inflation can erode the value of the cash sum over time; and



- (3) for all *home reversion plans*, a statement or warning with regard to any material issue not covered elsewhere in this section of the *illustration*.

**Section 8 of a home reversion plan illustration: "What you will have to pay and when"**

9.4.148

FCA

R

The heading of the right-hand column of Section 8 of the *illustration* must state the frequency with which payments must be made by the *customer*. (For example, if payments are to be made on a monthly basis, the heading for this section must be "What you will have to pay and when" and the column must be headed "Monthly payments").

9.4.149

FCA

R

All the payments in Section 8 must be calculated based on the frequency used for the purposes of the heading in the right-hand column of the section and must be shown in that column.

9.4.150

FCA

R

Section 8 of the *illustration* must contain the following information:

- (1) a statement at the beginning of the section regarding rent and charges using the following text: "A home reversion plan is not a loan. Once you have paid the fees shown in section 9, you will only have to pay the charges shown below.";
- (2) the amount and frequency of annual rent, if any, to be paid by the *customer*; and
- (3) a description and the amount of other periodic charges to be paid by the *customer*.

9.4.151

FCA

R

Where the payment due to the *reversion provider* is to be deducted from the income provided by a linked *investment* product (such as an annuity) such that the *customer* receives the net income, the *firm* must make a clear statement to this effect.

**Section 9 of a home reversion plan illustration: "What fees must you pay?"**

9.4.152

FCA

R

Under the section heading "What fees must you pay?" the *illustration* must:

- (1) itemise all the fees that the *customer* must pay, excluding any charges for insurance set out in Section 10 of the *illustration*; and
- (2) include a statement regarding taxes and costs using the following text: "You may have to pay other taxes or costs in addition to any fees shown here.".

9.4.153

FCA

G

An example of a fee that would not be included would be a fee payable by the *customer* to insure their property elsewhere (however this would need to be stated in the separate "Insurance" section).

9.4.154

FCA

R

The fees included in this section must be itemised under the relevant sub-headings as follows:

- (1) the fees that are payable by the *customer* to the *reversion provider* must be itemised under the sub-heading "Fees payable to [name of *reversion provider*]";
- (2) the remaining fees must be itemised under the sub-heading: "Other fees"; and
- (3) (a) if there are no fees to be itemised in accordance with (1), the sub-heading must be retained and a statement must be included that no fees apply;
- (b) if there are no fees to be itemised in accordance with (2), the sub-heading must be retained and only the text in ■ MCOB 9.4.152 R (2) applies.

9.4.155

FCA

R

The following information must be provided for each fee included in this section of the *illustration*:

- (1) a description of the fee;
- (2) the amount payable by the *customer* specified in the column on the right-hand side of the section;
- (3) for fees included under the sub-heading "Other fees", to whom the fee is payable;
- (4) when the fee is payable;
- (5) whether or not the fee is refundable, and if so, the extent to which it is refundable;
- (6) which fees (if any) are estimated and based on representative information; and
- (7) if any fee is payable after the start of the *home reversion plan* and subject to change in the future, the amount of that fee, along with a statement that this is the 'current fee'.

9.4.156

FCA

R

- (1) If any fees are to be deducted from the amount to be released, this must be stated alongside each fee.
- (2) If the *customer* has the option of deducting from the amount to be released any of the fees included in this section, the following text must be included: "If you wish you can deduct [this/these/the {type of fee}] fee(s) from the amount to be released under this home reversion plan. This will reduce the

amount you get to ? [insert amount of the amount to be released minus the fee(s)]. If you want to do this, you should ask for another illustration that shows the effect of this on the amount you will get.".

9.4.157

**G**

**FCA**

"Other fees" will include any fee charged by a *reversion intermediary*, or another third party, for *advising on or arranging a home reversion plan*, but not commission or *procurement fees* (which are dealt with in Section 12 of the *illustration*).

9.4.158

**R**

**FCA**

A *reversion provider* must provide a *tariff of charges* to the *customer*, if the *customer* so requests.

**Section 10 of a home reversion plan illustration: "Insurance"**

9.4.159

**R**

**FCA**

- (1) Under the section heading "Insurance" the *illustration* must include details of:
  - (a) insurance which is a *tied product*; and
  - (b) insurance which is required as a condition of the *home reversion plan* which is not a *tied product*.
- (2) Under this section heading a *firm* may also provide details of insurance which is optional for the *customer* to take out.
- (3) It must be clear to the *customer* which products he is required to purchase under which circumstances (for example, where both a *tied product* and a *reversion intermediary* are involved, whether the policy must be purchased from the *reversion provider* or the *reversion intermediary*).

9.4.160

**R**

**FCA**

The following information must be included if the *home reversion plan* requires the *customer* to take out insurance that is a *tied product* either through the *reversion provider* or the *reversion intermediary*:

- (1) details of which insurance is a *tied product*;
- (2) the name of the *firm* imposing the requirement for the insurance;
- (3) for how long the *customer* is obliged to purchase the insurance;
- (4) an accurate quotation or a reasonable estimate of any payments the *customer* needs to make for the insurance;
- (5) where a quotation is provided for insurance on the basis of an estimated sum insured, because the actual required sum insured is unknown, the fact that it is estimated should be stated along with the level of cover that has been assumed;

- (6) details of when the *customer's* payments for such insurance change, for example, if premiums are reviewed annually; and
- (7) where a quotation is not provided, a statement of when and how a quotation will be provided (for example, separately and as soon as possible).

**9.4.161**  
**FCA**

**G**

A *firm* must provide a *customer* with an accurate quotation for any *tied products* (see ■ MCOB 5.4.23 R). Where the level of cover the *firm* requires the *customer* to take up is known at the outset, then the quotation should reflect that level of cover.

**9.4.162**  
**FCA**

**R**

If the *home reversion plan* does not require the *customer* to take out insurance as a *tied product*, a statement must be provided under this section that the *customer* is not obliged to take out insurance through the *reversion provider* or the *reversion intermediary*.

**9.4.163**  
**FCA**

**R**

The following information must be included if the insurance required, as a condition of the *home reversion plan*, is not a *tied product*:

- (1) a brief statement of the type of insurance the *firm* requires; a quotation for such insurance may be included in the *illustration*, estimated where necessary; and
- (2) if a charge is made if the *customer* does not arrange insurance through the *reversion provider* or the *reversion intermediary*, this must be stated, together with the amount of the charge and the frequency with which this charge is payable.

**9.4.164**  
**FCA**

**R**

A *firm* may include in the *illustration*, quotations (estimated where necessary) for any insurance products (other than the insurance products covered elsewhere in the *illustration*) that the *firm* issuing the *illustration* wishes to sell to the *customer*.

**9.4.165**  
**FCA**

**R**

- (1) If any quotations for insurance are included in the *illustration* it:
  - (a) must include a brief description of the type of insurance;
  - (b) must include the total price to be paid by the *customer* in a column on the right hand side of the *illustration* under the heading "[insert frequency of payments quoted] payments"; and
  - (c) may refer the *customer* to the relevant insurance product disclosure documentation.
- (2) If the *customer* has asked to deduct any insurance premiums or insurance-related charges from the amount released, the *illustration* must state that this is the case.

- 9.4.166** FCA G The terms on which an insurance premium has been calculated should be presented to the *customer* in the format determined by the relevant regulatory requirements.
- Section 11 of a home reversion plan illustration: "What happens if you do not want this home reversion plan any more?"**
- 9.4.167** FCA R Under the heading "What happens if you do not want this home reversion plan any more?", the *illustration* must set out whether the *customer* can cancel the *home reversion plan* and if so, explain any relevant conditions attached and costs.
- Section 12 of a home reversion plan illustration: "Using a home reversion intermediary"**
- 9.4.168** FCA R Where the *illustration* is issued to a *customer* by, or on behalf of, a *reversion intermediary* Section 12 "Using a home reversion intermediary" must be included in the *illustration* and must include the following:
- (1) a clear statement of the amount payable (either directly or indirectly) by the *reversion provider* to the *reversion intermediary*, or to any third parties; and
  - (2) the name of the *reversion provider* who will make the payment, the name of the *reversion intermediary* and the names of any third parties who will be paid.
- 9.4.169** FCA R If the amount payable by the *reversion provider* to the *reversion intermediary* and to third parties is ?250 or less, the *reversion intermediary* need only state that the amount of the payment is "no more than ?250", unless the *customer* requests the actual amount.
- 9.4.170** FCA R If the *reversion intermediary* will pass to the *customer* all or part of the amount payable to the *reversion intermediary* by the *reversion provider*, that fact may be stated in this section, along with the amount payable to the *customer*.
- 9.4.171** FCA R If the *reversion provider* will make no payment to the *reversion intermediary* or any third party, this section may state that the *reversion intermediary* will receive no payment.
- 9.4.172** FCA R The amount disclosed as payable to the *reversion intermediary* or third parties must include, but is not limited to:
- (1) any *procurator fee*; and
  - (2) a cash value for any material non-cash inducements that the *reversion provider* provides, whether payable directly or indirectly.
- 9.4.173** FCA G Any material inducements provided by a *reversion provider*, whether directly or indirectly, to a *reversion intermediary* or third party (unless the payment only reflects the cost of outsourcing work relating to the processing of home reversion applications by a *firm*

unconnected to the *reversion intermediary*) must be quantified in cash terms (see ■ MCOB 2.3.7 R). This enables the cash values to be included in the *illustration*.

9.4.174

FCA

G

An example of a statement which would comply with ■ MCOB 9.4.168 R would be: "[name of *reversion provider*] will pay [name of *reversion intermediary*] ?[x] in cash and benefits, if you proceed with this home reversion plan."

**Contact details**  
.....

9.4.175

FCA

R

This section must:

- (1) follow Section 11 "What happens if you do not want this home reversion plan any more?", unless the *illustration* is issued by a *reversion intermediary*, in which case it must follow Section 12 "Using a home reversion intermediary"; and
- (2) include the name, address and contact point of the *firm* providing the *illustration*.

9.4.176

FCA

G

An example would be: "If you wish to discuss this home reversion plan illustration, please contact [name of individual] at [address] or call [him/her] on [telephone number]."



## 9.5 Disclosure at the offer stage for equity release transactions

9.5.1

FCA

R

- (1) ■ MCOB 6.1 to ■ MCOB 6.6 (with the modifications stated in ■ MCOB 9.5.2 R to ■ MCOB 9.5.4 R) apply to an *equity release provider* where the *home finance transaction* is an *equity release transaction*, except that those provisions that by their nature are only relevant to *regulated mortgage contracts* do not apply to *home reversion plans* (see ■ MCOB 9.1.2A G).
- (2) The table in ■ MCOB 9.5.2 R shows how the relevant *rules* and *guidance* in ■ MCOB 6 must be modified by replacing the cross-references with the relevant cross-references to *rules* and *guidance* in ■ MCOB 9.4, and ■ MCOB 9.5.
- (3) The table in ■ MCOB 9.5.3 R replaces certain *rules* and *guidance* in ■ MCOB 6 with *rules* and *guidance* from ■ MCOB 9.5.
- (4) The terms and expressions in the *rules* and *guidance* in ■ MCOB 6 that by their nature are only connected to *regulated mortgage contracts* must be replaced with the appropriate equivalent terms and expressions for *home reversion plans* (see ■ MCOB 9.3.1A G).

9.5.2

FCA

R

### Table of modified cross-references to other rules:

This table belongs to ■ MCOB 9.5.1 R.

| Subject                   | Rule or guidance | Reference in rule or guidance | To be read as a reference to:  |
|---------------------------|------------------|-------------------------------|--------------------------------|
| Application: What?        | MCOB 6.1.5R      | MCOB 6                        | MCOB 6 as modified by MCOB 9.5 |
| Content of offer document | MCOB 6.1.6G      | MCOB 5.6                      | MCOB 9.4                       |
| Purpose                   | MCOB 6.2.1G      | MCOB 6                        | MCOB 6 as modified by MCOB 9.5 |
| General                   | MCOB 6.3.2R      |                               |                                |
| Records                   | MCOB 6.4.3R      |                               |                                |



| Subject  | Rule or guidance              | Reference in rule or guidance   | To be read as a reference to:                 |
|--|-------------------------------|---------------------------------|---|
| Modifications to the <i>illustration</i>                 | <b>MCOB 6.4.5G</b>            | <b>MCOB 6.4.4R(5)(b)</b>        | <b>MCOB 9.5.4R(6)(b)</b>                      |
| Modifications to the <i>illustration</i>                 | <b>MCOB 6.4.6R</b>            | <b>MCOB 6.4.4(1)</b>            | <b>MCOB 9.5.4R(1)</b>                         |
| Modifications to the <i>illustration</i>                 | <b>MCOB 6.4.6R(1) and (2)</b> | <b>MCOB 5.6</b>                 | <b>MCOB 9.4</b>                               |
| Modifications to the <i>illustration</i>                 | <b>MCOB 6.4.7R</b>            | <b>MCOB 6.4.4R(1)</b>           | <b>MCOB 9.5.4R(1)</b>                         |
| Modifications to the <i>illustration</i>                 | <b>MCOB 6.4.7R(2)</b>         | <b>MCOB 5</b>                   | <b>MCOB 9</b>                                 |
| Modifications to the <i>illustration</i>                 | <b>MCOB 6.4.7R(3)</b>         | <b>MCOB 5.6.73R to 5.6.83G</b>  | <b>MCOB 9.4.72R to 9.4.82G</b>                |
| Modifications to the <i>illustration</i>                 | <b>MCOB 6.4.7R(3)</b>         | <b>MCOB 5.6.92R to 5.6.112G</b> | <b>MCOB 9.4.91R to 9.4.110R</b>               |
| Other information contained in the <i>offer document</i> | <b>MCOB 6.4.13R</b>           | <b>MCOB 5.6.122R</b>            | <b>MCOB 9.4.126R</b>                          |
| <i>Offer documents in place of illustrations</i>         | <b>MCOB 6.6.1R</b>            | <b>MCOB 5.4 and 5.5</b>         | <b>MCOB 5.4 and 5.5 as modified by MCOB 9</b> |

9

9.5.3  
FCA

**R** Table of rules in ■ MCOB 6 replaced by rules in ■ MCOB 9:

This table belongs to ■ MCOB 9.5.1 R

| Subject                                  | Rule               | Rule replaced by   |
|--|--------------------|--------------------|
| Modifications to the <i>illustration</i> | <b>MCOB 6.4.4R</b> | <b>MCOB 9.5.4R</b> |

9.5.4  
FCA

**R** The *illustration* provided as part of the *offer document* in accordance with ■ MCOB 6.4.1 R(1) must meet the requirements of ■ MCOB 9.4, with the following modifications:

- (1) the *illustration* must be suitably adapted and revised to reflect the fact that the *firm* is making an offer to a *customer* and updated to reflect changes to, for example, for a *lifetime mortgage* the interest rate, charges, the exchange rate or the



APR required by ■ MCOB 10 (Annual Percentage Rate) at the date the *illustration* is issued;

- (2) the *illustration* must be based on the example term estimated in accordance with ■ MCOB 9.4.10 R;
- (3) ■ MCOB 9.4.2 R(2)(a) does not apply;
- (4) ■ MCOB 9.4.17 R (Information to be included at the head of the illustration) does not apply;
- (5) Section 1: 'About this information' is replaced by the following:
 

"Section 1: 'About this offer document'. Under the section heading 'About this offer document', the following text must be included:

  - (a) "You are not bound by the terms of this offer document until [insert relevant circumstances, including the names of any documents that must be signed. For example "you have signed the legal charge and the funds are released for your lifetime mortgage"] or "you have signed the agreement to sell your property to the reversion provider"]. We are required by the Financial Conduct Authority (FCA) - the independent watchdog that regulates financial services - to provide you with this offer document."
  - (b) (unless the offer document is being provided in place of an *illustration* ) "You should compare this offer document with the key facts illustration given to you before you applied for this [lifetime mortgage] [home reversion plan], to see how the details may have changed."
- (6) either:
  - (a) The heading for Section 2 is replaced with 'Which service did we provide you with?' and the following text should be presented as two options each with a 'check box', one of which must be marked prominently to indicate the level of service provided to the *customer*: "We have recommended, having assessed your needs, that you take out this [lifetime mortgage] [home reversion plan]." "We have not recommended a particular [lifetime mortgage] [home reversion plan] for you. You must make your own choice whether to accept this [lifetime mortgage] [home reversion] offer."; or
  - (b) if the service described in Section 2 of the earlier *illustration* was provided by another *firm*, the heading for Section 2 is replaced by 'Which service were you provided with?' and the following text should be presented as two options each with a 'check box' one of which must be marked prominently to indicate the level of service provided to the *customer*: "[name of firm] recommended that you take out this [lifetime mortgage]

[home reversion plan]." "[name of firm] did not recommend a particular [lifetime mortgage] [home reversion plan], for you. You must make your own choice whether to accept this [mortgage] [home reversion] offer.";

- (7) the fees recorded in the *illustration* that is part of the *offer document* must include any fees paid or payable by the *customer*;
- (8) any requirements to disclose whether a fee is refundable must be read as including fees that have already been paid;
- (9) [deleted]
- (10) for a *lifetime mortgage*:
  - (a) where additional features are included in accordance with ■ MCOB 9.4.91 R and these are credit facilities regulated by the Consumer Credit Act 1974, the relevant parts of Section 14 of the *illustration* that is part of the *offer document* must include the following text: "This credit facility is regulated under the Consumer Credit Act 1974. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available.";
  - (b) The text required by ■ MCOB 9.4.102 R (2)(a) or ■ MCOB 9.4.102 R (2)(b) should be adapted to include, or tell the *customer* where they can find, the information required by ■ MCOB 6.5.4 R; and
  - (c) ■ MCOB 9.4.119 R and ■ MCOB 9.4.120 R apply to the *illustration* that is part of the *offer document* if the *illustration* given out in accordance with ■ MCOB 9 was issued by, or on behalf of, a *mortgage intermediary*.

9.5.5  
FCA

**R** For *home reversion plans*, the *firm* must provide the *customer* with copies of the valuation report for the property and the terms of the *home reversion plan* including the terms on which he will occupy the property, together with the *offer document*.



**9.6 Disclosure at the start of the contract and after sale for equity release transactions**

9.6.1  
FCA

**R**

- (1) (a) ■ MCOB 7.1 to ■ MCOB 7.3, ■ MCOB 7.5 and ■ MCOB 7.6 (as modified by this section) apply to a *firm* where the *home finance transaction* is a *lifetime mortgage*.
- (b) ■ MCOB 7.1 to ■ MCOB 7.3 (as modified by this section) apply to a *firm* where the *home finance transaction* is a *home reversion plan*, except that those provisions that by their nature are only relevant to *regulated mortgage contracts* do not apply to *home reversion plans* (see ■ MCOB 9.1.2A G).
- (2) The table in ■ MCOB 9.6.2 R shows how the relevant *rules* and *guidance* in ■ MCOB 7 must be modified by replacing the cross-references with the relevant cross-references to *rules* and *guidance* in ■ MCOB 9.4 to ■ MCOB 9.8.
- (3) The table in ■ MCOB 9.6.3 R replaces certain rules and guidance in ■ MCOB 7 with *rules* and *guidance* from ■ MCOB 9.7 and ■ MCOB 9.8.
- (4) The table in ■ MCOB 9.6.4 R disapplies certain *rules* in ■ MCOB 7 for the purposes of ■ MCOB 9.
- (5) The terms and expressions in ■ MCOB 7 that by their nature are only connected to *regulated mortgage contracts* must be replaced with the appropriate equivalent terms and expressions for *home reversion plans* (see ■ MCOB 9.3.1A G).

9

9.6.2  
FCA

**R**

**Table Table of modified cross-references to other rules:**

This table belongs to MCOB 9.6.1R.

| Subject     | Rule or guidance | Reference in rule or guidance | To be read as a reference to:             |
|-------------|------------------|-------------------------------|---|
| Application | MCOB 7.1.4R      | MCOB 7.6.7R - MCOB 7.7.4R     | MCOB 7.6.7R - MCOB 7.6.33G as modified by |

| Subject   | Rule or guidance       | Reference in rule or guidance | To be read as a reference to:                          |
|---|------------------------|-------------------------------|--|
|   |                        |                               | <b>MCOB 9.8.5R - 9.8.9R</b>                            |
| <b>Application</b>                              | <b>MCOB 7.1.5R</b>     | <b>MCOB 7.5 - MCOB 7.7.4R</b> | <b>MCOB 7.5 - MCOB 7.6.33G as modified by MCOB 9.8</b> |
| <b>Information in more than one document</b>    | <b>MCOB 7.3.3R</b>     | <b>MCOB 7</b>                 | <b>MCOB 7 as modified by MCOB 9</b>                    |
| <b>Frequency of statements</b>                  | <b>MCOB 7.5.6G</b>     | <b>MCOB 7.5.3R(2)</b>         | <b>MCOB 9.8.1R(2)</b>                                  |
| <b>Annual statement - additional content</b>    | <b>MCOB 7.5.9G</b>     | <b>MCOB 7.5.3R(2)(b)</b>      | <b>MCOB 9.8.1R</b>                                     |
| <b>Further advances</b>                         | <b>MCOB 7.6.7R</b>     | <b>MCOB 5</b>                 | <b>MCOB 9.4</b>  |
| <b>Further advances</b>                         | <b>MCOB 7.6.10G</b>    | <b>MCOB 7.6.9R(10)</b>        | <b>MCOB 9.8.5R(1)</b>                                  |
| <b>Further advances</b>                         | <b>MCOB 7.6.10G</b>    | <b>MCOB 5.6.34</b>            | <b>MCOB 9.4.114R</b>                                   |
| <b>Further advances</b>                         | <b>MCOB 7.6.11G</b>    | <b>MCOB 7.6.9R(3) and (4)</b> | <b>MCOB 9.8.5R(3)</b>                                  |
| <b>Further advances</b>                         | <b>MCOB 7.6.11G(2)</b> | <b>MCOB 5.6.40R</b>           | <b>MCOB 9.4.37R</b>                                    |
| <b>Further advances</b>                         | <b>MCOB 7.6.12G</b>    | <b>MCOB 7.6.9R(3)</b>         | <b>MCOB 9.8.5R(3)</b>                                  |
| <b>Further advances</b>                         | <b>MCOB 7.6.13R</b>    | <b>MCOB 5.6.25R(2)(a)</b>     | <b>MCOB 9.4.24R(4)(a)</b>                              |
| <b>Further advances</b>                         | <b>MCOB 7.6.13R</b>    | <b>MCOB 7.6.9R(3)(b)</b>      | <b>MCOB 9.8.5R(3)(b)</b>                               |
| <b>Further advances</b>                         | <b>MCOB 7.6.14R</b>    | <b>MCOB 5</b>                 | <b>MCOB 9</b>  |
| <b>Rate switches</b>                            | <b>MCOB 7.6.20R</b>    | <b>MCOB 5</b>                 | <b>MCOB 9</b>  |
| <b>Rate switches</b>                            | <b>MCOB 7.6.20R</b>    | <b>MCOB 5</b>                 | <b>MCOB 9</b>  |
| <b>Addition or removal of party to contract</b> | <b>MCOB 7.6.22R</b>    | <b>MCOB 5</b>                 | <b>MCOB 9</b>  |

| Subject   | Rule or guidance    | Reference in rule or guidance        | To be read as a reference to:                              |
|---|---------------------|--------------------------------------|--|
| <b>Addition or removal of party to contract</b> | <i>MCOB 7.6.25R</i> | <i>MCOB 5</i>                        | <i>MCOB 9</i>  |
| <b>Changes to payments</b>                      | <i>MCOB 7.6.29R</i> | <i>MCOB 7.6.28R</i>                  | <i>MCOB 9.8.9R or MCOB 9.8.10R</i>                         |
| <b>Changes to payments</b>                      | <i>MCOB 7.6.30R</i> | <i>MCOB 7.6.28R</i>                  | <i>MCOB 9.8.9R or MCOB 9.8.10R</i>                         |
| <b>Use of illustrations</b>                     | <i>MCOB 7.6.31R</i> | <i>MCOB 7.6.28R</i>                  | <i>MCOB 9.8.9R or MCOB 9.8.10R</i>                         |
| <b>Use of illustrations</b>                     | <i>MCOB 7.6.31R</i> | <i>MCOB 5</i>                        | <i>MCOB 9</i>  |
| <b>Use of illustrations</b>                     | <i>MCOB 7.6.32R</i> | <i>MCOB 7.6.28R</i>                  | <i>MCOB 9.8.9R or MCOB 9.8.10R</i>                         |
| <b>Use of illustrations</b>                     | <i>MCOB 7.6.32R</i> | <i>MCOB 7.6.18R and MCOB 7.6.22R</i> | <i>MCOB 7.6.18R and MCOB 7.6.22R as modified by MCOB 9</i> |
| <b>Simultaneous requests</b>                    | <i>MCOB 7.6.33G</i> | <i>MCOB 7.6.18R and MCOB 7.6.22R</i> | <i>MCOB 7.6.18R and MCOB 7.6.22R as modified by MCOB 9</i> |
| <b>Simultaneous requests</b>                    | <i>MCOB 7.6.33G</i> | <i>MCOB 5</i>                        | <i>MCOB 9</i>  |

9.6.3

FCA

R

Table Table of rules in MCOB 7 replaced by rules in this chapter:

This table belongs to MCOB 9.6.1R.

| Subject                                 | Rule or guidance    | Rule replaced by:  |
|---|---------------------|--------------------|
| <b>Information at start of contract</b> | <i>MCOB 7.4</i>     | <i>MCOB 9.7</i>    |
| <b>Content of statement</b>             | <i>MCOB 5.3R</i>    | <i>MCOB 9.8.1R</i> |
| <b>Frequency of statements</b>          | <i>MCOB 7.5.5R</i>  | <i>MCOB 9.8.2R</i> |
| <b>Event-driven information</b>         | <i>MCOB 7.6.1R</i>  | <i>MCOB 9.8.3R</i> |
| <b>Release of additional borrowing</b>  | <i>MCOB 7.6.6G</i>  | <i>MCOB 9.8.4G</i> |
| <b>Further advances</b>                 | <i>MCOB 7.6.9R</i>  | <i>MCOB 9.8.5G</i> |
| <b>Further advances</b>                 | <i>MCOB 7.6.16R</i> | <i>MCOB 9.8.7R</i> |

| Subject   | Rule or guidance    | Rule replaced by:               |
|---|---------------------|---------------------------------|
| <b>Addition or removal of party to contract</b> | <i>MCOB 7.6.27R</i> | <i>MCOB 9.8.8R</i>              |
| <b>Changes to payments</b>                      | <i>MCOB 7.6.28R</i> | <i>MCOB 9.8.9R and MCOB 9.8</i> |

9.6.4  
FCA

**R** Table Table of rules in MCOB 7 which do not apply in relation to lifetime mortgage :

This table belongs to MCOB 9.6.1R.

| Subject                           | Rule               |
|-----------------------------------|--------------------|
| <b>Annual statements: content</b> | <i>MCOB 7.5.4R</i> |
| <b>Business loans</b>             | <i>MCOB 7.7</i>    |



**9.7 Disclosure at the start of the contract: lifetime mortgages**

9.7.1

FCA

G

■ MCOB 9.7 applies to a *firm* when it *enters into a lifetime mortgage*.

**Disclosure requirements where interest payments are required**

9.7.2

FCA

R

A *firm* that *enters into a lifetime mortgage* with a *customer* where interest payments are required (whether or not they will be collected by deduction from the income from an annuity or other linked *investment* product) must provide the *customer* with the following information before the *customer* makes the first payment under the contract:

- (1) the amount of the first payment required;
- (2) the amount of the subsequent payments;
- (3) the method by which the payments will be collected (for example, by direct debit or by deduction from a linked *investment* product such as an annuity) and the frequency of such payments and the date of collection of the first and subsequent payments;
- (4) the net amount which the *customer* will receive, where the interest payment is deducted from the income generated by a linked *investment* product such as an annuity, and the method by which this amount will be paid to the *customer*;
- (5) confirmation of whether in connection with the *lifetime mortgage* insurance products such as buildings and contents insurance or payment protection insurance) have been purchased through the *firm*;
- (6) the first premium (and subsequent premiums where different) for insurance products purchased through the *firm* in connection with the *lifetime mortgage*;
- (7) confirmation of whether the insurance premiums are to be collected with the mortgage payment or separately (where the latter applies, the *firm* must give details or state that these will be confirmed separately);

- (8) confirmation that the *lifetime mortgage* is on an interest-only basis, and details of how the *firm* expects the capital to be repaid (for example, from the proceeds of the sale of the property);
- (9) if it is possible for *arrears* to occur, what to do if the *customer* falls into *arrears* , explaining the benefit of making early contact with the *firm*, providing the name, address and telephone of a contact point with the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the *tariff of charges*;
- (10) confirmation of any *linked borrowing* and *linked deposits* that are available; and
- (11) whether the *lifetime mortgage* permits the *customer* to make any overpayments or underpayments of the amounts due.

9.7.3

FCA

R

The information in ■ MCOB 9.7.2 R must be provided to the *customer* in a single communication, except (5), (6) and (9) which may be provided separately.

**Disclosure requirements where the regulated lifetime mortgage contract is a drawdown mortgage with fixed payments to the customer**

9.7.4

FCA

R

A *firm* that enters into a *lifetime mortgage* which is a *drawdown mortgage*, with fixed payments to the *customer*, must provide the *customer* with the following information before the first payment is drawn down by the *customer*:

- (1) the amount of the first payment to be made;
- (2) the amount of subsequent payments, if different;
- (3) the method by which the payment will be made (for example, by transfer to the *customer's* bank account) and the date of issue of the first and subsequent payments;
- (4) confirmation of whether in connection with the *lifetime mortgage* insurance products such as buildings and contents insurance or payment protection insurance) have been purchased through the *firm*;
- (5) the first premium (and subsequent premiums where different) for insurance products purchased through the *firm* in connection with the *lifetime mortgage*;
- (6) confirmation of the method and date of collection of the premiums for insurance products purchased through the *firm*;



- (7) details of how the *firm* expects the capital and interest to be repaid (for example from the proceeds of the sale of the property);
- (8) confirmation of any *linked borrowing* and *linked deposits* that are available; and
- (9) whether the *lifetime mortgage* permits the *customer* to make any repayments on the *lifetime mortgage*

9.7.5

FCA

**R**

The information in ■ MCOB 9.7.4 R must be provided to the *customer* in a single communication, except (4), (5) and (6) which may be provided separately.

9.7.6

FCA

**R**

Disclosure requirements where the regulated lifetime mortgage contract is a drawdown mortgage without fixed payments to the customer Where the *lifetime mortgage* is a *drawdown mortgage* and the *customer* can choose the amount and frequency of the payments they receive, or the amount and frequency of payments can vary for other reasons (for example in line with interest rates) the *firm* must provide the *customer* with the following information before the first payment is drawn down by the *customer*:

- (1) (a) where the *customer* can choose the amount and frequency of the payments they receive, details of any limitations to the amount and frequency of the payments which the *customer* may request; or
  - (b) where the amount and frequency of payments can vary for other reasons (for example in line with interest rates), the amount of the first payment and details of how the amount and frequency of the payments can be varied in future;
- (2) the method by which the payment will be made (for example, by transfer to the *customer's* bank account);
- (3) confirmation of whether in connection with the *lifetime mortgage* insurance products such as buildings and contents insurance or payment protection insurance) have been purchased through the *firm*.
- (4) the first premium (and subsequent premiums where different) for insurance products purchased through the *firm* in connection with the *lifetime mortgage*;
- (5) confirmation of the method and date of collection of the premiums for insurance products purchased through the *firm*;
- (6) details of how the *firm* expects the capital and interest to be repaid (for example from the proceeds of the sale of the property);

- (7) confirmation of any *linked borrowing* and *linked deposits* that are available; and
- (8) whether the *lifetime mortgage* permits the *customer* to make any repayments on the *lifetime mortgage*.

9.7.7  
FCA

**R** The information in **■ MCOB 9.7.6 R** must be provided to the *customer* in a single communication, except (3), (4) and (5) which may be provided separately

**Disclosure requirements where a lump sum payment is made to the customer and interest is rolled up**

9.7.8  
FCA

**R** Where the *lifetime mortgage* provides for a lump sum payment to be made to the *customer*, and all or part of the interest will be rolled up during the life of the mortgage, the *firm* must provide the *customer* with the following information before the *customer* makes the first payment under the contract, or if no payments are required from the *customer*, within seven days of completion of the mortgage:

- (1) if no payments are required from the *customer*, confirmation that no payments are required and details of how the *firm* expects the capital and interest to be repaid (for example from the proceeds of the sale of the property);
- (2) if payments are required from the *customer*:
  - (a) the amount of the first payment required;
  - (b) the amount of the subsequent payments;
  - (c) the method by which the payments will be collected, the frequency of such payments and the date of collection of the first and subsequent payments; and
  - (d) what to do if the *customer* falls into *arrears*, explaining the benefit of making early contact with the *firm*, providing the name, address and telephone of a contact point with the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the *tariff of charges*;
- (3) confirmation of whether in connection with the *lifetime mortgage* insurance products such as buildings and contents insurance or payment protection insurance) have been purchased through the *firm*.
- (4) the amount of the first premium (and subsequent premiums where different) for insurance products purchased through the *firm* in connection with the *lifetime mortgage*;

- (5) confirmation of the method and date of collection of the premiums for insurance products purchased through the *firm* in connection with the *lifetime mortgage*;
- (6) confirmation of any *linked borrowing* and *linked deposits* that are available; and
- (7) whether the *lifetime mortgage* permits the *customer* to make any overpayments or underpayments of the amounts due.

9.7.9

FCA

**R**

The information in ■ MCOB 9.7.8 R must be provided to the *customer* in a single communication, except (3) (4) and (5) which may be provided separately

**Record keeping requirements**

9.7.10

FCA

**R**

- (1) A *firm* must make and retain an adequate record of the information that it provides to each *customer* at the start of the *lifetime mortgage* in accordance with this section.
- (2) The record required by (1) must be maintained for a year from the date that the information is provided to the *customer*.



## 9.8 Disclosure after sale: lifetime mortgages

### Annual statements: content

9.8.1  
FCA

R

The statement required by ■ MCOB 7.5.1 R must contain the following information:

- (1) except in the case of *mortgage credit cards*, information on the type of *lifetime mortgage*, (for example, fixed rate or variable rate) including a clear statement of how the *firm* expects the capital, or capital and interest (whichever is applicable) to be repaid (for example, from the proceeds of the sale of the property);
- (2) details of the following transactions and information on the *lifetime mortgage* during the period since the last statement (or, where the statement is the first statement, since the *customer* entered into the *lifetime mortgage*):
  - (a) (if applicable) the date and amount of each payment made by the *customer*;
  - (b) (if applicable) the amount of each payment that was due from the *customer* during the statement period;
  - (c) for *drawdown mortgages*, the date and amount of each payment made to the *customer*;
  - (d) the rates(s) of interest applicable to the *lifetime mortgage* during the statement period and, if applicable, the date(s) on which the rate(s) of interest changed;
  - (e) the amount of interest charged under the *lifetime mortgage* during the statement period; and
  - (f) any other amounts charged under the *lifetime mortgage* during the statement period, including fees and any amounts due in relation to *tied products*;
- (3) where it is possible for *arrears* to occur, a reminder that the *customer* should contact the *firm* if they are unable to make their regular payments under the *lifetime mortgage*; and

- (4) information at the date the statement is issued on:
- (a) the amount owed by the customer under the *lifetime mortgage*;
  - (b) the date at which any *early repayment charges* on the *lifetime mortgage* cease to apply, and the circumstances under which they will not apply;
  - (c) where applicable, the *early repayment charge* that applies, expressed as a monetary amount (see ■ MCOB 9.4.83 R);
  - (d) the cost of redeeming the *lifetime mortgage* at the date that the statement is issued (this must be shown as the sum of ■ MCOB 9.8.1 R(4)(a) and ■ MCOB 9.8.1 R(4)(c) plus any *linked borrowing* that cannot be retained (including the outstanding balances) plus any other charges that can be quantified at the date the statement is issued). If additional charges are payable that cannot be quantified at the point that the statement is issued (for example if the *customer* is in *arrears*) a warning must be included to that effect; and
  - (e) where applicable, the date on which the requirement for the *customer* to purchase any *tied products* from the *firm* comes an end.

9.8.2  
FCA

**R** Where a *firm* provides a *customer* with a statement containing the information set out in ■ MCOB 9.8.1 R(2) more frequently than once a year, the information set out in ■ MCOB 9.8.1 R(1), ■ MCOB 9.8.1 R(3) and ■ MCOB 9.8.1 R(4) may be provided in a separate communication, but must be provided at least once a year.

#### Event driven information

9.8.3  
FCA

**R** A *firm* must give the *customer* reasonable notice, in advance, of any of the following:

- (1) any changes to the payments that the *customer* is required to make (where payments are required, and whether or not they are collected by deduction from the income provided by a linked *investment* product such as annuity) resulting from interest rate changes;
- (2) the exercising of the *firm's* right (if allowed by the terms of the *lifetime mortgage* ) to enter the property to carry out essential repairs and maintenance (the cost must be confirmed to the *customer* where this will be added to the mortgage debt); and
- (3) any material change by the *firm* (other than changes which come within ■ MCOB 7.6.2 R or are included in ■ MCOB 9.8.3 R(1) and (2)) to the terms and conditions of the *lifetime mortgage*, where that change is permitted without the *customer's* prior consent.

9.8.4  
FCA

G

**Notification where additional borrowing taken up**

Examples of where ■ MCOB 7.6.5 R will apply are the release of tranches of money to the *customer* in relation to a self-built mortgage or other instalment mortgage, but not a *drawdown mortgage*.

9.8.5  
FCA

R

**Further advances**

The *illustration* provided in accordance with ■ MCOB 7.6.7 R must;

- (1) be based on the amount of the further advance only;
- (2) use the term 'additional borrowing' in place of the term 'lifetime mortgage' where appropriate throughout the titles and text of the *illustration*;
- (3) include an additional section headed: 'Total borrowing' and numbered '9' after Section 8, (with subsequent sections of the *illustration* renumbered accordingly) including the following text:
  - (a) "This section gives you information about how your lifetime mortgage will be affected by taking out this additional borrowing. Talk to [your mortgage lender] [insert name of mortgage lender] if you are not sure of the details of your current lifetime mortgage.";
  - (b) a clear statement explaining the total amount that the *customer* will owe if he takes out the additional borrowing; and,
    - (i) where payments are required on the *lifetime mortgage*, what the *customer's* new payments will be; or
    - (ii) where the *lifetime mortgage* is a *roll-up of interest mortgage*, the effect on the amount the *customer* would owe at the end of the estimated term and details of the estimated term that has been used (see ■ MCOB 9.8.6 G for guidance on the estimated term).

9.8.6  
FCA

G

The estimated term required at ■ MCOB 9.8.5 R(3)(b)(ii) may be:

- (1) the term originally estimated in accordance with ■ MCOB 9.4.10 R; or
- (2) where the term originally estimated in accordance with ■ MCOB 9.4.10 R has expired, a revised estimate in accordance with ■ MCOB 9.4.10 R; or
- (3) a term of the customer's choice, if the customer expresses a preference.

9.8.7  
FCA

R

■ MCOB 9.4.18 R is replaced with the following: "Section 1: 'About this information' Under the section heading 'About this information', the

following text must be included: "We are required by the Financial Conduct Authority (FCA) - the independent watchdog that regulates financial services - to provide you with this illustration. All firms selling lifetime mortgages are required to give illustrations, like this one, that contain similar information presented in the same way."

9.8.8 **R** [deleted]

**Changes to payments, amounts drawn down and amount owed**

9.8.9 **R** **FCA** If a *customer* requests, or agrees to, a change to a *lifetime mortgage* (other than a change as described in ■ MCOB 7.6.7 R to ■ MCOB 7.6.27 R (as modified by MCOB 9)) that changes the amount of each payment due (where payments are required), a *firm* must provide the *customer* with the following information, in a single communication, before the change takes effect:

- (1) the amount outstanding on the *lifetime mortgage* at the date the change is requested;
- (2) the payment due and the frequency of payments; where it is known that the payment will change (for example at the end of a fixed rate period), the new payment and the date of the change must also be shown;
- (3) the rate of interest applying to the *lifetime mortgage*; where it is known that the rate of interest will change, the new rate and the date of the change must also be shown;
- (4) the type of interest rate (for example fixed, or discounted); where it is known that the type of interest rate will change the new type and the date of the change must also be shown;
- (5) details of any charges that apply for changing the *lifetime mortgage*.

9.8.10 **R** **FCA** If a *customer* requests, or agrees to, a change to a *lifetime mortgage*. (other than a change as described in ■ MCOB 7.6.7 R to ■ MCOB 7.6.27 R (as modified by MCOB 9)) that changes the amount paid to the *customer* under a *drawdown mortgage*, or the amount that the customer will owe under a *roll-up of interest mortgage*, or both, a *firm* must provide the *customer* with the following information, in a single communication, before the change takes effect:

- (1) the amount outstanding on the *lifetime mortgage* at the date the change is requested;
- (2) (if applicable) the revised amount to be paid to the *customer* under the *drawdown mortgage* and the frequency of payments;

- (3) (a) an estimate of the revised amount that will be owed at the end of the term; or  
(b) (if the original term has expired) a revised estimate; in accordance with ■ MCOB 9.4.10 R;
- (4) the rate of interest applying to the *lifetime mortgage*; where it is known that the rate of interest will change, the new rate and the date of the change must also be shown;
- (5) the type of interest rate (for example fixed, or discounted); where it is known that the type of interest rate will change the new type and the date of the change must also be shown; and
- (6) details of any charges that apply for changing the *lifetime mortgage*.





**9.9 Disclosure after sale: home reversion plans**

**Provision of statements: instalment reversion plans**

9.9.1  
FCA

**R**

- (1) In relation to an *instalment reversion plan*, a *firm* must provide the *customer* with a statement at least once a year (or, in relation to the first statement, within the first 13 months of the plan term):
  - (a) covering the *instalment reversion plan* and any *tied product* purchased through the *firm*; and
  - (b) giving information of any other product purchased through the *firm* where the payments for those products are combined with amounts released under the *instalment reversion plan*.
  
- (2) A *firm* need not provide a statement if it has provided an *offer document* to the *customer* in respect of the *instalment reversion plan* within the previous year.

9.9.2  
FCA

**R**

Where a *tied product* is operated separately from the *instalment reversion plan*, for example where the premiums on a tied insurance product are not combined with amounts released under the *instalment reversion plan*, the statement relating to the *tied product* may be provided in a separate communication.

**Annual statement for instalment reversion plans: content**

9.9.3  
FCA

**R**

The statement must contain:

- (1) details of the following transactions during the period since the last statement (or, where it is the first statement, since the *customer* entered into the *instalment reversion plan*):
  - (a) the date and amount of each payment made by the *reversion provider*; and
  - (b) any amounts charged under the *instalment reversion plan* during the statement period, including fees and any amounts due in relation to *tied products*;
  
- (2) information at the date the statement is issued on:

- (a) the amount owed by the *reversion provider* to the *customer* under the *instalment reversion plan*;
- (b) if the amount to be received by the *customer* under the *instalment reversion plan* is linked to the performance of another investment, the amount to be received (or estimated amount likely to be received) by the *customer*;
- (c) the actual remaining term of the *instalment reversion plan* (but if the term of the *instalment reversion plan* is open-ended this should be clearly stated);
- (d) where applicable, the date on which the requirement for the *customer* to purchase any *tied products* from the *firm* ends; and
- (e) the proportion of the property that is owned by the *reversion provider* and *reversion occupier* respectively.

**Annual statement for instalment reversion plans: additional content if tariff of charges has changed**

9.9.4  
FCA

**R** If the *tariff of charges* has changed since the last annual statement was sent to the *customer* (or, where it is the first statement, since the *customer* entered into the *instalment reversion plan*) and a *firm* has not already sent a revised *tariff of charges*, it must include one with the annual statement.

**Event-driven information for instalment reversion plans: material changes**

9.9.5  
FCA

**R** A *firm* must give the *customer* reasonable notice of any material change by the *firm* to the terms of the *instalment reversion plan*, where the change is permitted without the *customer's* prior consent.

**Responsibilities of reversion providers and administrators: instalment reversion plans**

9.9.6  
FCA

**R** The *reversion administrator* and *reversion provider* may agree who will be responsible for producing and providing to the *customer* the statement and information required by this section.

9.9.7  
FCA

**R** The *reversion administrator* is solely responsible for producing and providing to the *customer* the information required by this section if the provider is an *unauthorised reversion provider*.

**Further releases: all home reversion plans**

9.9.8  
FCA

**R** If the *customer* wants to release further equity from the property through a *home reversion plan*, the *firm* must treat this transaction as a new *home reversion plan*, even if the parties to the arrangement are the same.

---

**The illustration: table of contents, prescribed text and prescribed section headings and subheadings (R).**

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*The illustration: table of contents, prescribed text and prescribed section headings and subheadings (R) - MCOB 9 Annex 1*



---

**The illustration: table of contents, prescribed text and prescribed section headings and sub-headings**

**FCA**

This annex forms part of **■ MCOB 9.4.2 R**.

This annex consists only of one or more forms. Forms are to be found through the following address:

*The illustration: table of contents, prescribed text and prescribed section headings and sub-headings: - MCOB 9 Annex 2*



## Chapter 10

# Annual Percentage Rate



## 10.1 Application

10.1.1

FCA

**R**

This chapter applies to a *firm* which, under *rules* elsewhere in MCOB, is required to calculate an *annual percentage rate* of charge (*APR*) or is required to use an approach equivalent to that set out in this chapter in calculating a comparative cost measure equivalent to an *APR* .





## 10.2 Purpose

### 10.2.1

FCA

G

The purpose of this chapter is to establish the requirements for the proper calculation of the *APR*. As a cost measure which facilitates comparisons between similar mortgages offered on a similar basis, the *APR* is an integral element of the *rules* relating to *financial promotions* of *qualifying credit* and disclosure.



### 10.3 Formula and assumptions for calculating the APR

#### Formula for calculating the APR

10.3.1  
FCA

R

The *APR* must be calculated so that, subject to ■ MCOB 10.3.1B R(3), the *annual percentage rate* of charge is the rate for *i* which satisfies the equation set out in ■ MCOB 10.3.1A R, expressed as a percentage.

10.3.1A  
FCA

R

#### Formula for calculating the APR

This table belongs to MCOB 10.3.1R is:  
The equation referred to in MCOB 10.3.1R is:

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^K} = \sum_{K'=1}^{K'=m'} \frac{A'_{K'}}{(1+i)^{K'}}$$

where

- K is the number identifying a particular advance of credit;
- K' is the number identifying a particular instalment;
- A<sub>K</sub> is the amount of advance K;
- A'<sub>K'</sub> is the amount of instalment K';
- ∑ represents the sum of all the terms indicated;
- m is the number of advances of credit;
- m' is the total number of instalments;
- <sup>t</sup>K is the interval, expressed in years, between the *relevant date* and the date of the second advance and those of any subsequent advances numbered three to m; and
- <sup>t</sup>K' is the interval, expressed in years, between the *relevant date* and the dates of instalments numbered one to m'.

10.3.1B  
FCA

R

- (1) In ■ MCOB 10.3.1A R, references to instalments are references to any payment made by or on behalf of the *customer* which comprise:
  - (a) a repayment of all or part of the credit under the contract; or
  - (b) a payment of all or part of the *total charge for credit*; or
  - (c) both a repayment of all or part of the credit and a payment of all or part of the *total charge for credit*.

- (2) Where more than one rate is given under ■ MCOB 10.3.1 R, the *APR* is the positive rate nearest to zero or, if no positive rate is given, the negative rate nearest to zero.

## 10.3.2

FCA

G

This calculation method is the same (with the exception of ■ MCOB 10.3.8 R(1) and (2)) as that described in the Consumer Credit (Total Charge for Credit) Regulations 1980 (SI 1980/51) as amended. Because of this, some of the terminology is different from that used elsewhere in *MCOB*, e.g. the references to 'transactions' should be read as relating to *secured lending*. As a guide for *firms*, ■ MCOB 10 Annex 1 G lists the substantively identical provisions in *MCOB 10* and the 1980 Regulations.

### APR calculation: assumptions as to the credit provided

## 10.3.3

FCA

R

- (1) The *APR* must be calculated on the basis of the following assumptions:
- (a) the assumption that the *customer* will not be entitled to any income tax relief relating to the transaction other than relief under sections 266-7 of the Income and Corporation Taxes Act 1988 and Schedule 14-15 to the same Act without any deduction under section 274 of the Income and Corporation Taxes Act 1988;
  - (b) the assumption that no assistance is given under the Home Purchase Assistance and Housing Corporation Guarantee Act 1978;
  - (c) (i) in the case of a transaction which provides for repayment of the credit or of the *total charge for credit* at or not later than a specified time or times, the assumption that the *mortgage lender* or *mortgage administrator* will not exercise any right under the transaction to require repayment at any other time or times; and
    - (ii) in any other case, the assumption that the *mortgage lender* or *mortgage administrator* will not exercise any right under the transaction to require payment; the *customer*, in any case, performing all his obligations under the transaction;
  - (d) unless (e) applies, in the case of a transaction which provides for variation of the rate or amount of any item included in the *total charge for credit* in consequence of the occurrence after the *relevant date* of any event, the assumption that the event will not occur; and, in this sub-paragraph, 'event' means an act or omission of the *customer* or of the *mortgage lender* or *mortgage administrator* or any other event (including, where the transaction makes provision for variation upon the continuation of any circumstance, the continuation of that circumstance) but does not include an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the agreement; and

(e) in the case of a *secured lending* contract which provides for the possibility of any variation of the rate of interest in consequence of the occurrence after the *relevant date* of any event (being an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the agreement), the assumption that such a variation will, when the event occurs, take place.

(2) For the purposes of this chapter:

- (a) an item included in the *total charge for credit* must not be treated as credit, even if time is allowed for its payment;
- (b) subject to (c) and to ■ MCOB 10.3.13 R, in the case of any agreement, each provision of credit and each repayment of the credit and of the *total charge for credit* must be taken to be made:
- (i) at the earliest time provided under the transaction; and
- (ii) in a case where any such provision or repayment is to be made at or not later than a specified time, at that time;

and, where any such repayment is to be made before the *relevant date*, it must be taken to be made on the *relevant date*;

- (c) where, under an agreement for *running-account credit* or an agreement for *fixed-sum credit* where the credit is not repayable at specified intervals or in specified amounts, a constant period rate of charge in respect of periods of equal or of nearly equal length is charged, it must be assumed, despite ■ MCOB 10.3.12 R, that:
- (i) the amount of credit outstanding at the beginning of a period is to remain outstanding throughout the period;
- (ii) the amount of any credit provided during a period is provided immediately after the end of the period; and
- (iii) any repayment of credit or of the *total charge for credit* made during a period is made immediately after the end of the period; and
- (d) it must be assumed that the amount of any repayment of credit or of the *total charge for credit* will, at the time when the repayment is made, be the smallest for which the agreement provides.

10.3.4

FCA

**R**

**APR calculation: rounding**

Where the *APR*, as calculated in accordance with ■ MCOB 10.3.1 R, has more than one decimal place it must be rounded to one decimal place as follows:

- (1) where the figure at the second decimal place is greater than or equal to five, the figure at the first decimal place must be increased by one and the decimal place (or places) following the first decimal place must be disregarded; and
- (2) where the figure at the second decimal place is less than five, that decimal place and any decimal places following it must be disregarded.

10.3.5

FCA

**R**

**APR calculation: the calculation of any period**

For the purposes of calculations under this chapter, the length of any period must be calculated as follows:

- (1) a period which is not a whole number of calendar months or a whole number of weeks must be counted in years and days;
- (2) subject to (3), a period which is a whole number of calendar months or a whole number of weeks must be counted in calendar months or in weeks, as the case may be;
- (3) where a period is both a whole number of calendar months and a whole number of weeks and:
  - (a) one repayment only is to be made, the period must be counted in calendar months,
  - (b) more than one repayment is to be made:
    - (i) if all such repayments are to be made at intervals from the relevant date of one or more weeks, the period must be counted in weeks; and
    - (ii) in any other case, the period must be counted in calendar months;
- (4) a period which is to be counted:
  - (a) in calendar months must be taken to be of a length equal to the relevant number of twelfth parts of a year;
  - (b) in weeks, must be taken to be of a length equal to the relevant number of fifty-second parts of a year.
- (5) a day may be taken to be either:

10

- (a) one three hundred and sixty-fifth part of a year or, if it is a leap year, one three hundred and sixty-sixth part of a year; or
- (b) one three hundred and sixty fifth and a quarter part of a year.

(6) Every day must be taken to be a *business day*

**APR calculation: necessary assumptions**

10.3.6  
FCA

R

- (1) ■ MCOB 10.3.7 R to ■ MCOB 10.3.13 R apply for the purpose of the calculation of the *total charge for credit* and of the rate of that charge in respect of matters necessary for the calculation which cannot be ascertained by the *mortgage lender* or *mortgage administrator* at the date of the making of the agreement.
- (2) In a case where ■ MCOB 10.3.7 R and one or more of ■ MCOB 10.3.8 R to ■ MCOB 10.3.13 R are applicable, ■ MCOB 10.3.7 R must be applied first.

**APR calculation: assumptions as to the amount of credit**

10.3.7  
FCA

R

- (1) Where the amount of the credit to be provided under the agreement cannot be ascertained at the date of the making of the agreement:
  - (a) in the case of an agreement for *running-account credit* under which there is a credit limit, that amount must be taken to be that credit limit; and
  - (b) in any other case, that amount shall be taken to be 100%.
- (2) Where a *mortgage lender* makes a further advance to the *customer* in addition to the amount originally borrowed under the *regulated mortgage contract*, the *APR* for the further advance must be calculated in respect of the further advance alone (and any related charges), and not in respect of the total amount borrowed.

**APR calculation: assumptions as to the period for which credit is provided**

10.3.8  
FCA

R

- (1) In relation to a *lifetime mortgage*, where the *APR* is calculated for the purpose of a *financial promotion* it must be assumed that the credit is being provided for a period of 15 years beginning with the *relevant date*.
- (2) In relation to a *lifetime mortgage*, where the *APR* is calculated for the purpose of an *illustration*, the period for which the credit is to be provided must be calculated in accordance with ■ MCOB 9.4.10 R or ■ MCOB 9.4.12 R.

- (3) Where, in any other case, the period for which credit is to be provided is not ascertainable at the date of the making of the agreement, it must be assumed that credit is provided for one year beginning with the *relevant date*.

**APR calculation: assumption where rate or amount is referenced to another factor**

10.3.9  
FCA

**R**

Subject to ■ MCOB 10.3.10 R, where the rate or amount of any item included in the *total charge for credit*, or the amount of any repayment of credit under a transaction, is to be ascertained by reference to the level of any index or other factor in accordance with a specified formula, the rate or amount must be taken to be the rate or amount so ascertained. The formula must be applied as if the level of the index or other factor subsisting at the date of the making of the agreement were that subsisting at the date by reference to which the formula is to be applied.

**APR calculation: assumptions where secured lending contracts provide for the variation in the rate of interest**

10.3.10  
FCA

**R**

- (1) The assumptions in ■ MCOB 10.3.10 R(3) and (4) apply to any *secured lending* contracts which provide for the possibility of any variation of the rate of interest if it is to be assumed, under ■ MCOB 10.3.3 R(1)(e), that the variation will take place but the amount of the variation cannot be ascertained at the date of the making of the agreement.

- (2) In this paragraph:

- (a) 'initial standard variable rate' means:

- (i) the standard variable rate of interest which would be applied by the *mortgage lender* or *mortgage administrator* to the agreement on the date of the making of the agreement if the agreement provided for interest to be paid at the *mortgage lender* or *mortgage administrator's* standard variable rate with effect from that date; or
- (ii) if there is no such rate, the standard variable rate of interest applied by the *mortgage lender* or *mortgage administrator* on the day of the making of the agreement in question to other *secured lending* contracts or, where there is more than one such rate, the highest such rate;

taking no account of any discount or other reduction to which the *customer* would or might be entitled; and

- (b) 'varied rate' means any rate of interest charged when a variation of the rate of interest under ■ MCOB 10.3.3 R (1)(e) is to be assumed.

- (3) Where a *secured lending* contract provides a formula for calculating a varied rate by reference to a standard variable rate of interest

10

applied by the *firm*, or any other fluctuating rate of interest, but does not enable the varied rate to be ascertained at the date of the making of the agreement because it is not known on that date what the standard variable rate will be or (as the case may be) at what level the fluctuating rate will be fixed when the varied rate falls to be calculated, it must be assumed that that rate or level will be the same as the initial standard variable rate.

- (4) Where a *secured lending* contract provides for the possibility of any variation in the rate of interest (other than a variation referred to in ■ MCOB 10.3.10 R(3)) which it is to be assumed, under ■ MCOB 10.3.3 R(1)(e), will take place, but does not enable the amount of that variation to be ascertained at the date of the making of the agreement, it must be assumed that the varied rate will be the same as the initial standard variable rate.

**APR calculation: further assumptions**

10.3.11

FCA

R

Where:

- (1) the period for which the credit, or any of it, is to be or may be provided cannot be ascertained at the date of the making of the agreement; and
- (2) the rate or amount of any item included in the *total charge for credit* will change at a time provided in the transaction within one year beginning with the *relevant date*;

the rate or amount must be taken to be the highest rate or amount under the transaction at any time in that year.

10.3.12

FCA

R

Where the earliest date on which credit is to be provided cannot be ascertained at the date of making of the agreement, it must be assumed that credit is provided on that date.

10.3.13

FCA

R

In the case of any transaction, it must be assumed:

- (1) that a charge payable at a time which cannot be ascertained at the date of the making of the agreement is to be payable on the *relevant date* or, where it may reasonably be expected that a *customer* will not make payment on that date, on the earliest date at which it may reasonably be expected that he will make payment; or
- (2) where more than one payment of a charge of the same description is to be made at times which cannot be ascertained at the date of the making of the agreement, that the first such payment will be payable on the *relevant date* (or, where it may reasonably be expected that a *customer* will not make payment on that date, at the earliest date on which it may reasonably be



---

expected that he will make payment), that the last such payment will be payable at the end of the period for which credit is provided and that all other such payments (if any) will be payable at equal intervals between those times.



## 10.4 Total charge for credit

### Make up of the total charge for credit

10.4.1  
FCA

R

For the purposes of this chapter, the *total charge for credit* which may be provided under an actual or prospective agreement is the total (determined as at the date of the making of the agreement) of the charges specified in ■ MCOB 10.4.2 R which apply in relation to the agreement, but excluding the charges specified in ■ MCOB 10.4.4 R.

### Items included in the total charge for credit

10.4.2  
FCA

R

The amounts of the following charges are included in the *total charge for credit* in relation to an agreement, with the exceptions in ■ MCOB 10.4.4 R:

- (1) the total of the interest on the credit which may be provided under the agreement;
- (2) other charges at any time payable under the transaction by or on behalf of the *customer*, whether to the *firm* or any other person; and
- (3) a premium under a contract of insurance, payable under the transaction by the *customer*, where the making or maintenance of the contract of insurance is required by the *firm*:
  - (a) as a condition of making the agreement; and
  - (b) for the sole purpose of ensuring complete or partial repayment of the credit, and complete or partial payment to the *firm* of such of those charges included in the *total charge for credit* as are payable to him under the transaction, in the event of the death, invalidity, illness or unemployment of the *customer*;

notwithstanding that the whole or part of the charge may be repayable at any time or that the consideration therefore may include matters not within the transaction or subsisting at a time not within the duration of the agreement.

10.4.3

FCA

G

- (1) ■ MCOB 10.4.2 R means, for example, that the following charges must be included within the *total charge for credit*:
  - (a) any fee payable to a *mortgage intermediary* for arranging the contract (see ■ MCOB 10.4.2 R(2)); and
  - (b) any *higher lending charge*.
- (2) The FCA takes the view that charges required to be included within the *total charge for credit* should not be excluded on the basis of these charges being refundable in certain circumstances.
- (3) The FCA also takes the view that the *total charge for credit* and APR should not reflect the 'value' of any cashback or similar incentive linked to the contract.

**Exclusions from the total charge for credit**

10.4.4

FCA

R

- (1) The amounts of the following items are not included in the *total charge for credit* in relation to an agreement:
  - (a) any charge payable under the transaction to the *firm* upon failure by the *customer* to do or to refrain from doing anything which he is required to do or to refrain from doing;
  - (b) any charge:
    - (i) which is payable by the *firm* to any person upon failure by the *customer* to do or to refrain from doing anything which he is required under the transaction to do or to refrain from doing; and
    - (ii) which the *firm* may under the transaction require the *customer* to pay to him or to another person on his behalf;
  - (c) any charge relating to a regulated *restricted-use credit agreement* to finance a transaction between the *customer* and the *firm* (whether forming part of that agreement or not), or to finance a transaction between the *customer* and a person (the "supplier") other than the *firm* which would be payable if the transaction were for cash;
  - (d) any charge (other than a *fee* or commission charged by a credit-broker or *mortgage intermediary*) not within ■ MCOB 10.4.4 R(1)(c):
    - (i) of a description which relates to services or benefits incidental to the agreement and also to other services or benefits which may be supplied to the *customer*; and
    - (ii) which is payable to fulfil an obligation incurred by the *customer* under arrangements which were effected before he applied to enter into the agreement and are not arrangements under which the *customer* is bound to enter into any personal credit agreement;

- (e) any charge under arrangements for the care, maintenance or protection of any land or goods (except as in ■ MCOB 10.4.4 R(2));
  - (f) charges for money transmission services relating to an arrangement for a current account under which the *customer* may, by cheques or similar orders payable to himself or to any other person, obtain or have the use of money held or made available by the *firm* and which records alterations in the financial relationship between the *firm* and *customer*, being charges which vary with the use made by the *customer* of the arrangement;
  - (g) any charge for a guarantee other than a guarantee:
    - (i) which is required by the *firm* as a condition of making the agreement; and
    - (ii) the purpose of which is to ensure complete or partial repayment of the credit, and complete or partial payment to the *firm* of such of those charges included in the *total charge for credit* as are payable to him under the transaction, in the event of death, invalidity, illness or unemployment of the *customer*;
  - (h) charges for the transfer of funds (other than charges within ■ MCOB 10.4.4 R(1)(f)) and charges for keeping an account intended to receive payments towards the repayment of the credit and the payment of interest and other charges, except where the *customer* does not have reasonable freedom of choice in the matter and where such charges are abnormally high; this does not exclude from the *total charge for credit* charges for collection of the payments to which it refers, whether such payments are made in cash or otherwise; and
  - (i) a premium under a contract of insurance other than a contract of insurance referred to in ■ MCOB 10.4.2 R (3).
- (2) In the case of a charge within ■ MCOB 10.4.4 R(1)(e), (1) has effect only:
- (a) where under the arrangement:
    - (i) the services are to be performed if, after the date of the making of the agreement, the condition of the land or goods becomes or is in immediate danger of becoming such that the land or goods cannot reasonably be enjoyed or used; and
    - (ii) the charge will not accrue unless the services are performed; or
  - (b) where:

- (i) provision of substantially the same description as that to which the arrangements relate is available under comparable arrangements from a person who is not the *firm* or a supplier or a credit-broker or a *mortgage intermediary* who introduced the *customer* and the *firm*;
  - (ii) the arrangements are made with a person chosen by the *customer*; and
  - (iii) (if, in accordance with the transaction, the consent of the *firm* or of a supplier or of the *mortgage intermediary* or credit-broker who introduced the *customer* and the *firm* is required to the making of the agreement), where the transaction provides that such consent may not be unreasonably withheld whether because no incidental benefit will or may accrue to the *firm* or to the supplier or to the credit-broker or to the *mortgage intermediary* or on any other ground.
- (3) References in ■ MCOB 10.4.4 R (2) to the *firm*, a supplier, a *mortgage intermediary* and a credit-broker include references to his near relative, his partner and a member of a group of which he is a member, to any person nominated by him or any such person in relation to the arrangements, and to a near relative of his partner; and 'near relative' means, in relation to any person, the husband, wife, civil partner, father, mother, brother, sister, son or daughter of that person and 'group' means the person (including a company) having control of a company together with all the companies directly or indirectly controlled by him.



## A guide to the substantively identical provisions of MCOB 10 and the Consumer Credit (Total Charge for Credit) Regulations 1980

**FCA**

This annex is intended as a reference aid for *firms* familiar with the existing consumer credit legislation regarding the calculation of the *APR*. This chapter is drafted to be substantively identical to this legislation (the primary differences being the adoption of *FCA* handbook terminology and the substitution of different internal references). The table gives the appropriate cross-reference for requirements in this chapter and the Total Charge for Credit Regulations.

| Substantively Identical Provisions |                                     |
|------------------------------------|-------------------------------------|
| MCOB 10                            | Total Charge for Credit Regulations |
| 10.3.1R and 10.3.1A R              | Regulation 7                        |
| 10.3.3R                            | Regulation 2                        |
| 10.3.4R                            | Regulation 6A                       |
| 10.3.5R                            | Regulation 11                       |
| 10.3.6R                            | Regulation 12                       |
| 10.3.7R                            | Regulation 13                       |
| 10.3.8R(3)                         | Regulation 14                       |
| 10.3.9R                            | Regulation 15                       |
| 10.3.10R                           | Regulation 15A                      |
| 10.3.11R                           | Regulation 16                       |
| 10.3.12R                           | Regulation 17                       |
| 10.3.13R                           | Regulation 18                       |
| 10.4.1R                            | Regulation 3                        |
| 10.4.2R                            | Regulation 4                        |
| 10.4.4R                            | Regulation 5                        |





## Chapter 11

# Responsible lending, and responsible financing of home purchase plans



**11.1 Application**

**Who?**

11.1.1  
FCA

**R** This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 11.1.2 R in accordance with column (2) of that table.

11.1.2  
FCA

**R** Table Table This table belongs to ■ MCOB 11.1.1 R

| (1) Category of firm          | (2) Applicable section   |
|-------------------------------|--|
| <i>mortgage lender</i>        | <b>whole chapter</b>   |
| <i>home purchase provider</i> | <b>MCOB 11.1, MCOB 11.2, MCOB 11.3.1 R (1) and MCOB 11.3.2 R</b> |

**What?**

11.1.3  
FCA

**R** This chapter applies if a *firm*:

- (1) *enters into a regulated mortgage contract or home purchase plan with a customer; or*
- (2) *makes a further advance or varies an existing regulated mortgage contract or home purchase plan to make a further advance to a customer.*



**11.2 Purpose**

**11.2.1**

**FCA**

**G**

This chapter reinforces *Principle 6* by requiring a *firm* to take account of a *customer's* ability to repay before deciding to enter into, or make a further advance on, a *regulated mortgage contract* or *home purchase plan*. The *FCA* regards it as important that customers should not be exploited by firms that lend in circumstances where they are self-evidently unable to repay through income and yet have no alternative means of repayment.



## **11.3 Responsible lending, and responsible financing of home purchase plans**

### **Customer's ability to pay**

**11.3.1**  
**FCA**

**R**

- (1) A *firm* must be able to show that before deciding to enter into, or making a further advance on, a *regulated mortgage contract*, or *home purchase plan*, account was taken of the *customer's* ability to repay.
- (2) A *mortgage lender* must make an adequate record to demonstrate that it has taken account of the *customer's* ability to repay for each *regulated mortgage contract* that it enters into and each further advance that it provides on a *regulated mortgage contract*. The record must be retained for a year from the date at which the *regulated mortgage contract* is entered into or the further advance is provided.

### **Self-certification of income**

**11.3.2**  
**FCA**

**R**

In taking account of a *customer's* ability to repay, a *firm* may rely upon self-certification of income by the *customer* in circumstances where the *firm* considers it to be appropriate, having regard to the interests of the *customer*, and where the *firm* has no reasonable grounds for doubting the information provided.

**11.3.3**  
**FCA**

**G**

- (1) Examples of the circumstances where the *firm* may consider self-certification of income to be appropriate for the purposes of ■ MCOB 11.3.2 R include:
  - (a) where the *customer* is an existing *customer* of the *firm*, with an established and good payment history;
  - (b) where proof of income is not readily available by virtue of the nature of the *customer's* employment, the basis of their remuneration, or the sources of their income; or
  - (c) where the *customer* has a deadline for entering into the *regulated mortgage contract* (for example, in an auction sale) and therefore there is insufficient time for the *firm* to complete its usual enquiries.
- (2) The examples in (1) are not exhaustive. There may be other circumstances in which a *firm* may consider self-certification to be appropriate. It will depend on the circumstances of each case. However, in considering whether self-certification is appropriate, a *firm* should have regard to its responsibilities to its *customers* and, in particular, should guard against

taking any action that would be contrary to *Principle 6* and in breach of ■ MCOB 11.3.1 R and ■ MCOB 11.3.2 R.

**Responsible lending policy**

11.3.4  
FCA

**R**

- (1) A *mortgage lender* must put in place, and operate in accordance with, a written policy setting out the factors it will take into account in assessing a *customer's* ability to repay.
- (2) A *mortgage lender* must make and keep up-to-date an adequate record of the policy in (1). When the policy is changed, a record of the previous policy must be retained for a year from the date of change.

11.3.5  
FCA

**G**

- (1) In determining the written policy in accordance with ■ MCOB 11.3.4 R(1), a *firm* should assume (in the absence of evidence to the contrary) that any regular payments under a *regulated mortgage contract* will be met from the *customer's* income. A *firm* should therefore take account of the *customer's* actual or reasonably anticipated income, or both, in reaching a decision on whether to enter into a *regulated mortgage contract* with that *customer* or make a further advance.
- (2) Other factors that the *FCA* would expect to be considered by a *firm* in taking account of the *customer's* ability to repay include:
  - (a) the level of both initial and subsequent repayments, where known (including, for *interest-only mortgages*, the cost of any associated *repayment vehicle*). This means, for example, that where the mortgage cost is significantly discounted for the initial period of a *regulated mortgage contract*, a *mortgage lender* should also consider the level of repayments the *customer* is expected to make at the end of that period, based on interest rates applicable at the time the *mortgage lender* is considering whether to enter into the *regulated mortgage contract* or make a further advance; and
  - (b) whether the *customer* has the ability to, and intends to, repay, either wholly or partly, from resources other than income. Such resources could include the realisation of *investments*, or the planned sale of the mortgaged property as in the case of a *regulated lifetime mortgage contract*.

11.3.6  
FCA

**G**

Where the *regulated mortgage contract* is an *interest-only mortgage*, and the *firm* is unable to establish the cost of the associated *repayment vehicle*, the repayments described in ■ MCOB 11.3.5 G(2)(a) may be based on an equivalent *repayment mortgage*.

11.3.7  
FCA

**G**

Where ■ MCOB 11.3.5 G(2)(b) applies, the *firm* should be able to demonstrate the *customer's* intention to repay (for example, by reference to information given by the *customer* on an application form or to correspondence with the *customer*).

11.3.8  
FCA

**G**

The record maintained in accordance with ■ MCOB 11.3.1 R(2) should include or provide reference to matters such as:

- (1) what checks, if any, the *firm* has carried out, regarding the *customer's* ability to repay; or

- 
- (2) evidence that demonstrates the *customer's* ability and intention to repay the loan, from resources other than income.



**11.4 [Not yet in force]**



**11.5 [Not yet in force]**





**11.6**

**[Not yet in force]**



**11.7**

**[Not yet in force]**



**11.8 Customers unable to change regulated mortgage contract, home purchase plan or provider**

**11.8.1**

**FCA**



Where a *customer* is unable to:

- (1) enter into a new *regulated mortgage contract* or home purchase plan or vary the terms of an existing *regulated mortgage contract* or *home purchase plan* with the existing *mortgage lender* or *home purchase provider*; or
- (2) enter into a new *regulated mortgage contract* or *home purchase plan* with a new *mortgage lender* or *home purchase provider*;

the existing *mortgage lender* or *home purchase provider* should not (for example, by offering less favourable interest rates or other terms) take advantage of the *customer's* situation or treat the *customer* any less favourably than it would treat other *customers* with similar characteristics. To do so may be relied on as tending to show contravention of *Principle 6* (Customers' interests).



# Chapter 12

## Charges



## 12.1 Application

### Who?

12.1.1

FCA

R

This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 12.1.2 R in accordance with column (2) of that table.

12.1.2

FCA

R

Table This table belongs to ■ MCOB 12.1.1 R

| (1) Category of firm   | (2) Applicable section   |
|--|--|
| <i>mortgage lender</i>   | <b>whole chapter except MCOB 12.1.6 R and MCOB 12.7</b>            |
| <i>mortgage adviser</i>  | <b>MCOB 12.1 (except MCOB 12.1.6 R) ,</b>                          |
| <i>mortgage arranger</i>   | <b>MCOB 12.2 and</b>   |
|  | <b>MCOB 12.5.2 R</b>   |
| <i>mortgage administrator</i>  | <b>MCOB 12.1 (except MCOB 12.1.6 R) ,</b>                          |
| <b>a firm that was a mortgage lender or mortgage administrator before the sale of a repossessed property</b>             | <b>MCOB 12.2, MCOB 12.4 and MCOB 12.5.2 R</b>                      |
| <i>home purchase provider</i>  | <b>MCOB 12.1.1 R to MCOB 12.1.3 R and MCOB 12.7</b>                |
| <i>home purchase adviser</i>   |  |
| <i>home purchase arranger</i>  |  |
| <i>home purchase administrator</i>   |  |
| <b>a firm that was a home purchase provider or home purchase administrator before the sale of a repossessed property</b> |  |
| <i>regulated sale and rent back firm</i>   | <b>MCOB 12.1.1 R to MCOB 12.1.3 R, MCOB 12.2.1 G and MCOB 12.5</b> |

| (1) Category of firm   | (2) Applicable section                                  |
|--|---|
| <i>reversion provider</i>  | MCOB 12.1, MCOB 12.2 and MCOB 12.5.1 R to MCOB 12.5.3 G |
| <i>reversion adviser</i>   | MCOB 12.1, MCOB 12.2, MCOB 12.5.2 R and MCOB 12.5.3 G   |
| <i>reversion arranger</i>  |   |
| <i>reversion administrator</i>   |   |
| <b>a firm that was a reversion provider or reversion administrator before the termination of a home reversion plan</b> |   |

**What?**

12.1.3

FCA

R

This chapter applies where a *firm*:

- (1) *enters into*, or makes a further advance on, a *home finance transaction* ; or
- (2) *administers a home finance transaction*; or
- (3) *arranges or advises on a home finance transaction* or a variation to the terms of a *home finance transaction*.

12.1.4

FCA

R

The arrears charges and excessive charges requirements in this chapter will continue to apply to a *firm* after a *regulated mortgage contract* has come to an end following the sale of a *repossessed* property. The excessive charges requirements will continue to apply to a *firm* after a *home reversion plan* has ended. References in this chapter to '*customer*' will include references to a former *customer* as appropriate.

12.1.5

FCA

G

The FCA will expect a *firm* to ensure that charges made to a *customer* arising from the sale of a *repossessed* property and charges arising in relation to a *sale shortfall* are not excessive and are subject to the same considerations as apply with respect to *arrears* charges under this chapter.

12.1.6

FCA

R

This chapter does not apply to a *firm* carrying on *reversion activities* or *regulated sale and rent back activities* in respect of a *customer* acting in his capacity as an *unauthorised reversion provider* or as an *unauthorised SRB agreement provider*.



## 12.2 Purpose

### 12.2.1

FCA

G

- (1) *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. A *firm* is also under an obligation, as a consequence of this sourcebook's disclosure requirements, to make charges transparent to *customers*. This chapter reinforces these requirements by preventing a *firm* from imposing unfair and excessive charges.
- (2) The level of charges under a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement* is not typically a matter for regulation. However, in certain limited circumstances, the *FCA* believes that *customers* should be protected from unfair and excessive charging practices. This chapter considers four specific circumstances, where:
  - (a) the charges imposed upon a *customer* seeking to terminate a *regulated mortgage contract* before the end of the term of the contract do not reflect the cost of termination to the *firm*;
  - (b) the charges imposed on a *customer* in payment difficulties are not based upon the costs incurred by the *firm*;
  - (c) the charges (including rates of interest) imposed on a *customer* under a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement* are excessive and contrary to the *customer's* interests; and
  - (d) the charges made to a *customer* in connection with a *firm* entering into, making a further advance on, *administering*, *arranging* or *advising on* a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement*, or *arranging* or *advising on* a variation to the terms of a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement* are excessive.





## 12.3 Early repayment charges : regulated mortgage contracts

### Early repayment charges to be expressed as cash and to be reasonable.....

12.3.1

FCA

R

A *firm* must ensure that any *regulated mortgage contract* that it enters into does not impose, and cannot be used to impose, an *early repayment charge* other than one that is:

- (1) able to be expressed as a cash value; and
- (2) a reasonable pre-estimate of the costs as a result of the *customer* repaying the amount due under the *regulated mortgage contract* before the contract has terminated.

12.3.2

FCA

G

A *firm* can choose the method it employs for calculating *early repayment charges* in accordance with ■ MCOB 12.3.1 R. A *firm* should not use the 'Rule of 78' (as contained in Schedule 2 of the Consumer Credit (Rebate on Early Settlement) Regulations 1983), which is not appropriate as it effectively overstates the cost to the *mortgage lender*.

12.3.3

FCA

G

A *firm* may calculate the same level of *early repayment charge* for all *regulated mortgage contracts* of a similar type (for example a tranche of *regulated mortgage contracts* offering a particular fixed rate of interest), rather than on the basis of the individual *regulated mortgage contract* with the particular *customer*.

### Early repayment charges to be disclosed in illustrations.....

12.3.4

FCA

R

Before:

- (1) *entering into a regulated mortgage contract* with a *customer*; or
- (2) making a further advance on an existing *regulated mortgage contract*; or
- (3) changing all or part of a *regulated mortgage contract* from one interest rate to another; a *firm* must disclose to the *customer*:
  - (a) in the illustration provided in accordance with ■ MCOB 5, ■ MCOB 7.6.7 R, ■ MCOB 7.6.18 R, ■ MCOB 7.6.22 R, ■ MCOB 7.6.31 R, or ■ MCOB 9; and

(b) in the *illustration* provided as part of the offer document in accordance with ■ MCOB 6.4.1 R(1) and ■ MCOB 9.5; the maximum amount payable as an *early repayment charge* in respect of that *regulated mortgage contract*, if an *early repayment charge* applies.

## 12.4 Arrears charges: regulated mortgage contracts

12.4.1

FCA

R

- (1) A *firm* must ensure that any *regulated mortgage contract* that it *enters into* does not impose, and cannot be used to impose, a charge for *arrears* on a *customer* except where that charge is a reasonable estimate of the cost of the additional administration required as a result of the *customer* being in *arrears* .
- (2) Paragraph (1) does not prevent a *firm* from *entering into* a *regulated mortgage contract* with a *customer* under which the *firm* may change the rate of interest charged to the *customer* from a fixed or discounted rate of interest to the *firm's* standard variable rate if the *customer* goes into *arrears*, providing that this standard variable rate is not a rate created especially for *customers* in *arrears*.

12.4.1A

FCA

A

The imposition of a charge for *arrears* on a *customer* who is adhering to an arrangement under which the *customer* and the *firm* agree that the *customer* will make payments of a set amount per month (or other agreed period) on agreed dates may be relied upon as tending to show contravention of ■ MCOB 12.4.1R (1)

12.4.1B

FCA

R

When a *customer* has a payment shortfall in respect of a *regulated mortgage contract*, a *firm* must ensure that any payments received from the *customer* are allocated first towards paying off the balance of the shortfall (excluding any interest or charges on that balance).

12.4.2

FCA

G

A *firm* may calculate the same level of *arrears* charges for all *regulated mortgage contracts* where the *customer* is in *arrears* , rather than on the basis of the individual *regulated mortgage contract* with the particular *customer*.

12.4.3

FCA

G

*Firms* are also subject to requirements on information provision and standards relating to *arrears* and *repossessions* (see ■ MCOB 13 (Arrears and repossessions)).

## 12.5 Excessive charges: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements

12.5.1

FCA

R

A *firm* must ensure that any *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement* that it enters into does not impose, and cannot be used to impose, excessive charges upon a *customer*.

12.5.2

FCA

R

A *firm* must ensure that its charges to a *customer* in connection with the *firm entering into*, making a further advance or further release on, *administering, arranging or advising on a regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement*, or *arranging or advising on a variation to the terms of a regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement* are not excessive.

12.5.3

FCA

G

When determining whether a charge is excessive, a *firm* should consider:

- (1) the amount of its charges for the services or products in question compared with charges for similar products or services on the market;
- (2) the degree to which the charges are an abuse of the trust that the *customer* has placed in the *firm*; and
- (3) the nature and extent of the disclosure of the charges to the *customer*.

12.5.4

FCA

G

*Mortgage lenders* are also subject to requirements relating to responsible lending (see ■ MCOB 11).



## 12.6 Business loans

### 12.6.1

FCA

G

*Firms* are reminded that, in relation to a *regulated mortgage contract* for a business purpose in circumstances where ■ MCOB 7.7.1 R applies, if there is a new *early repayment charge* or a change to the existing *early repayment charge*, ■ MCOB 7.7.1 R(2) requires a *firm* to notify the *customer* within five *business days* of the maximum amount payable as an *early repayment charge*.

### 12.6.2

FCA

G

*Firms* are also reminded that in accordance with ■ MCOB 1.2.3 R, they should either comply in full with *MCOB* or comply with all tailored provisions in *MCOB* that relate to business loans .



## 12.7 Home purchase plans

### 12.7.1

FCA

G

#### Who?

---

The FCA believes that *Principle 7* requires charges imposed by a *firm* on *customers* to be transparent and that imposing unfair or excessive charges is inconsistent with *Principle 6*.

**Note:** A *firm* should also have regard to its obligations under the *Unfair Terms Regulations* and may find material on the FCA website concerning the FCA consumer protection powers useful.

## Chapter 13

# Arrears and repossessions: regulated mortgage contracts and home purchase plans



## 13.1 Application

### Who?

13.1.1  
FCA

**R** This chapter applies to a *firm* in a category listed in column (1) of the table in ■ MCOB 13.1.2 R in accordance with column (2) of that table.

13.1.2  
FCA

**R** Table Table: This table belongs to ■ MCOB 13.1.1 R

| (1) Category of firm  | (2) Applicable section  |
|---|---|
| <i>mortgage lender, and a firm that was a mortgage lender before the sale of a repossessed property</i>                         | MCOB 13.1-MCOB 13.3, except for MCOB 13.3.9 R to MCOB 13.3.11 G   |
| <i>mortgage administrator, and a firm that was a mortgage administrator before the sale of a repossessed property</i>           | whole chapter except for MCOB 13.8  |
| <i>home purchase provider, and a firm that was a home purchase provider before the sale of a repossessed property</i>           | As for a <i>mortgage lender</i>   |
| <i>home purchase administrator, and a firm that was a home purchase administrator before the sale of a repossessed property</i> | As for a <i>mortgage lender</i> , plus: MCOB 13.6 and MCOB 13.8; and MCOB 13.4 and MCOB 13.5 in accordance with MCOB 13.8 |

### What?

13.1.3  
FCA

**R** This chapter applies with respect to *administering a regulated mortgage contract*, *administering a home purchase plan* and *administering a sale shortfall*.

13.1.4  
FCA

**R** The requirements in this chapter will continue to apply to a *firm* after a *regulated mortgage contract* or *home purchase plan* has come to an end following the sale of a *repossessed property*. References in this chapter to "*customer*" will include references to a former *customer* as appropriate.



13.1.5

FCA

G

The FCA expects a *firm* to treat a *sale shortfall* in the same way that it treats a payment shortfall.

13.1.6

FCA

G

A *firm* may have entered into a mix of *regulated mortgage contracts* and *non-regulated mortgage contracts* with a *customer* secured on the same property. In such circumstances, if the *regulated mortgage contract* is in *arrears*, notwithstanding that the overall position in respect of the mortgages generally is not in *arrears*, the *firm* will need to comply with all the requirements of ■ MCOB 13 in respect to the *regulated mortgage contract*. Where this involves providing the *customer* with information, a *firm* should explain, if it is the case, that whilst the overall position on the mortgages is not in *arrears*, no action will be taken in respect of the *regulated mortgage contract*.

13.1.7

FCA

G

If a *firm* has entered into more than one *regulated mortgage contract* or *home purchase plan* with the same *customer* relating to the same property, the *firm* may treat them all as one for the purposes of this chapter .



## **13.2 Purpose**

### **13.2.1**

**FCA**

**G**

This chapter amplifies *Principle 6* in respect of the information and service provided to *customers* who have payment difficulties or face a *sale shortfall* .

### **13.2.2**

**FCA**

**G**

There may be occasions where a *customer* enters into a *regulated mortgage contract* or *home purchase plan* with no intention of meeting his payment obligations. Where the intention is to defraud, this chapter does not prevent early action to recover sums due .

**13.3 Dealing fairly with customers in arrears:  
policy and procedures**

13.3.1

FCA

R

- (1) A *firm* must deal fairly with any *customer* who:
  - (a) is in *arrears* on a *regulated mortgage contract* or *home purchase plan*;
  - (b) has a *sale shortfall*; or
  - (c) is otherwise in breach of a *home purchase plan*.
- (2) A *firm* must put in place, and operate in accordance with, a written policy (agreed by its respective *governing body*) and procedures for complying with (1). Such policy and procedures must reflect the requirements of ■ MCOB 13.3.2A R and ■ MCOB 13.3.4A R.

13.3.2

E

- (1) [deleted]
- (2) [deleted]

13.3.2A

FCA

R

A *firm* must, when dealing with any *customer* in payment difficulties:

- (1) make reasonable efforts to reach an agreement with a *customer* over the method of repaying any payment shortfall or *sale shortfall*, in the case of the former having regard to the desirability of agreeing with the *customer* an alternative to taking possession of the property;
- (2) liaise, if the *customer* makes arrangements for this, with a third party source of advice regarding the payment shortfall or *sale shortfall*;
- (3) allow a reasonable time over which the payment shortfall or *sale shortfall* should be repaid, having particular regard to the need to establish, where feasible, a payment plan which is practical in terms of the circumstances of the *customer*;
- (4) grant, unless it has good reason not to do so, a *customer's* request for a change to:

- (a) the date on which the payment is due (providing it is within the same payment period); or
- (b) the method by which payment is made;

and give the *customer* a written explanation of its reasons if it refuses the request;

- (5) where no reasonable payment arrangement can be made, allow the *customer* to remain in possession for a reasonable period to effect a sale; and
- (6) not repossess the property unless all other reasonable attempts to resolve the position have failed.

**13.3.3**  
**FCA**

**G**

The requirement in ■ MCOB 13.3.1 R(2) for a written policy and procedures is intended to ensure that a *firm* has addressed the need for internal systems to deal fairly with any *customer* in financial difficulties. ■ MCOB 13.3.1 R (2) does not oblige a *firm* to provide *customers* with a copy of the written policy and procedures. Nor, however, does it prevent a *firm* from providing *customers* with either these documents or a more *customer*-orientated version.

**13.3.3A**  
**FCA**

**R**

In complying with ■ MCOB 13.3.2A R, a *firm* must give a *customer* a reasonable period of time to consider any proposals for dealing with the payment difficulties.

**13.3.4**

**G**

- (1) [deleted]
- (2) [deleted]

**13.3.4A**  
**FCA**

**R**

In complying with ■ MCOB 13.3.2AR(6):

- (1) a *firm* must consider whether, given the individual circumstances of the *customer*, it is appropriate to do one or more of the following in relation to the *regulated mortgage contract* or *home purchase plan* with the agreement of the *customer*:
  - (a) extend its term; or
  - (b) change its type; or
  - (c) defer payment of interest due on the *regulated mortgage contract* or of sums due under the *home purchase plan* (including, in either case, on any *sale shortfall*); or
  - (d) treat the payment shortfall as if it was part of the original amount provided (but a *firm* must not automatically capitalise a payment shortfall ); or
  - (e) make use of any Government forbearance initiatives in which the *firm* chooses to participate;

(2) a *firm* must give *customers* adequate information to understand the implications of any proposed arrangement; one approach may be to provide information on the new terms in line with the *annual statement provisions*.

13.3.4B  
FCA

**R** A *firm* must make *customers* aware of the existence of any applicable Government schemes to assist borrowers in payment difficulties in relation to *regulated mortgage contracts*.

13.3.4C  
FCA

**G** *Firms* should note that the list of options to consider set out at ■ MCOB 13.3.4AR(1) is not exhaustive. The *FCA* would expect *firms* to be able to justify a decision to offer a particular option.

13.3.4D  
FCA

**G** In the *FCA*'s view, in order to comply with *Principle 6*, *firms* should not agree to capitalise a payment shortfall save where no other option is realistically available to assist the *customer*.

13.3.5

**G** [deleted]

13.3.6  
FCA

**G** In relation to adopting a reasonable approach to the time over which the payment shortfall or *sale shortfall* should be repaid, the *FCA* takes the view that the determination of a reasonable repayment period will depend upon the individual circumstances. In appropriate cases this will mean that repayments are arranged over the remaining term.

13.3.7  
FCA

**G** In relation to granting a *customer's* request for a change to the payment date, a term that purported to allow a *firm* to change the payment date unilaterally might in any event contravene the *Unfair Terms Regulations*.

13.3.8  
FCA

**G** *Firms* that propose to outsource aspects of *customer* relationships (including collection of debts or any other sums due) should note that and ■ SYSC 8, a *firm* cannot contract out its regulatory obligations and the *FCA* will continue to hold them responsible for the way in which this work is carried on.

**Record keeping: arrears and repossessions**

13.3.9  
FCA

- R**
- (1) A *mortgage lender* or *administrator* must make and retain an adequate record of its dealings with a *customer* whose account is in *arrears* or who has a *sale shortfall* , which will enable the *firm* to show its compliance with this chapter . That record must include a recording of all telephone conversations between the *firm* and the *customer* which discuss the sums due .
  - (2) A *mortgage lender* or *administrator* must retain the record required by (1) for three years from the date of the dealing.

**13.3.10**

**FCA**

**G**

The record referred to in ■ MCOB 13.3.9 R should contain, or provide reference to, matters such as:

- (1) the date of first communication with the *customer* after the account was identified as being in *arrears*;
- (2) in relation to correspondence issued to a *customer* in *arrears* , the name and contact number of the employee dealing with that correspondence, where known;
- (3) the basis for issuing tailored information in accordance with ■ MCOB 13.7.1 R;
- (4) information relating to any new payment arrangements proposed;
- (5) the date of issue of any legal documents;
- (6) the arrangements made for sale after the *repossession* (whether legal or voluntary); and
- (7) the date of any communication summarising the *customer's* outstanding debt after sale of the *repossessed* property ;
- (8) the date and time of each call for the purposes of ■ MCOB 13.3.9R(1).

**13.3.11**

**FCA**

**G**

For details of the standard expected of *firms* in relation to maintaining records, see ■ MCOB 2.8 (Record keeping)

**13.4 Arrears: provision of information to the  
customer of a regulated mortgage contract**

13.4.1

FCA

R

If a *customer* falls into *arrears* on a *regulated mortgage contract*, a *firm* must as soon as possible, and in any event within 15 *business days* of becoming aware of that fact, provide the *customer* with the following in a *durable medium*:

- (1) the current *Money Advice Service* information sheet "Problems paying your mortgage";
- (2) a list of the due payments either missed or only paid in part;
- (3) the total sum of the payment shortfall ;
- (4) the charges incurred as a result of the payment shortfall ;
- (5) the total outstanding debt, excluding charges that may be added on redemption; and
- (6) an indication of the nature (and where possible the level) of charges the *customer* is likely to incur unless the payment shortfall is cleared.

13.4.2

FCA

G

- (1) The *Money Advice Service* information sheet "Problems paying your mortgage" is available on the website [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.org.uk) ; copies can also be obtained by calling 0300 500 5000.
- (2) [deleted]

13.4.3

FCA

G

- (1) A *firm* may provide the information in ■ MCOB 13.4.1 R (2), (3), (4), (5) and (6) orally, for example by telephone, but must provide the information in a *durable medium* with a copy of the *Money Advice Service* information sheet "Problems paying your mortgage" within 15 *business days* of becoming aware of the *customer's* account falling into *arrears*.
- (2) Where a *firm* provides the information in ■ MCOB 13.4.1 R when a payment shortfall occurs but before the *customer's* account falls into *arrears*, it need not repeat the provision of the information in ■ MCOB 13.4.1 R when the *customer's* account falls into *arrears*.

13.4.4

FCA

**R**

**Customers in arrears within the past 12 months**

If a *customer's* account has previously fallen into *arrears* within the past 12 months (and at that time the *customer* received the disclosure required by ■ MCOB 13.4.1 R), the *arrears* have been cleared and the *customer's* account falls into *arrears* on a subsequent occasion a *firm* must either:

- (1) issue a further disclosure in compliance with ■ MCOB 13.4.1 R;  
or
- (2) provide a statement, in a *durable medium*, of the payments due, the actual payment shortfall, any charges incurred and the total outstanding debt excluding any charges that may be added on redemption, together with information as to the consequences, including *repossession*, if the payment shortfall is not cleared.

13.4.5

FCA

**R**

**Steps required before action for repossession**

Before commencing action for *repossession*, a *firm* must:

- (1) provide a written update of the information required by ■ MCOB 13.4.1 R(2), (3), (4), (5) and (6);
- (2) ensure that the *customer* is informed of the need to contact the local authority to establish whether the *customer* is eligible for local authority housing after his property is *repossessed*; and
- (3) clearly state the action that will be taken with regard to *repossession*.



**13.5 Dealing with a customer in arrears or with  
a sale shortfall on a regulated mortgage  
contract**

**Statements of charges**

13.5.1

FCA

R

Where an account is in *arrears*, and the payment shortfall or *sale shortfall* is attracting charges, a *firm* must provide the *customer* with a regular written statement (at least once a quarter) of the payments due, the actual payment shortfall, the charges incurred and the debt.

13.5.2

FCA

G

- (1) For the purpose of ■ MCOB 13.5.1 R, charges that trigger the requirement for regular statements include all charges and fees levied directly as a result of the account falling into *arrears*. This includes charges such as monthly administrative charges, legal fees and interest. If interest is applied to the amount of the *arrears*, as it is applied to the rest of the mortgage, a *firm* need not send a written statement, unless other charges are also being made. If interest is applied to the amount of the *arrears* in a different manner to the rest of the mortgage then a written statement will be required.
- (2) In determining the frequency for providing statements in accordance with ■ MCOB 13.5.1 R, a *firm* should have regard to the application of new charges and the number of transactions on the *customer's* account.
- (3) If an account in *arrears* is subject to a payment plan agreed between a *firm* and a *customer*, and the account is operating in accordance with that plan, the *firm* will still need to send the *customer* a written statement if the payment shortfall or *sale shortfall* is attracting charges.
- (4) Information provided should cover the period since the last statement. *Firms* may use the annual statement to comply with ■ MCOB 13.5.1 R, in which case the annual statement will need to be supplemented to include the actual payment shortfall.

**Pressure on customers**

13.5.3

FCA

R

A *firm* must not put pressure on a *customer* through excessive telephone calls or correspondence, or by contact at an unreasonable hour.

13.5.4

FCA

G

In ■ MCOB 13.5.3 R, a reasonable hour will usually fall between 8 am and 9 pm. *Firms* should also have regard to the circumstances of the *customer* and any knowledge they have of the *customer's* work pattern or religious faith which might make it unreasonable to contact the *customer* during these hours.

13.5.5

FCA

G

In ■ MCOB 13.5.3 R, putting pressure on a *customer* includes:

- (1) the use of documents which resemble a court summons or other official document, or are intended to lead the *customer* to believe that they come from or have the authority of a court (which might in any event constitute a criminal offence under the County Courts Act 1984 or section 40 of The Administration of Justice Act 1970); and
- (2) the use of documents containing unfair, unclear or misleading information intended to coerce the *customer* into paying. A *firm* should also have regard to Section 1 of the Malicious Communications Act 1988 which establishes a criminal offence in respect of letters sent which convey a threat or false information with intent to cause distress or anxiety.

13.5.6

FCA

G

In relation to ■ MCOB 13.5.3 R, a *firm* should also have regard to the general law, including the Data Protection Act 1998, on the disclosure of information to third parties.



## 13.6 Repossessions

13.6.1

FCA

R

A *firm* must ensure that, whenever a property is *repossessed* (whether voluntarily or through legal action) and it administers the *regulated mortgage contract* or *home purchase plan* in respect of that property, steps are taken to:

- (1) market the property for sale as soon as possible; and
- (2) obtain the best price that might reasonably be paid, taking account of factors such as market conditions as well as the continuing increase in the amount owed by the *customer* .

13.6.2

FCA

G

In ■ MCOB 13.6.1 R it is recognised that a balance has to be struck between the need to sell the property as soon as possible, to reduce or remove the outstanding debt, and other factors which may prompt the delay of the sale. These might include market conditions (explicitly referred to in ■ MCOB 13.6.1 R(2)) but there may be other legitimate reasons for deferring action. This could include the expiry of a period when a grant is repayable on re-sale, or the discovery of a title defect that needs to be remedied if the optimal selling price is to be achieved.

### **If the proceeds of sale are less than the amount due**

13.6.3

FCA

R

A *firm* must ensure that, as soon as possible after the sale of a *repossessed* property, if the proceeds of sale are less than the amount due under the *regulated mortgage contract* or *home purchase plan*, the *customer* is informed in a *durable medium* of:

- (1) the *sale shortfall*; and
- (2) where relevant, the fact that the *sale shortfall* may be pursued by another company (for example, a mortgage indemnity insurer).

13.6.4

FCA

R

- (1) If the decision is made to recover the *sale shortfall*, the *firm* must ensure that the *customer* is notified of this intention.
- (2) The notification referred to in (1) must take place within five years of the date of the sale (if the *regulated mortgage contract* or *home purchase plan* is subject to Scottish law) or within six years (in all other cases).

13.6.5

FCA

G

A *firm* is not required to recover a *sale shortfall*. A *firm* may not wish to recover the *sale shortfall* in some situations, for example where the sums involved make action for recovery unviable.

**If the proceeds of sale are more than the amount due** .....

13.6.6

FCA

R

A *firm* must ensure that, on the sale of a *repossessed* property, if the proceeds of sale are more than the amount due under the *regulated mortgage contract* or *home purchase plan*, reasonable steps are taken, as soon as possible after the sale, to inform the *customer* in a *durable medium* of the surplus and, subject to the rights of any subsequent mortgage or charge holders, to pay it to him.



## 13.7 Business loans

13.7.1

FCA

R

Where the *regulated mortgage contract* is for a business purpose , a *firm* may as an alternative to ■ MCOB 13.4.1 R(1) provide the following information in a *durable medium* instead of the *Money Advice Service* information sheet "Problems paying your mortgage":

- (1) details of the consequences if the payment shortfall is not cleared;
- (2) a description of the options available to the *customer* for clearing the payment shortfall ; and
- (3) details of sources of fee-free advice for business *customers*.

13.7.2

FCA

G

*Firms* are reminded that in accordance with MCOB 1.2.3R, they should either comply in full with *MCOB* or comply with all tailored provisions in *MCOB* that relate to business loans . Therefore, a firm may only follow the tailored provisions in ■ MCOB 13.7, if it also follows all other tailored provisions in *MCOB*.



## 13.8 Home purchase plans

13.9

**Dealing fairly with customers in arrears: policy and procedures**

**Note:** The rules on establishing and applying a policy and procedures for dealing fairly with *customers in arrears* apply (see ■ MCOB 13.3).

### **Arrears: provision of information to the customer**

13.8.1

**R**

If a *customer* falls into *arrears*, a *firm* must provide the *customer* with adequate information about the *arrears* in a *durable medium*:

FCA

- (1) as soon as practicable after becoming aware of that fact;
- (2) at quarterly intervals; and
- (3) before commencing action for *repossession*.

13.8.2

**G**

A *firm* may want to refer to the provisions on the information to be provided to a mortgage customer in relation to *arrears* for guidance (see ■ MCOB 13.4 and ■ MCOB 13.5).

FCA

### **Repossessions**

**Note:** The rules regarding repossessions apply (see ■ MCOB 13.6).

# Mortgages and Home Finance: Conduct of Business sourcebook

## MCOB TP 1 Transitional Provisions

### 1 Transitional Provisions

| (1)         | (2) Material to which the transitional provision applies                               | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Hand-book provision: coming into force |
|-------------|--|-----|----------------------------|--|--|
| 1           | [deleted]  |     | [deleted]                  | Expired                                    | [deleted]                                  |
| 2           | [deleted]  |     | [deleted]                  | Expired                                    | [deleted]                                  |
| 3           | [deleted]  |     | [deleted]                  | Expired                                    | [deleted]                                  |
| 4           | [deleted]  |     | [deleted]                  | Expired                                    | [deleted]                                  |
| 5           | [deleted]  |     | [deleted]                  | Expired                                    | [deleted]                                  |
| 6           | [deleted]  |     | [deleted]                  | Expired                                    | [deleted]                                  |
| 7           | [deleted]  |     | [deleted]                  | Expired                                    | [deleted]                                  |
| 8           | [deleted]  |     | [deleted]                  | Expired                                    | [deleted]                                  |
| 9<br>[FCA]  | MCOB 5.6.9 R and<br>MCOB 9.4.13 R  | R   | Expired                    |  |  |
| 10<br>[FCA] | MCOB4Annex1R,<br>MCOB4Annex2R,<br>MCOB5Annex1R,<br>MCOB8Annex1R<br>and<br>MCOB9Annex1R | R   | Expired                    |  |  |
| 11<br>[FCA] | MCOB 4.4.1 R,<br>MCOB 4.4.7 R<br>and<br>MCOB 4.10.2 R                                  | R   | Expired                    |  |  |

| (1)         | (2) Material to which the transitional provision applies   | (3) | (4) Transitional provision   | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|-------------|--|-----|--|--|---|
| 12<br>[FCA] | MCOB 5.6.2 R,<br>MCOB 5.6.5 R,<br>MCOB 5.6.65 R,<br>MCOB 5.6.121 R,<br>MCOB 5.6.145 R<br>and<br>MCOB 5 Annex 1 R | R   | Expired  |  |   |
| 13<br>[FCA] | MCOB 13.3.9 R  | R   | Expired  |  |   |
| 14<br>[FCA] | MCOB 5.6.2 R,<br>MCOB 5.6.65 R,<br>MCOB 5.6.145 R<br>and<br>MCOB 5 Annex 1 R                                     | R   | Expired  |  |   |
| 15<br>[FCA] | MCOB 9.4.2 R,<br>MCOB 9 Annex 1 R<br>and<br>MCOB 9 Annex 2 R   | R   | Expired  |  |   |
| 16<br>[FCA] | MCOB 13.4.1 R(1)   | R   | Expired  |  |   |
| 17          | MCOB 4.4.1 R,<br>MCOB 4.10.2 R   | R   | A <i>firm</i> may use an <i>initial disclosure document</i> prepared in accordance with the <i>rules</i> in MCOB 4.4.1 R, MCOB 4.10.2 R, MCOB 4 Annex 1 R and COBS 6 Annex 2 as they were in force as at 31 March 2013 | From 1 April 2013 to 26 April 2014         | 1 April 2013                              |
| 18          | MCOB 4.4.1 R,<br>MCOB 4.10.2 R   | R   | A <i>firm</i> may use a <i>combined initial disclosure document</i> prepared in accordance with the <i>rules</i> in MCOB 4.4.1 R, MCOB 4.10.2 R and COBS 6 Annex 2 as they were in force as at 31 March 2013           | From 1 April 2013 to 26 April 2014         | 1 April 2013                              |



## Mortgages and Home Finance: Conduct of Business sourcebook

### MCOB TP 2 Transitional Provisions

#### 1 Transitional Provisions for home purchase plans and home reversion plans

| (1) | (2) Material to which the transitional provision applies   | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|-----|--|-----|----------------------------|--|---|
| 1   | Every <i>rule</i> in <i>MCOB</i> unless the context otherwise requires and subject to any more specific transitional provision relating to the matter. | R   | Expired                    |  |   |
| 2   |  | G   | Expired                    |  |   |
| 3   |  | G   | Expired                    |  |   |
| 4   | MCOB 3.8A.3 R (1)  | R   | Expired                    |  |   |
| 5   | MCOB 9.4.2 R,<br>MCOB 9.4.5 R,<br>MCOB 9.4.18 R and<br>MCOB 9 Annex 1 R  | R   | Expired                    |  |   |
| 6   | MCOB 9.4.2 R,<br>MCOB 9.4.5 R,<br>MCOB 9.4.133 R and<br>MCOB 9 Annex 2 R   | R   | Expired                    |  |   |



# Mortgages and Home Finance: Conduct of Business sourcebook

## MCOB TP 3 Transitional Provisions

### Transitional Provisions for sale and rent back agreements

| (1) | (2) Material to which the transitional provision applies   | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|-----|--|-----|----------------------------|--|---|
| 1   | Every <i>rule</i> in <i>MCOB</i> unless the context otherwise requires and subject to any more specific transitional provision relating to the matter. | R   | Expired                    |  |   |
| 2   | -  | G   | Expired                    |  |   |
| 3   | -  | G   | Expired                    |  |   |
| 4   | MCOB 3.8B.4 R;<br>MCOB 3.8B.5 R  | R   |                            |  |   |



# Mortgages and Home Finance: Conduct of Business sourcebook

## Schedule 1 Record keeping requirements

### Sch 1.1 G

**FCA**

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

### Sch 1.2 G

**FCA**

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

### Sch 1.3 G

**FCA**

| Handbook reference       | Subject of record                             | Contents of record  | When record must be made         | Retention period  |
|--------------------------|---|---|----------------------------------|---|
| MCOB 3.10.1 R            | Each <i>non-real time financial promotion</i> | Name of individual who confirmed compliance or approved the <i>financial promotion</i> , and the date of confirmation   | Date of confirmation or approval | One year from the date on which the <i>financial promotion</i> was last <i>communicated</i> |
| MCOB 3.10.2 G (2) to (5) | Each <i>non-real time financial promotion</i> | Details of: the medium for which the <i>financial promotion</i> was authorised; evidence supporting a material factual statement; evidence to show that any typical <i>APR</i> was representative of business | Date of confirmation or approval | One year from the date on which the <i>financial promotion</i> was last <i>communicated</i> |

| Handbook reference   | Subject of record   | Contents of record  | When record must be made   | Retention period  |
|----------------------|---|---|--|---|
| MCOB 3.10.3 G (1)    | Each <i>non-real time financial promotion</i>             | A copy of the <i>financial promotion</i> as finally published   | Date of confirmation or approval                                     | One year from the date on which the <i>financial promotion</i> was last <i>communicated</i>       |
| MCOB 4.7.17 R (1)(a) | Suitability   | Details of the customer information obtained, including the <i>customer's</i> needs and circumstances, for the purpose of assessing the suitability of a <i>regulated mortgage contract</i> | When the <i>personal recommendation</i> is made                      | Three years   |
| MCOB 4.7.17 R (1)(b) | Suitability   | An explanation of the reasons why the <i>firm</i> believes the <i>personal recommendation</i> complies with the suitability requirements in MCOB 4.7.4 R (1)                                | When the <i>personal recommendation</i> is made                      | Three years   |
| MCOB 4.7.17 R (1)(b) | Suitability   | An explanation of the reasons why a <i>personal recommendation</i> has been made on a basis other than that described in MCOB 4.7.13 E (1)  | When the <i>personal recommendation</i> is made                      | Three years   |
| MCOB 4.8.7 R         | Scripted questions  | A record of the scripted questions used in non-advised sales  | The date on which the scripted questions are first used              | One year from the date on which the scripted questions are superseded by a more up-to-date record |
| MCOB 4.6.11 R        | Notice of cancellation                                    | A record of the fact that notice has been given (including the original notice instructions and a copy of any receipt of notice issued)   | When the <i>firm</i> first becomes aware that notice has been served | Three years   |
| MCOB 4.11.8 R        | <i>Customer</i> information on which an assessment of the | <i>Customer</i> information on his income, expenditure,   | The date on which  | Five years, or one  |

| Handbook reference | Subject of record   | Contents of record   | When record must be made   | Retention period   |
|--------------------|---|--|--|--|
|                    | affordability and appropriateness for a <i>regulated sale and rent back agreement</i> was based   | resources, needs, objectives and individual circumstances  | the <i>firm</i> reached a conclusion on affordability and appropriateness                  | year after the end of the fixed term of the tenancy agreement, if later  |
| MCOB 5.4.19R       | Each <i>illustration</i> a <i>firm</i> issues to a <i>customer</i> where the <i>customer</i> applies for that particular <i>regulated mortgage contract</i> | The Key facts illustrations (KFI) issued   | The date the <i>customer</i> applies for the particular <i>regulated mortgage contract</i> | One year   |
| MCOB 5.4.21R       | Each KFI retained   | Detail of: the date the KFI was issued; the date on which the <i>customer</i> applied for the <i>regulated mortgage contract</i> ; and the medium through which the KFI was issued | The date the <i>customer</i> applies for the particular <i>regulated mortgage contract</i> | One year   |
| MCOB 5.9.2R        | Each pre-sale disclosure  | A record of the main terms of the <i>regulated sale and rent back agreement</i>  | The date on which the disclosure is made   | The longer of a period of one year from the end of the fixed term of the tenancy or five years from the date of the disclosure |
| MCOB 5.9.8R        | Provider information  | A record of the contact details of the provider, making it clear whether it is a <i>SRB agreement provider</i> or an <i>unauthorised SRB agreement provider</i>                    | The date on which the <i>regulated sale and rent back mediation activity</i> is carried on | The longer of one year, or one year from the end of the fixed term of the tenancy under the <i>regulated sale and</i>          |

| Handbook reference    | Subject of record  | Contents of record   | When record must be made  | Retention period   |
|-----------------------|--|--|---|--|
| <i>MCOB 6.4.3R(1)</i> | Offer document   | Each <i>offer document</i> issued to the <i>customer</i>                                   | The date on which the <i>firm</i> issues the <i>offer document</i> to the <i>customer</i> | One year<br><i>rent back agreement</i>   |
| <i>MCOB 6.4.3R(2)</i> | Tariff of charges  | A copy of the tariff of charges issued with, or as part of the <i>offer document</i>       | The date on which the <i>firm</i> issues the tariff of charges to the <i>customer</i>     | One year   |
| <i>MCOB 6.4.3R(3)</i> | Supplemental information relating to <i>mortgage credit cards</i>                          | Information explaining that rights associated with a traditional credit card do not apply, | The date on which the <i>firm</i> issues the information to the <i>customer</i>           | One year   |
| <i>MCOB 6.9.11R</i>   | Each written pre-offer document (Stage One) required under <i>MCOB 6.9.3R</i>              | A record of the main terms of the proposed <i>regulated sale and rent back agreement</i>   | The date on which the document is produced  | The longer of a period of one year from the end of the fixed term of the tenancy under the <i>regulated sale and rent back agreement</i> or five years from the date of the written pre-offer document |
| <i>MCOB 6.9.11R</i>   | Each written offer document for signing (Stage Two) required under <i>MCOB 6.9.10R (1)</i> | A record of the contents of the documents and the cooling-off period                       | The date on which the document is produced  | The longer of a period of one year from the end of   |



| Handbook reference | Subject of record            | Contents of record  | When record must be made   | Retention period  |
|--------------------|------------------------------|---|--|---|
|                    |                              |   |  | the fixed term of the tenancy under the <i>regulated sale and rent back agreement</i> or five years from the date of the written offer document |
| MCOB 7.4.2R        | Start of contract disclosure | The amount of the first and subsequent payments; the date and method of collection of the first and subsequent payments; details of insurance products and any repayment vehicle purchased through the <i>firm</i> , of the first premium payable and whether this is to be collected with the mortgage payment; detail of the repayment method, and if interest only a reminder to the <i>customer</i> to maintain a suitable repayment vehicle; what to do if the account falls into <i>arrears</i> ; information about linked borrowing or savings available and whether or not overpayments or underpayments are permitted. | The date on which the firm issues the information to the <i>customer</i> | One year  |
| MCOB 8.5.22R(1)(a) | Suitability                  | Details of the customer information obtained, including the <i>customer's</i> needs and circumstances, for the purpose of assessing the suitability of a <i>equity release transaction</i>  | When the <i>personal recommendation</i> is made                          | Three years   |
| MCOB 8.5.22R(1)(b) | Suitability                  | An explanation of the reasons why the <i>firm</i> believes the <i>personal recommendation</i> complies with suitability requirements in MCOB 8.5.4R(1)  | When the <i>personal recommendation</i> is made                          | Three years   |

| Handbook reference | Subject of record  | Contents of record  | When record must be made  | Retention period  |
|--------------------|--|---|---|---|
| MCOB 8.5.22R(1)(b) | Suitability  | An explanation of the reasons why a <i>personal recommendation</i> has been made on a basis other than that described in MCOB 8.5.17E(1)  | When the <i>personal recommendation</i> is made   | Three years   |
| MCOB 8.3.1R(1)     | Scripted questions   | A record of the scripted questions used in non-advised sales  | The date on which the scripted questions are first used                                   | One year from the date on which the scripted questions are superseded by a more up-to-date record |
| MCOB 8.3.1R(1)     | Notice of cancellation   | A record of the fact that notice has been given (including the original notice instructions and a copy of any receipt of notice issued)   | When the <i>firm</i> first becomes aware that notice has been served                      | Three years   |
| MCOB 9.3.1R        | Each <i>illustration</i> a <i>firm</i> issues to a <i>customer</i> where the <i>customer</i> applies for that particular <i>equity release transaction</i> | The key facts illustrations (KFI) issued  | The date the <i>customer</i> applies for the particular <i>equity release transaction</i> | One year  |
| MCOB 9.3.1R        | Each KFI retained  | Detail of: the date the KFI was issued; the date on which the <i>customer</i> applied for the <i>equity release transaction</i> ; and the medium through which the KFI was issued | The date the <i>customer</i> applies for the particular <i>equity release transaction</i> | One year  |
| MCOB 9.5.2R        | <i>Offer document</i>  | Each <i>offer document</i> issued to the <i>customer</i>  | The date on which the <i>firm</i> issues the <i>offer document</i> to                     | One year  |

| Handbook reference | Subject of record   | Contents of record  | When record must be made   | Retention period |
|--------------------|---|---|--|------------------|
| MCOB 9.5.2R        | Tariff of charges   | A copy of the tariff of charges issued with, or as part of the offer document   | the <i>customer</i><br>The date on which the <i>firm</i> issues the tariff of charges to the <i>customer</i> | One year         |
| MCOB 9.5.2R        | Supplemental information relating to <i>mortgage credit card</i>      | Information explaining that rights associated with a traditional credit card do not apply   | The date on which the firm issues the information to the <i>customer</i>                                     | One year         |
| MCOB 9.7.10R       | Start of contract disclosure where interest payments are required     | The amount of the first and subsequent payments; the date, frequency and method of collection of the first and subsequent payments; the net amount the <i>customer</i> will receive where interest is deducted from income and the method by which this will be paid; details of insurance products purchased through the <i>firm</i> , of the first premium payable and whether this is to be collected with the mortgage payment; confirmation that the <i>lifetime mortgage</i> is on an interest-only basis and details of how the firm expects the capital to be repaid; what to do if the account falls into <i>arrears</i> ; information about linked borrowing or savings available and whether or not overpayments or underpayments are permitted. | The date on which the <i>firm</i> issues the information to the <i>customer</i>                              | One year         |
| MCOB 9.6.1R        | <i>Illustrations</i> required on event-driven changes to the contract | A copy of the illustrations issued for further advances requiring authorisation; rate switches and the removal or   | When the illustrations is issued   | One year         |

| Handbook reference  | Subject of record  | Contents of record   | When record must be made  | Retention period |
|---------------------|--|--|---|------------------|
| <i>MCOB 9.7.10R</i> | Start of contract disclosure for a drawdown mortgage with fixed payments to the <i>customer</i>                | addition of a party to the contract<br><br>The amount of the first and subsequent payments; the date of issue and method of the payment of the first and subsequent payments; details of insurance products purchased through the <i>firm</i> , and of the first and subsequent premiums and the method and date of collection; details of how the firm expects the capital and interest to be paid; information about linked borrowing or savings available and whether or not repayments are permitted   | The date on which the firm issues the information to the customer               | One year         |
| <i>MCOB 9.7.10R</i> | Start of contract disclosure for a drawdown mortgage without fixed payments to the <i>customer</i>             | Where the <i>customer</i> can choose the frequency of the payment, details of the limitations on frequency and amount of payments; where payments can vary for any other reasons, details of the amount of the first payment and how subsequent payments can vary; the method by which payments will be made; details of insurance products purchased through the <i>firm</i> , and of the first and subsequent premiums and the method and date of collection; details of how the firm expects the capital and interest to be paid; information about linked borrowing or savings available and whether or not repayments are permitted | The date on which the <i>firm</i> issues the information to the <i>customer</i> | One year         |
| <i>MCOB 9.7.10R</i> | Start of contract disclosure where a lump sum payment to the <i>customer</i> is made and interest is rolled up | Confirmation if appropriate that no payments are required and details of how the <i>firm</i> expect capital and interest to be paid; if pay-   | The date on which the firm issues the informa-                                  | One year         |

| Handbook reference | Subject of record   | Contents of record   | When record must be made  | Retention period  |
|--------------------|---|--|---|---|
|                    |   | ments are to be made, the amount, frequency and method of collection of the first and subsequent payments; what to do in the case of <i>arrears</i> ; details of insurance products purchased through the <i>firm</i> , and of the first and subsequent premiums and the method and date of collection; details of how the firm expects the capital and interest to be paid; information about linked borrowing or savings available and whether or not repayments are permitted | tion to the customer  |   |
| MCOB 11.3.1R(2)    | Ability of the <i>customer</i> to repay advance   | Evidence to demonstrate that the <i>firm</i> has taken into account the <i>customer's</i> ability to repay   | When the assessment of the <i>customer's</i> ability to repay is made | One year from the date on which the <i>regulated mortgage contract</i> is entered into, or the further advance provided |
| MCOB 11.3.4R(2)    | Responsible lending policy  | A record of the <i>firm's</i> written policy setting out the factors the <i>firm</i> will take into account in assessing the <i>customer's</i> ability to repay  | The date on which the policy is set                                   | One year from the date on which the policy is replaced  |
| MCOB 13.3.9 R      | Dealings with <i>customers</i> in <i>arrears</i> or with a <i>mortgage shortfall debt</i> | Details of all dealings (including a recording of all telephone conversations) with the <i>customer</i> ; information relating to any repayment plan; date of issue of any legal proceedings; arrangements made for sale of a <i>repossessed</i> property; and the basis of any tailored information where the loan is for a business purpose.   | The date of the dealing   | Three years from the date on which the record is made   |



## Mortgages and Home Finance: Conduct of Business sourcebook

### Schedule 2 Notification Requirements

#### Sch 2.1 G

FCA

There are no notification requirements in *MCOB*.





## Mortgages and Home Finance: Conduct of Business sourcebook

### Schedule 3 Fees and other required payments

#### Sch 3.1 G

FCA

There are no requirements for fees or other payments in *MCOB*.



---

## Mortgages and Home Finance: Conduct of Business sourcebook

### Schedule 4 Powers exercised

#### Sch 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *MCOB*:

- Section 138 (General rule-making power)
- Section 139 (Miscellaneous ancillary matters)
- Section 145 (Financial promotion rules)
- Section 149 (Evidential provisions)
- Section 156 (General supplementary powers)

#### Sch 4.2 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *MCOB*:

- Section 157(1) (Guidance)



# Mortgages and Home Finance: Conduct of Business sourcebook

## Schedule 5 Rights of action for damages

### Sch 5.1 G

**FCA**

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

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a *private person* under Section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under Section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

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

### Sch 5.2 G

**FCA**

| Chapter / Appendix | Section / Annex | Paragraph  | Right of action under section 138D |          |                                |
|--------------------|-----------------|--|------------------------------------|----------|--------------------------------|
|                    |                 |  | For private person?                | Removed? | For other person?              |
|                    |                 | All <i>rules</i> in <i>MCOB</i> with the status letter "E"   | No                                 | No       | No                             |
|                    |                 | Any <i>rule</i> in <i>MCOB</i> which prohibits an <i>authorised person</i> from seeking to make provision excluding or restricting any duty or liability | Yes                                | No       | Yes<br>Any other <i>person</i> |
|                    |                 | All other <i>rules</i> in <i>MCOB</i>  | Yes                                | No       | No                             |



---

## Mortgages and Home Finance: Conduct of Business sourcebook

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

##### FCA

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.





# Banking: Conduct of Business sourcebook

## Banking: Conduct of Business sourcebook

|                |  |
|----------------|--|
| <b>BCOBS 1</b> | <b>Application</b>   |
| 1.1            | General application  |
| <b>BCOBS 2</b> | <b>Communications with banking customers and financial promotions</b>  |
| 2.1            | Purpose and Application: Who and what?                                 |
| 2.2            | The fair, clear and not misleading rule                                |
| 2.3            | Other general requirements for communications and financial promotions |
| 2.4            | Structured deposits, cash deposit ISAs and cash deposit CTFs           |
| <b>BCOBS 3</b> | <b>Distance communications</b>   |
| 3.1            | Distance marketing   |
| 3.2            | E Commerce   |
| 3 Annex 1      | Distance marketing information   |
| 3 Annex 2      | Abbreviated distance marketing information                             |
| <b>BCOBS 4</b> | <b>Information to be communicated to banking customers</b>             |
| 4.1            | Enabling banking customers to make informed decisions                  |
| 4.2            | Statements of account  |
| <b>BCOBS 5</b> | <b>Post sale</b>   |
| 5.1            | Post sale requirements   |
| <b>BCOBS 6</b> | <b>Cancellation</b>  |
| 6.1            | The right to cancel  |
| 6.2            | Exercising the right to cancel   |
| 6.3            | Effects of cancellation  |
| 6.4            | Obligations on cancellation  |
| 6.5            | Other applicable legislation   |

### Transitional Provisions and Schedules

|              |   |
|--------------|---|
| <b>TP 1</b>  | <b>Transitional Provision</b>           |
| <b>Sch 1</b> | <b>Record-keeping requirements</b>      |
| <b>Sch 2</b> | <b>Notification requirements</b>        |
| <b>Sch 3</b> | <b>Fees and other required payments</b> |
| <b>Sch 4</b> | <b>Powers exercised</b>                 |
| <b>Sch 5</b> | <b>Rights of action for damages</b>     |
| <b>Sch 6</b> | <b>Rules that can be waived</b>         |



# Chapter 1

# Application

## 1.1 General application

### The general application rule

- 1.1.1 **R** This sourcebook applies to a *firm* with respect to the activity of *accepting deposits* from *banking customers* carried on from an establishment maintained by it in the *United Kingdom* and activities connected with that activity.
- FCA**

### Limitations on the general application rule

- 1.1.2 **R** The general application *rule* is modified in the chapters of this sourcebook for particular purposes.
- FCA**
- 1.1.3 **R** Except as provided for in ■ BCOBS 1.1.4R, this sourcebook does not apply to:
- (1) *payment services* where Part 5 and 6 of the *Payment Services Regulations* apply; or
  - (2) a *person* or *firm* which has permission for *accepting deposits* but only for the purposes of, or in the course of, an activity other than *accepting deposits*.
- 1.1.4 **R**
- (1) Chapters 2, 5 and 6 of *BCOBS* (except for ■ BCOBS 5.1.11 R to ■ BCOBS 5.1.19 R) apply to *payment services* where Parts 5 and 6 of the *Payment Services Regulations* apply.
  - (2) Chapter 3 of *BCOBS* applies to *payment services* where Parts 5 and 6 of the *Payment Services Regulations* apply with the modifications set out in ■ BCOBS 3.1.2 R(2).
  - (3) A *firm* will not be subject to *BCOBS* to the extent that it would be contrary to the *United Kingdom's* obligations under an *EU* instrument.
- FCA**
- 1.1.5 **R** ■ BCOBS 4.1.4A G (2)(a), ■ BCOBS 5.1.3A G, ■ BCOBS 5.1.3B G and ■ BCOBS 5.1.13 R do not apply to a *credit union*.
- FCA**

**Exclusion of liability**

1.1.6

FCA

R

A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *banking customer* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.

1.1.7

FCA

G

The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.





## Chapter 2

# Communications with banking customers and financial promotions

## 2.1 Purpose and Application: Who and what?

### 2.1.1

FCA

G

*Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* requires a *firm* to pay due regard to the information needs of its *clients* and communicate information to them in a way which is clear, fair and not misleading. This chapter reinforces these requirements by requiring a *firm* to pay regard to the information needs of *banking customers* when communicating with, or making a *financial promotion* to, them and to communicate information in a way that is clear, fair and not misleading.

### 2.1.2

FCA

R

In addition to the general application rule ( ■ BCOBS 1.1.1 R), this chapter applies to the *communication*, or *approval for communication*, to a *person in the United Kingdom* of a *financial promotion* of a *retail banking service* unless it can lawfully be *communicated* by an *unauthorised person* without *approval*.

### 2.1.3

FCA

R

This chapter applies to a *firm*:

- (1) *communicating with a banking customer* in relation to *accepting deposits*;
- (2) *communicating a financial promotion* that is not an *excluded communication*; or
- (3) *approving a financial promotion*.

## 2.2 The fair, clear and not misleading rule

**2.2.1** **R** A *firm* must take reasonable steps to ensure that a communication or a *financial promotion* is fair, clear and not misleading.  
**FCA**

**2.2.2** **G** The fair, clear and not misleading *rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information that it is intended to convey. So a communication addressed to a *banking customer* who is not a *consumer* may not need to include the same information, or be presented in the same way, as a communication addressed to a *consumer*.  
**FCA**

**2.2.3** **G** The *rules* in ■ SYSC 3 (Systems and Controls) and ■ SYSC 4 (General organisational requirements) require a *firm* to put in place systems and controls or policies and procedures in order to comply with the *rules* in ■ COBS 4.6 (Past, simulated past and future performance), ■ COBS 4.7.1 R (Direct offer financial promotions), ■ COBS 4.10 (Systems and controls and approving and communicating financial promotions) and this chapter of BCOBS.  
**FCA**

**2.2.4** **G** Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 create criminal offences relating to certain misleading statements and practices.  
**FCA**

**2.2.5** **G** A communication or a *financial promotion* should not describe a feature of a product or service as "guaranteed", "protected" or "secure", or use a similar term unless:  
**FCA**

- (1) that term is capable of being a fair, clear and not misleading description of it; and
- (2) the *firm* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.



## 2.3 Other general requirements for communications and financial promotions

2.3.1  
FCA

R

A *firm* must ensure that each communication made to a *banking customer* and each *financial promotion communicated* or *approved* by the *firm*:

- (1) includes the name of the *firm*;
- (2) is accurate and, in particular, does not emphasise any potential benefits of a *retail banking service* without also giving a fair and prominent indication of any relevant risks;
- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
- (4) does not disguise, diminish or obscure important information, statements or warnings.

2.3.2  
FCA

G

The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *banking customer* can identify the *firm* communicating the information.

2.3.3  
FCA

G

In deciding whether, and how, to *communicate* information to a particular target audience, a *firm* should take into account the nature of the *retail banking service*, the *banking customer's* likely or actual commitment, the likely information needs of a reasonable recipient, and the role of the communication or *financial promotion* in the sales process.

2.3.4  
FCA

G

If a communication or a *financial promotion* names the FCA, PRA or both as the regulator of a *firm* and refers to matters not regulated by the FCA, PRA or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the FCA, PRA or both.

2.3.5  
FCA

G

When *communicating* information, a *firm* should consider whether omission of any relevant fact will result in information given to the *banking customer* being insufficient, unclear, unfair or misleading.

2.3.6

FCA

G

The Credit Institutions (Protection of Deposits) Regulations 1995 may apply in relation to communications with a *banking customer*.

2.3.7

FCA

R

If a communication or a *financial promotion* compares a *retail banking service* with one or more other *retail banking service* (whether or not provided by the *firm*), the *firm* must ensure that the comparison is meaningful and presented in a fair and balanced way.

2.3.8

FCA

R

If a communication or a *financial promotion* in relation to a *retail banking service* refers to a particular tax treatment or rate of interest payable, a *firm* must ensure that a prominent statement that the tax treatment or the rate of interest payable:

(1) depends on the individual circumstances of each *banking customer*; and

(2) may be subject to change in the future;

is either included in that communication or *financial promotion*, or provided to the *banking customer* on paper or in another *durable medium* in good time before the *banking customer* is bound by the contract for that *retail banking service*.

2.3.9

FCA

G

When designing a *financial promotion*, a *firm* may find it helpful to take account of the British Bankers' Association/Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts.



**2.4**

**Structured deposits, cash deposit ISAs and cash deposit CTFs**

**2.4.1**

**FCA**

**G**

If a *financial promotion* relates to a *structured deposit*, rules in ■ COBS 4.6 (Past, simulated past and future performance) will also apply.

**2.4.2**

**FCA**

**G**

If a *financial promotion* relates to a *cash deposit ISA* or *cash deposit CTF*, ■ COBS 4.7.1 R (Direct offer financial promotions) also applies.

## Chapter 3

# Distance communications

## 3.1 Distance marketing

### Application

3.1.1  
FCA

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

### The distance marketing disclosure rules

3.1.2  
FCA

**R** (1) Subject to (2), a *firm* must provide a *consumer* with the distance marketing information (■ BCOBS 3 Annex 1 R ) in good time before the *consumer* is bound by a *distance contract* or offer.

(2) Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the consumer only the information specified in rows 7 to 12, 15, 16 and 20 of ■ BCOBS 3 Annex 1 R

[Note: articles 3(1) and 4(5) of the *Distance Marketing Directive*]

3.1.3  
FCA

**R** A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[Note: article 3(2) of the *Distance Marketing Directive*]

3.1.4  
FCA

**R** When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purposes of its call explicitly clear at the beginning of the conversation.

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

3.1.5  
FCA

**R** A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from



the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

#### Terms and conditions, and form

3.1.6

FCA

R

A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* (■ BCOBS 3.1.2R to ■ 3.1.5R) in a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: articles 4(5) and 5 (1) of the *Distance Marketing Directive*]

3.1.7

FCA

G

A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

#### Commencing performance of the distance contract

3.1.8

FCA

R

The performance of the *distance contract* may only begin after the *consumer* has given his approval.

[Note: article 7 (1) of the *Distance Marketing Directive*]

#### Exception: successive operations

3.1.9

FCA

R

In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this chapter only apply to the initial agreement.

[Note: article 1(2) of the *Distance Marketing Directive*]

3.1.10

FCA

R

(1) If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (■ BCOBS 3.1.2R to ■ 3.1.5R) will only apply:

- (a) when the first operation is performed; and
- (b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[Note: recital 16 and article 1(2) of the *Distance Marketing Directive*]

(2) In this section:

- (a) "initial service agreement" includes the opening of a bank account;

- (b) "operations" includes the deposit or withdrawal of funds to or from a bank account; and
- (c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing *retail banking service*, does not constitute an "operation" but an additional contract to which the rules in this chapter apply.

[Note: recital 17 of the *Distance Marketing Directive*]

#### Exception: voice telephony communications

3.1.11

FCA

R

In the case of voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information ( ■ BCOBS 3 Annex 2 R ) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information ( ■ BCOBS 3 Annex 1 R ) in a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

[Note: articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

#### Exception: means of distance communication not enabling disclosure

3.1.12

FCA

R

A *firm* may provide the distance marketing information ( ■ BCOBS 3 Annex 1 R ) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: article 5(2) of the *Distance Marketing Directive*]

#### Exception: contracts for payment services

3.1.13

FCA

G

Where a *distance contract* covers both *payment services* and non-*payment services*, the exception in ■ BCOBS 3.1.2R (2) applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

#### Consumer's right to request paper copies and change the means of communication

3.1.14

FCA

R

At any time during the contractual relationship, the *consumer* is entitled, at his request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[Note: article 5(3) of the *Distance Marketing Directive*]

**Unsolicited services**

3.1.15

FCA

R

(1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of a reply not constituting consent.

(2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[Note: article 9 of the *Distance Marketing Directive*]

**Mandatory nature of a consumer's rights**

3.1.16

FCA

R

If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[Note: article 12 of the *Distance Marketing Directive*]

**Contracts governed by law of a third party state**

3.1.17

FCA

R

If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this chapter if the *distance contract* has a close link with the territory of one or more *EEA States*.

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

## 3.2 E Commerce

### Application

3.2.1

FCA

R

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

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

3.2.2

FCA

R

A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm* including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R), together with a statement which explains that it is on the *Financial Services Register* and includes the *FCA* registration number;
- (5) if it is a *professional firm*, or a person regulated by the equivalent of a *designated professional body* in another *EEA State*:
  - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
  - (b) the professional title and the *EEA State* where it was granted;
  - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and

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

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

3.2.3

FCA

R

If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

3.2.4

FCA

R

A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

3.2.5

FCA

R

An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

#### **Requirements relating to the placing and receipt of orders**

3.2.6

FCA

R

A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
  - (a) the different technical steps to follow to conclude the contract;
  - (b) whether or not the concluded contract will be filled in by the *firm* and whether it will be accessible;
  - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
  - (d) the languages offered for the conclusion of the contract;

- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means) acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
- (4) make available to the *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and 11(1) and (2) of the *E-Commerce Directive*]

3.2.7

FCA

R

For the purposes of ■ BCOBS 3.2.6R (3), an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

3.2.8

FCA

R

Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the *E-Commerce Directive*]

**Exception: contract concluded by e mail**

3.2.9

FCA

R

The requirements relating to the placing and receipt of orders (■ BCOBS 3.2.6R (3)) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: articles 10(4) and 11(3) of the *E-Commerce Directive*]

## Distance marketing information

**FCA**

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

### Information about the firm

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *consumer's* EEA State of residence, the name of that representative and the geographical address relevant for the *consumer's* relations with that representative.
- (3) Where the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant to the *consumer's* relations with that professional.
- (4) The particulars of the public register in which the *firm* is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement ( GEN 4), a statement that the *firm* is on the *Financial Services Register* and its *FCA* registration number.

### Information about the financial service

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related fees, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the *firm's* control and that past performance is no indicator of future performance.
- (8) Notice of the possibility that other taxes or costs may exist that are not paid via the *firm* or imposed by it.
- (9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a *firm's* offer applies as it stands.
- (10) The arrangements for payment and performance.
- (11) Details of any specific additional cost to the *consumer* for using a means of distance communication.

### Information about the contract

- (12) The existence or absence of a right to cancel under the cancellation rules (BCOBS 6) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those *rules*, as well as the consequences of not exercising the right to cancel.
- (13) The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
- (14) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
- (15) Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
- (16) The *EEA State* or States whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the contract.
- (17) Any contractual clause on the law applicable to the contract or on the competent court, or both.
- (18) In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.

#### Information about redress

- (19) How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to that body, together with equivalent information about any other applicable named complaints scheme.
- (20) Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities.

[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]



## Abbreviated distance marketing information

**FCA**

This Annex belongs to ■ BCOBS 3.1.11 R

- (1) The identity of the *person* in contact with the *consumer* and his link with the *firm*.
- (2) A description of the main characteristics of the financial service.
- (3) The total price to be paid by the *consumer* to the *firm* for the financial service including all taxes paid via the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (4) Notice of the possibility that other taxes and/or costs may exist that are not paid via the *firm* or imposed by him.
- (5) The existence or absence of a right to cancel in accordance with the cancellation rules (BCOBS 6) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay on the basis of the cancellation rules.
- (6) That other information is available on request and what the nature of that information is.

[Note: article 3(3)(b) of the *Distance Marketing Directive*]



## Chapter 4

# Information to be communicated to banking customers



## 4.1 Enabling banking customers to make informed decisions

### The appropriate information rule

4.1.1  
FCA

R

A *firm* must provide or make available to a *banking customer* appropriate information about a *retail banking service* and any *deposit* made in relation to that *retail banking service*:

- (1) in good time;
- (2) in an appropriate medium; and
- (3) in easily understandable language and in a clear and comprehensible form;

so that the *banking customer* can make decisions on an informed basis.

4.1.2  
FCA

G

- (1) In determining:
  - (a) what is "in good time";
  - (b) the appropriate medium for communicating information; and
  - (c) whether it is appropriate to provide information (that is, send or give it directly to the *banking customer*) or make it available (that is, make it available to obtain at the *banking customer's* option);

a *firm* should consider the importance of the information to the decision-making process of the *banking customer* and the time at which the information may be most useful. Distance communications requirements are also relevant.

- (2) For example, (unless ■ BCOBS 3 applies) a *firm* should provide the terms and conditions of the contract for a *retail banking service* on paper or in another *durable medium* in good time before a *banking customer* is bound by them.
- (3) Where a *firm* proposes to exercise a power to make:
  - (a) a change to any term or condition of the agreement;
  - (b) a change to any charge; or
  - (c) a material change to any rate of interest;

that applies to the *retail banking service* and that will be to the disadvantage of a *banking customer*, the *firm* should provide reasonable notice to the *banking customer* on paper or in another durable medium before the change

takes effect, taking into account the period of notice required by the *banking customer* to terminate the contract for the *retail banking service*. Whether a change to a rate of interest is "material" should be determined having regard to the size of the balance of the account and the size of the change in the rate.

- (4) Where a *firm* notifies a *banking customer* of a material change to a rate of interest that applies to a *retail banking service* and that will be to the disadvantage of a *banking customer*, this notification should, where applicable:
  - (a) refer to the fact that the *firm* offers a comparable *retail banking service* for which the *banking customer* is eligible;
  - (b) indicate that the *banking customer* may move to that *retail banking service* or a *retail banking service* provided by another *firm*; and
  - (c) indicate that the *firm* will assist the *banking customer* to move to another *retail banking service* if he wishes to do so.
- (5) Where, under a contract for a *retail banking service*, an introductory, promotional or preferential rate of interest applies to the *retail banking service* until a specified future date or the end of a fixed period, a *firm* should, where appropriate, provide notice of the expiry of the application of that rate of interest to the *banking customer* on paper or in another durable medium within a reasonable period before that rate of interest ceases to apply.
- (6) In determining whether it is appropriate to provide the notice referred to in (5), a *firm* should consider:
  - (a) whether there is a material difference between the introductory or promotional rate of interest and the rate of interest that will apply to the *retail banking service* following the expiry of the introductory or promotional rate of interest;
  - (b) the size of the balance of the account; and
  - (c) the period of time that has elapsed since the *firm* last provided information to the *banking customer* in relation to the period for which the introductory or promotional rate of interest is applicable and the effect of its expiry.
- (7) The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to use or rely on a variation clause in a contract with a *consumer*.

## 4.1.3

FCA

R

Where a *rule* in this chapter requires information to be provided on paper or in another *durable medium* before a *banking customer* is bound by the terms and conditions of the contract, a *firm* may instead provide that information in accordance with the distance communication timing requirements (see ■ BCOBS 3.1.11 R and ■ BCOBS 3.1.12 R).

## 4.1.4

FCA

G

The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided or made available by a *firm* to a *banking customer* should include information relating to:

- (1) the *firm*;

- (2) the different *retail banking services* offered by the *firm* which share the main features of the *retail banking service* the *banking customer* has enquired about, or which have the product features the *banking customer* has expressed an interest in, unless the *banking customer* has expressly indicated that he does not wish to receive that information;
- (3) the terms and conditions of the contract for a *retail banking service* and any changes to them;
- (4) the rate or rates of interest payable on any deposit, how and when such interest is calculated and applied and any changes to that rate or those rates;
- (5) any charges at any time payable by or on behalf of a *banking customer* in relation to each *retail banking service* and any changes to those charges;
- (5A) the time at which any funds placed with or transferred to the *firm* for credit to the *banking customer's* account will be made available to the *banking customer*;
- (6) a *banking customer's* rights to cancel a contract for a *retail banking service*;
- (7) how a *banking customer* may make a complaint (at the time and in the manner required by ■ DISP 1.2 );
- (8) the terms of any compensation scheme if the *firm* cannot meet its obligations in respect of the *retail banking service*;
- (9) basic bank accounts but only if the *firm* offers a basic bank account and the *banking customer* meets the *firm's* eligibility criteria for such an account; and
- (10) the timescales for each stage of the cheque clearing process.

4.1.4A  
FCA

G

- (1) This *guidance* applies to a *firm* only with respect to its *communications* and dealings with *consumers* where a *firm* has a *right of set-off*.
- (2) To ensure compliance with the appropriate information *rule*, the *firm* should:
  - (a) (i) provide an explanation of the nature and extent of the *firm's right of set-off*; and
  - (ii) if the *firm* considers that it is entitled to exercise a right to set off or combine a debt due solely from a *consumer*, or a debit balance on an account held in the sole name of a *consumer*, against or with a credit balance on an account held in the joint names of that *consumer* and another *consumer*, also provide an explanation of that right to the *consumers* in whose names the joint account is held;
 

in good time before the *consumer* is bound by the contract for the *retail banking service*. This information may be incorporated in the terms and conditions that apply to the contract for the *retail banking service*;
  - (b) (i) on the first occasion that the *firm* proposes to exercise a *right of set-off* in its dealings with the *consumer*; and

- (ii) where appropriate, on any subsequent occasion that the *firm* proposes to exercise a *right of set-off* in its dealings with the *consumer*;  
provide general information in relation to the nature of the *firm's right of set-off* and the generic circumstances in which the *firm* may rely on that right within a reasonable period before the *firm* seeks to exercise its *right of set-off*. The *FCA* considers that this information should be provided at least 14 *days* before the *firm* seeks to exercise its *right of set-off*. It may be incorporated in another communication sent by the *firm* to the *consumer*; and
  - (c) where it has exercised a *right of set-off*, provide prompt notification of this to the *consumer*. This notification should clearly identify the date that the *firm* exercised its *right of set-off* and the amount debited from the *consumer's* account in reliance on that right.
- (3) The information referred to in (2) should be provided in plain and intelligible language on paper or in another *durable medium*.
  - (4) In determining whether it is appropriate to provide general information under (2)(b)(ii), the *firm* should consider the period of time that has elapsed since the *firm* last provided that information under (2)(b)(i) or (ii).
  - (5) Nothing in (2)(a)(ii) should be considered as expressing a view on the validity, enforceability or fairness of any *right of set-off* in relation to a joint account that a *firm* considers it is entitled to exercise.

**4.1.5**  
**FCA**

**G** The information required by the appropriate information *rule* may vary according to matters such as:

- (1) the *banking customer's* likely or actual commitment;
- (2) the information needs of a reasonable recipient having regard to the type of *retail banking service* that is proposed or provided and its overall complexity, main benefits, risks, limitations, conditions and duration;
- (3) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in a sale made purely by written correspondence (see **■** BCOBS 3.1)); and
- (4) whether the same information has been provided to the *banking customer* previously and, if so, when that was.

**4.1.6**  
**FCA**

**G** The existence of cancellation rights does not affect what information it is appropriate to give a *banking customer* in order to enable him to make an informed purchasing decision.

PAGE 5  
**4.1.7**  
**FCA**

**G** If the *retail banking service* is a *cash deposit ISA* or a *cash deposit CTF*, the rules in **■** COBS 13.1 (Preparing product information) and **■** COBS 14.2 (Providing product information to clients) also apply.

4.2.1

FCA

R

4.2 Statements of account

- (1) A *firm* must provide or make available to a *banking customer* on paper or in another *durable medium* such regular statements of account as are appropriate to the type of *retail banking service* provided, but need not do so where:
  - (a) the *firm* has provided a *banking customer* with a pass book or other document in a *durable medium* that records transactions in relation to the *retail banking service*;
  - (b) the *retail banking service* is provided at a distance by means of electronic equipment where the *banking customer* can access his account balance, view transactions and give instructions in relation to the *retail banking service* at a distance by such means;
  - (c) a *banking customer* has elected not to receive periodic statements of account, and for so long as such election is in force; or
  - (d) it has reasonable grounds to believe that the *banking customer* is not resident at the address last known to it as the address of the *banking customer* and it is not practicable after reasonable inquiry to ascertain the *banking customer's* address.
- (2) A *firm* must not charge for providing information which is required to be provided by (1).
- (3) A *firm* must provide a *banking customer* with a true copy of any statement of account provided to him under (1) on paper or in another *durable medium* within a reasonable period of time following a request to that effect made by or on his behalf.
- (4) A *firm* and a *banking customer* may agree on a charge for:
  - (a) providing a copy of a statement of account under (3); or
  - (b) providing statements of account more frequently than required by (1);



at the request of the *banking customer*. Any such charge must reasonably correspond to the *firm's* actual costs.

4.2.2

FCA

G

A *firm* should indicate the rate or rates of interest that apply to a *retail banking service* in each statement of account provided or made available to a *banking customer* in respect of that *retail banking service* in accordance with ■ BCOBS 4.2.1R (1).

4



# Chapter 5

## Post sale

## 5.1 Post sale requirements

### Service

5.1.1  
FCA

R

A *firm* must provide a service in relation to a *retail banking service* which is prompt, efficient and fair to a *banking customer* and which has regard to any communications or *financial promotion* made by the *firm* to the *banking customer* from time to time.

5.1.2  
FCA

G

In determining the order in which to process payment instructions in relation to the *retail banking service*, a *firm* must have regard to its obligation to treat *banking customers* fairly.

5.1.3  
FCA

G

To the extent that it relates to a *retail banking service*, a *firm* may find it helpful to take account of the British Bankers' Association "A Statement of Principles: Banks and businesses - working together".

### Set-off

5.1.3A  
FCA

G

To ensure compliance with its obligations under ■ BCOBS 5.1.1 R and *Principle 6*, on any occasion where it proposes to exercise a *right of set-off*, a *firm* (other than a *credit union*) should, with respect to its dealings with *consumers*:

- (1) review the information available and accessible to the *firm* relating to the *consumer's* account, on an individual basis, and estimate the amount of any *subsistence balance*;
- (2) refrain from seeking to set off or combine:
  - (a) any debt due from, or a debit balance on an account held by, a *consumer* against or with that *subsistence balance*;
  - (b) any debt due from, or a debit balance on an account held by, a *consumer* in a personal capacity against or with any sum of money payable by the *firm* to the *consumer* or standing to the credit of the *consumer* in an account held with the *firm*, where the *firm* knows or reasonably ought to know that:
    - (i) a third party is beneficially entitled to that money or that the *consumer* is a fiduciary in respect of that money; or
    - (ii) the *consumer* has received that money from a government department, local authority or NHS direct payment body for a specific purpose or is under a legal obligation to a third party to retain and deal with that money in a particular way.

5.1.3B

FCA

G

(1) If it becomes apparent to a *firm* after it has exercised a *right of set-off* that it has set off or combined a debt due from, or a debit balance on an account held by, a *consumer* against or with:

- (a) the *consumer's subsistence balance*; or
- (b) money payable by the *firm* to the *consumer*, or standing to the credit of the *consumer* in an account held with the *firm*, that falls within
  - BCOBS 5.1.3AG (2)(b)(i) or ■ (ii);

the *firm* should refund to the *consumer* the sum debited from the account of the *consumer* in exercise of the *right of set-off* unless it is fair not to do so.

(2) If, in the circumstances referred to in (1), the *firm* does not provide a refund of the sum debited from the account in exercise of the *right of set-off*, the *firm* should be able to justify that it is fair not to do so and should consider taking other remedial action having regard to its obligations under ■ BCOBS 5.1.1 R and *Principle 6*.

### Dealings with customers in financial difficulty

5.1.4

FCA

G

*Principle 6* requires a *firm* to pay due regard to the interests of its customers and to treat them fairly. In particular, a *firm* should deal fairly with a *banking customer* whom it has reason to believe is in financial difficulty.

### Moving a retail banking service

5.1.5

FCA

R

**A *firm* must provide a prompt and efficient service to enable a *banking customer* to move to a *retail banking service* (including a *payment service*) provided by another *firm*.**

5.1.6

FCA

G

Where a *banking customer* wishes to move a *retail banking service* and there are no arrangements between the *firm* the *banking customer* wishes to move from and the *firm* that the *banking customer* wishes to move to, the service provided by the former *firm* will extend only to providing a prompt and efficient service in respect of termination of the *retail banking service*, for example by closing an account and returning any *deposit* (with interest as appropriate) to the *banking customer*.

5.1.7

FCA

G

Where a *banking customer* wishes to move a *retail banking service* and there are arrangements between the *firm* the *banking customer* wishes to move from and the *firm* that the *banking customer* wishes to move to, the service provided by the former *firm* will include providing a prompt and efficient service in respect of termination of the *retail banking service*, for example by closing an account, transferring any account balance and making arrangements in respect of any direct debits or standing orders.

5.1.8

FCA

G

A *firm* may find it helpful to take account of the European Banking Industry Committee Common Principles for Bank Account Switching and the Cash ISA to Cash ISA Transfer Industry Guidelines.

### Lost and dormant accounts

5.1.9

FCA

R

**A *firm* must make appropriate arrangements to enable a *banking customer*, so far as is possible, to trace and, if appropriate, to have access to a *deposit***

held (or formerly held) in a *retail banking service* provided by the *firm*. This applies even if:

- (1) the *banking customer* may not be able to provide the *firm* with information which is sufficient to identify the *retail banking service* concerned; or
- (2) the *banking customer* may not have carried out any transactions in relation to that *retail banking service* for an extended period of time.

5.1.10

FCA

R

If a *firm* participates in the scheme under the Dormant Bank and Building Society Accounts Act 2008, it must inform a *banking customer* of this fact and provide appropriate information regarding the terms of the scheme on entering into communications with a *banking customer* regarding a *dormant account*.

#### Firm's liability for unauthorised payments

5.1.11

FCA

R

- (1) Where a *banking customer* denies having authorised a payment, it is for the *firm* to prove that the payment was authorised.
- (2) Where a payment from a *banking customer's* account was not authorised by the *banking customer*, a *firm* must, within a reasonable period, refund the amount of the unauthorised payment to the *banking customer* and, where applicable, restore the *banking customer's* account to the state it would have been in had the unauthorised payment not taken place.

#### Banking customer's liability for unauthorised payments

5.1.12

FCA

R

- (1) Subject to (2) and (3), a *firm* may, in an agreement for a *retail banking service*, provide for a *banking customer* to be liable for an amount up to a maximum of £50 for losses in respect of unauthorised payments arising:
  - (a) from the use of a lost or stolen *payment instrument*; or
  - (b) where the *banking customer* has failed to keep the personalised security features of the *payment instrument* safe, from the misappropriation of the *payment instrument*.
- (2) A *firm* may, in an agreement for a *retail banking service*, provide for a *banking customer* to be liable for all losses in respect of unauthorised payments:
  - (a) where a *banking customer* has acted fraudulently; or
  - (b) (subject to (3)) where a *banking customer* has intentionally, or with gross negligence, failed to comply with his or her obligations under the agreement for the *retail banking service* in relation to the issue or use of the *payment*

*instrument* or to take all reasonable steps to keep its personalised security features safe.

- (3) Except where a *banking customer* has acted fraudulently, a *firm* must not, in an agreement for a *retail banking service*, seek to make a *banking customer* liable for any losses in respect of unauthorised payments where:
- (a) the unauthorised payment arises after the *banking customer* has notified the *firm* of the loss, theft, misappropriation or unauthorised use of the *payment instrument*;
  - (b) the *firm* has failed to ensure that appropriate means are available at all times to enable the *banking customer* to notify it of the loss, theft, misappropriation or unauthorised use of a *payment instrument*; or
  - (c) the *payment instrument* has been used in connection with
    - (i) a *distance contract*; or
    - (ii) a *distance selling contract* other than an *excepted contract*.
- (4) Except as provided in (1) to (3), a *firm* must not, in an agreement for a *retail banking service*, seek to make a *banking customer* liable for any consequential loss in respect of an unauthorised payment.

#### Value date

5.1.13

FCA

R

- (1) The reference date used by a *firm* for the purpose of calculating interest on funds credited to an account of a *banking customer* held with it must be no later than:
- (a) the *business day* on which the funds are credited to the account of the *firm*; or
  - (b) in the case of cash placed with a *firm* for credit to a *banking customer's* account in the same currency as that account, immediately after the *firm* receives the funds.
- (2) Paragraph (1) does not apply to funds credited to a *banking customer's* account by means of a paper cheque.

#### Non-execution or defective execution of payments

5.1.14

FCA

R

- (1) Where a *banking customer* claims that a payment has not been correctly executed, it is for the *firm* to prove that the payment was authenticated, accurately recorded, entered in the *firm's* accounts and not affected by a technical breakdown or some other deficiency.

5.1.15

FCA

R

- (2) In paragraph (1) "authenticated" means the use of any procedure by which a *firm* is able to verify the use of a specific *payment instrument*, including its personalised security features.
- (1) Where a payment from an account of a *banking customer* is executed in accordance with the *payment routing information* provided in respect of that payment, it shall be treated as correctly executed by each *firm* involved in executing the payment.
- (2) Where incorrect *payment routing information* has been provided to a *firm* in respect of a payment:
- (a) ■ BCOBS 5.1.16R and ■ BCOBS 5.1.17R do not apply in relation to that payment; and
- (b) the *firm* must make reasonable efforts to recover the funds involved in the transaction.
- (3) A *firm* and a *banking customer* may agree on a charge for taking the steps referred to in (2)(b). Any such charge must reasonably correspond to the *firm's* actual costs.

5.1.16

FCA

R

- (1) Where a *banking customer* instructs or requests a *firm* to make a payment from his or her account and the payment is not correctly executed, the *firm* must, without undue delay:
- (a) refund to the *banking customer* the amount of the non-executed or defective payment; and
- (b) where applicable, restore the *banking customer's* account to the state in which it would have been had the defective payment not taken place;
- unless:
- (c) the *firm* can prove that the amount of the payment was received by another *firm* (referred to in this *rule* as "firm B") with which the relevant account of the intended recipient is held.
- (2) Where (1)(c) applies, firm B must:
- (a) immediately make available the amount of the payment to the intended recipient; and
- (b) where applicable, credit the corresponding amount to the intended recipient's account.



5.1.17

FCA

**R** Where:

- (1) an instruction or request for a payment to be made from a *banking customer's* account is given by the intended recipient of that payment to a *firm*;
- (2) that *firm* can prove that it correctly transmitted the instruction or request to the *firm* with which the relevant account of the *banking customer* is held (in this rule referred to as "firm A"); and
- (3) the payment is not correctly executed;  
firm A must, as appropriate and without undue delay:
  - (4) refund to that *banking customer* the amount of the payment; and
  - (5) restore that *banking customer's* account to the state in which it would have been had the defective payment not taken place.

5.1.18

FCA

**R** Where a *firm* is required to give a refund or take other remedial action under ■ BCOBS 5.1.16R or ■ BCOBS 5.1.17R , it must also refund:

- (1) any charges for which a *banking customer* is responsible; and
- (2) any interest which a *banking customer* must pay;

as a consequence of the non-execution or defective execution of the payment.

5.1.19

FCA

**R** Where the non-execution or defective execution of a payment by a *firm* is due to abnormal and unforeseeable circumstances beyond the *firm's* control, the consequences of which would have been unavoidable despite all efforts to the contrary, ■ BCOBS 5.1.16R to ■ BCOBS 5.1.18R shall not apply with respect to that incorrectly executed payment.



# Chapter 6

# Cancellation

## 6.1 The right to cancel

### Introduction

6.1.1  
FCA

**R** Except as provided for in ■ BCOBS 6.1.2 R, a *banking customer* has a right to cancel a contract for a *retail banking service* (including a *cash deposit ISA*) without penalty and without giving any reason, within 14 calendar days.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to *distance contracts*]

6.1.2  
FCA

**R** There is no right to cancel:

- (1) a contract (other than a *cash deposit ISA*) where the rate or rates of interest payable on the *deposit* are fixed for a period of time following conclusion of the contract;
- (2) a contract whose price depends on fluctuations in the financial market outside the *firm's* control that may occur during the cancellation period; or
- (3) a *cash deposit CTF* (other than a *distance contract*).

6.1.3  
FCA

**G** A *firm* may provide longer or additional cancellation rights voluntarily but, if it does, these should be on terms at least as favourable to the *banking customer* as those in this chapter, unless the differences are clearly explained.

### Beginning of cancellation period

6.1.4  
FCA

**R** The cancellation period begins:

- (1) either from the day of the conclusion of the contract for the *retail banking service*; or
- (2) from the day on which the *banking customer* receives the contractual terms and conditions of the *retail banking service* and any other pre-contractual information required under this sourcebook, if that is later than the date referred to in (1) above.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to *distance contracts*]

6.1.5

FCA

R

**Disclosing the right to cancel**

- (1) The *firm* must disclose to a *banking customer* in good time or, if that is not possible, immediately after the *banking customer* is bound by a contract for a *retail banking service*, and in a *durable medium*, the existence of the right to cancel, its duration and the conditions for exercising it including information on the amount which the *banking customer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which the notification of cancellation should be sent.
- (2) This *rule* applies only where a *banking customer* would not otherwise receive the information referred to in (1) under a *rule* in this sourcebook from the *firm* (such as under ■ BCOBS 3.1.2 R to ■ 3.1.5 R (the distance marketing disclosure rules)).

6

 6.2 Exercising the right to cancel

6.2.1

FCA

R

If a *banking customer* exercises his right to cancel he must, before the expiry of the cancellation period, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a *durable medium* available and accessible to the recipient, is dispatched before the cancellation period expires.

[Note: article 6(6) of the *Distance Marketing Directive* for distance contracts]

6.2.2

FCA

G

The *firm* should accept any indication that the *banking customer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *banking customer* as the date when the notification was dispatched.

**Record keeping**  
.....

6.2.3

FCA

R

The *firm* must make adequate records concerning the exercise of a right to cancel and retain them for at least three years.

## 6.3 Effects of cancellation

6.3.1

FCA

R

By exercising a right to cancel, a *banking customer* withdraws from the contract and the contract is terminated.

### Payment for the service provided before cancellation

6.3.2

FCA

R

- (1) This *rule* applies in relation to a contract for a *retail banking service* that is not a *cash deposit ISA* or a *cash deposit CTF*.
- (2) When a *banking customer* exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The amount payable must not:
  - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;
  - (b) in any case be such that it could be construed as a penalty.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]
- (3) The *firm* may not require a *banking customer* to pay any amount on the basis of this *rule* unless it can prove that the *banking customer* was duly informed about the amount payable and, in the case of a contract which is a *distance contract*, in conformity with the distance marketing disclosure rules. However, in no case may the *firm* require such payment if it has commenced the performance of the contract before expiry of the cancellation period without the *banking customer's* prior request.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

## 6.4 Obligations on cancellation

### Firm's obligation

6.4.1

FCA

R

The *firm* must, without undue delay and within 30 calendar days, return to the *banking customer* any sums it has received from him except for any amount that the *banking customer* may be required to pay under ■ BCOBS 6.3.2 R. This period begins from the day on which the *firm* receives the notification of cancellation.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

### Banking customer's obligation

6.4.2

FCA

R

The *firm* is entitled to receive from the *banking customer* any sums or property he has received from the *firm* without any undue delay and no later than within 30 calendar days. This period begins from the day on which the *banking customer* dispatches the notification of cancellation.

[Note: article 7(5) of the *Distance Marketing Directive* in relation to *distance contracts*]

6.4.3

FCA

R

Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.





**6.5 Other applicable legislation**

6.5.1

FCA

**R**

This chapter applies as modified to the extent necessary for it to be compatible with any enactment, including legislation relating to child trust funds.

6



## Banking: Conduct of Business sourcebook

### BCOBS TP 1 Transitional Provision

| (1) | (2)   | (3) | (4)                    | (5)                                     | (6)                                    |
|-----|---|-----|------------------------|---|--|
|     | Materials to which the transitional provision applies |     | Transitional provision | Transitional provisions: dates in force | Handbook provisions: coming into force |
| 1   | <i>BCOBS</i>  | R   | Expired                |   |  |
| 2   | BCOBS 4.1.1 R   | R   | Expired                |   |  |
| 3   | BCOBS 4.1.1 R   | G   | Expired                |   |  |
| 4   | BCOBS 4.1.1 R   | R   | Expired                |   |  |
| 5   | BCOBS 5.1.13 R  | R   | Expired                |   |  |
| 6   | BCOBS 4.1.1 R   | R   | Expired                |   |  |
| 7   | BCOBS 4.2.2 G   | R   | Expired                |   |  |



## Banking: Conduct of Business sourcebook

### Schedule 1 Record-keeping requirements

**FCA**

**Notes:**

- 1** The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record-keeping requirements.
- 2** It is not a complete statement of those requirements and should not be relied on as if it were.

| Handbook reference   | Subject of record                      | When record must be made               | Contents of record      | Retention period            |
|----------------------|--|--|-------------------------|-----------------------------|
| <b>BCOBS 6.2.3 R</b> | <b>Cancellation: exercise of right</b> | <b>Exercise of the right to cancel</b> | <b>Date of exercise</b> | <b>At least three years</b> |



## Banking: Conduct of Business sourcebook

### Schedule 2 Notification requirements

**FCA**

There are no requirements for notification in *BCOBS*.





## Banking: Conduct of Business sourcebook

### Schedule 3 Fees and other required payments

**FCA**

There are no requirements for fees or other payments in *BCOBS*.



---

## Banking: Conduct of Business sourcebook

### Schedule 4 Powers exercised

#### Sch 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *BCOBS*:

- Section 138 (General rule-making power)
- Section 139(4) (Miscellaneous ancillary matters)
- Section 145 (Financial promotion rules)
- Section 156 (General supplementary powers)

#### Sch 4.2 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *BCOBS*:

- Section 157(1) (Guidance)



## Banking: Conduct of Business sourcebook

### Schedule 5 Rights of action for damages

**FCA**

|     |   |
|-----|---|
| 5.1 | The table below sets out the <i>rules</i> in <i>BCOBS</i> contravention of which by an <i>authorised person</i> may be actionable under Section 138D of the <i>Act</i> (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.  |
| 5.2 | If a "Yes" appears in the column headed "For private person?", the <i>rule</i> may be actionable by a <i>private person</i> 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 <i>FCA</i> has removed the right of action under Section 138D(3) of the Act. If so, a reference to the <i>rule</i> in which it is removed is also given. |
| 5.3 | The column headed "For other person?" indicates whether the <i>rule</i> may be actionable by a <i>person</i> other than a <i>private person</i> (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of <i>person</i> by whom the <i>rule</i> may be actionable is given.   |

| Rule  | Right of action under section 150 |          |                   |                  |
|---|-----------------------------------|----------|-------------------|------------------|
|   | For private person?               | Removed? | For other person? |                  |
| Any rule in <i>BCOBS</i> which prohibits an au- | Yes                               | No       | Yes               | Any other person |

PAGE  
1

| Rule  | Right of action under section 150 |                  |                   |
|---|-----------------------------------|------------------|-------------------|
|   | For private person?               | Removed?         | For other person? |
| <p><b>thorised person from seeking to make provision excluding or restricting any duty or liability</b></p> <p><b>All other rules in <i>BCOBS</i></b></p> | <p><b>Yes</b></p>                 | <p><b>No</b></p> | <p><b>No</b></p>  |

---

## Banking: Conduct of Business sourcebook

### Schedule 6 Rules that can be waived

**FCA****6.1**

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.





# Client Assets

## Client Assets

|                |   |
|----------------|---|
| <b>CASS 1</b>  | <b>Application and general provisions</b>                 |
| 1.1            | Application and purpose                                   |
| 1.2            | General application: who? what?                           |
| 1.3            | General application: where?                               |
| 1.4            | Application: particular activities                        |
| 1.5            | Application: electronic media and E-Commerce              |
| <b>CASS 1A</b> | <b>CASS firm classification and operational oversight</b> |
| 1A.1           | Application   |
| 1A.2           | CASS firm classification                                  |
| 1A.3           | Responsibility for CASS operational oversight             |
| <b>CASS 2</b>  | <b>[Deleted]</b>  |
| 2.1            | [Deleted]   |
| 2.2            | [Deleted]   |
| 2.3            | [Deleted]   |
| 2.4            | [Deleted]   |
| 2.5            | [Deleted]   |
| 2.6            | [Deleted]   |
| <b>CASS 3</b>  | <b>Collateral</b>   |
| 3.1            | Application and Purpose                                   |
| 3.2            | Requirements  |
| <b>CASS 4</b>  | <b>[Deleted]</b>  |
| 4.1            | [Deleted]   |
| 4.2            | [Deleted]   |
| 4.3            | [Deleted]   |
| 4.4            | [Deleted]   |
| 4.5            | [Deleted]   |
| <b>CASS 5</b>  | <b>Client money: insurance mediation activity</b>         |
| 5.1            | Application   |

|                |   |
|----------------|---|
| 5.2            | Holding money as agent of insurance undertaking   |
| 5.3            | Statutory trust   |
| 5.4            | Non-statutory client money trust  |
| 5.5            | Segregation and the operation of client money accounts  |
| 5.6            | Client money distribution   |
| 5.7            | Mandates  |
| 5.8            | Safe keeping of client's documents and other assets   |
| 5 Annex 1      | Segregation of designated investments: permitted investments, general principles and conditions (This Annex belongs to CASS 5.5.14 R) |
| <br>           |   |
| <b>CASS 6</b>  | <b>Custody rules</b>  |
| 6.1            | Application   |
| 6.2            | Holding of client assets  |
| 6.3            | Depositing assets and arranging for assets to be deposited with third parties   |
| 6.4            | Use of safe custody assets  |
| 6.5            | Records, accounts and reconciliations   |
| <br>           |   |
| <b>CASS 7</b>  | <b>Client money rules</b>   |
| 7.1            | Application and Purpose   |
| 7.2            | Definition of client money  |
| 7.3            | Organisational requirements: client money   |
| 7.4            | Segregation of client money   |
| 7.5            | Transfer of client money to a third party   |
| 7.6            | Records, accounts and reconciliations   |
| 7.7            | Statutory trust   |
| 7.8            | Notification and acknowledgement of trust   |
| 7.9            | [Deleted]   |
| 7 Annex 1      | Annex 1   |
| <br>           |   |
| <b>CASS 7A</b> | <b>Client money distribution</b>  |
| 7A.1           | Application and purpose   |
| 7A.2           | Primary pooling events  |
| 7A.3           | Secondary pooling events  |
| <br>           |   |
| <b>CASS 8</b>  | <b>Mandates</b>   |
| 8.1            | Application   |
| 8.2            | Definition of mandate   |
| 8.3            | Records and internal controls   |
| <br>           |   |
| <b>CASS 9</b>  | <b>Prime brokerage</b>  |

- 9.1 Application
- 9.2 Prime broker's daily report to clients
- 9.3 Prime brokerage agreement disclosure annex

## CASS 10 CASS resolution pack

- 10.1 Application, purpose and general provisions
- 10.2 Core content requirements
- 10.3 Existing records forming part of the CASS resolution pack

## Transitional Provisions and Schedules

- TP 1 Transitional Provisions
- Sch 1
- Sch 2 Notification requirements
- Sch 3 Fees and other required payments
- Sch 4 Powers exercised
- Sch 5 Rights of actions for damages
- Sch 6 Rules that can be waived

# Chapter 1

## Application and general provisions



## 1.1 Application and purpose

### Application

1.1.1

FCA

G

CASS applies to a *firm* as specified in the remainder of this chapter.

### Purpose

1.1.2

FCA

G

The purpose of this chapter is to set out to whom, for what activities, and within what territorial limits the *rules*, *evidential provisions* and *guidance* in CASS apply.



## 1.2 General application: who? what?

### General application: who?

1.2.1  
FCA

G

The *rules* in ■ CASS 1.2 set out the maximum scope of this sourcebook. The application of CASS is modified for certain activities by ■ CASS 1.4. Also particular chapters or sections of CASS may have provisions which limit their application.

1.2.2  
FCA

R

CASS applies to every *firm*, except as provided for in ■ CASS 1.2.3 R, with respect to the carrying on of:

- (1) all *regulated activities* except to the extent that a provision of CASS provides for a narrower application; and
- (2) *unregulated activities* to the extent specified in any provision of CASS.

1.2.3  
FCA

R

CASS does not apply to:

- (1) an *ICVC*; or
- (2) an *incoming EEA firm* other than an *insurer*, with respect to its *passport activities*; or
- (3) a *UCITS qualifier*.

1.2.4  
FCA

R

With the exception of this chapter and the *insurance client money chapter*, CASS does not apply to:

- (1) an *authorised professional firm* with respect to its *non-mainstream regulated activities*; or
- (2) the *Society*.

1.2.5

FCA

R

The *insurance client money chapter* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, which are *insurance mediation activities*, if:

- (1) the *firm's designated professional body* has made rules which implement article 4 of the *Insurance Mediation Directive*;
- (2) those rules have been approved by the *FCA* under section 332(5) of the *Act*; and
- (3) the *firm* is subject to the rules in the form in which they were approved.

1.2.6

G

[deleted]

1.2.7

FCA

G

**General application: what?**

- (1) The approach in *CASS* is to ensure that the *rules* in a chapter are applied to *firms* in respect of particular *regulated activities* or *unregulated activities*.
- (2) The scope of the *regulated activities* to which *CASS* applies is determined by the description of the activity as it is set out in the *Regulated Activities Order*. Accordingly, a *firm* will not generally be subject to *CASS* in relation to any aspect of its business activities which fall within an exclusion found in the *Regulated Activities Order*. The definition of *designated investment business* includes, however, activities within the exclusion from *dealing in investments as principal* in article 15 of the *Regulated Activities Order* (Absence of holding out etc).
- (3) The *custody chapter* and the *client money chapter* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *MiFID business* and/or *designated investment business*.
- (3A) The *collateral rules* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business* (including *MiFID business*).
- (4) The *insurance client money chapter* applies in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *insurance mediation activities*.
- (5) [deleted]
- (6) The *mandate rules* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business* (including *MiFID business*) and *insurance mediation activity*, except where it relates to a *reinsurance contract*.

**Application for retail clients, professional clients and eligible counterparties**

1.2.8

FCA

G

- (1) *CASS* applies directly in respect of activities conducted with or for all categories of clients.



- (2) [deleted]
- (3) The *insurance client money chapter* does not generally distinguish between different categories of *client*. However, the term *consumer* is used for those to whom additional obligations are owed, rather than the term *retail client*. This is to be consistent with the *client* categories used in the Insurance: New Conduct of Business sourcebook.
- (4) Each provision in the *custody chapter* and the *client money chapter* makes it clear whether it applies to activities carried on for *retail clients*, *professional clients* or both. There is no further modification of the *rules* in these chapters in relation to activities carried on for *eligible counterparties*. Such *clients* are treated in the same way as other *professional clients* for the purposes of these *rules*.

1.2.9 G [deleted]

**Investments and money held under different regimes** .....

1.2.10 R [deleted]

1.2.11 R Where a *firm* is subject to the *client money chapter* and the *insurance client money chapter* , it must ensure segregation between *money held under each chapter*, including that *money held under different chapters* is held, in different, separately designated, *client bank accounts* or *client transaction accounts*.  
FCA

1.2.12 G The purpose of the *rules* regarding the segregation of investments and *money held under different regimes* is to reduce the risk of confusion between assets held under different regimes either on an on-going basis or on the *failure* of a *firm* or a third party holding those assets.  
FCA

1.2.13 G A *firm* may opt to hold under a single chapter *money* that would otherwise be held under different chapters (see ■ CASS 5.1.1 R (3) and ■ CASS 7.1.3 R ).  
FCA



### 1.3 General application: where?

1.3.1  
FCA

**G** The *rules* in ■ CASS 1.3 set out the maximum territorial scope of this sourcebook. Particular rules may have express territorial limitations.

#### UK establishments: general

---

1.3.2  
FCA

**R** Except as provided for in ■ CASS 1.2.3 R (2), CASS applies to every *firm*, in relation to *regulated activities* carried on by it from an *establishment* in the *United Kingdom*.

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

---

1.3.3  
FCA

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

1.3.4  
FCA

**R** CASS does not apply to an *incoming ECA provider* acting as such.



## 1.4 Application: particular activities

### Occupational pension scheme firms (OPS firms)

1.4.1

FCA

R

In the case of *OPS activity* undertaken by an *OPS firm*, CASS applies with the following general modifications:

- (1) references to *customer* are to the *OPS* or *welfare trust*, whichever fits the case, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on; and
- (2) if an *OPS firm* is required by any *rule* in CASS to provide information to, or obtain consent from, a *customer*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *OPS* or *welfare trust* in respect of which that *firm* is acting, unless the context requires otherwise.

### Stock lending activity with or for clients

1.4.2

FCA

G

- (1) The *custody chapter* and the *client money chapter* apply in respect of any *stock lending activity* that is undertaken with or for a *client* by a *firm*.
- (2) The *collateral rules* apply, where relevant, in respect of *stock lending activity*.

### Corporate finance business

1.4.3

FCA

G

- (1) The *custody chapter* and the *client money chapter* apply in respect of *corporate finance business* that is undertaken by a *firm*.
- (2) The *collateral rules* apply, where relevant, in respect of *corporate finance business*.

### Oil market activity and energy market activity

1.4.4

FCA

G

- (1) The *custody chapter* and the *client money chapter* apply in respect of *oil market activity* and other *energy market activity* that is undertaken by a *firm*.
- (2) The *collateral rules* apply, where relevant, in respect of *energy market activity*.

**Appointed representatives and tied agents**

1.4.5  
FCA

G

- (1) Although CASS does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the Act). In determining whether a *firm* has complied with any provision of CASS, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the Act). Equally, CASS does not apply directly to *tied agents*. A *MiFID investment firm* will be fully and unconditionally responsible for the acts and omission of the *tied agents* that it appoints.
- (2) *Firms* should also refer to ■ SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives* and *tied agents*.

**Depositaries**

1.4.6  
FCA

R

The *client money chapter* does not apply to a *depositary* when acting as such.

1.4.7  
FCA

R

The remainder of CASS applies to a *depositary*, when acting as such, with the following general modifications:

- (1) except in the *mandate rules*, '*client*' means '*trustee*', '*trust*' or '*collective investment scheme*' as appropriate; and
- (2) in the *mandate rules*, '*client*' means '*trustee*' '*collective investment scheme*' or '*collective investment scheme instrument*' as appropriate.

1.4.8  
FCA

R

- (1) Other than the *mandate rules*, CASS does not apply to a *trustee firm* which is not a *depositary*, or the trustee of a *personal pension scheme* or *stakeholder pension scheme*, unless *MiFID* applies to it, in which case the *custody chapter* and the *client money chapter* do apply.
- (2) In the *custody chapter*, the *client money chapter* and the *mandate rules*, '*client*' means '*trustee*', '*trust*', '*trust instrument*' or '*beneficiary*', as appropriate.



## 1.5 Application: electronic media and E-Commerce

### Application to electronic media

1.5.1  
FCA

G

■ GEN 2.2.14 R (References to writing) has the effect that electronic media may be used to make communications that are required by the *Handbook* to be "in writing" unless a contrary intention appears.

1.5.2  
FCA

G

For any electronic communication with a *customer*, a *firm* should:

- (1) have in place appropriate arrangements, including contingency plans, to ensure the secure transmission and receipt of the communication; it should also be able to verify the authenticity and integrity of the communication; the arrangements should be proportionate and take into account the different levels of risk in a *firm's* business;
- (2) be able to demonstrate that the *customer* wishes to communicate using this form of media; and
- (3) if entering into an agreement, make it clear to the *customer* that a contractual relationship is created that has legal consequences.

1.5.3  
FCA

G

*Firms* should note that ■ GEN 2.2.14 R does not affect any other legal requirement that may apply in relation to the form or manner of executing a *document* or agreement.

1.5.4

G

[deleted]



## Chapter 1A

# CASS firm classification and operational oversight

1A.1 Application

1A.1.1

FCA

R

- (1) Subject to (2) , (3) and (4) , this chapter applies to a *firm* to which either or both of ■ CASS 6 (Custody rules) and ■ CASS 7 (Client money rules) applies.
- (2) In relation to a *firm* to which ■ CASS 5 (Client money: insurance mediation activity) and ■ CASS 7 (Client money rules) apply, this chapter does not apply in relation to *client money* that a *firm* holds in accordance with ■ CASS 5 .
- (3) The *rules* and *guidance* in ■ CASS 1A.2 apply to a *firm* even if at the date of the determination or, as the case may be, the notification, either or both of ■ CASS 6 and ■ CASS 7 do not apply to it, provided that:
  - (a) either or both of those chapters applied to it during part or all of the previous calendar year; or
  - (b) it projects that either or both will apply to it in the current calendar year.
- (4) This chapter does not apply to a *firm* to which only ■ CASS 6 applies, applied or is projected to apply, merely because it is, was, or is projected to be a *firm* which *arranges safeguarding and administration of assets*.



**1A.2 CASS firm classification**

1A.2.1

FCA

G

The application of certain *rules* in this chapter depends upon the 'CASS firm type' within which a *firm* falls. The 'CASS firm types' are defined in accordance with ■ CASS 1A.2.7 R . The 'CASS firm type' within which a *firm* falls is also used to determine whether it is required to have the *CASS operational oversight function* described in ■ CASS 1A.3.1A R and whether the reporting obligations in ■ SUP 16.14 (Client money and asset return) apply to it .

1A.2.2

FCA

R

- (1) A *firm* must once every year, and by the time it is required to make a notification in accordance with ■ CASS 1A.2.9R (4), determine whether it is a *CASS large firm*, *CASS medium firm* or a *CASS small firm* according to the amount of *client money* or *safe custody assets* which it holds, using the limits set out in the table in ■ CASS 1A.2.7 R.
- (2) For the purpose of determining its 'CASS firm type' in accordance with ■ CASS 1A.2.7 R, a *firm* must:
  - (a) if it currently holds *client money* or *safe custody assets*, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year ending on 31 December and use that figure to determine its 'CASS firm type';
  - (b) if it did not hold *client money* or *safe custody assets* in the previous calendar year but projects that it will do so in the current calendar year, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* that it projects that it will hold during that year and use that figure to determine its 'CASS firm type'; but
  - (c) in either case, exclude from its calculation any *client money* held in accordance with ■ CASS 5 (Client money: insurance mediation activity).

1A.2.3

FCA

R

For the purpose of calculating the value of the total amounts of *client money* and *safe custody assets* that it holds on any given *day* during a calendar year a *firm* must:

- (1) in complying with ■ CASS 1A.2.2R (2)(a) , base its calculation upon internal reconciliations performed during the previous year;
- (2) in relation to *client money* or *safe custody assets* denominated in a currency other than sterling, translate the value of that *money* or that *safe custody assets* into sterling at the previous *day's* closing spot exchange rate; and
- (3) in relation to *safe custody assets* only, calculate their total value using the previous *day's* closing mark to market valuation, or if in relation to a particular *safe custody asset* none is available, the most recent available valuation.

1A.2.4

FCA

G

One of the consequences of ■ CASS 1A.2.2 R is that a *firm* that determines itself to be a *CASS small firm* or a *CASS medium firm* will, at least if it exceeds during the course of a calendar year either of the limits in ■ CASS 1A.2.7 R that applies to it, become in the next calendar year:

- (1) in the case of a *CASS small firm*, a *CASS medium firm* or a *CASS large firm*; and
- (2) in the case of a *CASS medium firm*, a *CASS large firm*.

1A.2.5

FCA

R

(1) Notwithstanding ■ CASS 1A.2.2 R, provided that the conditions in (2) are satisfied a *firm* may elect to be treated:

- (a) as a *CASS medium firm*, in the case of a *firm* that is classed by the application of the limits in ■ CASS 1A.2.7 R as a *CASS small firm*; and
- (b) as a *CASS large firm*, in the case of a *firm* that is classed by the application of the limits in ■ CASS 1A.2.7 R as a *CASS medium firm*.

(2) The conditions to which (1) refers are that in either case:

- (a) the election is notified to the *FCA* in writing ;
- (b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and
- (c) the *FCA* has not objected.

1A.2.6

FCA

G

■ CASS 1A.2.5 R provides a *firm* with the ability to opt in to a higher category of 'CASS firm type'. This may be useful for a *firm* whose holding of *client money* and *safe*

*custody assets* is near the upper categorisation limit for a *CASS small firm* or a *CASS medium firm*.

1A.2.7

FCA

R

CASS firm types

| CASS firm type          | Highest total amount of <i>client money</i> held during the <i>firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year | Highest total value of <i>safe custody assets</i> held by the <i>firm</i> during the <i>firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year |
|-------------------------|--|---|
| <i>CASS large firm</i>  | more than £1 billion   | more than £100 billion  |
| <i>CASS medium firm</i> | an amount equal to or greater than £1 million and less than or equal to £1 billion   | an amount equal to or greater than £10 million and less than or equal to £100 billion   |
| <i>CASS small firm</i>  | less than £1 million   | less than £10 million   |

1A.2.8

R

[deleted]

1A.2.8A

R

[deleted]

1A.2.9

FCA

R

Once every calendar year a *firm* must notify to the *FCA* in writing the information specified in (1), (2) or (3) as applicable, and the information specified in (4), in each case no later than the *day* specified in (1) to (4):

- (1) if it held *client money* or *safe custody assets* in the previous calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
- (2) if it did not hold *client money* or *safe custody assets* in the previous calendar year but at any point up to the fifteenth *business day* of January the *firm* projects that it will do so in the current calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
- (3) in any other case, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money* or *safe custody assets* ; and

(4) in every case, of its 'CASS firm type' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3) .

**1A.2.10** **R** For the purpose of the annual notification to which **■** CASS 1A.2.9 R refers, a *firm* must apply the calculation rule in **■** CASS 1A.2.3 R .  
**FCA**

**1A.2.11** **G** For the purpose of **■** CASS 1A.2.9R (1), the *FCA* will treat that obligation as satisfied if a *firm* submitted a *CMAR* for each period within the previous calendar year in compliance with **■** SUP 16.14.3 R.  
**FCA**

**1A.2.12** **R** A *firm's* 'CASS firm type' and any change to it takes effect:  
**FCA**

- (1) if the *firm* notifies the *FCA* in accordance with **■** CASS 1A.2.9 R (1) or **■** CASS 1A.2.9 R (2) , on 1 February following the notification; or
- (2) if the *firm* notifies the *FCA* in accordance with **■** CASS 1A.2.9 R (3), on the *day* it begins to hold *client money* or *safe custody assets*; or
- (3) if the *firm* makes an election under **■** CASS 1A.2.5 R (1), and provided the conditions in **■** CASS 1A.2.5 R (2) are satisfied, on the *day* the notification made under **■** CASS 1A.2.5 R (2)(a) states that the election is intended to take effect.

**1A.2.13** **G** Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Client Assets Firm Classification".  
**FCA**



**1A.3 Responsibility for CASS operational oversight**

1A.3.1  
FCA

**R**

A CASS *small firm* must allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:

- (1) oversight of the *firm's* operational compliance with CASS; and
- (2) reporting to the *firm's governing body* in respect of that oversight

**CF10a: the CASS operational oversight function**

1A.3.1A  
FCA

**R**

A CASS *medium firm* and a CASS *large firm* must allocate to a *director* or *senior manager* the function of:

- (1) oversight of the operational effectiveness of that *firm's* systems and controls that are designed to achieve compliance with CASS;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a *CMAR* to the *FCA* in accordance with ■ SUP 16.14.

1A.3.1B  
FCA

**G**

■ CASS 1A.3.1A R describes the *controlled function* known as the *CASS operational oversight function*. The *table of controlled functions* in ■ SUP 10.4.5 R together with SUP 10.7.9 R specify the *CASS operational oversight function* as a *required function* for a *firm* to which ■ CASS 1A.3.1A R applies.

1A.3.1C  
FCA

**R**

If, at the time a *firm* becomes a CASS *medium firm* or a CASS *large firm* in accordance with ■ CASS 1A.2.12 R (1) or ■ CASS 1A.2.12 R (2), the *firm* is not able to comply with ■ CASS 1A.3.1A R because it has no *director* or *senior manager* who is an *approved person* in respect of the CASS *operational oversight function*, the *firm* must:

- (1) take the necessary steps to ensure that it complies with ■ CASS 1A.3.1A R as soon as practicable, which must at least include submitting an application for a *candidate* in respect of the CASS

1A

*operational oversight function* within 30 *business days* of the *firm* becoming a *CASS medium firm* or a *CASS large firm*; and

- (2) until such time as it is able to comply with ■ CASS 1A.3.1A R, allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:
  - (a) oversight of the *firm's* operational compliance with CASS;
  - (b) reporting to the *firm's governing body* in respect of that oversight; and
  - (c) completing and submitting the *CMAR* to the *FCA* in accordance with ■ SUP 16.14.

1A.3.2 R [deleted]

1A.3.3 R  
FCA

- (1) Subject to (2), a *firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with ■ CASS 1A.3.1 R , ■ CASS 1A.3.1A R or ■ CASS 1A.3.1C R (2) .
- (2) A *CASS small firm* must make and retain such a record only where it allocates responsibility to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.
- (3) A *firm* must ensure that the record made under this *rule* is retained for a period of five years after it is made.

# Chapter 2

[Deleted]



[Chapter Deleted]



# Chapter 3

# Collateral

## 3.1 Application and Purpose

### Application

3.1.1  
FCA

R

This chapter applies to a *firm* when it receives or holds assets in connection with an arrangement to secure the obligation of a *client* in the course of, or in connection with, its *designated investment business*, including *MiFID business*.

3.1.2  
FCA

G

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

3.1.3  
FCA

R

This chapter does not apply to a *firm* that has only a bare security interest (without rights to hypothecate) in the *client's* asset. In such circumstances, the *firm* must comply with the *custody rules* or *client money rules* as appropriate.

3.1.4  
FCA

G

For the purpose of this chapter only, a bare security interest in the *client's* asset gives a *firm* the right to realise the assets only on a *client's* default and without the right to use other than in default.

### Purpose

3.1.5  
FCA

G

The purpose of this chapter is to ensure that an appropriate level of protection is provided for those assets over which a *client* gives a *firm* certain rights. The arrangements covered by this chapter are those under which the *firm* is given a right to use the asset, and the *firm* treats the asset as if legal title and associated rights to that asset had been transferred to the *firm* subject only to an obligation to return equivalent assets to the *client* upon satisfaction of the *client's* obligation to the *firm*. The rights covered in this chapter do not include those arrangements by which the *firm* has only a bare security interest in the *client's* asset (in which case the *custody rules* or *client money rules* apply).

3.1.6  
FCA

G

Examples of the arrangements covered by this chapter include the taking of collateral by a *firm*, under the ISDA English Law (transfer of title) and the New York Law Credit Support Annexes (assuming the right to rehypothecate has not been disappplied).

3.1.7

FCA

G

This chapter recognises the need to apply a differing level of regulatory protection to the assets which form the basis of the two different types of arrangement described in

■ CASS 3.1.5 G. Under the bare security interest arrangement, the asset continues to belong to the *client* until the *firm's* right to realise that asset crystallises (that is, on the *client's* default). But under a "right to use arrangement", the *client* has transferred to the *firm* the legal title and associated rights to the asset, so that when the *firm* exercises its right to treat the asset as its own, the asset ceases to belong to the *client* and in effect becomes the *firm's* asset and is no longer in need of the full range of *client* asset protection. The *firm* may exercise its right to treat the asset as its own by, for example, clearly so identifying the asset in its own books and records.

3.1.8

FCA

G

A *prime brokerage firm* is reminded of the additional obligations in CASS 9.3.1R which apply to *prime brokerage agreements*.

## 3.2 Requirements

### Application

3.2.1

R

[deleted]

3.2.2

FCA

R

A *firm* that receives or holds a *client's* assets under an arrangement to which this chapter applies and which exercises its right to treat the assets as its own must ensure that it maintains adequate records to enable it to meet any future obligations including the return of equivalent assets to the *client*.

3.2.3

FCA

G

If the *firm* has the right to use the *client's* asset under a "right to use arrangement" but has not yet exercised its right to treat the asset as its own, the *client money rules* or the *custody rules* will continue to apply as appropriate until such time as the *firm* exercises its right, at which time ■ CASS 3.2.2 R will apply.

3.2.4

FCA

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) 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.

# Chapter 4

[Deleted]



[Chapter Deleted]

4

## Chapter 5

# Client money: insurance mediation activity

5.1.1

FCA

R

## 5.1 Application

- (1) ■ CASS 5.1 to ■ CASS 5.6 apply, subject to (2), (3) and ■ CASS 5.1.3 R to ■ CASS 5.1.6 R, to a *firm* that receives or holds *money* in the course of or in connection with its *insurance mediation activity*.
- (2) ■ CASS 5.1 to ■ CASS 5.6 do not, subject to (3), apply:
  - (a) to a *firm* to the extent that it acts in accordance with the *client money chapter*; or
  - (b) to a *firm* in carrying on an *insurance mediation activity* which is in respect of a *reinsurance contract*; or
  - (c) to an *insurance undertaking* in respect of its *permitted activities*; or
  - (d) to a *managing agent* when acting as such; or
  - (e) with respect to *money* held by a *firm* which:
    - (i) is an *approved bank*; and
    - (ii) has requisite capital under article 4(4)(b) of the *Insurance Mediation Directive*;  
but only when held by the *firm* in an account with itself, in which case the *firm* must notify the *client* (whether through a *client agreement*, *terms of business*, or otherwise in writing) that:
      - (iii) *money* held for that *client* in an account with the *approved bank* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
      - (iv) as a result, the *money* will not be held in accordance with ■ CASS 5.1 to ■ CASS 5.6.
- (3) A *firm* may elect to comply with:



- (a) ■ CASS 5.1 to ■ CASS 5.6 in respect of *client money* which it receives in the course of carrying on *insurance mediation activity* in respect of *reinsurance contracts*; and
- (b) ■ CASS 5.1, ■ CASS 5.2 and ■ CASS 5.4 to ■ CASS 5.6 in respect of *money* which it receives in the course of carrying on an activity which would be *insurance mediation activity*, and which *money* would be *client money*, but for article 72D of the *Regulated Activities Order* (Large risks contracts where risk situated outside the EEA);

but the election must be in respect of all the *firm's* business which consists of that activity.

(4) A *firm* must keep a record of any election in (3).

5.1.2

FCA

G

A *firm* that is an *approved bank*, and relies on the exemption under ■ CASS 5.1.1 R (2)(e), should be able to account to all of its *clients* for amounts held on their behalf at all times. A bank account opened with the *firm* that is in the name of the *client* would generally be sufficient. When *money* from *clients* deposited with the *firm* is held in a pooled account, this account should be clearly identified as an account for *clients*. The *firm* should also be able to demonstrate that an amount owed to a specific *client* that is held within the pool can be reconciled with a record showing that individual's *client* balance and is, therefore, identifiable at any time.

5.1.3

FCA

R

An *authorised professional firm* regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the rules of its *designated professional body* as specified in ■ CASS 5.1.4 R, in force on 14 January 2005, must comply with those rules and if it does so, it will be deemed to comply with ■ CASS 5.2 to ■ CASS 5.6.

5.1.4

FCA

R

For the purposes of ■ CASS 5.1.3 R the relevant rules are:

- (1) If regulated by the Law Society (of England and Wales);
  - (a) the Solicitors' Accounts Rules 1998; or
  - (b) where applicable, the Solicitors Overseas Practice Rules 1990;
- (2) if regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001;
- (3) if regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

5.1.4A

FCA

R

- (1) A *firm* will, subject to (3), be deemed to comply with ■ CASS 5.3 to ■ CASS 5.6 if it receives or holds *client money* and it either:

- (a) in relation to a service charge, complies with the requirement to segregate such money in accordance with section 42 of the Landlord and Tenant Act 1987 ("the 1987 Act"); or
  - (b) in relation to money which is clients' money for the purpose of the Royal Institution of Chartered Surveyors' Rules of Conduct ("RICS rules") in force as at 14 January 2005, it complies with the requirement to segregate and account for such money in accordance with the RICS Members' Accounts rules.
- (2) Paragraph (1)(a) also applies to a *firm* in Scotland or in Northern Ireland if in acting as a property manager the *firm* receives or holds a service charge and complies (so far as practicable) with section 42 of the 1987 Act as if the requirements of that provision applied to it.
- (3) In addition to complying with (1), a *firm* must ensure that an account in which *money* held pursuant to the trust fund mentioned in section 42(3) of the 1987 Act or an account maintained in accordance with the RICS rules satisfies the requirements in ■ CASS 5.5.49 R to the extent that the *firm* will hold money as trustee or otherwise on behalf of its clients.

5.1.5  
FCA

**R** Subject to ■ CASS 5.1.5A R *money* is not *client money* when:

- (1) it becomes properly due and payable to the *firm*:
  - (a) for its own account; or
  - (b) in its capacity as agent of an *insurance undertaking* where the *firm* acts in accordance with ■ CASS 5.2; or
- (2) it is otherwise received by the *firm* pursuant to an arrangement made between an *insurance undertaking* and another *person* (other than a *firm*) by which that other *person* has authority to underwrite risks, settle claims or handle refunds of *premiums* on behalf of that *insurance undertaking* outside the *United Kingdom* and where the *money* relates to that business.

5.1.5A  
FCA

**R** ■ CASS 5.1.5 R (1)(b) and ■ CASS 5.1.5 R (2) do not apply, and hence *money* is *client money*, in any case where:

- (1) in relation to an activity specified in ■ CASS 5.2.3 R (1) (a) to ■ CASS 5.2.3 R (1) (c), the *insurance undertaking* has agreed that the *firm* may treat *money* which it receives and holds as agent of the *undertaking*, as *client money* and in accordance with the provisions of ■ CASS 5.3 to ■ CASS 5.6; and

(2) the agreement in (1) is in writing and adequate to show that the *insurance undertaking* consents to its interests under the trusts (or in Scotland agency) in ■ CASS 5.3.2 R or ■ CASS 5.4.7 R being subordinated to the interests of the *firm's* other *clients*.

5.1.6  
FCA

**R** Except where a *firm* and an *insurance undertaking* have (in accordance with ■ CASS 5.1.5A R) agreed otherwise, for the purposes of ■ CASS 5.1 to ■ CASS 5.6 an *insurance undertaking* (when acting as such) with whom a *firm* conducts *insurance mediation activity* is not to be treated as a *client* of the *firm*.

5.1.7  
FCA

**G**

(1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients'* assets when the *firm* is responsible for them. An essential part of that protection is the proper accounting and handling of *client money*. The *rules* in ■ CASS 5.1 to ■ CASS 5.6 also give effect to the requirement in article 4.4 of the *Insurance Mediation Directive* that all necessary measures should be taken to protect *clients* against the inability of an *insurance intermediary* to transfer *premiums* to an *insurance undertaking* or to transfer the proceeds of a claim or *premium* refund to the insured.

(2) There are two particular approaches which *firms* can adopt which reflect options given in article 4.4. The first is to provide by law or contract for a transfer of risk from the *insurance intermediary* to the *insurance undertaking* (■ CASS 5.2). The second is that *client money* is strictly segregated by being transferred to *client accounts* that cannot be used to reimburse other creditors in the event of the *firm's* insolvency (■ CASS 5.3 and ■ CASS 5.4 provide different means of achieving such segregation). ■ CASS 5.1.5A R permits a *firm* subject to certain conditions to treat *money* which it collects as agent of an *insurance undertaking* as *client money*; the principle of strict segregation is, however, satisfied because such *undertakings* must agree to their interests being subordinated to the interests of the *firm's* other *clients*.

5.1.8  
FCA

**G** *Firms* which carry on *designated investment business* which may, for example, involve them handling *client money* in respect of life assurance business should refer to the *non-directive client money chapter* which includes provisions enabling *firms* to elect to comply solely with that chapter or with the *insurance client money chapter* in respect of that business. *Firms* that also carry on *MiFID* or *equivalent third country business* may elect to comply solely with the *MiFID client money chapter* with respect of *client money* in respect of which the *non-directive client money chapter* or the *insurance client money chapter* apply.

5.1.9  
FCA

**G** *Firms* are reminded that ■ SUP 3 contains provisions which are relevant to the preparation and delivery of reports by auditors.



## 5.2 Holding money as agent of insurance undertaking

### Introduction

5.2.1  
FCA

G

If a *firm* holds *money* as agent of an *insurance undertaking* then the *firm's clients* (who are not *insurance undertakings*) will be adequately protected to the extent that the *premiums* which it receives are treated as being received by the *insurance undertaking* when they are received by the agent and claims *money* and *premium* refunds will only be treated as received by the *client* when they are actually paid over. The *rules* in ■ CASS 5.2 make provision for agency agreements between *firms* and *insurance undertakings* to contain terms which make clear when *money* should be held by a *firm* as agent of an undertaking. *Firms* should refer to ■ CASS 5.1.5 R to determine the circumstances in which they may treat *money* held on behalf of *insurance undertakings* as *client money*.

5.2.2  
FCA

G

- (1) Agency agreements between *insurance intermediaries* and *insurance undertakings* may be of a general kind and facilitate the introduction of business to the *insurance undertaking*. Alternatively, an agency agreement may confer on the *intermediary* contractual authority to commit the *insurance undertaking* to risk or authority to settle claims or handle *premium* refunds (often referred to as "binding authorities"). ■ CASS 5.2.3 R requires that binding authorities of this kind must provide that the *intermediary* is to act as the agent of the *insurance undertaking* for the purpose of receiving and holding *premiums* (if the *intermediary* has authority to commit the *insurance undertaking* to risk), claims *monies* (if the *intermediary* has authority to settle claims on behalf of the *insurance undertaking*) and *premium* refunds (if the *intermediary* has authority to make refunds of *premium* on behalf of the *insurance undertaking*). Accordingly such *money* is not, except where a *firm* and an *insurance undertaking* have in compliance with ■ CASS 5.1.5A R agreed otherwise, *client money* for the purposes of ■ CASS 5.
- (2) Other introductory agency agreements may also, depending on their precise terms, satisfy some or all of the requirements of the type of written agreement described in ■ CASS 5.2.3 R. It is desirable that an *intermediary* should, before informing its *clients* (in accordance with ■ CASS 5.2.3 R (3)) that it will receive *money* as agent of an *insurance undertaking*, agree the terms of that notification with the relevant *insurance undertakings*.

5.2.3  
FCA

R

### Requirement for written agreement before acting as agent of insurance undertaking

- (1) A *firm* must not agree to:

- (a) *deal in investments as agent for an insurance undertaking in connection with insurance mediation; or*
  - (b) *act as agent for an insurance undertaking for the purpose of settling claims or handling premium refunds; or*
  - (c) *otherwise receive money as agent of an insurance undertaking; unless:*
    - (d) *it has entered into a written agreement with the insurance undertaking to that effect; and*
    - (e) *it is satisfied on reasonable grounds that the terms of the policies issued by the insurance undertaking to the firm's clients are likely to be compatible with such an agreement; and*
    - (f) (i) *(in the case of (a)) the agreement required by (d) expressly provides for the firm to act as agent of the insurance undertaking for the purpose of receiving premiums from the firm's clients; and*  
 (ii) *(in the case of (b)) the agreement required by (d) expressly provides for the firm to act as agent of the insurance undertaking for the purpose of receiving and holding claims money (or, as the case may be, premium refunds) prior to transmission to the client making the claim (or, as the case may be, entitled to the premium refund) in question.*
- (2) *A firm must retain a copy of any agreement it enters pursuant to (1) for a period of at least six years from the date on which it is terminated.*
- (3) *Where a firm holds, or is to hold, money as agent for an insurance undertaking it must ensure that it informs those of its clients which are not insurance undertakings and whose transactions may be affected by the arrangement (whether in its terms of business, client agreements or otherwise in writing) that it will hold their money as agent of the insurance undertaking and if necessary the extent of such agency and whether it includes all items of client money or is restricted, for example, to the receipt of premiums.*
- (4) *A firm may (subject to the consent of the insurance undertaking concerned) include in an agreement in (1) provision for client money received by its appointed representative, field representatives and other agents to be held as agent for the insurance undertaking (in which event it must ensure that the representative or agent provides the information to clients required by (3)).*

**G** Firms are reminded that ■ CASS 5.1.5A R provides that, if the *insurance undertaking* has agreed in writing, *money* held in accordance with an agreement made under ■ CASS 5.2.3 R

may be treated as *client money* and may (but not otherwise) be kept in a *client bank account*.

**5.2.5**  
**FCA**

**G**

A *firm* which provides for the protection of a *client* (which is not an *insurance undertaking*) under ■ CASS 5.2 is relieved of the obligation to provide protection for that *client* under ■ CASS 5.3 or ■ CASS 5.4 to the extent of the items of *client money* protected by the agency agreement.

**5.2.6**  
**FCA**

**G**

A *firm* may, in accordance with ■ CASS 5.2.3 R (4), arrange for an *insurance undertaking* to accept responsibility for the *money* held by its *appointed representatives*, *field representatives*, and other agents, in which event ■ CASS 5.5.18 R to ■ CASS 5.5.25 G will not apply.

**5.2.7**  
**FCA**

**G**

A *firm* may operate on the basis of an agency agreement as provided for by ■ CASS 5.2.3 R for some of its *clients* and with protection provided by a *client money* trust in accordance with ■ CASS 5.3 or ■ CASS 5.4 for other *clients*. A *firm* may also operate on either basis for the same *client* but in relation to different transactions. A *firm* which does so should be satisfied that its administrative systems and controls are adequate and, in accordance with ■ CASS 5.2.4 G, should ensure that *money* held for both types of *client* and business is kept separate.



## 5.3 Statutory trust

5

### 5.3.1

FCA

G

Section 137B(1) of the Act (Miscellaneous ancillary matters) provides that *rules* may make provision which results in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). ■ CASS 5.3.2 R creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of failure of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

### 5.3.2

FCA

R

A *firm* (other than a *firm* acting in accordance with ■ CASS 5.4) receives and holds *client money* as trustee (or in Scotland as agent) on the following terms:

- (1) for the purposes of and on the terms of ■ CASS 5.3, ■ CASS 5.5 and the *client money (insurance) distribution rules*;
- (2) subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such) for whom that *money* is held, according to their respective interests in it;
- (3) after all valid claims in (2) have been met, for *clients* which are *insurance undertakings* according to their respective interests in it;
- (4) on the failure of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2) and (3); and
- (5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

### 5.3.3

FCA

G

- (1) A *firm* which holds *client money* can discharge its obligation to ensure adequate protection for its *clients* in respect of such *money* by complying with ■ CASS 5.3 which provides for such *money* to be held by the *firm* on the terms of a trust imposed by the *rules*.
- (2) The trust imposed by ■ CASS 5.3 is limited to a trust in respect of *client money* which a *firm* receives and holds. The consequential and supplementary requirements in ■ CASS 5.5 are designed to secure the proper segregation and

maintenance of adequate *client money* balances. In particular, ■ CASS 5.5 does not permit a *firm* to use *client money* balances to provide credit for *clients* (or potential *clients*) such that, for example, their *premium* obligations may be met in advance of the *premium* being remitted to the *firm*. A *firm* wishing to provide credit for *clients* may however do so out of its own funds.





## 5.4 Non-statutory client money trust

### Introduction

5.4.1  
FCA

G

- (1) ■ CASS 5.4 permits a *firm*, which has adequate resources, systems and controls, to declare a trust on terms which expressly authorise it, in its capacity as trustee, to make advances of credit to the *firm's clients*. The *client money* trust required by ■ CASS 5.4 extends to such debt obligations which will arise if the *firm*, as trustee, makes credit advances, to enable a *client's premium* obligations to be met before the *premium* is remitted to the *firm* and similarly if it allows claims and *premium* refunds to be paid to the *client* before receiving remittance of those *monies* from the *insurance undertaking*.
- (2) ■ CASS 5.4 does not permit a *firm* to make advances of credit to itself out of the *client money* trust. Accordingly, ■ CASS 5.4 does not permit a *firm* to withdraw *commission* from the *client money* trust before it has received the *premium* from the *client* in relation to the *non-investment insurance contract* which generated the *commission*.

### Voluntary nature of this section

5.4.2  
FCA

R

A *firm* may elect to comply with the requirements in this section, and may do so for some of its business whilst complying with ■ CASS 5.3 for other parts.

5.4.3  
FCA

R

A *firm* is not subject to ■ CASS 5.3 when and to the extent that it acts in accordance with this section.

### Conditions for using the non-statutory client money trust

5.4.4  
FCA

R

A *firm* may not handle *client money* in accordance with the *rules* in this section unless each of the following conditions is satisfied:

- (1) the *firm* must have and maintain systems and controls which are adequate to ensure that the *firm* is able to monitor and manage its *client money* transactions and any credit risk arising from the operation of the trust arrangement and, if in accordance with ■ CASS 5.4.2 R a *firm* complies with both the rules in ■ CASS 5.3 and ■ CASS 5.4, such systems and controls must extend to both arrangements;

- (2) the *firm* must obtain, and keep current, written confirmation from its auditor that it has in place systems and controls which are adequate to meet the requirements in (1);
- (3) the *firm* must designate a *manager* with responsibility for overseeing the *firm's* day to day compliance with the systems and controls in (1) and the *rules* in this section;
- (4) the *firm* (if, under the terms of the non-statutory trust, it is to handle *client money* for *retail customers*) must have and at all times maintain capital resources of not less than £50,000 calculated in accordance with ■ MIPRU 4.4.1 R; and
- (5) in relation to each of the *clients* for whom the *firm* holds *money* in accordance with ■ CASS 5.4, the *firm* must take reasonable steps to ensure that its *terms of business* or other *client agreements* adequately explain, and obtain the *client's* informed consent to, the *firm* holding the *client's money* in accordance with ■ CASS 5.4 (and in the case of a *client* which is an *insurance undertaking* (when acting as such) there must be an agreement which satisfies ■ CASS 5.1.5A R).

5.4.5  
FCA

**G** The amount of a *firm's* capital resources maintained for the purposes of ■ MIPRU 4.2.11 R will also satisfy (in whole or in part) the requirement in ■ CASS 5.4.4 R (4).

5.4.6  
FCA

**R** **Client money to be received under the non-statutory client money trust**  
Except to the extent that a *firm* acts in accordance with ■ CASS 5.3, a *firm* must not receive or hold any *client money* unless it does so as trustee (or, in Scotland, as agent) and has properly executed a deed (or equivalent formal document) to that effect.

5.4.7  
FCA

**R** **Contents of trust deed**  
The deed referred to in ■ CASS 5.4.6 R must provide that the *money* (and, if appropriate, *designated investments*) are held:

- (1) for the purposes of and on the terms of:
  - (a) ■ CASS 5.4;
  - (b) the applicable provisions of ■ CASS 5.5; and
  - (c) the *client money (insurance) distribution rules*
- (2) subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such) for whom that *money* is held, according to their respective interests in it;

- (3) after all valid claims in (2) have been met for *clients* which are *insurance undertakings* according to their respective interests in it;
- (4) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2) and (3); and
- (5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

5.4.8

FCA

R

The deed (or equivalent formal document) referred to in ■ CASS 5.4.6 R may provide that:

- (1) the *firm*, acting as trustee (or, in Scotland, as agent), has power to make advances or give credit to *clients* or *insurance undertakings* from *client money*, provided that it also provides that any debt or other obligation of a *client* or resulting obligation of an *insurance undertaking*, in relation to an advance or credit, is held on the same terms as ■ CASS 5.4.7 R;
- (2) the benefit of a letter of credit or unconditional guarantee provided by an *approved bank* on behalf of a *firm* to satisfy any shortfall in the *firm's client money* resource (as calculated under ■ CASS 5.5.65 R) when compared with the firm's client money requirement (as calculated under ■ CASS 5.5.66 R or as appropriate ■ CASS 5.5.68 R), is held on the same terms as ■ CASS 5.4.7 R.

5



## 5.5 Segregation and the operation of client money accounts

### Application

**5.5.1** **R** Unless otherwise stated each of the provisions in **■ CASS 5.5** applies to *firms* which are acting in accordance with **■ CASS 5.3** (Statutory trust) or **■ CASS 5.4** (Non-statutory trust).  
**FCA**

**5.5.2** **G** One purpose of **■ CASS 5.5** is to ensure that, unless otherwise permitted, *client money* is kept separate from the *firm's own money*. Segregation, in the event of a *firm's* failure, is important for the effective operation of the trust that is created to protect *client money*. The aim is to clarify the difference between *client money* and general creditors' entitlements in the event of the *failure* of the *firm*.  
**FCA**

### Requirement to segregate

**5.5.3** **R** A *firm* must, except to the extent permitted by **■ CASS 5.5**, hold *client money* separate from the *firm's money*.  
**FCA**

### Money due to a client from a firm

**5.5.4** **R** If a *firm* is liable to pay *money* to a *client*, it must as soon as possible, and no later than one *business day* after the *money* is due and payable:

- (1) pay it into a *client bank account*, in accordance with **■ CASS 5.5.5 R**; or
- (2) pay it to, or to the order of, the *client*.

### Segregation

**5.5.5** **R** A *firm* must segregate *client money* by either:

- (1) paying it as soon as is practicable into a *client bank account*;  
or
- (2) paying it out in accordance with **■ CASS 5.5.80 R**.

**5.5.6** **G** The *FCA* expects that in most circumstances it will be practicable for a *firm* to pay *client money* into a *client bank account* by not later than the next *business day* after receipt.  
**FCA**

5.5.7

FCA

G

Where an insurance transaction involves more than one *firm* acting in a chain such that for example *money* is transferred from a "producing" broker who has received *client money* from a *consumer* to an intermediate broker and thereafter to an *insurance undertaking*, each broker *firm* will owe obligations to its immediate *client* to segregate *client money* which it receives (in this example the producing broker in relation to the *consumer* and the intermediate broker in relation to the producing broker). A *firm* which allows a third party broker to hold or control *client money* will not thereby be relieved of its fiduciary obligations (see ■ CASS 5.5.34 R).

5.5.8

FCA

R

A *firm* may segregate *client money* in a different currency from that of receipt. If it does so, the *firm* must ensure that the amount held is adjusted at intervals of not more than twenty five *business days* to an amount at least equal to the original currency amount (or the currency in which the *firm* has its liability to its *clients*, if different), translated at the previous day's closing spot exchange rate.

5.5.9

FCA

R

A *firm* must not hold *money* other than *client money* in a *client bank account* unless it is:

- (1) a minimum sum required to open the account, or to keep it open;  
or
- (2) *money* temporarily in the account in accordance with ■ CASS 5.5.16 R (Withdrawal of commission and mixed remittance);  
or
- (3) interest credited to the account which exceeds the amount due to *clients* as interest and has not yet been withdrawn by the *firm*.

5.5.10

FCA

R

If it is prudent to do so to ensure that *client money* is protected (and provided that doing so would otherwise be in accordance with ■ CASS 5.5.63 R (1)(b)(ii)), a *firm* may pay into, or maintain in, a *client bank account* *money* of its own, and that *money* will then become *client money* for the purposes of ■ CASS 5 and the *client money (insurance) distribution rules*.

5.5.11

FCA

R

A *firm*, when acting in accordance with ■ CASS 5.3 (statutory trust), must ensure that the total amount of *client money* held for each *client* in any of the *firm's client money bank accounts* is positive and that no payment is made from any such account for the benefit of a *client* unless the *client* has provided the *firm* with cleared funds to enable the payment to be made.

5.5.11A

FCA

G

When a *firm* acts in accordance with ■ CASS 5.3 (Statutory trust) it should not make a payment from the *client bank account* unless it is satisfied on reasonable grounds that the *client* has provided it with cleared funds. Accordingly, a *firm* should normally allow a reasonable period of time for cheques to clear. If a withdrawal is made and the *client's* cheque is subsequently dishonoured it will be the *firm's* responsibility to make good the *shortfall* in the account as quickly as possible (and without delay whilst a cheque is re-presented).

5.5.12  
FCA

R

If *client money* is received by the *firm* in the form of an automated transfer, the *firm* must take reasonable steps to ensure that:

- (1) the *money* is received directly into a *client bank account*; and
- (2) if *money* is received directly into the *firm's* own account, the *money* is transferred into a *client bank account* no later than the next *business day* after receipt.

5.5.13  
FCA

G

A *firm* can hold *client money* in either a *general client bank account* (■ CASS 5.5.38 R) or a *designated client bank account* (■ CASS 5.5.39 R). A *firm* holds all *client money* in *general client bank accounts* for its *clients* as part of a common pool of *money* so those particular *clients* do not have a claim against a specific sum in a specific account; they only have a claim to the *client money* in general. A *firm* holds *client money* in *designated client bank accounts* for those *clients* who requested that their *client money* be part of a specific pool of *money*, so those particular *clients* do have a claim against a specific sum in a specific account; they do not have a claim to the *client money* in general unless a *primary pooling event* occurs. If the *firm* becomes insolvent, and there is (for whatever reason) a *shortfall* in *money* held for a *client* compared with that *client's* entitlements, the available funds will be distributed in accordance with the *client money (insurance) distribution rules*.

#### Non-statutory trust - segregation of designated investments

5.5.14  
FCA

R

- (1) A *firm* which handles *client money* in accordance with the *rules* for a non-statutory trust in ■ CASS 5.4 may, to the extent it considers appropriate, but subject to (2), satisfy the requirement to segregate *client money* by segregating or arranging for the segregation of *designated investments* with a value at least equivalent to such *money* as would otherwise have been segregated into a *client bank account*.
- (2) A *firm* may not segregate *designated investments* unless it:
  - (a) takes reasonable steps to ensure that any *consumers* whose *client money* interests may be protected by such segregation are aware that the *firm* may operate such an arrangement and have (whether through its *terms of business*, client agreements, or otherwise in writing) an adequate opportunity to give their informed consent;
  - (b) ensures that the terms on which it will segregate *designated investments* include provision for it to take responsibility for meeting any *shortfall* in its *client money* resource which is attributable to falls in the market value of a segregated *investment*;
  - (c) provides in the deed referred to in ■ CASS 5.4.6 R for *designated investments* which it segregates to be held by it on the terms of the non-statutory trust; and
  - (d) takes reasonable steps to ensure that the segregation is at all times in conformity with the range of permitted

*investments, general principles and conditions in*

■ CASS 5 Annex 1 R.

5.5.15

FCA

G

A *firm* which takes advantage of ■ CASS 5.5.14 R will need to consider whether its *permission* should include the *permitted activity of managing investments*. If the *firm* is granted a power to manage with discretion the funds over which it is appointed as trustee under the trust deed required by ■ CASS 5.4 then it will be likely to need a *permission to manage investments*. It is unlikely to need such a permission, however, if it is merely granted a power to invest but the deed stipulates that the funds may only be managed with discretion by another *firm* (which has the necessary *permission*). Such an arrangement would not preclude the *firm* holding *client money* as trustee from appointing another *firm* (or *firms*) as manager and setting an appropriate strategy and overall asset allocation, subject to the limits set out in ■ CASS 5 Ann 1 R. A *firm* may also need to consider whether it needs a *permission* to operate a *collective investment scheme* if any of its *clients* are to participate in the income or gains arising from the acquisition or disposal of *designated investments*.

**Withdrawal of commission and mixed remittance**

5.5.16

FCA

R

(1) A *firm* may draw down *commission* from the *client bank account* if:

- (a) it has received the *premium* from the *client* (or from a third party *premium* finance provider on the *client's* behalf) ; and
- (b) this is consistent with the *firm's terms of business* which it maintains with the relevant *client* and the *insurance undertaking* to whom the *premium* will become payable;

and the *firm* may draw down *commission* before payment of the *premium* to the *insurance undertaking*, provided that the conditions in (a) and (b) are satisfied.

(2) If a *firm* receives a *mixed remittance* (that is part *client money* and part other *money*), it must:

- (a) pay the full sum into a *client bank account* in accordance with ■ CASS 5.5.5 R; and
- (b) pay the *money* that is not *client money* out of the *client bank account* as soon as reasonably practicable and in any event by not later than twenty-five *business days* after the day on which the remittance is cleared (or, if earlier, when the *firm* performs the *client money* calculation in accordance with ■ CASS 5.5.63 R (1)).

5.5.17

FCA

G

(1) As soon as *commission* becomes due to the *firm* (in accordance with ■ CASS 5.5.16 R (1)) it must be treated as a remittance which must be withdrawn in accordance with ■ CASS 5.5.16 R (2). The procedure required by ■ CASS 5.5.16 R will also apply where *money* is due and payable to the *firm* in respect of *fees* due from *clients* (whether to the *firm* or other professionals).

(2) *Firms* are reminded that *money* received in accordance with ■ CASS 5.2 must not, except where a *firm* and an *insurance undertaking* have (in accordance



5.5.18  
FCA

R

with ■ CASS 5.1.5A R) agreed otherwise, be kept in a *client bank account*. *Client money* received from a third-party *premium* finance provider should, however, be segregated into a *client bank account*.

- (3) Where a *client* makes payments of *premium* to a *firm* in instalments, ■ CASS 5.5.16 R (1) applies in relation to each instalment.
- (4) If a *firm* is unable to match a remittance with a transaction it may be unable to immediately determine whether the payment comprises a *mixed remittance* or is *client money*. In such cases the remittance should be treated as *client money* while the *firm* takes steps to match the remittance to a transaction as soon as possible.

#### Appointed representatives, field representatives and other agents

- (1) Subject to (4), a *firm* must in relation to each of its *appointed representatives, field representatives* and other agents comply with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R (Immediate segregation) or with ■ CASS 5.5.23 R (Periodic segregation and reconciliation).
- (2) A *firm* must in relation to each *representative* or other agent keep a record of whether it is complying with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R or with ■ CASS 5.5.23 R.
- (3) A *firm* is, but without affecting the application of ■ CASS 5.5.19 R to ■ CASS 5.5.23 R, to be treated as the recipient of *client money* which is received by any of its *appointed representatives, field representatives* or other agents.
- (4) Paragraphs (1) to (3) do not apply in relation to an *appointed representative, field representative* or other agent to which (if it were a *firm*) ■ CASS 5.1.4AR (1) or ■ CASS 5.1.4AR (2) would apply, but subject to the *representative* or agent maintaining an account which satisfies the requirements of ■ CASS 5.5.49 R to the extent that the *representative* or agent will hold *client money* on trust or otherwise on behalf of its *clients*.

#### Immediate segregation

5.5.19  
FCA

R

A *firm* must establish and maintain procedures to ensure that *client money* received by its *appointed representatives, field representatives, or other agents* of the *firm* is:

- (1) paid into a *client bank account* of the *firm* in accordance with ■ CASS 5.5.5 R; or
- (2) forwarded to the *firm*, or in the case of a *field representative* forwarded to a specified business address of the *firm*, so as to ensure that the *money* arrives at the specified business address by the close of the third *business day*.



5.5.20

FCA

G

For the purposes of ■ CASS 5.5.19 R, the *client money* received on *business day* one should be forwarded to the *firm* or specified business address of the *firm* no later than the next *business day* after receipt (*business day* two) in order for it to reach that *firm* or specified business address by the close of the third *business day*. Procedures requiring the *client money* to be sent to the *firm* or the specified business address of the *firm* by first class post no later than the next *business day* after receipt would meet the requirements of ■ CASS 5.5.19 R.

5.5.21

FCA

R

If *client money* is received in accordance with ■ CASS 5.5.19 R, the *firm* must ensure that its *appointed representatives*, *field representatives* or other agents keep *client money* (whether in the form of *premiums*, *claims money* or *premium* refunds) separately identifiable from any other *money* (including that of the *firm*) until the *client money* is paid into a *client bank account* or sent to the *firm*.

5.5.22

FCA

G

A *firm* which acts in accordance with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R need not comply with ■ CASS 5.5.23 R.

#### Periodic segregation and reconciliation

5.5.23

FCA

R

- (1) A *firm* must, on a regular basis, and at reasonable intervals, ensure that it holds in its *client bank account* an amount which (in addition to any other amount which it is required by these *rules* to hold) is not less than the amount which it reasonably estimates to be the aggregate of the amounts held at any time by its *appointed representatives*, *field representatives*, and other agents.
- (2) A *firm* must, not later than ten *business days* following the expiry of each period in (1):
  - (a) carry out, in relation to each such *representative* or agent, a reconciliation of the amount paid by the *firm* into its *client bank account* with the amount of *client money* actually received and held by the *representative* or other agent; and
  - (b) make a corresponding payment into, or withdrawal from, the account.

5.5.24

FCA

G

- (1) ■ CASS 5.5.23 R allows a *firm* with *appointed representatives*, *field representatives* and other agents to avoid the need for the *representative* to forward *client money* on a daily basis but instead requires a *firm* to segregate into its *client money bank account* amounts which it reasonably estimates to be sufficient to cover the amount of *client money* which the *firm* expects its *representatives* or agents to receive and hold over a given period. At the expiry of each such period, the *firm* must obtain information about the actual amount of *client money* received and held by its *representatives* so that it can reconcile the amount of *client money* it has segregated with the amounts actually received and held by its *representatives* and agents. The frequency at which this reconciliation is to be performed is not prescribed but it must be at regular and reasonable intervals having regard to the nature and frequency of the *insurance business* carried on by its *representatives* and agents. For example, a period of six *months* might be appropriate for a *representative* which conducts business involving the receipt

of *premiums* only infrequently whilst for other *representatives* a periodic reconciliation at *monthly* intervals (or less) may be appropriate.

- (2) Where a *firm* operates on the basis of ■ CASS 5.5.23 R, the *money* which is segregated into its *client bank account* is *client money* and will be available to meet any obligations owed to the *clients* of its *representatives* who for this purpose are treated as the *firm's clients*.

5.5.25  
FCA

**G** A *firm* which acts in accordance with ■ CASS 5.5.23 R need not comply with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R.

**Client entitlements**

5.5.26  
FCA

**R** A *firm* must take reasonable steps to ensure that it is notified promptly of any receipt of *client money* in the form of *client* entitlements.

5.5.27  
FCA

**G** The 'entitlements' mentioned in ■ CASS 5.5.26 R refer to any kind of miscellaneous payment which the *firm* receives on behalf of a *client* and which are due to be paid to the *client*.

5.5.28  
FCA

**R** When a *firm* receives a *client* entitlement on behalf of a *client*, it must pay any part of it which is *client money*:

- (1) for *client* entitlements received in the *United Kingdom*, into a *client bank account* in accordance with ■ CASS 5.5.5 R; or
- (2) for *client* entitlements received outside the *United Kingdom*, into any bank account operated by the *firm*, provided that such *client money* is:
  - (a) paid to, or in accordance with, the instructions of the *client* concerned; or
  - (b) paid into a *client bank account* in accordance with ■ CASS 5.5.5 R (1), as soon as possible but no later than five *business days* after the *firm* is notified of its receipt.

5.5.29  
FCA

**R** A *firm* must take reasonable steps to ensure that a *client* entitlement which is *client money* is allocated within a reasonable period of time after notification of receipt.

**Interest and investment returns**

5.5.30  
FCA

**R** (1) In relation to *consumers*, a *firm* must, subject to (2), take reasonable steps to ensure that its *terms of business* or other client agreements adequately explain, and where necessary obtain a *client's* informed consent to, the treatment of interest and, if applicable, investment returns, derived from its holding of *client money* and any segregated *designated investments*.

(2) In respect of interest earned on *client bank* accounts, (1) does not apply if a *firm* has reasonable ground to be satisfied that in relation to *insurance mediation activities* carried on with or for a *consumer* the amount of interest earned will be not more than £20 per transaction.

5.5.31  
FCA

**G** If no interest is payable to a *consumer*, that fact should be separately identified in the *firm's* client agreement or *terms of business*.

5.5.32  
FCA

**G** If a *firm* outlines its *policy* on its payment of interest, it need not necessarily disclose the actual rates prevailing at any particular time; the *firm* should disclose the terms, for example, LIBOR plus or minus 'x' percentage points.

### Transfer of client money to a third party

5.5.33  
FCA

**G** ■ CASS 5.5.34 R sets out the requirements a *firm* must comply with when it transfers *client money* to another *person* without discharging its fiduciary duty owed to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to another broker for the purposes of the *client's* transaction being effected. A *firm* can only discharge itself from its fiduciary duty by acting in accordance with, and in the circumstances permitted by, ■ CASS 5.5.80 R.

5.5.34  
FCA

**R** A *firm* may allow another *person*, such as another broker to hold or control *client money*, but only if:

- (1) the *firm* transfers the *client money* for the purpose of a transaction for a *client* through or with that *person*; and
- (2) in the case of a *consumer*, that *customer* has been notified (whether through a client agreement, *terms of business*, or otherwise in writing) that the *client money* may be transferred to another *person*.

5.5.35  
FCA

**G** In relation to the notification required by ■ CASS 5.5.34 R (2), there is no need for a *firm* to make a separate disclosure in relation to each transfer made.

5.5.36  
FCA

**G** A *firm* should not hold excess *client money* with another broker. It should be held in a *client bank account*.

### Client bank accounts

5.5.37  
FCA

**G** The FCA generally requires a *firm* to place *client money* in a *client bank account* with an *approved bank*. However, a *firm* which is an *approved bank* must not (subject to ■ CASS 5.1.1 R (2)(e)) hold *client money* in an account with itself.

5.5.38  
FCA

**R** (1) A *firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.

- (2) If the *firm* is a bank, it must not hold *client money* in an account with itself.

5.5.39  
FCA

R

A *firm* may open one or more *client bank accounts* in the form of a *designated client bank account*. Characteristics of these accounts are that:

- (1) the account holds *money* of one or more *clients*;
- (2) the account includes in its title the word 'designated';
- (3) the *clients* whose *money* is in the account have each consented in writing to the use of the bank with which the *client money* is to be held; and
- (4) in the event of the *failure* of that bank, the account is not pooled with any other type of account unless a *primary pooling event* occurs.

5.5.40  
FCA

G

- (1) A *firm* may operate as many *client* accounts as it wishes.
- (2) A *firm* is not obliged to offer its *clients* the facility of a *designated client bank account*.
- (3) Where a *firm* holds *money* in a *designated client bank account*, the effect upon either:
  - (a) the *failure* of a bank where any other *client bank account* is held; or
  - (b) the *failure* of a third party to whom *money* has been transferred out of any other *client bank account* in accordance with ■ CASS 5.5.34 R;

(each of which is a *secondary pooling event*) is that *money* held in the *designated client bank account* is not pooled with *money* held in any other account. Accordingly *clients* whose *money* is held in a *designated client bank account* will not share in any *shortfall* resulting from a *failure* of the type described in (a) or (b).

- (4) Where a *firm* holds *client money* in a *designated client bank account*, the effect upon the failure of the *firm* (which is a *primary pooling event*) is that *money* held in the *designated client bank account* is pooled with *money* in every other *client bank account* of the *firm*. Accordingly, *clients* whose *money* is held in a *designated client bank account* will share in any *shortfall* resulting from a *failure* of the *firm*.

5.5.41  
FCA

R

A *firm* may hold *client money* with a bank that is not an *approved bank* if all the following conditions are met:

- (1) the *client money* relates to one or more insurance transactions which are subject to the law or market practice of a jurisdiction outside the *United Kingdom*;

- (2) because of the applicable law or market practice of that overseas jurisdiction, it is not possible to hold the *client money* in a *client bank account* with an *approved bank*;
- (3) the *firm* holds the *money* with such a bank for no longer than is necessary to effect the transactions;
- (4) the *firm* notifies each relevant *client* and has, in relation to a *consumer* , a client agreement, or *terms of business* which adequately explain that:
  - (a) *client money* will not be held with an *approved bank*;
  - (b) in such circumstances, the legal and regulatory regime applying to the bank with which the *client money* is held will be different from that of the *United Kingdom* and, in the event of a *failure* of the bank, the *client money* may be treated differently from the treatment which would apply if the *client money* were held by an *approved bank* in the *United Kingdom*; and
  - (c) if it is the case, the particular bank has not accepted that it has no right of set-off or counterclaim against *money* held in a *client bank account*, in respect of any sum owed on any other account of the *firm*, notwithstanding the *firm's* request to the bank as required by ■ CASS 5.5.49 R; and
- (5) the *client money* is held in a designated bank account.

**A firm's selection of a bank**

5.5.42

FCA

G

A *firm* owes a duty of care to a *client* when it decides where to place *client money*. The review required by ■ CASS 5.5.43 R is intended to ensure that the risks inherent in placing *client money* with a bank are minimised or appropriately diversified by requiring a *firm* to consider carefully the bank or banks with which it chooses to place *client money*. For example, a *firm* which is likely only to hold relatively modest amounts of *client money* will be likely to be able to satisfy this requirement if it selects an *authorised* UK clearing bank.

5.5.43

FCA

R

Before a *firm* opens a *client bank account* and as often as is appropriate on a continuing basis (and no less than once in each financial year), it must take reasonable steps to establish that the bank is appropriate for that purpose.

5.5.44

FCA

G

A *firm* should consider diversifying placements of *client money* with more than one bank where the amounts are, for example, of sufficient size to warrant such diversification.

5.5.45

FCA

G

When considering where to place *client money* and to determine the frequency of the appropriateness test under ■ CASS 5.5.43 R, a *firm* should consider taking into account, together with any other relevant matters:

- (1) the capital of the bank;

- (2) the amount of *client money* placed, as a proportion of the bank's capital and *deposits*;
- (3) the credit rating of the bank (if available); and
- (4) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the bank and its *affiliated companies*.

5.5.46

FCA

G

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

### Group banks

5.5.47

FCA

R

Subject to ■ CASS 5.5.41 R, a *firm* that holds or intends to hold *client money* with a bank which is in the same *group* as the *firm* must:

- (1) undertake a continuous review in relation to that bank which is at least as rigorous as the review of any bank which is not in the same *group*, in order to ensure that the decision to use a *group* bank is appropriate for the *client*;
- (2) disclose in writing to its *client* at the outset of the *client* relationship (whether by way of a client agreement, *terms of business* or otherwise in writing) or, if later, not less than 20 *business days* before it begins to hold *client money* of that *client* with that bank:
  - (a) that it is holding or intends to hold *client money* with a bank in the same *group*;
  - (b) the identity of the bank concerned; and
  - (c) that the *client* may choose not to have his *money* placed with such a bank.

5.5.48

FCA

R

If a *client* has notified a *firm* in writing that he does not wish his *money* to be held with a bank in the same *group* as the *firm*, the *firm* must either:

- (1) place that *client money* in a *client bank account* with another bank in accordance with ■ CASS 5.5.38 R; or
- (2) return that *client money* to, or pay it to the order of, the *client*.



**Notification and acknowledgement of trust (banks)**

5.5.49

FCA

R

When a *firm* opens a *client bank account*, the *firm* must give or have given written notice to the bank requesting the bank to acknowledge to it in writing:

- (1) that all *money* standing to the credit of the account is held by the *firm* as trustee (or if relevant in Scotland, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against *money* in that account in respect of any sum owed to it on any other account of the *firm*; and
- (2) that the title of the account sufficiently distinguishes that account from any account containing *money* that belongs to the *firm*, and is in the form requested by the *firm*.

5.5.50

FCA

R

In the case of a *client bank account* in the *United Kingdom*, if the bank does not provide the acknowledgement referred to in ■ CASS 5.5.49 R within 20 *business days* after the *firm* dispatched the notice, the *firm* must withdraw all *money* standing to the credit of the account and deposit it in a *client bank account* with another bank as soon as possible.

5.5.51

FCA

R

In the case of a *client bank account* outside the *United Kingdom*, if the bank does not provide the acknowledgement referred to in ■ CASS 5.5.49 R within 20 *business days* after the *firm* dispatched the notice, the *firm* must notify the *client* of this fact as set out in ■ CASS 5.5.53 R.

5.5.52

FCA

G

*Firms* are reminded of the provisions of ■ CASS 5.5.41 R (4), which sets out the notification and consents required when using a bank that is not an *approved bank*.

**Notification to clients: use of an approved bank outside the United Kingdom**

5.5.53

FCA

R

A *firm* must not hold, for a *consumer*, *client money* in a *client bank account* outside the *United Kingdom*, unless the *firm* has previously disclosed to the *consumer* (whether in its *terms of business*, client agreement or otherwise in writing):

- (1) that his *money* may be deposited in a *client bank account* outside the *United Kingdom* but that the *client* may notify the *firm* that he does not wish his *money* to be held in a particular jurisdiction;
- (2) that in such circumstances, the legal and regulatory regime applying to the *approved bank* will be different from that of the *United Kingdom* and, in the event of a *failure* of the bank, his *money* may be treated in a different manner from that which would apply if the *client money* were held by a bank in the *United Kingdom*; and
- (3) if it is the case, that a particular bank has not accepted that it has no right of set-off or counterclaim against *money* held in a *client*

*bank account* in respect of any sum owed on any other account of the *firm*, notwithstanding the *firm's* request to the bank as required by ■ CASS 5.5.49 R.

5.5.54 FCA G There is no need for a *firm* to make a separate disclosure under ■ CASS 5.5.53 R (1) and ■ CASS 5.5.53 R (2) in relation to each jurisdiction.

5.5.55 FCA G *Firms* are reminded of the provisions of ■ CASS 5.5.41 R (4), which sets out the notification and consents required when using a bank that is not an *approved bank*.

5.5.56 FCA R If a *client* has notified a *firm* in writing before entering into a transaction that *client money* is not to be held in a particular jurisdiction, the *firm* must either:

- (1) hold the *client money* in a *client bank account* in a jurisdiction to which the *client* has not objected; or
- (2) return the *client money* to, or to the order of, the *client*.

5.5.57 FCA G *Firms* are reminded of the provisions of ■ CASS 5.5.41 R (4), which sets out the notification and consents required when using a bank that is not an *approved bank*.

**Notification to consumers : use of broker or settlement agent outside the United Kingdom**

5.5.58 FCA R A *firm* must not undertake any transaction for a *consumer* that involves *client money* being passed to another broker or *settlement agent* located in a jurisdiction outside the *United Kingdom*, unless the *firm* has previously disclosed to the *consumer* (whether in its *terms of business*, client agreement or otherwise in writing):

- (1) that his *client money* may be passed to a *person* outside the *United Kingdom* but the *client* may notify the *firm* that he does not wish his *money* to be passed to a *money* in a particular jurisdiction; and
- (2) that, in such circumstances, the legal and regulatory regime applying to the broker or *settlement agent* will be different from that of the *United Kingdom* and, in the event of a *failure* of the broker or *settlement agent*, this *money* may be treated in a different manner from that which would apply if the *money* were held by a broker or *settlement agent* in the *United Kingdom*.

5.5.59 FCA G There is no need for a *firm* to make a separate disclosure under ■ CASS 5.5.58 R in relation to each jurisdiction.



5.5.60

FCA

R

If a *client* has notified a *firm* before entering into a transaction that he does not wish his *money* to be passed to another broker or *settlement agent* located in a particular jurisdiction, the *firm* must either:

- (1) hold the *client money* in a *client bank account* in the *United Kingdom* or a jurisdiction to which the *money* has not objected and pay its own *money* to the *firm's* own account with the broker, agent or counterparty; or
- (2) return the *money* to, or to the order of, the *client*.

**Notification to the FCA: failure of a bank, broker or settlement agent**

5.5.61

FCA

R

On the *failure* of a third party with which *client money* is held, a *firm* must notify the *FCA*:

- (1) as soon as it becomes aware, of the *failure* of any bank, other broker or *settlement agent* or other entity with which it has placed, or to which it has passed, *client money*; and
- (2) as soon as reasonably practical, whether it intends to make good any *shortfall* that has arisen or may arise and of the amounts involved.

**Client money calculation and reconciliation**

5.5.62

FCA

G

- (1) In order that a *firm* may check that it has sufficient *money* segregated in its *client bank account* (and held by third parties) to meet its obligations to *clients* it is required periodically to calculate the amount which should be segregated (the *client money* requirement) and to compare this with the amount shown as its *client money* resource. This calculation is, in the first instance, based upon the *firm's* accounting records and is followed by a reconciliation with its banking records. A *firm* is required to make a payment into the *client bank account* if there is a shortfall or to remove any *money* which is not required to meet the *firm's* obligations.
- (2) For the purpose of calculating its *client money* requirement two alternative calculation methods are permitted, but a *firm* must use the same method in relation to ■ CASS 5.3 and ■ CASS 5.4. The first refers to individual *client* cash balances; the second to aggregate amounts of *client money* recorded on a *firm* business ledgers.

5.5.63

FCA

R

- (1) A *firm* must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 *business days*:
  - (a) check whether its *client money* resource, as determined by ■ CASS 5.5.65 R on the previous *business day*, was at least equal to the *client money* requirement, as determined by ■ CASS 5.5.66 R or ■ CASS 5.5.68 R, as at the close of business on that day; and
  - (b) ensure that:

- (i) any *shortfall* is paid into a *client bank account* by the close of business on the day the calculation is performed; or
  - (ii) any excess is withdrawn within the same time period unless ■ CASS 5.5.9 R or ■ CASS 5.5.10 R applies to the extent that the *firm* is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the calculation in (a) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and
- (c) include in any calculation of its *client money* requirement (whether calculated in accordance with ■ CASS 5.5.66 R or ■ CASS 5.5.68 R) any amounts attributable to *client money* received by its *appointed representatives, field representatives* or other agents and which, as at the date of calculation, it is required to segregate in accordance with ■ CASS 5.5.19 R.

- (2) A *firm* must within ten *business days* of the calculation in (a) reconcile the balance on each *client bank account* as recorded by the *firm* with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that account is held.
- (3) When any discrepancy arises as a result of the reconciliation carried out in (2), the *firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and those of the *firm*.
- (4) While a *firm* is unable to resolve a difference arising from a reconciliation, and one record or a set of records examined by the *firm* during its reconciliation indicates that there is a need to have a greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and either pay its own *money* into a relevant account or make a withdrawal of any excess.

5.5.64

FCA

R

A *firm* must keep a record of whether it calculates its *client money* requirement in accordance with ■ CASS 5.5.66 R or ■ CASS 5.5.68 R and may only use one method during each annual accounting period (which method must be the same in relation to both ■ CASS 5.3 and ■ CASS 5.4).

5.5.65

FCA

R

**Client money resource**

The *client money* resource, for the purposes of ■ CASS 5.5.63 R (1)(a), is:

- (1) the aggregate of the balances on the *firm's client money bank accounts*, as at the close of business on the previous *business day* and, if held in accordance with ■ CASS 5.4, *designated investments* (valued on a prudent and consistent basis) together with *client money* held by a third party in accordance with ■ CASS 5.5.34 R; and
- (2) (but only if the *firm* is comparing the *client money* resource with its *client's money* (accruals) requirement in accordance with ■ CASS 5.5.68 R) to the extent that *client money* is held in accordance with ■ CASS 5.3 (statutory trust), insurance debtors (which in this case cannot include pre-funded items); and
- (3) (but only if the *firm* is comparing the *client money* resource with its *client's money* (accruals) requirement in accordance with ■ CASS 5.5.68 R) to the extent that *client money* is held in accordance with ■ CASS 5.4 (non-statutory trust):
  - (a) all insurance debtors (including pre-funded items whether in respect of advance *premiums*, claims, *premium* refunds or otherwise) shown in the *firm's* business ledgers as amounts due from *clients*, *insurance undertakings* and other *persons*, such debts valued on a prudent and consistent basis to the extent required to meet any shortfall of the *client money* resource compared with the *firm's client money* requirement; and
  - (b) the amount of any letter of credit or unconditional guarantee provided by an *approved bank* and held on the terms of the trust (or, in Scotland, agency), limited to:
    - (i) the maximum sum payable by the *approved bank* under the letter of credit or guarantee; or
    - (ii) if less, the amount which would, apart from the benefit of the letter of credit or guarantee, be the *shortfall* of the *client money* resource compared with the *client money* requirement under ■ CASS 5.5.66 R or ■ CASS 5.5.68 R.

But a *firm* may treat a transaction with an *insurance undertaking* which is not a *UK domestic firm* as complete, and accordingly may (but only for the purposes of the calculation in (1)) disregard any unreconciled items of *client money* transferred to an intermediate broker relating to such a transaction, if:

- (4) it has taken reasonable steps to ascertain whether the transaction is complete; and

- (5) it has no reason to consider the transaction has not been completed; and
- (6) a period of at least 12 *months* has elapsed since the *money* was transferred to the intermediate broker for the purpose of the transaction.

**Client money (client balance) requirement**

5.5.66  
FCA

**R** A *firm's client money (client balance)* requirement is the sum of, for all *clients*, the individual *client* balances calculated in accordance with **■ CASS 5.5.67 R** but excluding any individual balances which are negative (that is, uncleared *client* funds).

5.5.67  
FCA

**R** The individual *client* balance for each *client* must be calculated as follows:

- (1) the amount paid by a *client* to the *client* (to include all *premiums*); plus
- (2) the amount due to the *client* (to include all claims and *premium* refunds); plus
- (3) the amount of any interest or investment returns due to the *client*;
- (4) less the amount paid to *insurance undertakings* for the benefit of the *client* (to include all *premiums* and *commission* due to itself) (i.e. *commissions* that are due but have not yet been removed from the client account);
- (5) less the amount paid by the *firm* to the *client* (to include all claims and *premium* refunds);

and where the individual *client* balance is found by the sum ((1) + (2) + (3)) - ((4) + (5)).

**Client money (accruals) requirement**

5.5.68  
FCA

**R** A *firm's client money (accruals)* requirement is the sum of the following:

- (1) all insurance creditors shown in the *firm's* business ledgers as amounts due to *insurance undertakings, clients* and other *persons*; plus
- (2) unearned commission being the amount of commission shown as accrued (but not shown as due and payable) as at the date of the calculation (a prudent estimate must be used if the *firm* is unable to produce an exact figure at the date of the calculation).

**5.5.69** **R** A *firm* which calculates its *client money* requirement on the preceding basis must in addition and within a reasonable period be able to match its *client money* resource to its requirement by reference to individual *clients* (with such matching being achieved for the majority of its *clients* and transactions).

**FCA**

**[deleted]**

**5.5.70** **R** [deleted]

**5.5.71** **G** [deleted]

**5.5.72** **R** [deleted]

**[deleted]**

**5.5.73** **R** [deleted]

**[deleted]**

**5.5.74** **R** [deleted]

**5.5.75** **R** [deleted]

**Failure to perform calculations or reconciliation**

**5.5.76** **R** A *firm* must notify the *FCA* immediately if it is unable to, or does not, perform the calculation required by **■ CASS 5.5.63 R (1)** .

**FCA**

**5.5.77** **R** A *firm* must notify the *FCA* immediately it becomes aware that it may not be able to make good any *shortfall* identified by **■ CASS 5.5.63 R (1)** by the close of business on the day the calculation is performed and if applicable when the reconciliation is completed .

**FCA**

**5.5.78** **R** [deleted]

**Discharge of fiduciary duty**

**5.5.79** **G** The purpose of **■ CASS 5.5.80 R** to **■ CASS 5.5.83 R** is to set out those situations in which a *firm* will have fulfilled its contractual and fiduciary obligations in relation to any *client money* held for or on behalf of its *client*, or in relation to the *firm's* ability to require repayment of that *money* from a third party .

**FCA**

**5.5.80** **R** Money ceases to be *client money* if it is paid:

**FCA**

- (1) to the *client*, or a duly authorised representative of the *client*; or
- (2) to a third party on the instruction of or with the specific consent of the *client*, but not if it is transferred to a third party in the course of effecting a transaction, in accordance with **■ CASS 5.5.34 R**; or

**5**

- (3) into a bank account of the *client* (not being an account which is also in the name of the *firm*); or
- (4) to the *firm* itself, when it is due and payable to the *firm* in accordance with ■ CASS 5.1.5 R (1); or
- (5) to the *firm* itself, when it is an excess in the *client bank account* as set out in ■ CASS 5.5.63 R (1)(b)(ii).

5.5.81  
FCA

G

- (1) A *firm* which pays professional fees (for example to a loss adjuster or valuer) on behalf of a *client* may do so in accordance with ■ CASS 5.5.80 R (2) where this is done on the instruction of or with the consent of the *client*.
- (2) When a *firm* wishes to transfer *client money* balances to a third party in the course of transferring its business to another *firm*, it should do so in compliance with ■ CASS 5.5.80 R and a transferee *firm* will come under an obligation to treat any *client money* so transferred in accordance with these rules.
- (3) *Firms* are reminded of their obligation, when transferring *money* to third parties in accordance with ■ CASS 5.5.34 R, to use appropriate skill, care and judgment in their selection of third parties in order to ensure adequate protection of *client money*.
- (4) *Firms* are reminded that, in order to calculate their *client money* resource in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.65 R, they will need to have systems in place to produce an accurate accounting record showing how much *client money* is being held by third parties at any point in time. For the purposes of ■ CASS 5.5.63 R to ■ CASS 5.5.65 R, however, a *firm* must assume that *monies* remain at an intermediate broker awaiting completion of the transaction unless it has received confirmation that the transaction has been completed.

5.5.82  
FCA

R

When a *firm* draws a cheque or other payable order to discharge its fiduciary duty under ■ CASS 5.5.80 R, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid by the bank.

5.5.83  
FCA

R

For the purposes of ■ CASS 5.1.5 R, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum will become due and payable to the *firm* or may be withdrawn from a *client bank account* by way of reimbursement.

#### Records

5.5.84  
FCA

R

A *firm* must ensure that proper records, sufficient to show and explain the *firm's* transactions and commitments in respect of its *client money*, are made and retained for a period of three years after they were made.



## 5.6 Client money distribution

### Application

5.6.1  
FCA

R

- (1) ■ CASS 5.6 (the *client money (insurance) distribution rules*) applies to a *firm* that in holding *client money* is subject to ■ CASS 5.3 (statutory trust) or ■ CASS 5.4 (Non-statutory trust) when a *primary pooling event* or a *secondary pooling event* occurs.
- (2) In the event of there being any discrepancy between the terms of the trust as required by ■ CASS 5.4.7 R (1)(c) and the provisions of ■ CASS 5.6, the latter shall apply.

5.6.2  
FCA

G

- (1) The *client money (insurance) distribution rules* have force and effect on any *firm* that holds *client money* in accordance with ■ CASS 5.3 or ■ CASS 5.4. Therefore, they may apply to a *UK branch* of a non-EEA *firm*. In this case, the *UK branch* of the *firm* may be treated as if the *branch* itself is a free-standing entity subject to the *client money (insurance) distribution rules*.
- (2) *Firms* that act in accordance with ■ CASS 5.4 (Non-statutory trust) are reminded that the *client money (insurance) distribution rules* should be given effect in the terms of trust required by ■ CASS 5.4.

5.6.3  
FCA

G

The *client money (insurance) distribution rules* seek to facilitate the timely return of *client money* to a *client* in the event of the *failure* of a *firm* or third party at which the *firm* holds *client money*.

### Failure of the authorised firm: primary pooling event

5.6.4  
FCA

G

A *primary pooling event* triggers a notional pooling of all the *client money*, in every type of *client money* account, and the obligation to distribute it.

PAGE  
33

5.6.5  
FCA

R

A *primary pooling event* occurs:

- (1) on the *failure* of the *firm*; or



- (2) on the vesting of assets in a trustee in accordance with an 'assets requirement' imposed under 55P(1)(b) or (c) (as the case may be) of the Act; or
- (3) on the coming into force of a requirement for all client money held by the firm; or
- (4) when the firm notifies, or is in breach of its duty to notify, the FCA, in accordance with ■ CASS 5.5.77 R , that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a secondary pooling event.

5.6.6  
FCA

**R** ■ CASS 5.6.5 R (4) does not apply so long as:

- (1) the firm is taking steps, in consultation with the FCA, to establish those records; and
- (2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

#### Pooling and distribution

5.6.7  
FCA

**R** If a primary pooling event occurs:

- (1) client money held in each client money account of the firm is treated as pooled;
- (2) the firm must distribute that client money in accordance with ■ CASS 5.3.2 R or, as appropriate, ■ CASS 5.4.7 R, so that each client receives a sum which is rateable to the client money entitlement calculated in accordance with ■ CASS 5.5.66 R; and
- (3) the firm must, as trustee, call in and make demand in respect of any debt due to the firm as trustee, and must liquidate any designated investment, and any letter of credit or guarantee upon which it relies for meeting any shortfall in its client money resource and the proceeds shall be pooled together with other client money as in (1) and distributed in accordance with (2).

5.6.8  
FCA

**G** A client's main claim is for the return of client money held in a client bank account. A client may claim for any shortfall against money held in a firm's own account. For that claim, the client will be an unsecured creditor of the firm.

#### Client money received after the failure of the firm

5.6.9  
FCA

**R** Client money received by the firm (including in its capacity as trustee under ■ CASS 5.4 (Non-statutory trust)) after a primary pooling event must not be pooled with client money held in any client money account operated by the firm at the time of the primary pooling event. It must be placed in a client bank account that has been opened after that event



and must be handled in accordance with the *client money rules*, and returned to the relevant *client* without delay, except to the extent that:

- (1) it is *client money* relating to a transaction that has not completed at the time of the *primary pooling event*; or
- (2) it is *money* relating to a *client*, for whom the *client money* requirement , calculated in accordance with ■ CASS 5.5.66 R or ■ CASS 5.5.68 R , shows that *money* is due from the *client* to the *firm* including in its capacity as trustee under ■ CASS 5.4 (Non-statutory trust) at the time of the *primary pooling event*.

5.6.10  
FCA

**G** Client money received after the *primary pooling event* relating to an incomplete transaction should be used to complete that transaction.

5.6.11  
FCA

**R** If a *firm* receives a *mixed remittance* after a *primary pooling event*, it must:

- (1) pay the full sum into the separate *client bank account* opened in accordance with ■ CASS 5.6.9 R; and
- (2) pay the *money* that is not *client money* out of that *client bank account* into the *firm's* own bank account within one *business day* of the *day* on which the remittance is cleared.

5.6.12  
FCA

**G** Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

**Failure of a bank, other broker or settlement agent: secondary pooling events**

5.6.13  
FCA

**R** If both a *primary pooling event* and a *secondary pooling event* occur, the provisions of this section relating to a *primary pooling event* apply.

5.6.14  
FCA

**R** A *secondary pooling event* occurs on the *failure* of a third party to which *client money* held by the *firm* has been transferred under ■ CASS 5.5.34 R.

5.6.15  
FCA

**R** ■ CASS 5.6.20 R to ■ CASS 5.6.31 R do not apply if, on the *failure* of the third party, the *firm* repays to its *clients* or pays into a *client bank account*, at an unaffected bank, an amount equal to the amount of *client money* which would have been held if a *shortfall* had not occurred at that third party.

5.6.16  
FCA

**G** When *client money* is transferred to a third party, a *firm* continues to owe a fiduciary duty to the *client*. However, consistent with a fiduciary's responsibility (whether as agent or trustee) for third parties under general law, a *firm* will not be held responsible for a *shortfall* in *client money* caused by a third party *failure* if it has complied with those duties.

5.6.17

FCA

G

To comply with its duties, the *firm* should show proper care:

- (1) in the selection of a third party; and
- (2) when monitoring the performance of the third party.

In the case of *client money* transferred to a bank, by demonstrating compliance with ■ CASS 5.5.43 R, a *firm* should be able to demonstrate that it has taken reasonable steps to comply with its duties.

#### Failure of a bank

5.6.18

FCA

G

When a bank *fails* and the *firm* decides not to make good the *shortfall* in the amount of *client money* held at that bank, a *secondary pooling event* will occur in accordance with ■ CASS 5.6.20 R. The *firm* would be expected to reflect the *shortfall* that arises at the *firm's* bank in the periodic *client money* calculation by reducing the *client money* resource and *client money* requirement accordingly.

5.6.19

FCA

G

The *client money (insurance) distribution rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* as a different bank, should not suffer the loss of the bank that has *failed*.

#### Failure of a bank: pooling

5.6.20

FCA

R

If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held, then:

- (1) in relation to every *general client bank account* of the *firm*, the provisions of ■ CASS 5.6.22 R and ■ CASS 5.6.26 R to ■ CASS 5.6.28 G will apply;
- (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 5.6.24 R and ■ CASS 5.6.26 R to ■ CASS 5.6.28 G will apply; and
- (3) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts* is not pooled with any other *client money*.

5.6.21

FCA

R

If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *designated client bank accounts* are held then in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 5.6.24 R and ■ CASS 5.6.26 R to ■ CASS 5.6.28 G will apply.

5.6.22

FCA

**R** Money held in each *general client bank account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts*, that has arisen as a result of the *failure* of the bank, must be borne by all the *clients* whose *client money* is held in a *general client bank account* of the *firm*, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
- (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.69 R.

5.6.23

FCA

**G** The term 'which should have been held' is a reference to the *failed* bank's failure (and elsewhere, as appropriate, is a reference to the other *failed* third party's failure) to hold the *client money* at the time of the pooling event.

5.6.24

FCA

**R** For each *client* with a *designated client bank account* held at the *failed* bank:

- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each of the relevant *clients* by the *firm*, and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the periodic *client money* calculation, in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.69 R.

5.6.25

FCA

**R** A *client* whose *money* was held, or which should have been held, in a *designated client bank account* with a bank that has *failed* is not entitled

to claim in respect of that *money* against any other *client bank account* or *client transaction account* of the *firm*.

**Client money received after the failure of a bank**

5.6.26

FCA

R

*Client money* received by the *firm* after the *failure* of a bank, that would otherwise have been paid into a *client bank account* at that bank:

- (1) must not be transferred to the *failed* bank unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* bank; and
- (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
  - (a) on the written instruction of the *client*, transferred to a bank other than the one that has *failed*; or
  - (b) returned to the *client* as soon as possible.

5.6.27

FCA

R

If a *firm* receives a *mixed remittance* after the *secondary pooling event* which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:

- (1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and
- (2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the remittance is cleared.

5.6.28

FCA

G

Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

**Failure of an intermediate broker or settlement agent: pooling**

5.6.29

FCA

R

If a *secondary pooling event* occurs as a result of the *failure* of another broker or *settlement agent* to whom the *firm* has transferred *client's money* then, in relation to every *general client bank account* of the *firm*, the provisions of ■ CASS 5.6.26 R to ■ CASS 5.6.28 G and ■ CASS 5.6.30 R will apply.

5.6.30

FCA

R

*Money* held in each *general client bank account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client*

*money* is held in a *general client bank account* of the *firm*, rateably in accordance with their entitlements;

- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements of (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* intermediate broker or *settlement agent* until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the periodic *client money* calculation, in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.69 R.

**Client money received after the failure of a broker or settlement agent** .....

5.6.31

FCA

R

*Client money* received by the *firm* after the *failure* of another broker or *settlement agent*, to whom the *firm* has transferred *client money* that would otherwise have been paid into a *client bank account* at that broker or *settlement agent*:

- (1) must not be transferred to the *failed* third party unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* broker or *settlement agent*; and
- (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
  - (a) on the written instruction of the *client*, transferred to a third party other than the one that has *failed*; or
  - (b) returned to the *client* as soon as possible.

**Notification on the failure of a bank, other broker or settlement agent** .....

5.6.32

FCA

R

The provisions of ■ CASS 5.5.61 R apply.



**5.7 Mandates**

- 5.7.1 **R** [deleted]
- 5.7.2 **R** [deleted]
- 5.7.3 **G** [deleted]
- 5.7.4 **G** [deleted]
- 5.7.5 **G** [deleted]
- 5.7.6 **R** [deleted]

5



## 5.8 Safe keeping of client's documents and other assets

### Application

5.8.1  
FCA

R

- (1) ■ CASS 5.8 applies to a *firm* (including in its capacity as trustee under ■ CASS 5.4) which in the course of *insurance mediation activity* takes into its possession for safekeeping any *client title documents* (other than *documents* of no value) or other tangible assets belonging to *clients*.
- (2) ■ CASS 5.8 does not apply to a *firm* when:
  - (a) carrying on an *insurance mediation activity* which is in respect of a *reinsurance contract*; or
  - (b) acting in accordance with ■ CASS 6 (Custody rules).

### Purpose

5.8.2  
FCA

G

The *rules* in this section amplify the obligation in *Principle 10* which requires a *firm* to arrange adequate protection for *client's* assets. *Firms* carrying on *insurance mediation activities* may hold, on a temporary or longer basis, *client title documents* such as *policy documents* (other than *policy documents* of no value) and also items of physical property if, for example, a *firm* arranges for a valuation. The *rules* are intended to ensure that *firms* make adequate arrangements for the safe keeping of such property.

### Requirement

5.8.3  
FCA

R

- (1) A *firm* which has in its possession or control *documents* evidencing a *client's* title to a *contract of insurance* or other similar *documents* (other than documents of no value) or which takes into its possession or control tangible assets belonging to a *client*, must take reasonable steps to ensure that any such *documents* or items of property:
  - (a) are kept safe until they are delivered to the *client*;
  - (b) are not delivered or given to any other *person* except in accordance with instructions given by the *client*; and that

a record is kept as to the identity of any such *documents* or items of property and the dates on which they were received by the *firm* and delivered to the *client* or other *person*.

- 
- (2) A *firm* must retain the record required in (1) for a period of three years after the document or property concerned is delivered to the *client* or other *person*.



**Segregation of designated investments: permitted investments, general principles and conditions (This Annex belongs to ■ CASS 5.5.14 R)**

**FCA**

**1** The general principles which must be followed when client money segregation includes designated investments:

- (a) there must be a suitable spread of investments;
- (b) investments must be made in accordance with an appropriate liquidity strategy;
- (c) the investments must be in accordance with an appropriate credit risk policy;
- (d) any foreign exchange risks must be prudently managed.

**2** Table of permitted designated investments for the purpose of CASS 5.5.14 R (1).

| Investment type   | Qualification   |
|---|---|
| 1. Negotiable <i>debt security</i> (including a certificate of deposit) | <p>(a) Remaining term to maturity of 5 years or less; and</p> <p>(b) The issuer or <i>investment</i> must have a short-term credit rating of A1 by Standard and Poor's, or P1 by Moody's Investor Services, or F1 by Fitch if the instrument has a remaining term to maturity of 366 days or less; or a minimum long term credit rating of AA- by Standards and Poor's, or Aa3 by Moody's Investor Services or AA- by Fitch if the instrument has a term to maturity of more than 366 days.</p> |
| 2. A <i>repo</i> in relation to negotiable <i>debt security</i>         | As for 1 above and where the credit rating of the counterparty also meets the criteria in 1.  |
| 3. Bond funds   | <p>(a) An <i>authorised fund</i> or a <i>recognised scheme</i> or an investment company which is registered by the Securities and Exchange Commission of the United States of America under the Investment Company Act 1940;</p> <p>(b) A minimum credit rating and risk rating of Aaf and S2 respectively by Standard and Poor's or Aa and MR2 respectively by Moody's Investor Services or AA and V2 respectively by Fitch.</p>   |
| 4. Money market fund  | <p>(a) An <i>authorised fund</i> or a <i>recognised scheme</i>;</p> <p>(b) A minimum credit and risk rating of Aaa and MR1+ respectively by Moody's Investor Services or AAAM by Standard and Poor's or AAA and V1+ respectively by Fitch.</p>  |

**5. Derivatives**

Only for the purpose of prudently managing foreign currency risks.

**3** The general conditions which must be satisfied in the segregation of *designated investments* are:

- (a) any redemption of an *investment* must be by payment into the *firm's client money* bank account;
- (b) where the credit or risk rating of a *designated investment* falls below the minimum set out in the Table, the *firm* must dispose of the *investment* as soon as possible and in any event not later than 20 *business days* following the downgrade;
- (c) where any *investment* or issuer has more than one rating, the lowest shall apply.

# Chapter 6

## Custody rules

## 6.1 Application

### 6.1.1

FCA

R

This chapter (the *custody rules*) applies to a *firm*:

(1) [deleted]

(a) [deleted]

(b) [deleted]

(1A) when it holds *financial instruments* belonging to a *client* in the course of its *MiFID business*; and/or

(1B) when it is *safeguarding and administering investments*, in the course of business that is not *MiFID business*.

(2) [deleted]

### 6.1.1A

FCA

G

The *regulated activity of safeguarding and administering investments* covers both the *safeguarding and administration of assets (without arranging)* and *arranging safeguarding and administration of assets*, when those assets are either *safe custody investments* or *custody assets*. A *safe custody investment* is, in summary, a *designated investment* which a *firm* receives or holds on behalf of a *client*. *Custody assets* include *designated investments*, and any other assets that the *firm* holds or may hold in the same portfolio as a *designated investment* held for or on behalf of a *client*.

### 6.1.1B

FCA

R

*Firms* to which the *custody rules* apply by virtue of ■ CASS 6.1.1R (1B) must also apply the *custody rules* to those *custody assets* which are not *safe custody investments* in a manner appropriate to the nature and value of those *custody assets*.

### 6.1.1C

FCA

G

In accordance with article 42 of the *Regulated Activities Order*, a *firm* ("I") will not be *arranging safeguarding and administration of assets* if it introduces a *client* to another *firm* whose *permitted activities* include the *safeguarding and administration of investments*, or to an *exempt person* acting as such, with a view to that other *firm* or *exempt person*:

(1) providing a safe custody service in the *United Kingdom*; or

(2) arranging for the provision of a safe custody service in the *United Kingdom* by another *person*;

and the other *firm*, *exempt person* or other *person* who is to provide the safe custody service is not in the same *group* as I, and does not remunerate I.

6.1.2

FCA

G

*Firms* are reminded that dividends (actual or payments in lieu), *stock lending* fees and other payments received for the benefit of a *client*, and which are due to the *clients*, should be held in accordance with the *client money chapter* where appropriate.

6.1.3

G

[deleted]

#### Business in the name of the firm

6.1.4

FCA

R

The *custody rules* do not apply where a *firm* carries on business in its name but on behalf of the *client* where that is required by the very nature of the transaction and the *client* is in agreement.

[Note: recital 26 to *MiFID*]

6.1.5

FCA

G

For example, this chapter does not apply where a *firm* borrows *safe custody assets* from a client as principal under a *stock lending* agreement.

#### Title transfer collateral arrangements

6.1.6

FCA

R

- (1) The *custody rules* do not apply where a *client* transfers full ownership of a *safe custody asset* to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.

[Note: recital 27 to *MiFID*]

- (2) Excepted from (1) is a transfer of the full ownership of a *safe custody asset*:
  - (a) belonging to a *retail client*;
  - (b) whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and
  - (c) which is made to that *firm* or to any other *person arranging* on its behalf.

6.1.6A

FCA

R

- (1) Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's safe custody assets*.

- (2) The application of (1) is confined to the taking of a transfer of full ownership:
- (a) whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and
  - (b) which is made to that *firm* or to any other *person* arranging on its behalf.

6.1.7

FCA

G

A title transfer financial collateral arrangement under the *Financial Collateral Directive* is a type of transfer of instruments to cover obligations where the *financial instrument* will not be regarded as belonging to the *client*.

6.1.8

FCA

G

*Firms* are reminded of the *client's best interests rule*, which requires them to act honestly, fairly and professionally in accordance with the best interests of their *clients* when structuring their business particularly in respect of the effect of that structure on *firms'* obligations under this chapter.

6.1.9

FCA

G

*Firms* are reminded that, in certain cases, the *collateral rules* apply where a *firm* receives collateral from a *client* in order to secure the obligations of the *client*.

#### Prime brokerage agreements

6.1.9A

FCA

G

A *prime brokerage firm* is reminded of the additional obligations in ■ CASS 9.3.1 R which apply to *prime brokerage agreements*.

#### Affiliated companies - MiFID business

6.1.10

FCA

G

The fact that a *client* is an *affiliated company* in respect of *MiFID business* does not affect the operation of the *custody rules* in relation to that *client*.

#### Affiliated companies - non-MiFID business

6.1.10A

FCA

G

In respect of business which is not *MiFID business*, the *custody rules* do not apply to a *firm* when it safeguards and administers a *designated investment* on behalf of an *affiliated company*, unless:

- (1) the *firm* has been notified that the *designated investment* belongs to a *client* of the *affiliated company*; or
- (2) the *affiliated company* is a *client* dealt with at arm's length.

6.1.11

G

[deleted]

**Delivery versus payment transactions**

6.1.12

FCA

R

- (1) A *firm* need not treat this chapter as applying in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that the *safe custody asset* is either to be:
- (a) in respect of a *client's* purchase, due to the *client* within one *business day* following the *client's* fulfilment of a payment obligation; or
  - (b) in respect of a *client's* sale, due to the *firm* within one *business day* following the fulfilment of a payment obligation;
- unless the delivery or payment by the *firm* does not occur by the close of business on the third *business day* following the date of payment or delivery of the *safe custody asset* by the *client*.
- (2) Until such a delivery versus payment transaction through a commercial settlement system settles, a *firm* may segregate *money* (in accordance with the *client money chapter*) instead of the *client's safe custody assets*.

6.1.13

G

[deleted]

6.1.14

G

[deleted]

**Temporary handling of safe custody assets**

6.1.15

FCA

G

The *custody rules* do not apply if a *firm* temporarily handles a *safe custody asset* belonging to a *client*. A *firm* should temporarily handle a *safe custody asset* for no longer than is reasonably necessary. In most transactions this would be no longer than one *business day*, but it may be longer or shorter depending upon the transaction in question. For example, when a *firm* executes an order to sell shares which have not been registered on a de-materialised exchange, handling documents for longer periods may be reasonably necessary. However, in the case of *safe custody assets* in *bearer form*, the *firm* is expected to handle them for less than one *business day*. When a *firm* temporarily handles *safe custody assets*, it is still obliged to comply with *Principle 10* (Clients' assets).

6.1.16

FCA

G

When a *firm* temporarily handles a *safe custody asset*, in order to comply with its obligation to act in accordance with *Principle 10* (Clients' assets), the following are guides to good practice:

- (1) a *firm* should keep the *safe custody asset* secure, record it as belonging to that *client*, and forward it to the *client* or in accordance with the *client's* instructions as soon as practicable after receiving it; and
- (2) a *firm* should make and retain a record of the fact that the *firm* has handled that *safe custody asset* and of the details of the *client* concerned and of any action the *firm* has taken.

### Exemptions which do not apply to MiFID business

**6.1.16A** **R** The exemptions in ■ CASS 6.1.16B R to ■ CASS 6.1.16D G do not apply to a *MiFID investment firm* which holds *financial instruments* belonging to a client in the course of *MiFID business*.  
**FCA**

### Operators of regulated collective investment schemes

**6.1.16B** **R** The *custody rules* do not apply to a *firm* when it acts as the *operator* of a *regulated collective investment scheme*, in relation to activities carried on for the purpose of, or in connection with, the operation of the *scheme*.  
**FCA**

### Personal investment firms

**6.1.16C** **R** The *custody rules* do not apply to a *personal investment firm* when it temporarily holds a *designated investment*, other than in *bearer form*, belonging to a *client*, if the *firm*:  
**FCA**

- (1) keeps it secure, records it as belonging to that *client*, and forwards it to the *client* or in accordance with the *client's* instructions, as soon as practicable after receiving it;
- (2) retains the *designated investment* for no longer than the *firm* has taken reasonable steps to determine is necessary to check for errors and to receive the final *document* in connection with any series of transactions to which the *documents* relate; and
- (3) makes a record, which must then be retained for a period of 5 years after the record is made, of all the *designated investments* handled in accordance with (1) and (2) together with the details of the *clients* concerned and of any action the *firm* has taken.

**6.1.16D** **G** Administrative convenience alone should not lead a *personal investment firm* to rely on ■ CASS 6.1.16C R. *Personal investment firms* should consider what is in the *client's* interest and not rely on ■ CASS 6.1.16C R as a matter of course.  
**FCA**

### Trustees and depositaries

**6.1.16E** **R** The specialist regime in ■ CASS 6.1.16F R to ■ CASS 6.1.16I G does not apply to a *MiFID investment firm* which holds *financial instruments* belonging to a client in the course of *MiFID business*.  
**FCA**

**6.1.16F** **R** When a *trustee firm* or *depository* acts as a *custodian* for a trust or *collective investment scheme* and:  
**FCA**

- (1) the trust or *scheme* is established by written instrument; and
- (2) the *trustee firm* or *depository* has taken reasonable steps to determine that the relevant law and provisions of the trust instrument or *scheme* constitution will provide protections at



least equivalent to the *custody rules* for the trust property or *scheme* property;  
 the *trustee firm* or *depository* need comply only with the *custody rules* listed in the table below.

| Reference  | Rule                                       |
|--|--|
| CASS 6.1.1 R to CASS 6.1.9 G and CASS 6.1.15 G to CASS 6.1.16C R | Application                                |
| CASS 6.1.16E R to CASS 6.1.16I G                                 | Trustees and depositories                  |
| CASS 6.1.22 G to CASS 6.1.24 G                                   | General purpose                            |
| CASS 6.2.1 R and CASS 6.2.2 R                                    | Protection of clients' safe custody assets |
| CASS 6.2.3 R and CASS 6.2.6 G                                    | Registration and recording                 |
| CASS 6.2.7 R   | Holding                                    |
| CASS 6.4.1 R and CASS 6.4.2 G                                    | Use of safe custody assets                 |
| CASS 6.5.  | Records, accounts and reconciliations      |

**6.1.16G** G The reasonable steps referred in ■ CASS 6.1.16FR (2) could include obtaining an appropriate legal opinion to that effect.  
FCA

**6.1.16H** R When a *trustee firm* or *depository* within ■ CASS 6.1.16F R arranges for, or delegates the provision of safe custody services by or to another *person*, the *trustee firm* or *depository* must also comply with ■ CASS 6.3.1 R (Depositing assets and arranging for assets to be deposited with third parties) in addition to the custody rules listed in the table in ■ CASS 6.1.16F R.  
FCA

**6.1.16I** G A *trustee firm* or *depository* that just *arranges safeguarding and administration of assets* may also take advantage of the exemption in ■ CASS 6.1.16J R (Arrangers).  
FCA

**Arrangers**

**6.1.16J** R Only the *custody rules* in the table below apply to a *firm* when *arranging safeguarding and administration of assets*.  
FCA

| Reference  | Rule  |
|--|---|
| CASS 6.1.1 R to CASS 6.1.9 G and CASS 6.1.15 G to CASS 6.1.16B R | Application   |
| CASS 6.1.16J R   | Arrangers   |
| CASS 6.1.22 G to CASS 6.1.24 G                                   | General purpose   |
| CASS 6.3.1 R (1A) and CASS 6.3.2 G                               | Arranging for assets to be deposited with third parties |
| CASS 6.1.16K R   | Records   |

**6.1.16K** **R** When a *firm* arranges *safeguarding and administration of assets*, it must ensure that proper records of the *custody assets* which it arranges for another to hold or receive, on behalf of the *client*, are made and retained for a period of 5 years after they are made.

**FCA**

**6.1.17** **R** (1) [deleted]

(1A) [deleted]

(2) [deleted]

(3) [deleted]

**6.1.18** **G** [deleted]

**6.1.19** **G** [deleted]

**6.1.20** **G** [deleted]

**6.1.20A** **G** [deleted]

**6.1.21** **R** [deleted]

### General purpose

**6.1.22** **G** *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients'* assets when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *safe custody assets* for which it is responsible.

**FCA**

**6.1.23** **G** The *rules* in this chapter are designed primarily to restrict the commingling of *client* and the *firm's* assets and minimise the risk of the *client's safe custody assets* being used by the *firm* without the *client's* agreement or contrary to the *client's* wishes, or being treated as the *firm's* assets in the event of its insolvency.

**FCA**

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

**FCA**

## 6.2 Holding of client assets

6.2.1

FCA

R

### Requirement to protect clients' safe custody assets

A *firm* must, when holding *safe custody assets* belonging to *clients*, make adequate arrangements so as to safeguard *clients*' ownership rights, especially in the event of the *firm*'s insolvency, and to prevent the use of *safe custody assets* belonging to a *client* on the *firm*'s own account except with the *client*'s express consent.

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

6.2.2

FCA

R

### Requirement to have adequate organisational arrangements

A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *clients*' *safe custody assets*, or the rights in connection with those *safe custody assets*, as a result of the misuse of the *safe custody assets*, fraud, poor administration, inadequate record-keeping or negligence.

[Note: article 16(1)(f) of the *MiFID implementing Directive*]

6.2.3

FCA

R

### Registration and recording of legal title

To the extent practicable, a *firm* must effect appropriate registration or recording of legal title to a *safe custody asset* in the name of:

- (1) the *client* (or, where appropriate, the *trustee firm*), unless the *client* is an *authorised person* acting on behalf of its *client*, in which case it may be registered in the name of the *client* of that *authorised person*;
- (2) a *nominee company* which is controlled by:
  - (a) the *firm*;
  - (b) an *affiliated company*;
  - (c) a *recognised investment exchange* or a *designated investment exchange*; or

- (d) a third party with whom *financial instruments* are deposited under ■ CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties);
- (3) any other third party if:
- (a) the *safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and
- (b) the *firm* has notified the *client* in writing;
- (4) the *firm* if:
- (a) the *safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and
- (b) the *firm* has notified the *client* if a *professional client*, or obtained prior written consent if a *retail client*.

6.2.3A

FCA

R If:

- (1) the *safe custody asset* is an *emission auction product* that is a *financial instrument*; and
- (2) it is not practicable or possible for a *firm* to effect registration or recording of legal title in this asset in the manner set out in ■ CASS 6.2.3 R ,

the *firm* must register or record legal title in its name provided it has notified the *client* in writing.

6.2.4

FCA

R

A *firm* must accept the same level of responsibility to its *client* for any *nominee company* controlled by the *firm* with respect of any requirements of the *custody rules*.

6.2.5

FCA

R

A *firm* may register or record legal title to its own *applicable assets* in the same name as that in which legal title to a *safe custody asset* is registered or recorded, but only if:

- (1) the *firm's applicable assets* are separately identified in the *firm's* records from the *safe custody assets*; or

(2) the *firm* registers or records a *safe custody asset* in accordance with ■ CASS 6.2.3 R (4).

6.2.6

FCA

G

A *firm* when complying with ■ CASS 6.2.3 R (3) or ■ CASS 6.2.3 R (4) will be expected to demonstrate that adequate investigations have been made of the market concerned by reference to local sources, which may include an appropriate legal opinion.

6.2.7

FCA

R

A *firm* must ensure that any documents of title to *applicable assets* in *bearer form*, belonging to the *firm* and which it holds in its physical possession, are kept separately from any document of title to a *client's safe custody assets* in *bearer form*.

6.3.1

FCA

R

## 6.3 Depositing assets and arranging for assets to be deposited with third parties

- (1) A *firm* may deposit *safe custody assets* held by it on behalf of its *clients* into an account or accounts opened with a third party, but only if it exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those *safe custody assets*.
- (1A) A *firm* which arranges the registration of a *safe custody investment* through a third party must exercise all due skill, care and diligence in the selection and appointment of the third party.
- (2) A *firm* must take the necessary steps to ensure that any *client's safe custody assets* deposited with a third party, in accordance with this *rule* are identifiable separately from the *applicable assets* belonging to the *firm* and from the *applicable assets* belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.
- (3) When a *firm* makes the selection, appointment and conducts the periodic review referred to under this *rule*, it must take into account:
  - (a) the expertise and market reputation of the third party; and
  - (b) any legal requirements or market practices related to the holding of those *safe custody assets* that could adversely affect *clients'* rights.
- (4) A *firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of a third party as required in this *rule*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the third party to hold *safe custody assets* belonging to *clients*.

[Note: articles 16(1)(d) and 17(1) of the *MiFID implementing Directive*]

## 6.3.2

FCA

G

In discharging its obligations under this section, a *firm* should also consider, together with any other relevant matters:

- (1) once a *safe custody asset* has been lodged by the *firm* with the third party, the third party's performance of its services to the *firm*;
- (2) the arrangements that the third party has in place for holding and safeguarding the *safe custody asset*;
- (3) current industry standard reports, for example Financial Reporting and Auditing Group (FRAG) 21 report or its equivalent;
- (4) the capital or financial resources of the third party;
- (5) the credit rating of the third party; and
- (6) any other activities undertaken by the third party and, if relevant, any *affiliated company*.

## 6.3.3

FCA

G

A *firm* should consider carefully the terms of its agreements with third parties with which it will deposit *safe custody assets* belonging to a *client*. The following terms are examples of the issues *firms* should address in this agreement:

- (1) that the title of the account indicates that any *safe custody asset* credited to it does not belong to the *firm*;
- (2) that the third party will hold or record a *safe custody asset* belonging to the *firm's client* separately from any *applicable asset* belonging to the *firm* or to the third party;
- (3) the arrangements for registration or recording of the *safe custody asset* if this will not be registered in the *client's* name;
- (4) [deleted]
- (5) the restrictions over the circumstances in which the third party may withdraw assets from the account;
- (6) the procedures and authorities for the passing of instructions to or by the *firm*;
- (7) the procedures regarding the claiming and receiving of dividends, interest payments and other entitlements accruing to the *client*; and
- (8) the provisions detailing the extent of the third party's liability in the event of the loss of a *safe custody asset* caused by the fraud, wilful default or negligence of the third party or an agent appointed by him.

## 6.3.4

FCA

R

- (1) **A *firm* must only deposit *safe custody assets* with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of *safe custody assets* for the account of another person with a third party who is subject to such regulation.**

- (2) A *firm* must not deposit *safe custody assets* held on behalf of a *client* with a third party in a country that is not an *EEA State* (third country) and which does not regulate the holding and safekeeping of *safe custody assets* for the account of another person unless:
- (a) the nature of the *safe custody assets* or of the *investment services* connected with those *safe custody assets* requires them to be deposited with a third party in that third country; or
  - (b) the *safe custody assets* are held on behalf of a *professional client* and the *client* requests the *firm* in writing to deposit them with a third party in that third country.
- (3) [deleted]
- (a) [deleted]
  - (b) [deleted]
    - (i) [deleted]
    - (ii) [deleted]
    - (iii) [deleted]

[Note: article 17(2) and (3) of the *MiFID implementing Directive*]

6.3.5

FCA

R

Subject to ■ CASS 6.3.6 R, in relation to a third party with which a *firm* deposits *safe custody assets* belonging to a *client*, a *firm* must ensure that any agreement with that third party relating to the custody of those assets does not include the grant to that party, or to any other *person*, of a lien or a right of retention or sale over the *safe custody assets*, or a right of set-off over any *client money* derived from those *safe custody assets*.

6.3.6

FCA

R

A *firm* may conclude an agreement with a third party relating to the custody of *safe custody assets* which confers on that party, or on another *person* instructed by that party to provide custody services for those assets, a lien, right of retention or sale, or right of set-off in favour of that party or that other *person* only if that lien or right:

- (1) is confined to those *safe custody assets* held in an account with that third party or that other person and extends only to properly incurred charges and liabilities arising from the provision of custody services in respect of *safe custody assets* held in that account; or
- (2) arises under the operating terms of a securities depository, securities settlement system or central counterparty in whose



account *safe custody assets* are recorded or held, and provided that it does so for the purpose only of facilitating the settlement of trades involving the assets held in that account; or

- (3) arises in relation to those *safe custody assets* held in a jurisdiction outside the *United Kingdom*, provided that:
- (a) it does so as a result of local applicable law in that jurisdiction or is necessary for that *firm* to gain access to the local market in that jurisdiction; and
  - (b) in respect of each *client* to which those assets belong, either:
    - (i) the *firm* has taken reasonable steps to determine that holding those assets subject to that lien or right is in the best interests of that *client*; or
    - (ii) where a *client* is a *professional client*, the *firm* is instructed by that *client* to hold those assets in that jurisdiction notwithstanding the existence of that lien or right.

6.3.7

FCA

G

A *firm* will be considered to be acting on the instructions of its *professional client* under ■ CASS 6.3.6R (3)(b)(ii) where:

- (1) the *firm* has received an individual instruction or has a standing instruction in its terms of business which results in it holding *safe custody assets* in the relevant jurisdiction; and
- (2) prior to acting on the instruction, the *firm* has expressly informed the *client* that holding that *client's safe custody assets* in the relevant jurisdiction will involve the granting of a lien or right over those assets. The *firm* may do this by discussing the lien or right individually with the *client* or by including reference to it in terms of business (which may themselves cross refer to a separate list of relevant jurisdictions to which ■ CASS 6.3.6R (3)(a) applies maintained on the *firm's* website in a form accessible to *clients*) or by a similar method.

6.3.8

FCA

R

For the purpose of ■ CASS 6.3.6 R, references to a *safe custody asset* include any *client money* derived from that *safe custody asset*. *Client money* derived from a *safe custody asset* may be regarded as held in the same account as that *safe custody asset* even though that money and those assets may be recorded separately.

6.3.9

FCA

R

■ CASS 6.3.6 R does not permit a *firm* to agree to a right of set-off of the kind prohibited by either ■ CASS 7.8.1 R or ■ CASS 7.8.2 R in relation to *client money*.

## 6.4 Use of safe custody assets

6.4.1

FCA

R

- (1) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* or otherwise use such *safe custody assets* for its own account or the account of another *client* of the *firm*, unless:
  - (a) the *client* has given express prior consent to the use of the *safe custody assets* on specified terms; and
  - (b) the use of that *client's safe custody assets* is restricted to the specified terms to which the *client* consents.
- (2) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* in an omnibus account held by a third party, or otherwise use *safe custody assets* held in such an account for its own account or for the account of another *client* unless, in addition to the conditions set out in (1):
  - (a) each *client* whose *safe custody assets* are held together in an omnibus account has given express prior consent in accordance with (1)(a); or
  - (b) the *firm* has in place systems and controls which ensure that only *safe custody assets* belonging to *clients* who have given express prior consent in accordance with the requirements of (1)(a) are used.
- (3) For the purposes of obtaining the express prior consent of a *retail client* under this *rule* the signature of the *retail client* or an equivalent alternative mechanism is required.
- (4) [deleted]

[Note: article 19 of the *MiFID implementing Directive*]

6.4.2

FCA

G

*Firms* are reminded of the *client's best interests rule*, which requires the *firm* to act honestly, fairly and professionally in accordance with the best interests of their *clients*. An example of what is generally considered to be such conduct, in the context of *stock lending activities* involving *retail clients* is that:

- (1) the *firm* ensures that *relevant collateral* is provided by the borrower in favour of the *client*;
- (2) the current realisable value of the *safe custody asset* and of the *relevant collateral* is monitored daily; and
- (3) the *firm* provides *relevant collateral* to make up the difference where the current realisable value of the collateral falls below that of the *safe custody asset* , unless otherwise agreed in writing by the *client*.

## 6.4.3

FCA

R

Where a *firm* uses *safe custody assets* as permitted in this section, the records of the *firm* must include details of the *client* on whose instructions the use of the *safe custody assets* has been effected, as well as the number of *safe custody assets* used belonging to each *client* who has given consent, so as to enable the correct allocation of any loss.

[Note: article 19(2) of the *MiFID implementing Directive*]

6

## 6.5 Records, accounts and reconciliations

### Records and accounts

6.5.1  
FCA

**R** A *firm* must keep such records and accounts as necessary to enable it at any time and without delay to distinguish *safe custody assets* held for one *client* from *safe custody assets* held for any other *client*, and from the *firm's* own *applicable assets*.

[Note: article 16(1)(a) of the *MiFID implementing Directive*]

6.5.2  
FCA

**R** A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *safe custody assets* held for *clients*.

[Note: article 16(1)(b) of the *MiFID implementing Directive*]

6.5.2A  
FCA

**R** A *firm* must keep a copy of every executed *client* agreement that includes that *firm's* right to use *safe custody assets* for its own account, including in the case of a *prime brokerage agreement* the disclosure annex referred to in ■ CASS 9.3.1 R.

### Record keeping

6.5.3  
FCA

**R** A *firm* must ensure that the records made under this section are retained for a period of five years after they are made.

### Internal reconciliation of safe custody assets held for clients

6.5.4  
FCA

- G**
- (1) Carrying out internal reconciliations of the *safe custody assets* held for each *client* with the *safe custody assets* held by the *firm* and third parties is an important step in the discharge of the *firm's* obligations under ■ CASS 6.5.2 R (Records and accounts) and, where relevant, ■ SYSC 4.1.1 R (General requirements) and ■ SYSC 6.1.1 R (Compliance).
  - (2) A *firm* should perform such internal reconciliations:
    - (a) as often as is necessary; and
    - (b) as soon as reasonably practicable after the date to which the reconciliation relates;
 to ensure the accuracy of the *firm's* records and accounts.

- (3) Reconciliation methods which can be adopted for these purposes include the 'total count method', which requires that all *safe custody assets* be counted and reconciled as at the same date.
- (4) If a *firm* chooses to use an alternative reconciliation method (for example the 'rolling stock method') it needs to ensure that:
  - (a) all of a particular *safe custody asset* are counted and reconciled as at the same date; and
  - (b) all *safe custody assets* are counted and reconciled during a period of six months.

6.5.5

FCA

R

A *firm* that uses an alternative reconciliation method must first send a written confirmation to the *FCA* from the *firm's* auditor that the *firm* has in place systems and controls which are adequate to enable it to use the method effectively.

#### Reconciliations with external records

6.5.6

FCA

R

A *firm* must conduct on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those *safe custody assets* are held.

[Note: article 16(1)(c) of the *MiFID implementing Directive*]

6.5.7

FCA

G

Where a *firm* deposits *safe custody assets* belonging to a *client* with a third party, in complying with the requirements of ■ CASS 6.5.6 R, the *firm* should seek to ensure that the third party will deliver to the *firm* a statement as at a date or dates specified by the *firm* which details the description and amounts of all the *safe custody assets* credited to the account, and that this statement is delivered in adequate time to allow the *firm* to carry out the periodic reconciliations required in ■ CASS 6.5.6 R.

#### Frequency of external reconciliations

6.5.8

FCA

G

A *firm* should perform the reconciliation required by ■ CASS 6.5.6 R:

- (1) as regularly as is necessary; and
- (2) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of third parties by whom *safe custody assets* are held.

#### Independence of person conducting reconciliations

PAGE  
19

6.5.9

FCA

G

Whenever possible, a *firm* should ensure that reconciliations are carried out by a *person* (for example an *employee* of the *firm*) who is independent of the production or maintenance of the records to be reconciled.

**Reconciliation discrepancies**

6.5.10

FCA

R

A *firm* must promptly correct any discrepancies which are revealed in the reconciliations envisaged by this section, and make good, or provide the equivalent of, any unreconciled *shortfall* for which there are reasonable grounds for concluding that the *firm* is responsible.

6.5.11

FCA

G

Items recorded or held within a suspense or error account fall within the scope of discrepancies.

6.5.12

FCA

G

A *firm* may, where justified, conclude that another *person* is responsible for an irreconcilable *shortfall* despite the existence of a dispute with that other *person* about the unreconciled item. In those circumstances, the *firm* is not required to make good the *shortfall* but is expected to take reasonable steps to resolve the position with the other *person*.

**Notification requirements**

6.5.13

FCA

R

A *firm* must inform the *FCA* in writing without delay:

- (1) if it has not complied with, or is unable, in any material respect, to comply with the requirements in ■ CASS 6.5.1 R, ■ CASS 6.5.2 R or ■ CASS 6.5.6 R ; or
- (2) if, having carried out a reconciliation, it has not complied with, or is unable, in any material respect, to comply with ■ CASS 6.5.10 R.

**Audit of compliance with the MiFID custody rules**

6.5.14

FCA

G

*Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FCA* under ■ SUP 3.10 (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *custody rules*.

6.5.15

FCA

G

*Firms* that use an alternative reconciliation method are reminded that the *firm's* auditor must confirm to the *FCA* in writing that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively (see ■ CASS 6.5.5 R).

# Chapter 7

## Client money rules

## 7.1 Application and Purpose

### Application

7.1.1  
FCA

R

This chapter (the *client money rules*) applies to a *firm* that receives *money* from or holds *money* for, or on behalf of, a *client* in the course of, or in connection with:

- (1) [deleted]
  - (a) [deleted]
  - (b) [deleted]
- (2) [deleted]
- (3) its *MiFID business*; and/or
- (4) its *designated investment business*, that is not *MiFID business* in respect of any *investment agreement* entered into, or to be entered into, with or for a *client*;

unless otherwise specified in this section.

7.1.2

G

[deleted]

### Opt-in to the client money rules

7.1.3  
FCA

R

- (1) A *firm* that receives or holds *money* to which this chapter applies in relation to:
  - (a) its *MiFID business*; or
  - (b) its *MiFID business* and its *designated investment business* which is not *MiFID business*;

and holds *money* in respect of which ■ CASS 5 applies, may elect to comply with the provisions of this chapter in respect of all such *money* and if it does so, this chapter applies as if all such *money* were *money* that the *firm* receives and holds in the course of, or in connection with, its *MiFID business*.



(1A) [deleted]

(1B) A *firm* that receives or holds *money* to which this chapter applies solely in relation to its *designated investment business* which is not *MiFID business* and receives or holds *money* in respect of which the *insurance client money chapter* applies, may elect to comply with the provisions of this chapter in respect of all such *money* and if it does so, this chapter applies as if all such *money* were *money* that the *firm* receives and holds in the course of or in connection with its *designated investment business*.

(2) A *firm* must make and retain a written record of any election it makes under this *rule*, including the date from which the election is to be effective. The *firm* must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.

7.1.4  
FCA

G The opt-in to the *client money rules* in this chapter does not apply in respect of *money* that a *firm* holds outside of the scope of the *insurance client money chapter*.

7.1.5  
FCA

G If a *firm* has opted to comply with this chapter, the *insurance client money chapter* will have no application to the activities to which the election applies.

7.1.6  
FCA

G A *firm* that is only subject to the *insurance client money chapter* may not opt to comply with this chapter.

7.1.7

G [deleted]

7.1.7A

G [deleted]

**Money that is not client money: 'opt outs' for any business other than insurance mediation activity**

7.1.7B  
FCA

R ■ CASS 7.1.7C G to ■ CASS 7.1.7I G do not apply to a *firm* in relation to *money* held in connection with its *MiFID business* to which this chapter applies or in relation to *money* for which the *firm* has made an election under ■ CASS 7.1.3 R (1).

**Professional client opt-out**

7.1.7C  
FCA

G The 'opt out' provisions provide a *firm* with the option of allowing a *professional client* to choose whether their *money* is subject to the *client money rules* (unless the *firm* is conducting *insurance mediation activity*).

PAGE  
3

7.1.7D  
FCA

R Subject to ■ CASS 7.1.7F R, *money* is not *client money* when a *firm* (other than a *sole trader*) holds that *money* on behalf of, or receives it from, a *professional client*, other than in the course of *insurance mediation activity*,

and the *firm* has obtained written acknowledgement from the *professional client* that:

- (1) *money* will not be subject to the protections conferred by the *client money rules*;
- (2) as a consequence, this *money* will not be segregated from the *money* of the *firm* in accordance with the *client money rules* and will be used by the *firm* in the course of its own business; and
- (3) the *professional client* will rank only as a general creditor of the *firm*.

#### 'Opt-outs' for non-IMD business

7.1.7E  
FCA

G

For a *firm* whose business is not governed by the *Insurance Mediation Directive*, it is possible to 'opt out' on a one-way basis. However, in order to maintain a comparable regime to that applying to *MiFID business*, all '*MiFID* type' business undertaken outside the scope of *MiFID*, should comply with the *client money rules* or be 'opted out' on a two-way basis.

7.1.7F  
FCA

R

*Money* is not *client money* if a *firm*, in respect of *designated investment business* which is not an *investment service or activity*, an *ancillary service*, a *listed activity* or *insurance mediation activity*:

- (1) holds it on behalf of or receives it from a *professional client* who is not an *authorised person*; and
- (2) has sent a separate written notice to the *professional client* stating the matters set out in ■ CASS 7.1.7DR (1) to ■ CASS 7.1.7DR (3).

7.1.7G  
FCA

G

When a *firm* undertakes a range of business for a *professional client* and has separate agreements for each type of business undertaken, the *firm* may treat *client money* held on behalf of the *client* differently for different types of business; for example, a *firm* may, under ■ CASS 7.1.7D R or ■ CASS 7.1.7F R, elect to segregate *client money* in connection with *securities* transactions and not segregate (by complying with ■ CASS 7.1.7D R or ■ CASS 7.1.7F R) *money* in connection with *contingent liability investments* for the same *client*.

7.1.7H  
FCA

R

When a *firm* transfers *client money* to another *person*, the *firm* must not enter into an agreement under ■ CASS 7.1.7D R or ■ CASS 7.1.7F R with that other *person* in relation to that *client money* or represent to that other *person* that the *money* is not *client money*.

7.1.7I  
FCA

G

■ CASS 7.1.7H R prevents a *firm*, when passing *client money* to another *person* under ■ CASS 7.5.2 R (transfer of *client money* to a third party), from making use of the 'opt out' provisions under ■ CASS 7.1.7D R or ■ CASS 7.1.7F R.

**Credit institutions and approved banks**

7.1.8

FCA

R

The *client money rules* do not apply to a *BCD credit institution* in relation to deposits within the meaning of the *BCD* held by that *institution*.

[Note: article 13(8) of *MiFID* and article 18(1) of the *MiFID implementing Directive*]

7.1.9

FCA

G

If a *credit institution* that holds *money* as a deposit with itself is subject to the requirement to disclose information before providing services, it should, in compliance with that obligation, notify the *client* that:

- (1) *money* held for that *client* in an account with the *credit institution* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
- (2) as a result, the *money* will not be held in accordance with the *client money rules*.

7.1.10

FCA

G

Pursuant to *Principle 10* (Clients' assets), a *credit institution* that holds *money* as a deposit with itself should be able to account to all of its *clients* for amounts held on their behalf at all times. A bank account opened with the *firm* that is in the name of the *client* would generally be sufficient. When *money* from *clients* deposited with the *firm* is held in a pooled account, this account should be clearly identified as an account for *clients*. The *firm* should also be able to demonstrate that an amount owed to a specific *client* that is held within the pool can be reconciled with a record showing that individual's *client* balance and is, therefore, identifiable at any time. Similarly, where that *money* is reflected only in a *firm's* bank account with other banks (nostro accounts), the *firm* should be able to reconcile amounts owed to that *client* within a reasonable period of time.

7.1.11

FCA

G

A *credit institution* is reminded that the exemption for deposits is not an absolute exemption from the *client money rules*.

7.1.11A

FCA

R

- (1) This *rule* applies to a *firm* which is an *approved bank* but not a *BCD credit institution*.
- (2) The *client money rules* do not apply to money held by the *approved bank* if it is undertaking business which is not *MiFID business* but only when the money is held in an account with itself, in which case the *firm* must notify the *client* in writing that:
  - (a) *money* held for that *client* in an account with the *approved bank* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
  - (b) as a result, the *money* will not be held in accordance with the *client money rules*.

**Affiliated companies - MiFID business**

7.1.12

FCA

G

A *firm* that holds *money* on behalf of, or receives *money* from, an *affiliated company* in respect of *MiFID business* must treat the *affiliated company* as any other *client* of the *firm* for the purposes of this chapter.

**Affiliated companies - non-MiFID business**

7.1.12A

FCA

R

A *firm* that holds *money* on behalf of, or receives *money* from, an *affiliated company* in respect of *designated investment business* which is not *MiFID business* must not treat the *money* as *client money* unless:

- (1) the *firm* has been notified by the *affiliated company* that the *money* belongs to a *client* of the *affiliated company*; or
- (2) the *affiliated company* is a *client* dealt with at arm's length; or
- (3) the *affiliated company* is a manager of an *occupational pension scheme* or is an overseas company; and
  - (a) the *money* is given to the *firm* in order to carry on *designated investment business* for or on behalf of the *clients* of the *affiliated company*; and
  - (b) the *firm* has been notified by the *affiliated company* that the *money* is to be treated as *client money*.

7.1.13

G

[deleted]

**Coins**

7.1.14

FCA

R

The *client money rules* do not apply with respect to coins held on behalf of a *client* if the *firm* and the *client* have agreed that the *money* (or *money* of that type) is to be held by the *firm* for the intrinsic value of the metal which constitutes the coin.

**Solicitors**

7.1.15

FCA

R

- (1) An *authorised professional firm* regulated by the Law Society (of England and Wales), the Law Society of Scotland or the Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the following rules of its *designated professional body*, must comply with those rules and, where relevant paragraph (3), and if it does so, it will be deemed to comply with the *client money rules*.
- (2) The relevant rules are:
  - (a) if the *firm* is regulated by the Law Society (of England and Wales):
    - (i) the Solicitors' Accounts Rules 1998; or
    - (ii) where applicable, the Solicitors Overseas Practice Rules 1990;
  - (b) if the *firm* is regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001; and

(c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

(3) If the *firm* in (1) is a *MiFID investment firm* that receives or holds *money* for, or on behalf of a client in the course of, or in connection with its *MiFID business*, it must also comply with the *MiFID client money (minimum implementing) rules* in relation to that business.

#### Long term insurers and friendly societies

7.1.15A

FCA

R

This chapter does not apply to the *permitted activities* of a *long-term insurer* or a *friendly society*, unless it is a *MiFID investment firm* that receives *money* from or holds *money* for or on behalf of a *client* in the course of, or in connection with, its *MiFID business*.

#### Contracts of insurance

7.1.15B

FCA

R

This chapter does not apply to *client money* held by a *firm* which:

- (1) receives or holds *client money* in relation to *contracts of insurance*; but which
- (2) in relation to such *client money* elects to act in accordance with the *insurance client money chapter*.

7.1.15C

FCA

R

A *firm* should make and retain a written record of any election which it makes under ■ CASS 7.1.15B R.

#### Life assurance business

7.1.15D

FCA

G

- (1) A *firm* which receives and holds *client money* in respect of life assurance business in the course of its *designated investment business* that is not *MiFID business* may:
  - (a) under ■ CASS 7.1.3 R (1B) elect to comply with the *client money chapter* in respect of such *client money* and in doing so avoid the need to comply with the *insurance client money chapter* which would otherwise apply to the *firm* in respect of *client money* received in the course of its *insurance mediation activity*; or
  - (b) under ■ CASS 7.1.15B R, elect to comply with the *insurance client money chapter* in respect of such *client money*.
- (2) These options are available to a *firm* irrespective of whether it also receives and holds *client money* in respect of other parts of its *designated investment business*. A *firm* may not however choose to comply with the *insurance client money chapter* in respect of *client money* which it receives and holds in the course of any part of its *designated investment business* which does not involve an *insurance mediation activity*.

**Trustee firms (other than trustees of unit trust schemes)**

7.1.15E  
FCA

**R**

A trustee firm which holds money in relation to its *designated investment business* which is not *MiFID business* to which this chapter applies, must hold any such *client money* separate from its own *money* at all times.

7.1.15F  
FCA

**R**

Only the *client money rules* listed in the table below apply to a *trustee firm* in connection with *money* that the firm receives, or holds for or on behalf of a client in the course of or in connection with its *designated investment business* which is not *MiFID business*.

| Reference   | Rule  |
|---|---|
| CASS 7.1.1 R to CASS 7.1.6 G, and CASS 7.1.8 R to CASS 7.1.14 R | Application   |
| CASS 7.1.15E R and CASS 7.1.15F R                               | Trustee firms (other than trustees of unit trust schemes)           |
| CASS 7.1.16 G   | General principle   |
| CASS 7.7.2 R to CASS 7.7.4 G                                    | Requirement   |
| CASS 7.4.1 R to CASS 7.4.6 G                                    | Depositing client money   |
| CASS 7.4.7 R to CASS 7.4.13 G                                   | A firm's selection of credit institution, bank or money market fund |
| CASS 7.6.6 G to CASS 7.6.16 R                                   | Reconciliation of client money balances                             |

**General purpose**

7.1.16  
FCA

**G**

- (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients'* assets when the *firm* is responsible for them. An essential part of that protection is the proper accounting and treatment of *client money*. The *client money rules* provide requirements for *firms* that receive or hold *client money*, in whatever form.
- (2) The *client money rules* also, where relevant, implement the provisions of *MiFID* which regulate the obligations of a *firm* when it holds *client money* in the course of its *MiFID business*.

## 7.2 Definition of client money

7.2.1 **R** [deleted]

7.2.2 **R** [deleted]

### Title transfer collateral arrangements

7.2.3 **R** (1) Where a *client* transfers full ownership of *money* to a *firm* for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such *money* should no longer be regarded as *client money*.

FCA

[Note: recital 27 to MiFID]

(2) Excepted from (1) is a transfer of the full ownership of *money*:

- (a) belonging to a *retail client*;
- (b) whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and
- (c) which is made to that *firm* or to any other *person arranging* on its behalf.

7.2.3A **R** (1) Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's money*.

FCA

(2) The application of (1) is confined to the taking of a transfer of full ownership:

- (a) whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that



contract is entered into with a *firm* acting as *market maker*; and

(b) which is made to that *firm* or to any other *person* arranging on its behalf.

7.2.4

FCA

G

A title transfer financial collateral arrangement under the *Financial Collateral Directive* is an example of a type of transfer of *money* to cover obligations where that *money* will not be regarded as *client money*.

7.2.5

FCA

G

Where a *firm* has received full title or full ownership to *money* under a collateral arrangement, the fact that it has also granted a security interest to its *client* to secure its obligation to repay that *money* to the *client* would not result in the *money* being *client money*. This can be compared to a situation in which a *firm* takes a charge or other security interest over *money* held in a *client bank account*, where that *money* would still be *client money* as there would be no absolute transfer of title to the *firm*. However, where a *firm* has received *client money* under a security interest and the security interest includes a "right to use arrangement", under which the *client* agrees to transfer all of its rights to *money* in that account to the *firm* upon the exercise of the right to use, the *money* may cease to be *client money*, but only once the right to use is exercised and the *money* is transferred out of the *client bank account* to the *firm*.

7.2.6

FCA

G

*Firms* are reminded of the *client's best interest rule*, which requires a *firm* to act honestly, fairly and professionally in accordance with the best interests of its *clients* when structuring its business particularly in respect of the effect of that structure on *firms'* obligations under the *client money rules*.

7.2.7

FCA

G

Pursuant to the *client's best interests rule*, a *firm* should ensure that where a *retail client* transfers full ownership of *money* to a *firm*:

- (1) the *client* is notified that full ownership of the *money* has been transferred to the *firm* and, as such, the *client* no longer has a proprietary claim over this *money* and the *firm* can deal with it on its own right;
- (2) the transfer is for the purposes of securing or covering the *client's* obligations;
- (3) an equivalent transfer is made back to the *client* if the provision of collateral by the *client* is no longer necessary; and
- (4) there is a reasonable link between the timing and the amount of the collateral transfer and the obligation that the *client* owes, or is likely to owe, to the *firm*.



**Money in connection with a "delivery versus payment" transaction**

7.2.8

FCA

R

*Money* need not be treated as *client money* in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that either:

- (1) in respect of a *client's* purchase, *money* from a *client* will be due to the *firm* within one *business day* upon the fulfilment of a delivery obligation; or
- (2) in respect of a *client's* sale, *money* is due to the *client* within one *business day* following the *client's* fulfilment of a delivery obligation;

unless the delivery or payment by the *firm* does not occur by the close of business on the third *business day* following the date of payment or delivery of the *investments* by the *client*.

7.2.8A

FCA

G

The exclusion from the *client money rules* for delivery versus payment transactions under ■ CASS 7.2.8 R is an example of an exclusion from the *client money rules* which is permissible by virtue of recital 26 of *MiFID*.

7.2.8B

FCA

R

*Money* need not be treated as *client money* in respect of a delivery versus payment transaction, for the purpose of settling a transaction in relation to *units* in a *regulated collective investment scheme*, if:

- (1) the *authorised fund manager* receives it from a *client* in relation to the *authorised fund manager's* obligation to issue *units*, in an *AUT* or to arrange for the issue of *units* in an *ICVC*, in accordance with *COLL*, unless the *price* of those *units* has not been determined by the close of business on the next *business day*:
  - (a) following the date of the receipt of the *money* from the *client*; or
  - (b) if the *money* was received by an *appointed representative* of the *authorised fund manager*, in accordance with ■ CASS 7.4.24 G, following the date of receipt at the specified business address of the *authorised fund manager*; or
- (2) the *money* is held in the course of redeeming *units* where the proceeds of that redemption are paid to a *client* within the time specified in *COLL*; when an *authorised fund manager* draws a cheque or other payable order within these time frames the provisions of ■ CASS 7.2.17 R and ■ CASS 7.2.9 R (2) will not apply.

**Money due and payable to the firm**

7.2.9

FCA

R

- (1) *Money* is not *client money* when it becomes properly due and payable to the *firm* for its own account.

- (2) For these purposes, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum from a client bank account for reimbursement will become due and payable to the *firm*.

7.2.10

FCA

G

Money held as *client money* becomes due and payable to the *firm* or for the *firm's* own account, for example, because the *firm* acted as *principal* in the contract or the *firm*, acting as agent, has itself paid for *securities* in advance of receiving the purchase money from its *client*. The circumstances in which it is due and payable will depend on the contractual arrangement between the *firm* and the *client*.

7.2.10A

FCA

G

*Firms* are reminded that, notwithstanding that *money* may be due and payable to them, they have a continuing obligation to segregate *client money* in accordance with the *client money rules*. In particular, in accordance with ■ CASS 7.6.2 R, *firms* must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out internal reconciliations of *client money* balances, either in accordance with the *standard method of internal client money reconciliation* or a different method which meets the requirements of ■ CASS 7.6.7 R and ■ CASS 7.6.8 R.

7.2.11

FCA

G

When a *client's* obligation or liability, that is secured by that *client's* asset, crystallises, and the *firm* realises the asset in accordance with an agreement entered into between the *client* and the *firm*, the part of the proceeds of the asset to cover such liability that is due and payable to the *firm* is not *client money*. However, any proceeds of sale in excess of the amount owed by the *client* to the *firm* should be paid over to the *client* immediately or be held in accordance with the *client money rules*.

### Commission rebate

7.2.12

FCA

G

When a *firm* has entered into an arrangement under which *commission* is rebated to a *client*, those rebates need not be treated as *client money* until they become due and payable to the *client* in accordance with the terms of the contractual arrangements between the parties.

7.2.13

FCA

G

When *commission* rebate becomes due and payable to the *client*, the *firm* should:

- (1) treat it as *client money*; or
- (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see ■ CASS 7.2.15 R);

unless the *firm* and the *client* have entered into an arrangement under which the *client* has agreed to transfer full ownership of this *money* to the *firm* as collateral against payment of future professional fees (see ■ CASS 7.2.3 R (Title transfer collateral arrangements)).

### Interest

7.2.14

FCA

R

Unless a *firm* notifies a *retail client* in writing whether or not interest is to be paid on *client money* and, if so, on what terms and at what

frequency, it must pay that *client* all interest earned on that *client money*. Any interest due to a *client* will be *client money*.

#### Discharge of fiduciary duty

7.2.15

FCA

R

Money ceases to be *client money* (having regard to ■ CASS 7.2.17 R where applicable) if:

- (1) it is paid to the *client*, or a duly authorised representative of the *client*; or
- (2) it is paid to a third party on the instruction of the *client*, unless it is transferred to a third party in the course of effecting a transaction, in accordance with ■ CASS 7.5.2 R (Transfer of client money to a third party); or
- (3) it is paid into a bank account of the *client* (not being an account which is also in the name of the *firm*); or
- (4) it is due and payable to the *firm* in accordance with ■ CASS 7.2.9 R (Money due and payable to the firm); or
- (5) it is paid to the *firm* as an excess in the *client bank account* (see ■ CASS 7.6.13 R (2) (Reconciliation discrepancies)); or
- (6) it is paid by an *authorised central counterparty* to a clearing member other than the *firm* in connection with a *porting* arrangement in accordance with ■ CASS 7.2.15A R; or
- (7) it is paid by an *authorised central counterparty* directly to the *client* in accordance with ■ CASS 7.2.15B R.

7.2.15A

FCA

R

*Client money* received or held by the *firm* and placed in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty* ceases to be *client money* for that *firm* if, as part of the default management process of that *authorised central counterparty* in respect of a default by the *firm*, it is *ported* by the *authorised central counterparty* in accordance with article 48 of EMIR.

7.2.15B

FCA

R

*Client money* received or held by the *firm* and placed in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty* ceases to be *client money* if, as part of the default management process of that *authorised central counterparty* in respect of a default by the *firm*, it is paid directly to the *client* by the *authorised central counterparty* in accordance with the procedure described in article 48(7) of EMIR.

7.2.16

FCA

G

When a *firm* wishes to transfer *client money* balances to a third party in the course of transferring its business to another *firm*, it should do so in a way which it discharges its fiduciary duty to the *client* under this section.

7.2.17

FCA

R

When a *firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid by the bank.

#### Allocated but unclaimed client money

7.2.18

FCA

G

The purpose of the *rule* on allocated but unclaimed *client money* is to allow a *firm*, in the normal course of its business, to cease to treat as *client money* any balances, allocated to an individual *client*, when those balances remain unclaimed.

7.2.19

FCA

R

A *firm* may cease to treat as *client money* any unclaimed *client money* balance if it can demonstrate that it has taken reasonable steps to trace the *client* concerned and to return the balance.

7.2.20

FCA

A

- (1) Reasonable steps should include:
  - (a) entering into a written agreement, in which the *client* consents to the *firm* releasing, after the period of time specified in (b), any *client money* balances, for or on behalf of that *client*, from *client bank accounts*;
  - (b) determining that there has been no movement on the *client's* balance for a period of at least six years (notwithstanding any payments or receipts of charges, interest or similar items);
  - (c) writing to the *client* at the last known address informing the *client* of the *firm's* intention of no longer treating that balance as *client money*, giving the *client* 28 days to make a claim;
  - (d) making and retaining records of all balances released from *client bank accounts*; and
  - (e) undertaking to make good any valid claim against any released balances.
- (2) Compliance with (1) may be relied on as tending to establish compliance with ■ CASS 7.2.19 R.
- (3) Contravention of (1) may be relied on as tending to establish contravention of ■ CASS 7.2.19 R.

7.2.21

FCA

G

When a *firm* gives an undertaking to make good any valid claim against released balances, it should make arrangements authorised by the *firm's* relevant *controllers* that are legally enforceable by any *person* with a valid claim to such *money*.



**7.3 Organisational requirements: client money**

7.3.1  
FCA

**R**

**Requirement to protect client money**  
 A *firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.

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

7.3.2  
FCA

**R**

**Requirement to have adequate organisational arrangements**  
 A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

[Note: article 16(1)(f) of the *MiFID implementing Directive*]

7

## 7.4 Segregation of client money

### Depositing client money

7.4.1  
FCA

**R** A *firm*, on receiving any *client money*, must promptly place this *money* into one or more accounts opened with any of the following:

- (1) a central bank;
- (2) a *BCD credit institution*;
- (3) a bank authorised in a third country;
- (4) a *qualifying money market fund*.

[Note: article 18(1) of the *MiFID implementing Directive*]

7.4.2  
FCA

**G** An account with a central bank, a *BCD credit institution* or a bank authorised in a third country in which *client money* is placed is a *client bank account*.

### Qualifying money market funds

7.4.3  
FCA

**G** Where a *firm* deposits *client money* with a *qualifying money market fund*, the units in that fund should be held in accordance with ■ CASS 6.

[Note: recital 23 to the *MiFID implementing Directive*]

7.4.4  
FCA

**G** A *firm* that places *client money* in a *qualifying money market fund* should ensure that it has the *permissions* required to invest in and hold units in that fund and must comply with the *rules* that are relevant for those activities.

7.4.5  
FCA

**R** A *firm* must give a *client* the right to oppose the placement of his *money* in a *qualifying money market fund*.

[Note: article 18(3) of the *MiFID implementing Directive*]

7.4.6

FCA

G

If a *firm* that intends to place *client money* in a *qualifying money market fund* is subject to the requirement to disclose information before providing services, it should, in compliance with that obligation, notify the *client* that:

- (1) *money* held for that *client* will be held in a *qualifying money market fund*; and
- (2) as a result, the *money* will not be held in accordance with the *client money rules* but in accordance with the *custody rules*.

#### **A firm's selection of a credit institution, bank or money market fund**

7.4.7

FCA

R

A *firm* that does not deposit *client money* with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the *credit institution*, bank or *qualifying money market fund* where the *money* is deposited and the arrangements for the holding of this *money*.

[Note: article 18(3) of the *MiFID implementing Directive*]

7.4.8

FCA

R

When a *firm* makes the selection, appointment and conducts the periodic review of a *credit institution*, a bank or a *qualifying money market fund*, it must take into account:

- (1) the expertise and market reputation of the third party; and
- (2) any legal requirements or market practices related to the holding of *client money* that could adversely affect *clients'* rights.

[Note: article 18(3) of the *MiFID implementing Directive*]

7.4.9

FCA

G

In discharging its obligations when selecting, appointing and reviewing the appointment of a *credit institution*, a bank or a *qualifying money market fund*, a *firm* should also consider, together with any other relevant matters:

- (1) the need for diversification of risks;
- (2) the capital of the *credit institution* or bank;
- (3) the amount of *client money* placed, as a proportion of the *credit institution* or bank's capital and *deposits*, and, in the case of a *qualifying money market fund*, compared to any limit the fund may place on the volume of redemptions in any period;
- (4) the credit rating of the *credit institution* or bank; and
- (5) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the *credit institution* or bank and *affiliated companies*.



7.4.9A

FCA

R

A *firm* must limit the funds that it deposits or holds with a relevant group entity or combination of such entities so that those funds do not at any point in time exceed 20 per cent of the balance on:

- (1) all of its *general client bank accounts* considered in aggregate;
- (2) each of its *designated client bank accounts*; and
- (3) each of its *designated client fund accounts*.

7.4.9B

FCA

R

For the purpose of ■ CASS 7.4.9A R an entity is a relevant group entity if it is:

- (1) a *BCD credit institution*, a bank authorised in a third country, a *qualifying money market fund*, or the entity operating or managing a *qualifying money market fund*; and
- (2) a member of the same *group* as that *firm*.

7.4.9C

FCA

G

The *rules* in ■ SUP 16.14 provide that a *firm* must report to the *FCA* in relation to the identity of the entities with which it deposits *client money* and the amounts of *client money* deposited with them. The *FCA* will use that information to monitor compliance with the diversification *rule* in ■ CASS 7.4.9A R.

7.4.10

FCA

R

A *firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of a *credit institution*, a bank or a *qualifying money market fund*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the third party to hold *client money*.

#### Client bank accounts

7.4.11

FCA

R

A *firm* must take the necessary steps to ensure that *client money* deposited, in accordance with ■ CASS 7.4.1 R, in a central bank, a *credit institution*, a bank authorised in a third country or a *qualifying money market fund* is held in an account or accounts identified separately from any accounts used to hold *money* belonging to the *firm*.

[Note: article 16(1)(e) of the *MiFID implementing Directive*]

7.4.12

FCA

G

A *firm* may open one or more *client bank accounts* in the form of a *general client bank account*, a *designated client bank account* or a *designated client fund account* (see ■ CASS 7A.2.1 G (Failure of the authorised firm: primary pooling event)).

7.4.13

FCA

G

A *designated client fund account* may be used for a *client* only where that *client* has consented to the use of that account and all other *designated client fund accounts* which may be pooled with it. For example, a *client* who consents to the use of bank A and bank B should have his *money* held in a different *designated client fund account* at bank B from a *client* who has consented to the use of banks B and C.



**Payment of client money into a client bank account**

7.4.14

FCA

G

Two approaches that a *firm* can adopt in discharging its obligations under the *client money segregation requirements* are:

- (1) the 'normal approach'; or
- (2) the 'alternative approach'.

7.4.15

FCA

R

**A *firm* that does not adopt the normal approach must first send a written confirmation to the FCA from the *firm's* auditor that the *firm* has in place systems and controls which are adequate to enable it to operate another approach effectively.**

7.4.16

FCA

G

The alternative approach would be appropriate for a *firm* that operates in a multi-product, multi-currency environment for which adopting the normal approach would be unduly burdensome and would not achieve the *client* protection objective. Under the alternative approach, *client money* is received into and paid out of a *firm's* own bank accounts; consequently the *firm* should have systems and controls that are capable of monitoring the *client money* flows so that the *firm* can comply with its obligations to perform reconciliations of records and accounts (see ■ CASS 7.6.2 R). A *firm* that adopts the alternative approach will segregate *client money* into a *client bank account* on a daily basis, after having performed a reconciliation of records and accounts of the entitlement of each *client* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank accounts* and *client transaction accounts* to determine what the *client money* requirement was at the close of the previous *business day*.

7.4.17

FCA

G

Under the normal approach, a *firm* that receives *client money* should either:

- (1) pay it promptly, and in any event no later than the next *business day* after receipt, into a *client bank account*; or
- (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see ■ CASS 7.2.15 R).

7.4.18

FCA

G

Under the alternative approach, a *firm* that receives *client money* should:

- (1) (a) pay any *money* to or on behalf of *clients* out of its own account; and
  - (b) perform a reconciliation of records and accounts required under ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General requirements) and ■ SYSC 6.1.1 R (Compliance), adjust the balance held in its *client bank accounts* and then segregate the *money* in the *client bank account* until the calculation is re-performed on the next *business day*; or
- (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see ■ CASS 7.2.15 R).

7.4.19

FCA

G

A *firm* that adopts the alternative approach may:

- (1) receive all *client money* into its own bank account;
- (2) choose to operate the alternative approach for some types of business (for example, overseas equities transactions) and operate the normal approach for other types of business (for example, *contingent liability investments*) if the *firm* can demonstrate that its systems and controls are adequate (see ■ CASS 7.4.15 R); and
- (3) use an historic average to account for uncleared cheques (see paragraph 4 of ■ CASS 7 Annex 1 G).

7.4.20

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* should ensure that any *money* other than *client money* deposited in a *client bank account* is promptly paid out of that account unless it is a minimum sum required to open the account, or to keep it open.

7.4.21

FCA

R

**If it is prudent to do so to ensure that *client money* is protected, a *firm* may pay into a *client bank account* *money* of its own, and that *money* will then become *client money* for the purposes of this chapter.**

#### Automated transfers

7.4.22

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach that receives *client money* in the form of an automated transfer should take reasonable steps to ensure that:

- (1) the *money* is received directly into a *client bank account*; and
- (2) if *money* is received directly into the *firm's* own account, the *money* is transferred into a *client bank account* promptly, and in any event, no later than the next *business day* after receipt.

#### Mixed remittance

7.4.23

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach that receives a *mixed remittance* (that is part *client money* and part other *money*) should:

- (1) pay the full sum into a *client bank account* promptly, and in any event, no later than the next *business day* after receipt; and
- (2) pay the *money* that is not *client money* out of the *client bank account* promptly, and in any event, no later than one *business day* of the day on which the *firm* would normally expect the remittance to be cleared.

#### Appointed representatives, tied agents, field representatives and other agents

7.4.24

FCA

G

- (1) Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach should establish and maintain procedures to ensure that

*client money* received by its *appointed representatives, tied agents, field representatives* or other agents is:

- (a) paid into a *client bank account* of the *firm* promptly, and in any event, no later than the next *business day* after receipt; or
  - (b) forwarded to the *firm*, or in the case of a *field representative* forwarded to a specified business address of the *firm*, so as to ensure that the *money* arrives at the specified business address promptly, and in any event, no later than the close of the third *business day*.
- (2) For the purposes of 1(b), *client money* received on *business day* one should be forwarded to the *firm* or specified business address of the *firm* promptly, and in any event, no later than the next *business day* after receipt (*business day* two) in order for it to reach that *firm* or specified business address by the close of the third *business day*. Procedures requiring the *client money* in the form of a cheque to be sent to the *firm* or the specified business address of the *firm* by first class post promptly, and in any event, no later than the next *business day* after receipt, would be in line with 1(b).

7.4.25

FCA

G

The *firm* should ensure that its *appointed representatives, tied agents, field representatives* or other agents keep *client money* separately identifiable from any other *money* (including that of the *firm*) until the *client money* is paid into a *client bank account* or sent to the *firm*.

7.4.26

FCA

G

A *firm* that operates a number of small branches, but holds or accounts for all *client money* centrally, may treat those small branches in the same way as *appointed representatives* and *tied agents*.

### Client entitlements

7.4.27

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach that receives outside the *United Kingdom* a *client* entitlement on behalf of a *client* should pay any part of it which is *client money*:

- (1) to, or in accordance with, the instructions of the *client* concerned; or
- (2) into a *client bank account* promptly, and in any event, no later than five *business days* after the *firm* is notified of its receipt.

7.4.28

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach should allocate a *client* entitlement that is *client money* to the individual *client* promptly and, in any case, no later than ten *business days* after notification of receipt.

### Money due to a client from a firm

7.4.29

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach that is liable to pay *money* to a *client* should promptly, and in any event no later than one *business day* after the *money* is due and payable, pay the *money*:

- (1) to, or to the order of, the *client*; or
- (2) into a *client bank account*.

**Segregation in different currency**

7.4.30

FCA

R

A *firm* may segregate *client money* in a different currency from that of receipt. If it does so, the *firm* must ensure that the amount held is adjusted each *day* to an amount at least equal to the original currency amount (or the currency in which the *firm* has its liability to its *clients*, if different), translated at the previous day's closing spot exchange rate.

7.4.31

FCA

G

The *rule* on segregation of *client money* in a different currency (■ CASS 7.4.30 R) does not apply where the *client* has instructed the *firm* to convert the *money* into and hold it in a different currency.

**Commodity Futures Trading Commission Part 30 exemption order**

7.4.32

FCA

G

United States (US) legislation restricts the ability of non-US firms to trade on behalf of US customers on non-US futures and options exchanges. The relevant US regulator (the CFTC) operates an exemption system for *firms* authorised under the *Act*. The FCA or the PRA sponsors the application from a *firm* for exemption from Part 30 of the General Regulations under the US Commodity Exchange Act in line with this system.

7.4.33

FCA

G

A *firm* with a *Part 30 exemption order* undertakes to the CFTC that it will refuse to allow any US customer to opt not to have his *money* treated as *client money* if it is held or received in respect of transactions on non-US exchanges, unless that US customer is an "eligible contract participant" as defined in section 1a(12) of the Commodity Exchange Act, 7 U.S.C. In doing so, the *firm* is representing that if available to it, it will not make use of the opt-out arrangements in ■ CASS 7.1.7B R to ■ CASS 7.1.7F R in relation to that business.

7.4.34

FCA

R

A *firm* must not reduce the amount of, or cancel a letter of credit issued under, an LME bond arrangement where this will cause the *firm* to be in breach of its *Part 30 exemption order*.

7.4.35

FCA

R

A *firm* must notify the FCA immediately it arranges the *issue* of an individual letter of *credit* under an LME bond arrangement.

## 7.5 Transfer of client money to a third party

### 7.5.1

FCA

G

This section sets out the requirements a *firm* must comply with when it transfers *client money* to another *person* without discharging its fiduciary duty owed to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to a *clearing house* in the form of margin for the *firm's* obligations to the *clearing house* that are referable to transactions undertaken by the *firm* for the relevant clients. They may also arise when a *firm* passes *client money* to an *intermediate broker* for *contingent liability investments* in the form of initial or variation margin on behalf of a *client*. In these circumstances, the *firm* remains responsible for that *client's equity balance* held at the *intermediate broker* until the contract is terminated and all of that *client's* positions at that *broker* closed. If a *firm* wishes to discharge itself from its fiduciary duty, it should do so in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (■ CASS 7.2.15 R).

### 7.5.2

FCA

R

A *firm* may allow another *person*, such as an exchange, a *clearing house* or an *intermediate broker*, to hold or control *client money*, but only if:

- (1) the *firm* transfers the *client money*:
  - (a) for the purpose of a transaction for a *client* through or with that *person*; or
  - (b) to meet a *client's* obligation to provide collateral for a transaction (for example, an *initial margin* requirement for a *contingent liability investment*); and
- (2) in the case of a *retail client*, that *client* has been notified that the *client money* may be transferred to the other *person*.

### 7.5.3

FCA

G

A *firm* should not hold excess *client money* in its *client transaction accounts* with *intermediate brokers*, *settlement agents* and *OTC counterparties*; it should be held in a *client bank account*. This guidance does not apply to *client money* provided by a *firm* to an *authorised central counterparty* in connection with a *contingent liability investment* undertaken for a *client* and recorded in a *client transaction account* that is an *individual client account* or an *omnibus client account* at that *authorised central counterparty*.

## 7.6 Records, accounts and reconciliations

### Records and accounts

7.6.1  
FCA

**R** A *firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own *money*.

[Note: article 16(1)(a) of the *MiFID implementing Directive*]

7.6.2  
FCA

**R** A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *client money* held for *clients*.

[Note: article 16(1)(b) of the *MiFID implementing Directive*]

### Client entitlements

7.6.3  
FCA

**G** Pursuant to **■** CASS 7.6.2 R (Records and accounts), and where relevant **■** SYSC 4.1.1 R (General requirements) and **■** SYSC 6.1.1 R (Compliance), a *firm* should take reasonable steps to ensure that it is notified promptly of any receipt of *client money* in the form of a *client* entitlement.

### Record keeping

7.6.4  
FCA

**R** A *firm* must ensure that records made under **■** CASS 7.6.1 R and **■** CASS 7.6.2 R are retained for a period of five years after they were made.

7.6.5  
FCA

**G** A *firm* should ensure that it makes proper records, sufficient to show and explain the *firm's* transactions and commitments in respect of its *client money*.

### Internal reconciliations of client money balances

7.6.6  
FCA

**G**

- (1) Carrying out internal reconciliations of records and accounts of the entitlement of each *client* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank accounts* and *client transaction accounts* should be one of the steps a *firm* takes to satisfy its obligations under **■** CASS 7.6.2 R, and where relevant **■** SYSC 4.1.1 R and **■** SYSC 6.1.1 R.

(2) A *firm* should perform such internal reconciliations:

- (a) as often as is necessary; and
  - (b) as soon as reasonably practicable after the date to which the reconciliation relates;
- to ensure the accuracy of the *firm's* records and accounts.

- (3) The *standard method of internal client money reconciliation* sets out a method of reconciliation of client money balances that the FCA believes should be one of the steps that a *firm* takes when carrying out internal reconciliations of *client money*.

### Records

7.6.7

FCA

R

- (1) A *firm* must make records, sufficient to show and explain the method of internal reconciliation of *client money* balances under ■ CASS 7.6.2 R used, and if different from the *standard method of internal client money reconciliation*, to show and explain that:
  - (a) the method of internal reconciliation of *client money* balances used affords an equivalent degree of protection to the *firm's clients* to that afforded by the *standard method of internal client money reconciliation*; and
  - (b) in the event of a *primary pooling event* or a *secondary pooling event*, the method used is adequate to enable the *firm* to comply with the *client money distribution rules*.
- (2) A *firm* must make these records on the date it starts using a method of internal reconciliation of *client money* balances and must keep it for a period of five years after ceasing to use it.

7.6.8

FCA

R

A *firm* that does not use the *standard method of internal client money reconciliation* must first send a written confirmation to the FCA from the *firm's* auditor that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively.

### Reconciliations with external records

7.6.9

FCA

R

A *firm* must conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom *client money* is held.

[Note: article 16(1)(c) of the *MiFID implementing Directive*]

### Frequency of external reconciliations

7.6.10

FCA

G

- (1) A *firm* should perform the required reconciliation of *client money* balances with external records:
  - (a) as regularly as is necessary; and
  - (b) as soon as reasonably practicable after the date to which the reconciliation relates;



to ensure the accuracy of its internal accounts and records against those of third parties by whom *client money* is held.

- (2) In determining whether the frequency is adequate, the *firm* should consider the risks which the business is exposed, such as the nature, volume and complexity of the business, and where and with whom the *client money* is held.

### Method of external reconciliations

7.6.11  
FCA

G

A method of reconciliation of *client money* balances with external records that the FCA believes is adequate is when a *firm* compares:

- (1) the balance on each *client bank account* as recorded by the *firm* with the balance on that account as set out on the statement or other form of confirmation issued by the bank with which those accounts are held; and
- (2) the balance, currency by currency, on each *client transaction account* as recorded by the *firm*, with the balance on that account as set out in the statement or other form of confirmation issued by the *person* with whom the account is held;

and identifies any discrepancies between them.

7.6.12  
FCA

R

Any *approved collateral* held in accordance with the *client money rules* must be included within this reconciliation.

### Reconciliation discrepancies

7.6.13  
FCA

R

When any discrepancy arises as a result of a *firm's* internal reconciliations, the *firm* must identify the reason for the discrepancy and ensure that:

- (1) any *shortfall* is paid into a *client bank account* by the close of business on the day that the reconciliation is performed; or
- (2) any *excess* is withdrawn within the same time period (but see ■ CASS 7.4.20 G and ■ CASS 7.4.21 R).

7.6.14  
FCA

R

When any discrepancy arises as a result of the reconciliation between a *firm's* internal records and those of third parties that hold *client money*, the *firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the *firm*.

7.6.15  
FCA

R

While a *firm* is unable to resolve a difference arising from a reconciliation between a *firm's* internal records and those of third parties that hold *client money*, and one record or a set of records examined by the *firm* during its reconciliation indicates that there is a need to have a greater amount of *client money* or *approved collateral* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record



or set of records is accurate and pay its own *money* into a relevant account.

#### Notification requirements

7.6.16

FCA

R

A *firm* must inform the *FCA* in writing without delay:

- (1) if it has not complied with, or is unable, in any material respect, to comply with the requirements in ■ CASS 7.6.1 R, ■ CASS 7.6.2 R or ■ CASS 7.6.9 R;
- (2) if having carried out a reconciliation it has not complied with, or is unable, in any material respect, to comply with ■ CASS 7.6.13 R to ■ CASS 7.6.15 R.

#### Audit of compliance with the MiFID client money rules

7.6.17

FCA

G

*Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FCA* under ■ SUP 3.10 (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *client money rules*.

7.6.18

FCA

G

*Firms* that do not adopt the normal approach are reminded that the *firm's* auditor must confirm to the *FCA* in writing that the *firm* has in place systems and controls which are adequate to enable it to operate the alternative approach effectively (see ■ CASS 7.4.15 R).

7.6.19

FCA

G

*Firms* that do not use the *standard method of internal client money reconciliation* are reminded that the *firm's* auditor must confirm to the *FCA* in writing that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively (see ■ CASS 7.6.8 R).

## 7.7 Statutory trust

### 7.7.1

FCA

G

Section 137B(1) of the Act (Miscellaneous ancillary matters) provides that *rules* may make provision which result in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). This section creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of *failure* of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

### Requirement

### 7.7.2

FCA

R

A *firm* receives and holds *client money* as trustee (or in Scotland as agent) on the following terms:

- (1) for the purposes of and on the terms of the *client money rules* and the *client money distribution rules*;
- (2) subject to (4 ), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such with respect of *client money* received in the course of *insurance mediation activity* and that was opted in to this chapter) for whom that *money* is held, according to their respective interests in it;
- (3) after all valid claims in (2) have been met, for *clients* which are *insurance undertakings* with respect of *client money* received in the course of *insurance mediation activity* according to their respective interests in it;
- (4) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
- (5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

7.7.3

FCA

**R** A *trustee firm* which is subject to the *client money rules* by virtue of

■ CASS 7.1.1 R (4):

- (1) must receive and hold *client money* in accordance with the relevant instrument of trust;
- (2) subject to that, receives and holds *client money* on trust on the terms (or in Scotland on the agency terms) specified in  
■ CASS 7.7.2 R.

7.7.4

FCA

**G**

If a *trustee firm* holds *client money* in accordance with ■ CASS 7.7.3 R (2), the *firm* should follow the provisions in ■ CASS 7.1.15E R and ■ CASS 7.1.15F R.



## 7.8 Notification and acknowledgement of trust

### Banks

7.8.1  
FCA

R

- (1) When a *firm* opens a *client bank account*, the *firm* must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that:
  - (a) all *money* standing to the credit of the account is held by the *firm* as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against *money* in that account in respect of any sum owed to it on any other account of the *firm*; and
  - (b) the title of the account sufficiently distinguishes that account from any account containing *money* that belongs to the *firm*, and is in the form requested by the *firm*.
- (2) In the case of a *client bank account* in the *United Kingdom*, if the bank does not provide the required acknowledgement within 20 *business days* after the *firm* dispatched the notice, the *firm* must withdraw all *money* standing to the credit of the account and *deposit* it in a *client bank account* with another bank as soon as possible.

### Exchanges, clearing houses, intermediary brokers or OTC counterparties

7.8.2  
FCA

R

- (1) A *firm* which undertakes any *contingent liability investment* for *clients* through an exchange, *clearing house*, *intermediate broker* or *OTC counterparty* must, before the *client transaction account* is opened with the exchange, *clearing house*, *intermediate broker* or *OTC counterparty*:
  - (a) notify the *person* with whom the account is to be opened that the *firm* is under an obligation to keep *client money* separate from the *firm's* own *money*, placing *client money* in a *client bank account*;
  - (b) instruct the *person* with whom the account is to be opened that any *money* paid to it in respect of that transaction is to be credited to the *firm's client transaction account*; and

- (c) require the *person* with whom the account is to be opened to acknowledge in writing that the *firm's client transaction account* is not to be combined with any other account, nor is any right of set-off to be exercised by that *person* against *money* credited to the *client transaction account* in respect of any sum owed to that *person* on any other account.
- (2) If the exchange, *clearing house*, *intermediate broker* or *OTC* counterparty does not provide the required acknowledgement within 20 *business days* of the dispatch of the notice and instruction, the *firm* must cease using the *client transaction account* with that *clearing house*, *intermediate broker* or *OTC* counterparty and arrange as soon as possible for the transfer or liquidation of any open positions and the repayment of any *money*.



7.9

[Deleted]

**Annex 1****FCA**

As explained in ■ CASS 7.6.6 G, in complying with its obligations under ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance), a *firm* should carry out internal reconciliations of records and accounts of *client money* the *firm* holds in *client bank accounts* and *client transaction accounts*. This Annex sets out a method of reconciliation that the FCA believes is appropriate for these purposes (the *standard method of internal client money reconciliation*).

1. Each *business day*, a *firm* that adopts the normal approach (see ■ CASS 7.4.17 G) should check whether its *client money* resource, being the aggregate balance on the *firm's client bank accounts*, as at the close of business on the previous *business day*, was at least equal to the *client money* requirement, as defined in paragraph 6 below, as at the close of business on that day.
2. Each *business day*, a *firm* that adopts the alternative approach (see ■ CASS 7.4.18 G) should ensure that its *client money* resource, being the aggregate balance on the *firm's client bank accounts*, as at the close of business on that *business day* is at least equal to the *client money* requirement, as defined in paragraph 6 below, as at the close of business on the previous *business day*.
3. No excess or *shortfall* should arise when adopting the alternative approach.
4. If a *firm* is operating the alternative approach and draws a cheque on its own bank account, it will be expected to account for those cheques that have not yet cleared when performing its reconciliations of records and accounts under paragraph 2. An historic average estimate of uncleared cheques may be used to satisfy this obligation (see ■ CASS 7.4.19 G (3)).
5. For the purposes of performing its reconciliations of records and accounts under paragraphs 1 or 2, a *firm* should use the values contained in its accounting records, for example its cash book, rather than values contained in statements received from its banks and other third parties.

**Client money requirement**

6. The *client money* requirement is either:
  - (1) (subject to paragraph 18) the sum of, for all *clients*:
    - (a) the individual *client* balances calculated in accordance with paragraph 7, excluding:
      - (i) individual *client* balances which are negative (that is, debtors); and
      - (ii) *clients' equity balances*; and
    - (b) the total *marginised transaction* requirement calculated in accordance with paragraph 14; or
  - (2) the sum of:
    - (a) for each *client bank account*:
      - (i) the amount which the *firm's* records show as held on that account; and

(ii) an amount that offsets each negative net amount which the *firm's* records show attributed to that account for an individual *client*; and

(b) the total *marginised transaction* requirement calculated in accordance with paragraph 14.

**General transactions**

7. The individual *client* balance for each *client* should be calculated in accordance with this table:

| Individual client balance calculation   |    |
|---|----|
| Free <i>money</i> (no trades) and sale proceeds due to the <i>client</i> :  | A  |
| (a) in respect of <i>principal deals</i> when the <i>client</i> has delivered the <i>designated investments</i> ; and   | B  |
| (b) in respect of <i>agency deals</i> , when either:  |    |
| (i) the sale proceeds have been received by the <i>firm</i> and the <i>client</i> has delivered the <i>designated investments</i> ; or  | C1 |
| (ii) the <i>firm</i> holds the <i>designated investments</i> for the <i>client</i> ; and  | C2 |
| the cost of purchases:  |    |
| (c) in respect of <i>principal deals</i> , paid for by the <i>client</i> but the <i>firm</i> has not delivered the <i>designated investments</i> to the <i>client</i> ; and                   | D  |
| (d) in respect of <i>agency deals</i> , paid for by the <i>client</i> when either:  |    |
| (i) the <i>firm</i> has not remitted the <i>money</i> to, or to the order of, the counterparty; or  | E1 |
| (ii) the <i>designated investments</i> have been received by the <i>firm</i> but have not been delivered to the <i>client</i> ;   | E2 |
| Less  |    |
| <i>money</i> owed by the <i>client</i> in respect of unpaid purchases by or for the <i>client</i> if delivery of those <i>designated investments</i> has been made to the <i>client</i> ; and | F  |
| Proceeds remitted to the <i>client</i> in respect of sales transactions by or for the <i>client</i> if the <i>client</i> has not delivered the <i>designated investments</i> .                | G  |
| Individual <i>Client</i> Balance 'X' = (A+B+C1+C2+D+E1+E2)-F-G  | X  |

8. A *firm* should calculate the individual *client* balance using the contract value of any *client* purchases or sales.

9. A *firm* may choose to segregate *designated investments* instead of the value identified in paragraph 7 (except E1) if it ensures that the *designated investments* are held in such a manner that the *firm* cannot use them for its own purposes.

10. Segregation in the context of paragraph 9 can take many forms, including the holding of a *safe custody investment* in a nominee name and the safekeeping of certificates evidencing title in a fire resistant safe. It is not the intention that all the *custody rules* in the *custody chapter* should be applied to *designated investments* held in the course of settlement.

11. In determining the *client money* requirement under paragraph 6, a *firm* need not include *money* held in accordance with ■ CASS 7.2.8 R (Delivery versus payment transaction).

12. In determining the *client money* requirement under paragraph 6, a *firm*:

(1) should include dividends received and interest earned and allocated;



- (2) may deduct outstanding *fees*, calls, rights and interest charges and other amounts owed by the *client* which are due and payable to the *firm* (see ■ CASS 7.2.9 R);
- (3) need not include *client money* in the form of *client* entitlements which are not required to be segregated (see ■ CASS 7.4.27 G) nor include *client money* forwarded to the *firm* by its appointed representatives, *tied agents*, field representatives and other agents, but not received (see ■ CASS 7.4.24 G);
- (4) should take into account any *client money* arising from ■ CASS 7.6.13 R (Reconciliation discrepancies); and
- (5) should include any unallocated *client money*.

### Equity balance

13. A *firm's* equity balance, whether with an exchange, *intermediate broker* or *OTC* counterparty, is the amount which the *firm* would be liable to pay to the exchange, *intermediate broker* or *OTC* counterparty (or vice-versa) in respect of the *firm's* *marginied transactions* if each of the open positions of the *firm's* *clients* was liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the *firm's* account with the exchange, *intermediate broker* or *OTC* counterparty is closed.

### Margined transaction requirement

14. The total *marginied transaction* requirement is:

- (1) the sum of each of the *client's* *equity balances* which are positive;

Less

- (2) the proportion of any individual negative *client equity balance* which is secured by *approved collateral*; and
- (3) the net aggregate of the *firm's* equity balance (negative balances being deducted from positive balances) on transaction accounts for *customers* with exchanges, *clearing houses*, *intermediate brokers* and *OTC* counterparties.

15. To meet a shortfall that has arisen in respect of the requirement in paragraph 6(1)(b) or 6(2)(b), a *firm* may utilise its own *approved collateral* provided it is held on terms specifying when it is to be realised for the benefit of *clients*, it is clearly identifiable from the *firm's* own property and the relevant terms are evidenced in writing by the *firm*. In addition, the proceeds of the sale of that *collateral* should be paid into a *client bank account*.

16. If a *firm's* total *marginied transaction* requirement is negative, the *firm* should treat it as zero for the purposes of calculating its *client money* requirement.

17. The terms '*client equity balance*' and '*firm's* equity balance' in paragraph 13 refer to cash values and do not include non-cash *collateral* or other *designated investments* held in respect of a *marginied transaction*.

17A. A *firm* with a *Part 30 exemption order* which also operates an LME bond arrangement for the benefit of US-resident investors, should exclude the *client equity balances* for transactions undertaken on the London Metal Exchange on behalf of those US-resident investors from the calculation of the *marginied transaction* requirement.

### Reduced client money requirement option

18.

(1) When, in respect of a *client*, there is a positive individual *client* balance and a negative *client equity balance*, a *firm* may offset the credit against the debit and hence have a reduced individual *client* balance in paragraph 7 for that *client*.

(2) When, in respect of a *client*, there is a negative individual *client* balance and a positive *client equity balance*, a *firm* may offset the credit against the debit and hence have a reduced *client equity balance* in paragraph 14 for that *client*.

19. The effect of paragraph 18 is to allow a *firm* to offset, on a *client* by *client* basis, a negative amount with a positive amount arising out of the calculations in paragraphs 7 and 14, and, by so doing, reduce the amount the *firm* is required to segregate.

# Chapter 7A

## Client money distribution



## 7A.1 Application and purpose

### Application

---

7A.1.1

FCA

R

This chapter (the *client money distribution rules*) applies to a *firm* that holds *client money* which is subject to the *client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

### Purpose

---

7A.1.2

FCA

G

The *client money distribution rules* seek to facilitate the timely return of *client money* to a *client* in the event of the *failure* of a *firm* or third party at which the *firm* holds *client money*.

## 7A.2 Primary pooling events

### Failure of the authorised firm: primary pooling event

7A.2.1

FCA

G

- (1) A firm can hold *client money* in a *general client bank account*, a *designated client bank account* or a *designated client fund account*.
- (2) A firm holds all *client money* in *general client bank accounts* for its *clients* as part of a common pool of *money* so those particular *clients* do not have a claim against a specific sum in a specific account; they only have a claim to the *client money* in general.
- (3) A firm holds *client money* in *designated client bank accounts* or *designated client fund accounts* for those *clients* that requested their *client money* be part of a specific pool of *money*, so those particular *clients* do have a claim against a specific sum in a specific account; they do not have a claim to the *client money* in general unless a *primary pooling event* occurs. A *primary pooling event* triggers a notional pooling of all the *client money*, in every type of *client money* account, and the obligation to distribute it.
- (4) If the firm becomes insolvent, and there is (for whatever reason) a *shortfall* in *money* held for a *client* compared with that *client's* entitlements, the available funds will be distributed in accordance with the *client money distribution rules*.

7A.2.2

FCA

R

A *primary pooling event* occurs:

- (1) on the *failure* of the *firm*;
- (2) on the vesting of assets in a *trustee* in accordance with an '*assets requirement*' imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act*;
- (3) on the coming into force of a *requirement* for all *client money* held by the *firm*; or
- (4) when the *firm* notifies, or is in breach of its duty to notify, the *FCA*, in accordance with ■ CASS 7.6.16 R (Notification requirements), that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a *secondary pooling event*.

7A.2.3

FCA

**R** ■ CASS 7A.2.2R (4) does not apply so long as:

- (1) the *firm* is taking steps, in consultation with the *FCA*, to establish those records; and
- (2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

**Pooling and distribution**

7A.2.4

FCA

**R** If a *primary pooling event* occurs:

- (1) all *client money* held in a *client bank account* or a *client transaction account* of the *firm* is treated as pooled (forming a notional pool) except for *client money* held in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty*;
- (2) the *firm* must distribute *client money* comprising the notional pool in accordance with ■ CASS 7.7.2 R, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with ■ CASS 7A.2.5 R; and
- (3) if *client money* is remitted directly to the *firm* from an *authorised central counterparty*, then:
  - (a) any such remittance in respect of a *client transaction account* that is an *individual client account* must be distributed to the relevant *client* subject to ■ CASS 7.7.2 R (4);
  - (b) subject to (3)(c), any such remittance in respect of a *client transaction account* that is an *omnibus client account* must form part of the notional pool under ■ CASS 7A.2.4R (1) and be subject to distribution in accordance with ■ CASS 7A.2.4R (2); and
  - (c) any such remittance in respect of a *client transaction account* that is an *omnibus client account* must be distributed to the *clients* for whom that *omnibus client account* is held if:
    - (i) no *client money* in excess of the amount recorded in that *omnibus client account* is held by the *firm* as margin in relation to the positions recorded in that *omnibus client account*; and
    - (ii) the amount of such remittance attributable to each *client* of the *omnibus client account* is readily apparent from information provided to the *firm* by the *authorised central counterparty*;

in which case the amount of such remittance must be distributed to each such *client* in accordance with the information provided by the *authorised central counterparty* subject to

■ CASS 7.7.2 R (4).

## 7A.2.4A

FCA

G

- (1) Under *EMIR*, where a *firm* that is a clearing member of an *authorised central counterparty* defaults, the *authorised central counterparty* may:
  - (a) *port client* positions where possible; and
  - (b) after the completion of the default management process:
    - (i) return any balance due directly to those *clients* for whom the positions are held, if they are known to the *authorised central counterparty*; or
    - (ii) remit any balance to the *firm* for the account of its *clients* if the *clients* are not known to the *authorised central counterparty*.
- (2) Where any balance remitted from an *authorised central counterparty* to a *firm* is *client money*, ■ CASS 7A.2.4R (3) provides for the distribution of remittances from either an *individual client account* or an *omnibus client account*.
- (3) Remittances received by the *firm* falling within ■ CASS 7A.2.4R (3)(a) and ■ CASS 7A.2.4R (3)(c) should not be pooled with *client money* held in any *client bank account* operated by the *firm* at the time of the *primary pooling event*. Those remittances should be segregated and promptly distributed to each *client* on whose behalf the remittance was received.
- (4) For the avoidance of doubt, any *client money* remitted by the *authorised central counterparty* to the *firm* pursuant to ■ CASS 7A.2.4R (3) should not be treated as *client money* received after the failure of the *firm* under ■ CASS 7A.2.7 R.

## 7A.2.5

FCA

R

- (-1) Each *client's client equity balance* must be reduced by:
  - (a) any amount paid by an *authorised central counterparty* to a clearing member other than the *firm* in connection with a *porting arrangement* in accordance with ■ CASS 7.2.15 R (6) in respect of that *client*;
  - (b) any amount paid by an *authorised central counterparty* directly to that *client*, in accordance with ■ CASS 7.2.15 R (7); and
  - (c) any amount that must be distributed to that *client* by the *firm* in accordance with ■ CASS 7A.2.4R (3)(a) or ■ (c).
- (1) When, in respect of a *client*, there is a positive individual *client balance* and a negative *client equity balance*, the credit must be offset against the debit reducing the individual *client balance* for that *client*.
- (2) When, in respect of a *client*, there is a negative individual *client balance* and a positive *client equity balance*, the credit must be

offset against the debit reducing the *client equity balance* for that *client*.

7A.2.6 G [deleted]

#### Client money received after the failure of the firm

7A.2.7 R  
FCA *Client money* received by the *firm* after a *primary pooling event* must not be pooled with *client money* held in any *client money* account operated by the *firm* at the time of the *primary pooling event*. It must be placed in a *client bank account* that has been opened after that event and must be handled in accordance with the *client money rules*, and returned to the relevant *client* without delay, except to the extent that:

- (1) it is *client money* relating to a transaction that has not settled at the time of the *primary pooling event*; or
- (2) it is *client money* relating to a *client*, for whom the *client money* entitlement, calculated in accordance with ■ CASS 7A.2.5 R, shows that *money* is due from the *client* to the *firm* at the time of the *primary pooling event*.

7A.2.8 G  
FCA *Client money* received after the *primary pooling event* relating to an unsettled transaction should be used to settle that transaction. Examples of such transactions include:

- (1) an equity transaction with a trade date before the date of the *primary pooling event* and a settlement date after the date of the *primary pooling event*; or
- (2) a *contingent liability investment* that is 'open' at the time of the *primary pooling event* and is due to settle after the *primary pooling event*.

7A.2.9 R  
FCA If a *firm* receives a *mixed remittance* after a *primary pooling event*, it must:

- (1) pay the full sum into the separate *client bank account* opened in accordance with ■ CASS 7A.2.7 R; and
- (2) pay the *money* that is not *client money* out of that *client bank account* into a *firm's* own bank account within one *business day* of the *day* on which the *firm* would normally expect the remittance to be cleared.

7A.2.10 G  
FCA Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

7A.2.11 R  
FCA If both a *primary pooling event* and a *secondary pooling event* occur, the provisions of this section relating to a *primary pooling event* apply.



## 7A.3 Secondary pooling events

### Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events

7A.3.1

FCA

R

A *secondary pooling event* occurs on the *failure* of a third party to which *client money* held by the *firm* has been transferred under ■ CASS 7.4.1 R (1) to ■ CASS 7.4.1 R (3) (Depositing client money) or ■ CASS 7.5.2 R (Transfer of client money to a third party).

7A.3.2

FCA

R

■ CASS 7A.3.6 R to ■ CASS 7A.3.18 R do not apply if, on the *failure* of the third party, the *firm* repays to its *clients* or pays into a *client bank account*, at an unaffected bank, an amount equal to the amount of *client money* which would have been held if a *shortfall* had not occurred at that third party.

7A.3.3

FCA

G

When *client money* is transferred to a third party, a *firm* continues to owe fiduciary duties to the *client*. Whether a *firm* is liable for a *shortfall* in *client money* caused by a third party failure will depend on whether it has complied with its duty of care as agent or trustee.

### Failure of a bank

7A.3.4

FCA

G

When a bank *fails* and the *firm* decides not to make good the *shortfall* in the amount of *client money* held at that bank, a *secondary pooling event* will occur in accordance with ■ CASS 7A.3.6 R. The *firm* would be expected to reflect the *shortfall* that arises at the *failed* bank in its records of the entitlement of *clients* and of *money* held with third parties.

7A.3.5

FCA

G

The *client money distribution rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* at a different bank, should not suffer the loss of the bank that has *failed*.

### Failure of a bank: pooling

7A.3.6

FCA

R

If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held, then:

- (1) in relation to every *general client bank account* of the *firm*, the provisions of ■ CASS 7A.3.8 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;

- (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.10 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;
- (3) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.11 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;
- (4) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts*, is not pooled with any other *client money*; and
- (5) any *money* held in a *designated client fund account*, no part of which is held by the bank that has *failed*, is not pooled with any other *client money*.

7A.3.7

FCA

R

If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *designated client bank accounts* or *designated client fund accounts* are held, then:

- (1) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.10 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply; and
- (2) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.11 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply.

7A.3.8

FCA

R

Money held in each *general client bank account* and *client transaction account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts*, that has arisen as a result of the *failure* of the bank, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or *client transaction account* of the *firm*, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

7A.3.9

FCA

G

The term "which should have been held" is a reference to the *failed* bank's failure to hold the *client money* at the time of the pooling event.

7A.3.10

FCA

R

For each *client* with a *designated client bank account* held at the *failed* bank:

- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each of the relevant *clients* by the *firm*, and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

7A.3.11

FCA

R

Money held in each *designated client fund account* with the *failed* bank must be treated as pooled with any other *designated client fund accounts* of the *firm* which contain part of the same designated fund and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client fund accounts* that has arisen as a result of the *failure*, must be borne by each of the *clients* whose *client money* is held in that designated fund, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, in accordance with (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

7A.3.12

FCA

R

A *client* whose money was held, or which should have been held, in a *designated client bank account* with a bank that has *failed* is not entitled to claim in respect of that *money* against any other *client bank account* or *client transaction account* of the *firm*.

#### Client money received after the failure of a bank

7A.3.13

FCA

R

*Client money* received by the *firm* after the failure of a bank, that would otherwise have been paid into a *client bank account* at that bank:

- (1) must not be transferred to the *failed* bank unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* bank; and
- (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
  - (a) on the written instruction of the *client*, transferred to a bank other than the one that has *failed*; or
  - (b) returned to the *client* as soon as possible.

7A.3.14

FCA

R

If a *firm* receives a *mixed remittance* after the *secondary pooling event* which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:

- (1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and
- (2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the *firm* would normally expect the remittance to be cleared.

7A.3.15

FCA

G

Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

#### Failure of an intermediate broker, settlement agent or OTC counterparty: Pooling

7A.3.16

FCA

R

If a *secondary pooling event* occurs as a result of the *failure* of an *intermediate broker*, *settlement agent* or *OTC counterparty*, then in relation to every *general client bank account* and *client transaction*

account of the *firm*, the provisions of ■ CASS 7A.3.17 R and ■ CASS 7A.3.18 R will apply.

7A.3.17

FCA

R

Money held in each *general client bank account* and *client transaction account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or a *client transaction account* of the *firm*, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements of (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed intermediate broker, settlement agent* or *OTC counterparty* until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

#### Client money received after the failure of an intermediate broker, settlement agent or OTC counterparty

7A.3.18

FCA

R

*Client money* received by the *firm* after the *failure* of an *intermediate broker, settlement agent* or *OTC counterparty*, that would otherwise have been paid into a *client transaction account* at that *intermediate broker, settlement agent* or *OTC counterparty*:

- (1) must not be transferred to the *failed* third party unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed intermediate broker, settlement agent* or *OTC counterparty*; and
- (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
  - (a) on the written instruction of the *client*, transferred to a third party other than the one that has *failed*; or
  - (b) returned to the *client* as soon as possible.

7A.3.19

FCA

R

**Notification to the FCA: failure of a bank, intermediate broker, settlement agent or OTC counterparty**

---

On the *failure* of a third party with which *money* is held, a *firm* must notify the *FCA*:

- (1) as soon as it becomes aware of the *failure* of any bank, *intermediate broker*, *settlement agent*, *OTC* counterparty or other entity with which it has placed, or to which it has passed, *client money*; and
- (2) as soon as reasonably practical, whether it intends to make good any *shortfall* that has arisen or may arise and of the amounts involved.

# Chapter 8

# Mandates

## 8.1 Application

8.1.1

FCA

R

This chapter (the *mandate rules*) applies to a *firm* when it has a *mandate* in the course of, or in connection with, the *firm's*:

- (1) *designated investment business* (including *MiFID business*); or
- (2) *insurance mediation activity*, except where it relates to a *reinsurance contract*.

8.1.2

G

[deleted]

8.1.2A

FCA

R

The *mandate rules* do not apply to a *firm*:

- (1) in relation to *client money* that the *firm* is holding in accordance with ■ CASS 5 or ■ CASS 7 (including *client money* that the *firm* has allowed another *person* to hold or control in accordance with ■ CASS 7.5.2 R); or
- (2) in relation to *safe custody assets* that the *firm* is holding, or in respect of which the *firm* is carrying on *safeguarding and administration of assets (without arranging)* in accordance with ■ CASS 6; or
- (3) in relation to a *client's* assets that the *firm* is holding or has received under an arrangement to which ■ CASS 3 applies; or
- (4) when it acts as the *operator* of a *regulated collective investment scheme* in relation to property held for or within the *scheme*.

8.1.2B

FCA

G

- (1) ■ CASS 8.1.2A R is not an absolute exemption, but it excludes the application of the *mandate rules* in relation to *money* or assets that a *firm* has received, is holding, or is responsible for (as appropriate and in the circumstances described in ■ CASS 8.1.2A R).

- (2) This means that, for example in respect of ■ CASS 8.1.2A R (1), a *firm* holding *client money* in accordance with ■ CASS 5 or ■ CASS 7 does not also need to comply with the *mandate rules* in relation to the *client money* which it actually holds, but the *mandate rules* would apply if the *firm* has a *mandate*



under which it can receive a *client's money* from another *person* in the course of, or in connection with, the activities set out at ■ CASS 8.1.1 R (1) and ■ CASS 8.1.1 R (2).

- (3) Similarly, in respect of ■ CASS 8.1.2A R (4) , the *mandate rules* apply to a *firm* that is the *operator* of a *regulated collective investment scheme* if, for example, it has a *mandate* under which it can receive a *client's money* from another *person* for the purposes of investing it in the *scheme*.

8.1.3  
FCA

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

**Purpose**

8.1.4  
FCA

**G** The *mandate rules* require *firms* to establish and maintain records and *internal controls* to prevent the misuse of a *mandate*.

8.1.4A  
FCA

**G** The *mandate rules* only apply to a *firm* that has a *mandate*, and do not affect the duties of any other *person* to whom the *firm* is able to give the types of instructions referred to in ■ CASS 8.2.1R (4). For example, if a *person* (A) has accepted a *deposit* from a *client*, and a *firm* (B) has a *mandate* in respect of that *client's deposit* held by A, the *mandate rules* only apply to B, and do not affect the duties of A in relation to the *deposit*.

8.1.5

**R** [deleted]

8

## 8.2 Definition of mandate

### 8.2.1

FCA

R

A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):

- (1) they are obtained by the *firm* from the *client*, and with the *client's* consent;
- (2) they are in written form at the time they are obtained from the *client*;
- (3) they are retained by the *firm*;
- (4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):
  - (a) instructions to another *person* in relation to the *client's* money that is credited to an account maintained by that other *person* for the *client*;
  - (b) instructions to another *person* in relation to any money to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including where that other *person* is holding *client* money for the *client* in accordance with ■ CASS 5 or ■ CASS 7);
  - (c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments*);
  - (d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and
- (5) their circumstances are such that the *client's* further involvement would not be necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

8.2.2

FCA

G

**Written form**

A *mandate* can take any written form and need not state that it is a *mandate*. For example it could take the form of a standalone document containing certain information or conferring a certain authority on the *firm*, a specific provision within a document or agreement that also relates to other matters, or a combination of provisions within a number of documents which together meet the conditions in ■ CASS 8.2.1 R.

8.2.3

FCA

G

**Retention by the firm**

- (1) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retains it (for example by not destroying the relevant document):
  - (a) after it uses it to effect those immediate transactions; or
  - (b) because those transactions are not, for whatever reason, effected immediately.
- (2) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) and the *firm* retains that information (for example in accordance with its record-keeping procedures or in order to effect transactions in the future or over a period of time) then such information could amount to a *mandate*.

8.2.4

FCA

G

**Ability to give instructions to another person**

The instructions referred to at ■ CASS 8.2.1 R (4) are all instructions given by a *firm* to another *person* who also has a relationship with the *firm's client*. For example, the other person may be the *client's bank*, intermediary, *custodian* or credit card provider. This means, for example, that any means by which a *firm* can control a *client's money* or assets for which it is itself responsible to the *client* (rather than any other *person*) would not amount to a *mandate*. This includes where the *firm* is holding a *client's money* or assets other than in accordance with ■ CASS 5, ■ CASS 6 or ■ CASS 7 (for example, because of an exemption in those *rules*).

8.2.5

FCA

G

A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1R (4)(a) could include a direct debit instruction over a *client's bank* account in favour of the *firm*.

8.2.6

FCA

G

A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1 R (4)(d) could include written information that sets out the *client's credit card* details.

8.2.7

FCA

G

**Conditions on use of mandate and client's further involvement**

- (1) If a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4) , but its use of those means is subject to any limits or conditions, then this does not necessarily prevent those means from being a *mandate*. For example, a *client* might require that a *firm* uses a *mandate* only in connection with transactions up to a certain value.
- (2) However, if a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4) , but the *firm* cannot, in practice, use those means without the *client's* further involvement, then the condition in

■ CASS 8.2.1 R (5) would not be met. For example, a *firm* might have the means by which it can give instructions of the type referred to in ■ CASS 8.2.1 R (4)(a) in relation to an account maintained by another *person* for a *client*, but that other *person* might require the *client*'s signature or other authorisation before it gives effect to those instructions.

## 8.3 Records and internal controls

8.3.1

FCA

R

A *firm* that has *mandates* must establish and maintain adequate records and *internal controls* in respect of its use of the *mandates*.

8.3.2

FCA

R

The records and *internal controls* required by ■ CASS 8.3.1 R must include:

- (1) an up-to-date list of each *mandate* that the *firm* has obtained, including a record of any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
- (2) a record of each transaction entered into under each *mandate* that the *firm* has;
- (3) *internal controls* to ensure that each transaction entered into under each *mandate* that the *firm* has is in accordance with any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
- (4) the details of the procedures and *internal controls* around the giving of instructions under the *mandates* that the *firm* has (such instructions being those referred to in ■ CASS 8.2.1 R (4) ); and
- (5) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls* for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*.

8.3.3

FCA

G

A *firm* should distinguish between conditions placed by a *client* on the *firm's* use of a *mandate*, and criteria to which transactions effected by a *firm* with or for a *client* may be subject.

- (1) The requirements in ■ CASS 8.3.2 R (1) and ■ CASS 8.3.2 R (3) apply only in respect of conditions placed around the *firm's* use of a *mandate* itself or around the instructions described in ■ CASS 8.2.1 R (4). Examples of these include conditions under which a *mandate* may only be used by the *firm* in connection with transactions up to a certain value, or under which instructions under a *mandate* may only be given by certain personnel within the *firm*.

- 
- (2) The requirements in ■ CASS 8.3.2 R (1) and ■ CASS 8.3.2 R (3) do not apply in respect of criteria which relate to the nature and circumstances of transactions effected by a *firm* with or for a *client*. Examples of those criteria include investment restrictions or exposure limits for a managed portfolio, and required or preferred execution prices or execution venues.

# Chapter 9

## Prime brokerage



## 9.1 Application

9.1.1

FCA

**R** This chapter applies to a *firm*:

- (1) to which ■ CASS 6 (Custody rules) applies; and
- (2) which is a *prime brokerage firm*.



## 9.2 Prime broker's daily report to clients

### 9.2.1

FCA

R

- (1) A *firm* must make available to each of its *clients* to whom it provides *prime brokerage services* a statement in a *durable medium*:
  - (a) showing the value at the close of each *business day* of the items in (3); and
  - (b) detailing any other matters which that *firm* considers are necessary to ensure that a *client* has up-to-date and accurate information about the amount of *client money* and the value of *safe custody assets* held by that *firm* for it.
- (2) The statement must be made available to those *clients* not later than the close of the next *business day* to which it relates.
- (3) The statement must include:
  - (a) the total value of *safe custody assets* and the total amount of *client money* held by that *prime brokerage firm* for a *client*;
  - (b) the cash value of each of the following:
    - (i) Cash loans made to that *client* and accrued interest;
    - (ii) *securities* to be redelivered by that *client* under open short positions entered into on behalf of that *client*;
    - (iii) current settlement amount to be paid by that *client* under any *futures* contracts;
    - (iv) short sale cash proceeds held by the *firm* in respect of short positions entered into on behalf of that *client*;
    - (v) cash margin held by the *firm* in respect of open *futures* contracts entered into on behalf of that *client*;
    - (vi) mark-to-market close-out exposure of any *OTC* transaction entered into on behalf of that *client* secured by *safe custody assets* or *client money*;
    - (vii) total secured obligations of that *client* against the *prime brokerage firm*; and

(viii) all other *safe custody assets* held for that *client*.

- (c) total collateral held by the *firm* in respect of secured transactions entered into under a *prime brokerage agreement*, including where the *firm* has exercised a right of use in respect of that *client's safe custody assets*;
- (d) the location of all of a *client's safe custody assets*, including assets held with a sub-custodian; and
- (e) a list of all the institutions at which the *firm* holds or may hold *client money*, including money held in *client bank accounts* and *client transaction accounts*.

## 9.3 Prime brokerage agreement disclosure annex

### 9.3.1

FCA

R

- (1) A *firm* must ensure that every *prime brokerage agreement* that includes its right to use *safe custody assets* for its own account includes a disclosure annex.
- (2) A *firm* must ensure that the disclosure annex sets out a summary of the key provisions within the *prime brokerage agreement* permitting the use of *safe custody assets*, including:
  - (a) the contractual limit, if any, on the *safe custody assets* which a *prime brokerage firm* is permitted to use;
  - (b) all related contractual definitions upon which that limit is based;
  - (c) a list of numbered references to the provisions within that *prime brokerage agreement* which permit the *firm* to use the *safe custody assets*; and
  - (d) a statement of the key risks to that *client's safe custody assets* if they are used by the *firm*, including but not limited to the risks to the *safe custody assets* on the *failure* of the *firm*.
- (3) A *firm* must ensure that it sends to the *client* in question an updated disclosure annex if the terms of the *prime brokerage agreement* are amended after completion of that agreement such that the original disclosure annex no longer accurately records the key provisions of the amended agreement.

### 9.3.2

FCA

G

- (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *client's* assets when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *safe custody assets* for which it is responsible.
- (2) A *prime brokerage firm* should not enter into "right to use arrangements" for a *client's safe custody assets* unless:
  - (a) in the case of a *CASS small firm* or a *firm* to which ■ CASS 1A.3.1CR applies, the person in that *firm* to whom the responsibilities set out in ■ CASS 1A.3.1R or in ■ CASS 1A.3.1C R (2) respectively have been allocated; or

- (b) in the case of any other *firm*, the *person* who carries out the CASS *operational oversight function*; and
- (c) those of that *firm*'s managers who are responsible for those *safe custody assets*;

are each satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle 10* which include:

- (i) the daily reporting obligation in ■ CASS 9.2.1 R ; and
- (ii) the record-keeping obligations in ■ CASS 6.3.6 R (3)(b)(i) .

# Chapter 10

## CASS resolution pack

## 10.1 Application, purpose and general provisions

### Application

10.1.1  
FCA

R

- (1) Subject to (2) this chapter applies to a *firm* when it:
- (a) holds *financial instruments*, or is *safeguarding and administering investments*, in accordance with ■ CASS 6; and/or
  - (b) holds *client money* in accordance with ■ CASS 7.
- (2) This chapter does not apply to a *firm* to which ■ CASS 6 applies merely because it is a *firm* which *arranges safeguarding and administration of assets*.

### Purpose

10.1.2  
FCA

G

The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of *client money* and *safe custody assets* held by the *firm* to that *firm's clients*.

### General provisions

10.1.3  
FCA

R

A *firm* falling within ■ CASS 10.1.1 R must maintain and be able to retrieve, in the manner described in this chapter, a *CASS resolution pack*.

10.1.4  
FCA

G

A *firm* is required to maintain a *CASS resolution pack* at all times when ■ CASS 10.1.1 R applies to it.

10.1.5  
FCA

G

- (1) The *rules* in this chapter specify the types of documents and records that must be maintained in a *firm's CASS resolution pack* and the retrieval period for the pack. The *firm* should maintain the component documents of the *CASS resolution pack* in order for them to be retrieved in accordance with ■ CASS 10.1.7 R, and should not use the retrieval period to start producing these documents.

- (2) The contents of the documents that constitute the *CASS resolution pack* will change from time to time (for example, because daily reconciliations must be included in the pack).
- (3) A *firm* is only required to retrieve the *CASS resolution pack* in the circumstances prescribed in ■ CASS 10.1.7 R.

## 10.1.6

FCA

R

For the purpose of this chapter, a *firm* will be treated as satisfying a *rule* in this chapter requiring it to include a document in its *CASS resolution pack* if a member of that *firm's group* includes that document in its own *CASS resolution pack*, provided that:

- (1) that *group* member is subject to the same *rule*; and
- (2) the *firm* is still able to comply with ■ CASS 10.1.7 R.

## 10.1.7

FCA

R

In relation to each document in a *firm's CASS resolution pack* a *firm* must:

- (1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and
- (2) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of an *FCA* request.

## 10.1.8

FCA

R

Where documents are held by members of a *firm's group* in accordance with ■ CASS 10.1.6 R, the *firm* must have adequate arrangements in place with its *group* members which allow for delivery of the documents within the timeframe referred to in ■ CASS 10.1.7 R .

## 10.1.9

FCA

A

- (1) For the purpose of ■ CASS 10.1.7 R, the following documents and records should be retrievable immediately:
  - (a) the document identifying the institutions referred to in ■ CASS 10.2.1R (2);
  - (b) the document identifying individuals pursuant to ■ CASS 10.2.1R (4);
  - (c) any written notification or trust acknowledgement letters referred to in ■ CASS 10.2.1R (5);
  - (d) the most recent internal reconciliations relating to *safe custody assets* referred to in ■ CASS 10.3.1R (3) ;
  - (e) the most recent external reconciliations relating to *safe custody assets* referred to in ■ CASS 10.3.1R (5) ;

- (f) the most recent internal reconciliations relating to *client money* referred to in ■ CASS 10.3.1R (7) ; and
- (g) the most recent external reconciliations relating to *client money* referred to in ■ CASS 10.3.1R (9) .

- (2) Where a *firm* is reliant on the continued operation of certain systems for the provision of component documents in its CASS *resolution pack*, it should have arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.
- (3) Contravention of (1) or (2) may be relied upon as tending to establish contravention of ■ CASS 10.1.7 R.

10.1.10  
FCA

**G** Where a *firm* anticipates that it might be the subject of an *insolvency order*, it is likely to have sought advice from an external adviser. The *firm* should make the CASS *resolution pack* available promptly, on request, to such an adviser.

10.1.11  
FCA

- R** (1) A *firm* must ensure that it reviews the content of its CASS *resolution pack* on an ongoing basis to ensure that it remains accurate
- (2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in ■ CASS 10.2.1 R, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.

10.1.12  
FCA

**G** For the purpose of ■ CASS 10.1.11R (2), an example of a change that would render a document inaccurate in a material respect is a change of institution identified pursuant to ■ CASS 10.2.1R (2).

10.1.13  
FCA

**G** A *firm* may hold in electronic form any document in its CASS *resolution pack* provided that it continues to be able to comply with ■ CASS 10.1.7 R and ■ CASS 10.1.11 R in respect of that document.

10.1.14  
FCA

**R** The individual to whom responsibility for CASS operational oversight has been allocated under ■ CASS 1A.3.1 R, ■ CASS 1A.3.1A R or, as the case may be, ■ CASS 1A.3.1C R (2), must report at least annually to the *firm's governing body* in respect of compliance with the *rules* in this chapter.

10.1.15  
FCA

**G** Individuals allocated functions relating to CASS operational oversight pursuant to ■ CASS 1A.3.1 R, ■ CASS 1A.3.1A R or, as the case may be, ■ CASS 1A.3.1C R (2), are reminded that their responsibilities include compliance with the provisions in this chapter.



10.1.16

FCA

R

A *firm* must notify the *FCA* in writing immediately if it has not complied with, or is unable to comply with, ■ CASS 10.1.3 R.

## 10.2 Core content requirements

10.2.1

FCA

R

A *firm* must include within its *CASS resolution pack*:

- (1) a master document containing information sufficient to retrieve each document in the *firm's CASS resolution pack*;
- (2) a document which identifies the institutions the *firm* has appointed (including through an *appointed representative, tied agent, field representative* or other agent):
  - (a) in the case of *client money*, for the placement of *money* in accordance with ■ CASS 7.4.1 R or to hold or control *client money* in accordance with ■ CASS 7.5.2 R; and
  - (b) in the case of *safe custody assets*, for the deposit of those assets in accordance with ■ CASS 6.3.1 R;
- (3) a document which identifies each *appointed representative, tied agent, field representative* or other agent of the *firm* which receives *client money* or *safe custody assets* in its capacity as the *firm's* agent;
- (4) a document which identifies:
  - (a) each *senior manager* and *director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* by ■ CASS 6 or ■ CASS 7; and
  - (b) the individual to whom responsibility for *CASS operational oversight* has been allocated under ■ CASS 1A.3.1 R or, as the case may be, to whom the *CASS operational oversight function* has been allocated under ■ CASS 1A.3.1A R;
- (5) for each institution identified in ■ CASS 10.2.1R (2) , a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the *firm* that relates to

the holding of *client money* or *safe custody assets* including any written notification or trust acknowledgement letters sent or received pursuant to ■ CASS 7.8;

- (6) a document which:
- (a) identifies each member of the *firm's group* involved in operational functions related to any obligations imposed on the *firm* under ■ CASS 6 or ■ CASS 7, including in the case of a member that is a *nominee company*, identification as such; and
  - (b) identifies each third party which the *firm* uses for the performance of operational functions related to any of the obligations imposed on the *firm* by ■ CASS 6 or ■ CASS 7; and
  - (c) for each *group* member identified in (a), the type of entity (such as branch, subsidiary and or *nominee company*) the *group* member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;
- (7) a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between the *firm* and each third party identified in (6)(b);
- (8) where the *firm* relies on a third party identified in (6)(b), a document which describes how to:
- (a) gain access to relevant information held by that third party; and
  - (b) effect a transfer of any of the *client money* or *safe custody assets* held by the *firm*, but controlled by that third party; and
- (9) a copy of the *firm's* manual in which are recorded its procedures for the management, recording and transfer of the *client money* and *safe custody assets* that it holds.

## 10.2.2

FCA

G

For the purpose of ■ CASS 10.2.1R (4), examples of individuals within the *firm* who are critical or important to the performance of operational functions include:

- (1) those necessary to carry out both internal and external *client money* and *safe custody asset* reconciliations; and
- (2) those in charge of client documentation for business involving *client money* and *safe custody assets*.

10.2.3

FCA

**R** For the purpose of ■ CASS 10.2.1R (2), a *firm* must ensure that the document records:

- (1) the full name of the individual institution in question;
- (2) the postal and email address and telephone number of that institution; and
- (3) the numbers of all accounts opened by that *firm* with that institution.

## 10.3 Existing records forming part of the CASS resolution pack

### 10.3.1

FCA

R

A *firm* must include, as applicable, within its *CASS resolution pack* the records required under:

- (1) ■ CASS 6.3.1R (4) (safe custody assets: appropriateness of the firm's selection of a third party);
- (2) ■ CASS 6.4.3 R (firm's use of safe custody assets);
- (3) ■ CASS 6.5.1 R (*safe custody assets* held for each client), including internal reconciliations carried out pursuant to ■ CASS 6.5.2 R as explained in the *guidance* at ■ CASS 6.5.4 G;
- (4) ■ CASS 6.5.2A R (client agreements: firm's right to use);
- (5) ■ CASS 6.5.6 R (Reconciliations with external records);
- (6) ■ CASS 7.4.10 R (client money: appropriateness of the firm's selection of a third party);
- (7) ■ CASS 7.6.1 R (client money held for each client), including internal reconciliations carried out pursuant to ■ CASS 7.6.2 R as explained in the *guidance* at ■ CASS 7.6.6 G;
- (8) ■ CASS 7.6.7 R and ■ CASS 7.6.8 R (method of internal reconciliation of *client money* balances);
- (9) ■ CASS 7.6.9 R (Reconciliations with external records);
- (10) ■ COBS 3.8.2 R (2)(a) and ■ COBS 3.8.2 R (2)(c) (client categorisation);  
and
- (11) ■ COBS 8.1.4 R (retail and professional client agreements).

10

PAGE  
9

### 10.3.2

FCA

G

■ CASS 10.3.1 R does not change the record keeping requirements of the *rules* referred to therein.



## Client Assets

### CASS TP 1 Transitional Provisions

FCA

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision   | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|-----|--|-----|--|--|---|
| 1   | CASS 2 to CASS 4   | R   | [deleted]  |  |   |
| 2   | Every <i>rule</i> in the <i>Handbook</i>                 | R   | Expired  |  |   |
|     |  | G   | Expired  |  |   |
| 2A  |  | G   | [deleted]  |  |   |
| 3   | CASS 5.1 to CASS 5.6                                     | R   | Apply in relation to <i>money</i> (and where appropriate <i>designated investments</i> ) held by a <i>firm</i> on 14 January 2005 (being <i>money</i> or <i>designated investments</i> to which CASS 5.1 to CASS 5.6 would not otherwise apply) to the extent that such <i>money</i> (or <i>designated investments</i> ) relate to business carried on before 14 January 2005 and which would, if conducted on or after 14 January 2005, be an <i>insurance mediation activity</i> . | Indefinitely                               | 14 January 2005                           |
| 4   | CASS 5.1.5A  | R   | [Expired]  |  |   |
| 5   | CASS 5.3.2   | R   | [Expired]  |  |   |
| 6   | CASS 5.4.7   | R   | [Expired]  |  |   |
| 7   | CASS 5.5.65  | R   | [Expired]  |  |   |
| 8   | CASS 6.3.5   | R   | [deleted]  |  |   |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision   | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|-----|--|-----|--|--|---|
| 8A  | CASS 6.3.5 R to CASS 6.3.8R                              | R   | The <i>rules</i> listed in column (2) do not apply in relation to agreements executed before 1 April 2012.   | 1 April 2012 until 30 September 2012       | 1 April 2012                              |
|     |  | G   | Notwithstanding the operation of <i>CASS TP 1.1R(8A)</i> , a <i>firm</i> should as soon as reasonably practicable modify its agreement with that third party so as to meet the requirements of CASS 6.3.5 R to CASS 6.3.8 R. |  |   |
| 9   | CASS 6.1.6 R (2) and CASS 6.1.6A R                       |     | [deleted]  |  |   |
| 10  | CASS 7.2.3 R (2) and CASS 7.2.3A R                       |     | [deleted]  |  |   |



# Client Assets

## Schedule 1

### Sch 1.1 G

**FCA**

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

### Sch 1.2 G

**FCA**

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

### Sch 1.3 G

**FCA**

| Handbook reference                                 | Subject of record   | Contents of record   | When record must be made   | Retention period   |
|--|---|--|--|--|
| CASS 1A.3.3 R                                      | Allocation of the <i>CASS</i> oversight responsibilities in CASS 1A.3.1 R, of the <i>CASS operational oversight function</i> , or of the responsibilities in CASS 1A.3.1C R (2), as relevant                                  | The <i>person</i> to whom the <i>CASS</i> oversight responsibilities have been allocated, subject to the provisions of CASS 1A.3.3 R, to whom the <i>CASS operational oversight function</i> has been allocated in accordance with CASS 1A.3.1A R, or to whom the responsibilities in CASS 1A.3.1C R (2) have been allocated | Upon allocation  | 5 years (from the date the record was made)                                  |
| CASS 1.4.12 R and, where applicable, CASS 1.4.13 R | For a <i>firm</i> which carries on <i>auction regulation bidding</i> , election (under CASS 1.4.9 R) to comply with <i>CASS</i> in respect of this activity and, where applicable, decision to discontinue use of that opt in | Record of this election or, where applicable, the decision to discontinue use of the opt in, including the date on which either is to be effective   | Upon making the election or, where applicable, upon taking the decision to discontinue use of the opt in | 5 years from the date on which the opt in ceases to be used<br><br>[deleted] |

| Handbook reference | Subject of record   | Contents of record   | When record must be made | Retention period  |
|--------------------|---|--|--------------------------|---|
|                    |   |  |                          | [deleted]   |
|                    |   |  |                          | [deleted]   |
|                    |   |  |                          | [deleted]   |
|                    |   |  |                          | [deleted]   |
|                    |   |  |                          | [deleted]   |
|                    |   |  |                          | [deleted]   |
| CASS 5.1.1 R (4)   | Record of election of compliance with specified <i>CASS</i> rules   | Record of compliance with specified <i>CASS</i> rules  | Not specified            | Not specified   |
| CASS 5.2.3 R (2)   | Holding <i>client money</i> as agent  | The terms of the agreement   | Not specified            | Six years   |
| CASS 5.4.4 R (2)   | Adequacy of systems and controls  | Written confirmation of adequate systems and controls from its auditor   | Not specified            | Not specified   |
| CASS 5.5.84 R      | <i>Client money</i> calculation   | Whether the <i>firm</i> calculates its <i>client money</i> requirements according to CASS 5.5.84 R or CASS 5.5.84 R  | Not specified            | Not specified   |
| CASS 5.5.84 R      | Transactions and commitments for <i>client money</i>  | Explanation of the <i>firm's</i> transactions and commitments for <i>client money</i>  | Not specified            | Three years   |
| CASS 5.8.3 R (1)   | Client's title to a <i>contract of insurance</i>  | Identity of such <i>documents</i> and/or property and dates received and delivered to <i>client</i>  | Not specified            | Three years   |
| CASS 6.1.16C R (3) | A <i>personal investment firm</i> that temporarily holds a <i>client's designated investments</i> which is not in the course of <i>MiFID business</i> | Client details and any actions taken by the <i>firm</i>  |                          | 5 years (from the making of the record)   |
| CASS 6.1.16K R     | Client custody assets which the <i>firm</i> has arranged for another to hold or receive   | Full details   | On receipt               | 5 years   |
|                    |   |  |                          | [deleted]   |
| CASS 6.3.1R (4)    | Appropriateness of a <i>firm's</i> selection of a third party   | Grounds upon which a <i>firm</i> satisfies itself as to the appropriateness of the <i>firm's</i> selection of a third party to hold <i>safe custody assets</i> belonging to <i>clients</i> | Date of the selection    | 5 years (from the date the <i>firm</i> ceases to use the third party to hold <i>safe custody assets</i> belonging to <i>clients</i> ) |

| Handbook reference | Subject of record  | Contents of record  | When record must be made    | Retention period  |
|--------------------|--|---|-----------------------------|---|
| CASS 6.4.3 R       | Details of <i>clients</i> and <i>safe custody assets</i> used for the <i>firm's</i> own account or the account of another <i>client</i> of the <i>firm</i> | Details of the <i>client</i> on whose instructions the use of the <i>safe custody assets</i> has been effected and the number of <i>safe custody assets</i> used belonging to each <i>client</i>  | Maintain up to date records | 5 years (from the date the record was made)   |
| CASS 6.5.1 R       | <i>Safe custody assets</i> held for each <i>client</i> and the <i>firm's</i> own <i>applicable assets</i>  | All that is necessary to enable the <i>firm</i> to distinguish <i>safe custody assets</i> held for one <i>client</i> from <i>safe custody assets</i> held for any other <i>client</i> , and from the <i>firm's</i> own <i>applicable assets</i> | Maintain up to date records | 5 years (from the date the record was made)   |
| CASS 6.5.2 R       | <i>Safe custody assets</i> held for <i>clients</i>   | Accurate records which ensure their correspondence to the <i>safe custody assets</i> held for <i>clients</i>  | Maintain up to date records | 5 years (from the date the record was made)   |
| CASS 6.5.2A R      | <i>Client</i> agreements that include a <i>firm's</i> right to use <i>safe custody assets</i> for its own account  | A copy of every executed <i>client</i> agreement that includes a <i>firm's</i> right to use <i>safe custody assets</i> for its own account  | Maintain up-to-date records | 5 years (from the date the record was made)   |
| CASS 7.1.3 R (2)   | Record of election to comply with the <i>client money chapter</i>  | Record of election to comply with the <i>client money chapter</i> , including the date from which the election is to be effective   | Date of the election        | 5 years (from the date the <i>firm</i> ceases to use the election)                        |
| CASS 7.1.15C R     | Record of election in relation to CASS 7.1.15C R   | Record of election in relation to CASS 7.1.15C R  | Date of election            | Not specified   |
| CASS 7.4.10 R      | Appropriateness of a <i>firm's</i> selection of a third party  | Grounds upon which a <i>firm</i> satisfies itself as to the appropriateness of the <i>firm's</i> selection of a third party to hold <i>client money</i>   | Date of the selection       | 5 years (from the <i>firm</i> ceases to use the third party to hold <i>client money</i> ) |
| CASS 7.6.1 R       | <i>Client money</i> held for each <i>client</i> and the <i>firm's</i> own <i>money</i>   | All that is necessary to enable the <i>firm</i> to distinguish <i>client money</i> held for one <i>client</i> from <i>client money</i> held for any other <i>client</i> , and from the <i>firm's</i> own <i>money</i>                           | Maintain up to date records | 5 years (from the date the record was made)   |
| CASS 7.6.2 R       | <i>Client money</i> held for each <i>client</i>  | Accurate records to ensure the correspondence between the records and accounts of the entitlement of each <i>client</i> for   | Maintain up to date records | 5 years (from the date the record was made)   |

| Handbook reference | Subject of record   | Contents of record  | When record must be made                     | Retention period   |
|--------------------|---|---|--|--|
|                    |   | whom the <i>firm</i> holds <i>client money</i> with the records and accounts of the <i>client money</i> the <i>firm</i> holds in <i>client bank accounts</i> and <i>client transaction accounts</i>   |  |  |
| CASS 7.6.7 R       | Internal reconciliation of <i>client money</i> balances   | Explanation of method of internal reconciliation of <i>client money</i> balances used by the <i>firm</i> , and if different from the <i>standard method of internal client money reconciliation</i> , an explanation as to how the method used affords equivalent degree of protection to <i>clients</i> , and how it enables the <i>firm</i> to comply with the <i>client money distribution rules</i> | Date the <i>firm</i> starts using the method | 5 years (from the date the <i>firm</i> ceases to use the method) |
| CASS 7A.3.8 R (3)  | <i>Client money shortfall</i>   | Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank  | Maintain up to date records                  | Until <i>client</i> is repaid                                    |
| CASS 7A.3.10 R (3) | <i>Client money shortfall</i>   | Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank  | Maintain up to date records                  | Until <i>client</i> is repaid                                    |
| CASS 7A.3.11 R (3) | <i>Client money shortfall</i>   | Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank  | Maintain up to date records                  | Until <i>client</i> is repaid                                    |
| CASS 7A.3.17 R (3) | <i>Client money shortfall</i>   | Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed intermediate broker, <i>settlement agent</i> or OTC counterparty  | Maintain up to date records                  | Until <i>client</i> is repaid                                    |
| CASS 8.3.1 R       | Adequate records and internal controls in respect of the <i>firm's</i> use of <i>mandates</i> (see CASS 8.3.2 R (1) to CASS 8.3.2 R (5) ) | Up to date list of <i>firm's mandates</i> and any conditions regarding the use of <i>mandates</i> , all transactions entered into, details of procedures and <i>internal controls</i> for giving and receiving of instructions under <i>mandates</i> , and important <i>client</i> documents held by the <i>firm</i>  | Maintain current full details                | Not specified  |

---

| Handbook reference | Subject of record                    | Contents of record                                   | When record must be made  | Retention period  |
|--------------------|--------------------------------------|--|---|-------------------|
| CASS 10.1.3 R      | <i>A firm's CASS resolution pack</i> | The documents to which CASS 10.2 and CASS 10.3 refer | From the date on which a <i>firm</i> becomes subject to CASS 10.1.3 R | None is specified |



## Client Assets

Schedule 2  
Notification requirements

## Sch 2.1 G

FCA

| Handbook reference      | Matter to be notified  | Contents of notification   | Trigger event                                 | Time allowed   |
|-------------------------|--|--|---|--|
| CASS 1A.2.5 R           | Election to be treated as a <i>CASS medium firm</i> or a <i>CASS large firm</i>  | The fact of that election  | The fact of that election                     | To be made at least one week before the election is intended to take effect                        |
| CASS 1A.2.8 R (1) - (3) |  |  |   | [deleted]  |
| CASS 1A.2.8 R (4)       |  |  |   | [deleted]  |
| CASS 1A.2.8A R          |  |  |   | [deleted]  |
| CASS 1A.2.9 R (1) - (3) | The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9 R | The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9 R. | The need to comply with CASS 1A.2.9 R (1)-(3) | By the fifteenth <i>business day</i> of January unless contrary provision is made in CASS 1A.2.9 R |
| CASS 1A.2.9 R (4)       | A <i>firm's</i> 'CASS firm type' classification  | A <i>firm's</i> 'CASS firm type' classification  | The need to comply with CASS 1A.2.9 R (4)     | At the same time the <i>firm</i> makes the notification under CASS 1A.2.9 R (1), (2) or (3)        |
| CASS 1A.3.2 R           |  |  |   | [deleted]  |
|                         |  |  |   | [deleted]  |
|                         |  |  |   | [deleted]  |
|                         |  |  |   | [deleted]  |
|                         |  |  |   | [deleted]  |
|                         |  |  |   | [deleted]  |
|                         |  |  |   | [deleted]  |
|                         |  |  |   | [deleted]  |
|                         |  |  |   | [deleted]  |
|                         |  |  |   | [deleted]  |

| Handbook reference | Matter to be notified  | Contents of notification   | Trigger event   | Time allowed                      |
|--------------------|--|--|---|-----------------------------------|
|                    |  |  |   | [deleted]<br>[deleted]            |
| CASS 5.5.84 R      | Failure of <i>bank, broker or settlement agent</i>   | Full details including whether it intends to make good any <i>shortfall</i> that may have arisen in the amounts involved                       | As soon as the <i>firm</i> becomes aware  | Immediately                       |
| CASS 5.5.84 R      | Inability to perform the calculation required by CASS 5.5.84 R   | Inability to perform the calculation   | Inability to perform the calculation  | Immediately                       |
| CASS 5.5.84 R      | Inability to make good any <i>shortfall</i> identified by CASS 5.5.84 R  | Inability to make good any <i>shortfall</i> in <i>client money</i>   | Inability to make good any <i>shortfall</i>   | Immediately                       |
| CASS 5.5.84 R      | Inability to comply with the requirements in CASS 5.5.84 R; CASS 5.5.84 R; CASS 5.5.84 R; CASS 5.5.84 R  | Inability to comply with the requirements of the <i>rules</i> listed   | Inability to comply with the requirements of the <i>rules</i> listed                  | As soon as reasonably practicable |
| CASS 6.5.13R (1)   | Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.1 R (Records and accounts), CASS 6.5.2 R (Records and accounts, including internal reconciliations) or CASS 6.5.6R (Reconciliations with external records) | The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that | Non-compliance or inability, in any material respect, to comply with the requirements | Without delay                     |
| CASS 6.5.13R (2)   | Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.10R (Reconciliation discrepancies)   | The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that | Non-compliance or inability, in any material respect, to comply with the requirements | Without delay                     |
| CASS 7.4.35 R      | LME bond arrangements  | Issue of an individual letter of credit issued by the <i>firm</i>  | Upon issue of an individual letter of credit under an LME bond arrangement            | Immediately                       |
| CASS 7.6.16 R (1)  | Non-compliance or inability, in any material respect, to com-  | The fact that the <i>firm</i> has not complied or is unable, in any mate-  | Non-compliance or inability, in any mate-   | Without delay                     |



| Handbook reference | Matter to be notified  | Contents of notification   | Trigger event   | Time allowed                             |
|--------------------|--|--|---|--|
|                    | ply with the requirements in CASS 7.6.1R (Records and accounts), CASS 7.6.2R (Records and accounts, including internal reconciliations) or CASS 7.6.9R (Reconciliations with external records)   | rial respect, to comply with the requirements and the reasons for that   | ply with the requirements   |  |
| CASS 7.6.16 R (2)  | Non-compliance or inability, in any material respect, to comply with the requirements in CASS 7.6.13R to CASS 7.6.15R (Reconciliation discrepancies)   | The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that | Non-compliance or inability, in any material respect, to comply with the requirements | Without delay                            |
| CASS 7A.3.19 R (1) | Failure of a third party with which <i>money</i> is held - i.e.: bank, <i>intermediate broker</i> , <i>settlement agent</i> or OTC counterparty or other entity with which it has placed or to which it has passed <i>client money</i> | Full details   | <i>Firm</i> becomes aware of the <i>failure</i> of the entity                         | As soon as the <i>firm</i> becomes aware |
| CASS 7A.3.19 R (2) | <i>Failure</i> of a third party with which money is held - i.e.: bank, <i>intermediate broker</i> , <i>settlement agent</i> or OTC counterparty or other entity with which it has placed or to which it has passed <i>client money</i> | Intentions regarding making good any <i>shortfall</i> that has arisen or may arise, and of the amounts involved                                | <i>Failure</i> of third party with which <i>client money</i> is held                  | As soon as reasonably practical          |
| CASS 10.1.16 R     | If a <i>firm</i> has not complied with, or is unable to comply with, CASS 10.1.3 R   | The fact of that <i>firm's</i> non-compliance or inability to comply with the <i>rule</i> in CASS 10.1.3 R                                     | Non-compliance or inability to comply with CASS 10.1.3 R                              | Immediately (as per CASS 10.1.16 R)      |



## Client Assets

### Schedule 3 Fees and other required payments

#### Sch 3.1 G

FCA

There are no requirements for fees or other payments in *CASS*.



---

## Client Assets

### Schedule 4 Powers exercised

#### Sch 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *CASS*:

- Section 138 (General rule-making power)
- Section 139(1) (Miscellaneous ancillary matters)
- Section 149 (Evidential provisions)
- Section 156 (General supplementary powers)

#### Sch 4.2 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *CASS*:

- Section 157(1) (Guidance)



## Client Assets

### Schedule 5 Rights of actions for damages

#### Sch 5.1 G

**FCA**

1. The table below sets out the *rules* in *CASS* contravention of which by an *authorised person* may be actionable under Section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention
2. If a 'Yes' appears in the column headed 'For private person?', the *rule* may be actionable by a 'private person' under Section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A 'Yes' in the column headed 'Removed' indicates that the *FCA* has removed the right of action under Section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. The column headed 'For other person?' indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

#### Sch 5.2 G

**FCA**

| Chapter / Appendix   | Section / Annex | Paragraph | Right of action under Section 138D |          |                   |
|--|-----------------|-----------|------------------------------------|----------|-------------------|
|  |                 |           | For private person?                | Removed? | For other person? |
| All <i>rules</i> in <i>CASS</i> with the status letter "E" |                 |           | No                                 | No       | No                |
| All other <i>rule</i> in <i>CASS</i> .                     |                 |           | Yes                                | No       | No                |





---

## Client Assets

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

##### FCA

As a result of section 138A of the *Act* (Modification or waiver of rules), the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.



# Market Conduct

## Market Conduct

|              |   |
|--------------|---|
| <b>MAR 1</b> | <b>The Code of Market Conduct</b>   |
| 1.1          | Application and interpretation  |
| 1.2          | Market Abuse: general   |
| 1.3          | Market abuse (insider dealing)  |
| 1.4          | Market abuse (improper disclosure)  |
| 1.5          | Market abuse (misuse of information)  |
| 1.6          | Market abuse (manipulating transactions)  |
| 1.7          | Market abuse (manipulating devices)   |
| 1.8          | Market abuse (dissemination)  |
| 1.9          | Market abuse (misleading behaviour) & market abuse (distortion)                         |
| 1.10         | Statutory exceptions  |
| 1.11         | [Deleted]   |
| 1 Annex 1    | Provisions of the Buy-back and Stabilisation Regulation relating to buy-back programmes |
| 1 Annex 2    | Accepted Market Practices   |
| 1 Annex 3    | [Deleted]   |
| 1 Annex 4    | [Deleted]   |

|              |  |
|--------------|--|
| <b>MAR 2</b> | <b>Stabilisation</b>   |
| 2.1          | Application and Purpose  |
| 2.2          | Stabilisation: general   |
| 2.3          | Stabilisation under the Buy-back and Stabilisation Regulation  |
| 2.4          | Stabilisation when the Buy-back and Stabilisation Regulation does not apply                              |
| 2.5          | The Price Stabilising Rules: overseas provisions   |
| 2.6          | [Deleted]  |
| 2.7          | [Deleted]  |
| 2.8          | [Deleted]  |
| 2 Annex 1    | List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1R(2)) |
| 2 Annex 2    | [Deleted]  |
| 2 Annex 3    | [Deleted]  |

|              |                  |
|--------------|------------------|
| <b>MAR 3</b> | <b>[Deleted]</b> |
| 3.1          | [Deleted]        |
| 3.2          | [Deleted]        |
| 3.3          | [Deleted]        |
| 3.4          | [Deleted]        |
| 3.5          | [Deleted]        |
| 3.6          | [Deleted]        |
| 3.7          | [Deleted]        |
| 3.8          | [Deleted]        |
| 3 Annex 1    | [Deleted]        |

|              |   |
|--------------|---|
| 3 Annex 2    | [Deleted]   |
| 3 Annex 3    | [Deleted]   |
| <b>MAR 4</b> | <b>Support of the Takeover Panel's Functions</b>  |
| 4.1          | APPLICATION AND PURPOSE   |
| 4.2          |   |
| 4.3          | SUPPORT OF THE TAKEOVER PANEL'S FUNCTIONS   |
| 4.4          | EXCEPTIONS  |
| <b>MAR 5</b> | <b>Multilateral trading facilities (MTFs)</b>   |
| 5.1          | Application   |
| 5.2          | Purpose   |
| 5.3          | Trading process requirements  |
| 5.4          | Finalisation of transactions  |
| 5.5          | Monitoring compliance with the rules of the MTF   |
| 5.6          | Reporting requirements  |
| 5.7          | Pre-trade transparency requirements for shares  |
| 5.8          | Provisions common to pre- and post-trade transparency requirements for shares                   |
| 5.9          | Post-trade transparency requirements for shares   |
| 5 Annex 1    | [Deleted]   |
| <b>MAR 6</b> | <b>Systematic Internalisers</b>   |
| 6.1          | Application   |
| 6.2          | Purpose   |
| 6.3          | Criteria for determining whether an investment firm is a systematic internaliser                |
| 6.4          | Systematic internaliser reporting requirement   |
| 6.5          | Obligations on systematic internalisers in shares to make public firm quotes                    |
| 6.6          | Size and content of quotes  |
| 6.7          | Prices reflecting prevailing market conditions  |
| 6.8          | Liquid market for shares, share class, standard market size and relevant market                 |
| 6.9          | Publication of quotes   |
| 6.10         | Execution price of retail client orders   |
| 6.11         | Execution price of professional client orders   |
| 6.12         | Execution price of client orders not matching quotation sizes                                   |
| 6.13         | Standards and conditions for trading  |
| 6.14         | Limiting risk of exposure to multiple transactions  |
| <b>MAR 7</b> | <b>Disclosure of information on certain trades undertaken outside a regulated market or MTF</b> |
| 7.1          | Application   |

**7.2**            **Making post-trade information public**  
**7 Annex 1**    **Deferred publication thresholds and delays**

**MAR 8**            **Benchmarks**

**8.1**            **Application and purpose**  
**8.2**            **Requirements for benchmark submitters**  
**8.3**            **Requirements for benchmark administrators**

**Transitional Provisions and Schedules**

**TP 1**            **Transitional Provisions**  
**Sch 1**          **Record Keeping requirements**  
**Sch 2**          **Notification requirements**  
**Sch 3**          **Fees and other required payments**  
**Sch 4**          **Powers Exercised**  
**Sch 5**          **Rights of action for damages**  
**Sch 6**          **Rules that can be waived**

# Chapter 1

## The Code of Market Conduct

## 1.1 Application and interpretation

### Application and purpose

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access.

See [www.esma.europa.eu/system/files/esma\\_2012\\_122\\_en.pdf](http://www.esma.europa.eu/system/files/esma_2012_122_en.pdf)

#### 1.1.1

FCA

G

This chapter (which contains the *Code of Market Conduct*) applies to all *persons* seeking guidance on the *market abuse* regime.

#### 1.1.1A

FCA

G

References in ■ MAR 1 to the *Act* should be read to mean the *Act* as modified by the *RAP regulations* where the relevant behaviour occurs in relation to *qualifying investments* which are offered for sale on a *prescribed auction platform*.

#### 1.1.2

FCA

G

This chapter provides assistance in determining whether or not *behaviour* amounts to *market abuse*. It also forms part of the *UK's* implementation of the *Market Abuse Directive* (including its EU implementing legislation, that is Directive 2003/124/EC, Directive 2003/125/EC, Regulation 2273/2003 and Directive 2004/72/EC) and the *auction regulation*. It is therefore likely to be helpful to *persons* who:

- (1) want to avoid engaging in *market abuse* or to avoid requiring or encouraging another to do so; or
- (2) want to determine whether they are required by ■ SUP 15.10 (Reporting suspicious transactions (market abuse)) to report a transaction to the *FCA* as a suspicious one.

#### 1.1.3

FCA

G

The *FCA's* statement of policy about the imposition and amount of penalties in cases of *market abuse* (required by section 124 of the *Act*) is in ■ DEPP 6.

### Using MAR 1

#### 1.1.4

FCA

G

- (1) Assistance in the interpretation of ■ MAR 1 (and the remainder of the *Handbook*) is given in the Readers' Guide to the *Handbook* and in ■ GEN 2 (Interpreting the Handbook). This includes an explanation of the status of the types of provision used (see in particular chapter six of the Readers' Guide to the *Handbook*).



- (2) Provisions designated with "C" indicate *behaviour* which conclusively, for the purposes of the *Act*, does not amount to *market abuse* (see section 122(1) of the *Act* ).

1.1.5

FCA

G

Part VIII of the *Act*, and in particular section 118, specifies types of *behaviour* which can amount to *market abuse* . This chapter considers the general concepts relevant to *market abuse*, then each type of behaviour in turn and then describes exceptions to *market abuse* which are of general application. In doing so, it sets out the relevant provisions of the *Code of Market Conduct*, that is:

- (1) descriptions of *behaviour* that, in the opinion of the *FCA*, do or do not amount to *market abuse* (see section 119(2)(a) and (b) and section 122 of the *Act*);
- (2) descriptions of *behaviour* that are or are not *accepted market practices* in relation to one or more identified markets (see section 119(2)(d) and (e) and section 122(1) of the *Act* (subject to the *behaviour* being for legitimate reasons)); and
- (3) factors that, in the opinion of the *FCA*, are to be taken into account in determining whether or not *behaviour* amounts to *market abuse* (see section 119(2)(c) and section 122(2) of the *Act* ).

1.1.6

FCA

G

The *Code* does not exhaustively describe all types of *behaviour* that may or may not amount to *market abuse*. In particular, the descriptions of *behaviour* which, in the opinion of the *FCA*, amount to *market abuse* should be read in the light of:

- (1) the elements specified by the *Act* as making up the relevant type of *market abuse*; and
- (2) any relevant descriptions of *behaviour* which, in the opinion of the *FCA*, do not amount to *market abuse* .

1.1.7

FCA

G

Likewise, the *Code* does not exhaustively describe all the factors to be taken into account in determining whether *behaviour* amounts to *market abuse*. If factors are described, they are not to be taken as conclusive indications, unless specified as such, and the absence of a factor mentioned does not, of itself, amount to a contrary indication.

1.1.8

FCA

G

For the avoidance of doubt, it should be noted that any reference in the *Code* to "profit" refers also to potential profits, avoidance of loss or potential avoidance of loss.

1.1.9

[Deleted]

1.1.10

[Deleted]

1.1.11

[Deleted]

1.1.12

[Deleted]

1.1.13

[Deleted]

1.1.14

[Deleted]



## 1.2 Market Abuse: general

1.2.1

FCA

G

Provisions in this section are relevant to more than one of the types of *behaviour* which may amount to *market abuse*.

1.2.2

FCA

UK

Table: section 118(1) of the Act

"For the purposes of this Act, [*market abuse*] is [*behaviour*] (whether by one person alone or by two or more persons jointly or in concert) which -

- (a) occurs in relation to:
  - (i) [*qualifying investments*] admitted to trading on a [*prescribed market*], or
  - (ii) [*qualifying investments*] in respect of which a request for admission to trading on such a market has been made, or
  - (iii) in the case of subsections (2) and (3), investments which are [*related investments*] in relation to such [*qualifying investments*], and
- (b) falls within any one or more of the types of [*behaviour*] set out in subsections (2) to (8).

1.2.2A

FCA

UK

Table: section 118(1) of the Act as modified by the RAP Regulations

For the purposes of this Act, [*market abuse*] is [*behaviour*] (whether by one person alone or by two or more persons jointly or in concert) which -

- (a) occurs in relation to:
  - (i) [*qualifying investments*] which are offered for sale on a [*prescribed auction platform*], or
  - (ii) in the case of subsection (2) or (3), investments which are [*related investments*] in relation to such [*qualifying investments*], and
- (b) falls within any one or more of the types of [*behaviour*] set out in subsections (2) to (8A).

1.2.3

FCA

G

Section 118(1)(a) of the *Act* does not require the *person* engaging in the *behaviour* in question to have intended to commit *market abuse*.

1.2.4

FCA

G

Statements in this chapter to the effect that *behaviour* will amount to *market abuse* assume that the test in section 118(1)(a) of the *Act* has also been met.

### Prescribed markets and qualifying investments: "in relation to": factors to be taken into account

1.2.5

FCA

A

In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not *behaviour* prior to a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a *prescribed auction platform* satisfies section 118(1)(a) of the *Act*, and are indications that it does:

- (1) if it is in relation to *qualifying investments*:
  - (a) in respect of which a request for admission to trading on a *prescribed market* is subsequently made; and
  - (b) if it continues to have an effect once an application has been made for the *qualifying investment* to be admitted for trading, or it has been admitted to trading on a *prescribed market*, respectively, or
- (2) if it is in relation to *qualifying investments*:
  - (a) which are subsequently offered for sale on a *prescribed auction platform*; and
  - (b) if it continues to have an effect once the *qualifying investments* are offered for sale on a *prescribed auction platform*.

1.2.6

FCA

A

In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not refraining from action amounts to *behaviour* which satisfies section 118(1)(a) of the *Act* and are indications that it does:

- (1) if the *person* concerned has failed to discharge a legal or regulatory obligation (for example to make a particular disclosure) by refraining from acting; or
- (2) if the *person* concerned has created a reasonable expectation of him acting in a particular manner, as a result of his representations (by word or conduct), in circumstances which give rise to a duty or obligation to inform those to whom he made the representations that they have ceased to be correct, and he has not done so.

**Insiders: factors to be taken into account**

1.2.7

FCA



Table: section 118B of the Act

"For the purposes of [*market abuse*] an [*insider*] is any person who has [*inside information*] -

- (a) as a result of his membership of the administrative, management or supervisory bodies of an [*issuer*] of [*qualifying investments*],
- (b) as a result of his holding in the capital of an [*issuer*] of [*qualifying investments*],
- (c) as a result of having access to the information through the exercise of his employment, profession or duties,
- (d) as a result of his criminal activities, or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is [*inside information*]."

1.2.7A

FCA



Table: section 118B of the Act as modified by the RAP Regulations

For the purposes of [*market abuse*] an [*insider*] is any person who has [*inside information*]:

- (a) as a result of his membership of an administrative, management or supervisory body of an [*auction platform*] or its operator, an auctioneer or auction monitor,
- (b) as a result of his holding in the capital of an [*auction platform*] or its operator, an auctioneer or auction monitor,
- (c) as a result of having access to the information through the exercise of his employment, profession or duties,
- (d) as a result of his criminal activities, or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is [*inside information*]."

1.2.8

FCA



In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not a *person* could reasonably be expected to know that information in his possession is *inside information* and therefore whether he is an *insider* under section 118B(e) of the *Act*, and indicate that the *person* is an *insider*:

- (1) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that the *person* from whom he received it is an *insider*; and
- (2) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that it is *inside information*.

1.2.9

FCA

G

For the purposes of the other categories of *insider* specified by section 118B(a) to (d), the *person* concerned does not need to know that the information concerned is *inside information*.

### Inside information: factors to be taken into account

1.2.10

FCA

✠

Table: section 118C(2) and (3) of the Act

"... [*inside information*] is information of a precise nature which -  
(a) is not generally available; ..."

1.2.11

FCA

G

The phrase "precise nature" is defined in section 118C(5) of the *Act*. This phrase is also relevant to section 118C(4) of the *Act*.

1.2.12

FCA

⚠

In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not information is generally available, and are indications that it is (and therefore not *inside information*):

- (1) whether the information has been disclosed to a *prescribed market* or a *prescribed auction platform* through a *regulatory information service* or *RIS* or otherwise in accordance with the rules of that market;
- (2) whether the information is contained in records which are open to inspection by the public;
- (3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public;
- (4) whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality; and
- (5) the extent to which the information can be obtained by analysing or developing other information which is generally available. [Note: Recital 31 *Market Abuse Directive*]

1.2.13

FCA

⚠

- (1) In relation to the factors in ■ MAR 1.2.12E it is not relevant that the information is only generally available outside the *UK*.
- (2) In relation to the factors in ■ MAR 1.2.12E (1), (3), (4) and (5) it is not relevant that the observation or analysis is only achievable by a *person* with above average financial resources, expertise or competence.

1.2.14

FCA

G

For example, if a passenger on a train passing a burning factory calls his broker and tells him to *sell shares* in the factory's owner, the passenger will be acting on information

which is generally available, since it is information which has been obtained by legitimate means through observation of a public event.

1.2.15

FCA



Table: section 118C(4) of the Act

**"In relation to a person charged with the execution of orders ... [*inside information*] includes information conveyed by a client and related to the client's pending orders ..."**

1.2.15A

FCA



Table: section 118C(4) of the Act as modified by the RAP Regulations

**In relation to a person charged with the execution of bids ... [*inside information*] includes information conveyed by a client and related to the client's pending bids ...**

1.2.16

FCA



In the opinion of the *FCA*, a factor which indicates that there is a pending order or bid for a client is, if a *person* is approached by another in relation to a transaction, and:

- (1) the transaction is not immediately executed on an arm's length basis in response to a price quoted by that *person*; and
- (2) the *person* concerned has taken on a legal or regulatory obligation relating to the manner or timing of the execution of the transaction.

#### **Inside information: commodity derivatives**

1.2.17

FCA



The *Act* (and the *Market Abuse Directive*) recognise that there are differences in the nature of information which is important to commodity derivatives markets and that which is important to other markets. In particular, *inside information* is limited by reference to what the market participants expect to receive information about.

1.2.18

FCA



Table: section 118C(3) of the Act

**"In relation to [*qualifying investments*] or [*related investments*] which are commodity derivatives, [*inside information*] is information of a precise nature which ... (c) users of markets in which the derivatives are traded would expect to receive in accordance with any accepted market practices on those markets."**

1.2.19

FCA



Table: section 118C(7) of the Act

**"For the purposes of subsection (3)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information ... which is -**

- (i) routinely made available to the users of those markets, or
- (ii) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market."

**The regular user**

1.2.20

FCA

G

In section 118 of the *Act*, the *regular user* decides:

- (1) whether information that is not generally available would or would be likely to be relevant when deciding the terms on which transactions in *qualifying investments* or *related investments* should be effected (section 118(4)(a) of the *Act*); and
- (2) whether *behaviour*:
  - (a) based on information meeting the criteria in section 118(4)(a) is below the expected standard (section 118(4)(b)); or
  - (b) creates or is likely to create a false or misleading impression or distorts the market or the auction of investments of the kind in question (section 118(8)); or
  - (c) which creates or is likely to create a false or misleading impression or distorts the market or the auction of investments of the kind in question is below the expected standard (section 118(8)).

1.2.21

FCA

G

The *regular user* is a hypothetical reasonable *person* who regularly deals on the market and in the investments of the kind in question or bids on the auction platform in relation to investments of the kind in question. The presence of the *regular user* imports an objective element into the elements listed in ■ MAR 1.2.15 UK while retaining some subjective features of the markets for, or the auction of, the investments in question.

**Requiring or encouraging**

1.2.22

FCA

UK

Table: section 123(1)(b) of the Act

**"If [the FCA] is satisfied that a person ("A") - ...**

**(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in [behaviour], which if engaged in by A, would amount to [market abuse],**

**it may impose on him a penalty of such amount as it considers appropriate.**

1.2.23

FCA

G

The following are examples of *behaviour* that might fall within the scope of section 123(1)(b):

- (1) a director of a company, while in possession of *inside information*, instructs an employee of that company to *deal* in *qualifying investments* or *related investments* in respect of which the information is *inside information*;
- (2) a *person* recommends or advises a friend to engage in *behaviour* which, if he himself engaged in it, would amount to *market abuse*.

## 1.3 Market abuse (insider dealing)

### 1.3.1

FCA



Table: section 118(2) of the Act

"The first type of [*behaviour*] is where an [*insider*] [*deals*], or attempts to [*deal*], in a [*qualifying investment*] or [*related investment*] on the basis of [*inside information*] relating to the investment in question."

### 1.3.2

FCA



#### Descriptions of behaviour that amount to market abuse (insider dealing)

The following *behaviours* are, in the opinion of the FCA, *market abuse (insider dealing)*:

- (1) *dealing* on the basis of *inside information* which is not *trading information*;
- (2) front running/pre-positioning - that is, a transaction for a *person's* own benefit, on the basis of and ahead of an order (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is *inside information*), which takes advantage of the anticipated impact of the order on the market or auction clearing price;
- (3) in the context of a takeover, an *offeror* or potential *offeror* entering into a transaction in a *qualifying investment*, on the basis of *inside information* concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target *company's shares* (for example, a *spread bet* on the target *company's share* price); and
- (4) in the context of a takeover, a *person* who acts for the *offeror* or potential *offeror dealing* for his own benefit in a *qualifying*



*investment or related investments* on the basis of information concerning the proposed bid which is *inside information*.

#### **Factors to be taken into account: "on the basis of"**

1.3.3

FCA

A

In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is "on the basis of" *inside information*, and are each indications that it is not:

- (1) if the decision to *deal* or attempt to *deal* was made before the *person* possessed the relevant *inside information*; or
- (2) if the *person* concerned is *dealing* to satisfy a legal or regulatory obligation which came into being before he possessed the relevant *inside information*; or
- (3) if a *person* is an *organisation*, if none of the individuals in possession of the *inside information*:
  - (a) had any involvement in the decision to *deal*; or
  - (b) behaved in such a way as to influence, directly or indirectly, the decision to engage in the *dealing*; or
  - (c) had any contact with those who were involved in the decision to engage in the *dealing* whereby the information could have been transmitted.

1.3.4

A

[deleted]

1.3.5

FCA

A

In the opinion of the *FCA*, if the *inside information* is held behind an effective *Chinese wall*, or similarly effective arrangements, from the individuals who are involved in or who influence the decision to *deal*, that indicates that the decision to *deal* by an *organisation* is not "on the basis of" *inside information*.

#### **Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: legitimate business of market makers etc:**

1.3.6

FCA

C

A *person* will form an intention to *buy* or *sell*, or submit or withdraw a bid for, a *qualifying investment* or a *related investment* before doing so. His carrying out of his own intention is not in itself *market abuse (insider dealing)*. [**Note:** Recital 30 *Market Abuse Directive* and article 36(1) of the *auction regulation*]

1.3.7

FCA

C

For market makers and *persons* that may lawfully *deal* in *qualifying investments* or *related investments* on their own account, pursuing their legitimate business of such *dealing* (including entering into an agreement for the underwriting of an issue of *financial instruments*) will not in itself amount to *market abuse (insider dealing)*. [**Note:** Recital 18 *Market Abuse Directive*]

1.3.8

FCA

G

■ MAR 1.3.7 C applies even if the *person* concerned in fact possesses *trading information* which is *inside information*.

1.3.9

FCA



In the opinion of the *FCA*, if the *inside information* is not limited to *trading information*, (except in relation to an agreement for the underwriting of an issue of *financial instruments*) that indicates that the *behaviour* is not in pursuit of legitimate business.

1.3.10

FCA



In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is in pursuit of legitimate business, and are indications that it is:

- (1) the extent to which the relevant trading by the *person* is carried out in order to hedge a risk, and in particular the extent to which it neutralises and responds to a risk arising out of the *person's* legitimate business; or
- (2) whether, in the case of a transaction on the basis of *inside information* about a client's transaction which has been executed, the reason for it being *inside information* is that information about the transaction is not, or is not yet, required to be published under any relevant regulatory or exchange obligations; or
- (3) whether, if the relevant trading by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it; or
- (4) the extent to which the *person's behaviour* was reasonable by the proper standards of conduct of the market concerned, taking into account any relevant regulatory or legal obligations and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.

1.3.11

FCA



In the opinion of the *FCA*, if the *person* acted in contravention of a relevant legal, regulatory or exchange obligation, that is a factor to be taken into account in determining whether or not a *person's behaviour* is in pursuit of legitimate business, and is an indication that it is not.

#### **Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: execution of client orders**

1.3.12

FCA



The dutiful carrying out of, or arranging for the dutiful carrying out of, an order (including an order relating to a bid) on behalf of another (including as portfolio manager) will not in itself amount to *market abuse (insider dealing)* by the *person* carrying out that order. [Note: Recital 18 *Market Abuse Directive* and article 36(1) of the *auction regulation*]

1.3.13

FCA



■ MAR 1.3.12 C applies whether or not the *person* carrying out the order (including an order relating to a bid) or the *person* for whom he is acting, in fact possesses *inside information*. Also, a *person* that carries out an order on behalf of another will not,

merely as a result of that action, be considered to have any *inside information* held by that other *person*.

1.3.14

FCA

E

In the opinion of the *FCA*, if the *inside information* is not limited to *trading information*, that indicates that the *behaviour* is not dutiful carrying out of an order on behalf of a client.

1.3.15

FCA

E

In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is dutiful execution of an order (including an order relating to a bid) on behalf of another, and are indications that it is:

- (1) whether the *person* has complied with the applicable provisions of *COBS*, or their equivalents in the relevant jurisdiction; or
- (2) whether the *person* has agreed with its client it will act in a particular way when carrying out, or arranging the carrying out of, the order; or
- (3) whether the *person's behaviour* was with a view to facilitating or ensuring the effective carrying out of the order; or
- (4) the extent to which the *person's behaviour* was reasonable by the proper standards of conduct of the market or auction platform concerned and (if relevant) proportional to the risk undertaken by him; or
- (5) whether, if the relevant trading or bidding (including the withdrawal of a bid) by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading or bidding either has no impact on the price or there has been adequate disclosure to that client that trading or bidding will take place and he has not objected to it.

1.3.16

FCA

G

Some steps which a *person* takes as a result of carrying out a client transaction may be within the scope of ■ MAR 1.3.6 C to ■ MAR 1.3.11 E rather than being part of dutiful execution.

#### **Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: takeover and merger activity**

1.3.17

FCA

C

*Behaviour*, based on *inside information* relating to another *company*, in the context of a public takeover bid or merger for the purpose of gaining control of that *company* or proposing a merger with that *company*, does not of itself amount to *market abuse (insider dealing)* [Note: see Recital 29 *Market Abuse Directive*], including:

- (1) seeking from holders of *securities*, issued by the target, irrevocable undertakings or expressions of support to accept an *offer* to acquire those *securities* (or not to accept such an *offer*);

- (2) making arrangements in connection with an issue of *securities* that are to be offered as consideration for the takeover or merger *offer* or to be issued in order to fund the takeover or merger *offer*, including making arrangements for the underwriting or placing of those *securities* and any associated hedging arrangements by underwriters or places which are proportionate to the risks assumed; and
- (3) making arrangements to offer cash as consideration for the takeover or merger *offer* as an alternative to *securities* consideration.

1.3.18

FCA

G

There are two categories of *inside information* relevant to ■ MAR 1.3.17 C:

- (1) information that an *offeror* or potential *offeror* is going to make, or is considering making, an offer for the target;
- (2) information that an *offeror* or potential *offeror* may obtain through due diligence.

1.3.19

FCA

A

In the opinion of the FCA, the following factors are to be taken into account in determining whether or not a *person's behaviour* is for the purpose of him gaining control of the target *company* or him proposing a merger with that *company*, and are indications that it is:

- (1) whether the transactions concerned are in the target *company's shares*; or
- (2) whether the transactions concerned are for the sole purpose of gaining that control or effecting that merger.

#### Examples of market abuse (insider dealing)

1.3.20

FCA

G

The following examples of *market abuse (insider dealing)* concern the definition of *inside information* relating to *financial instruments* other than *commodity derivatives*.

- (1) X, a director at B PLC has lunch with a friend, Y. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading. Y enters into a spread bet priced or valued by reference to the share price of B PLC based on his expectation that the price in B PLC will increase once the take over offer is announced.
- (2) An employee at B PLC obtains the information that B PLC has just lost a significant contract with its main customer. Before the information is announced over the *regulatory information service* the employee, whilst being under no obligation to do so, sells his shares in B PLC based on the information about the loss of the contract.

1.3.21

FCA

G

The following example of *market abuse (insider dealing)* concerns the definition of *inside information* relating to commodity derivatives.

Before the official publication of LME stock levels, a metals trader learns (from an *insider*) that there has been a significant decrease in the level of LME aluminium stocks. This information is routinely made available to users of that *prescribed market*. The

trader buys a substantial number of *futures* in that metal on the LME, based upon his knowledge of the significant decrease in aluminium stock levels.

## 1.3.22

FCA

G

The following example of *market abuse (insider dealing)* concerns the definition of *inside information* relating to pending client orders.

A dealer on the trading desk of a *firm dealing* in oil derivatives accepts a very large order from a *client* to acquire a long position in oil futures deliverable in a particular *month*. Before executing the order, the dealer trades for the *firm* and on his personal account by taking a long position in those oil futures, based on the expectation that he will be able to sell them at profit due to the significant price increase that will result from the execution of his *client's* order. Both trades will be *market abuse (insider dealing)*.

## 1.3.23

FCA

G

The following connected examples of *market abuse (insider dealing)* concerns the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.

- (1) A *person* deals, on a *prescribed market*, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
- (2) A *person* deals, in a commodity futures contract traded on a *prescribed market*, based on the same information, provided that the information is required to be disclosed under the rules of the relevant commodity futures market.

## 1.4 Market abuse (improper disclosure)

1.4.1

FCA



Table: section 118(3) of the Act

**"The second [type of *behaviour*] is where:  
an [*insider*]  
discloses  
[*inside information*]  
to another person  
otherwise than in the proper course of the exercise of his employment,  
profession or duties."**

### Descriptions of behaviour that amount to market abuse (improper disclosure)

1.4.2

FCA



The following *behaviours* are, in the opinion of the FCA, *market abuse (improper disclosure)*:

- (1) disclosure of *inside information* by the *director* of an *issuer* to another in a social context; and
- (2) selective briefing of analysts by *directors* of *issuers* or others who are *persons discharging managerial responsibilities*.

### Descriptions of behaviour that does not amount to market abuse (improper disclosure)

1.4.3

FCA



Disclosure of *inside information* will not amount to *market abuse (improper disclosure)*, if it is made:

- (1) to a government department, the Bank of England, the Competition Commission, the *Takeover Panel* or any other *regulatory body* or authority for the purposes of fulfilling a legal or regulatory obligation; or
- (2) otherwise to such a body in connection with the performance of the functions of that body.

1.4.4

FCA



Disclosure of *inside information* which is required or permitted by *Part 6 rules* (or any similar regulatory obligation) will not amount to *market abuse (improper disclosure)*.

## 1.4.4A

FCA



Disclosure of *inside information* by a *broker* to a potential buyer regarding the fact that the seller of *qualifying investments* is a *person discharging managerial responsibilities* or the identity of the *person discharging managerial responsibilities* or the purpose of the sale by the *person discharging managerial responsibilities* where:

- (1) the disclosure is made only to the extent necessary, and solely in order to dispose of the investment;
- (2) the illiquidity of the stock is such that the transaction could not otherwise be completed; and
- (3) the transaction could not be otherwise completed without creating a disorderly market;

will not, of itself, amount to *market abuse (improper disclosure)*.

**Factors to be taken into account in determining whether or not behaviour amounts to market abuse (improper disclosure)**.....

## 1.4.5

FCA



In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not the disclosure was made by a *person* in the proper course of the exercise of his employment, profession or duties, and are indications that it was:

- (1) whether the disclosure is permitted by the rules of a *prescribed market*, a *prescribed auction platform*, of the *FCA* or the *Takeover Code*; or
- (2) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the *person* to whom the disclosure is made and is:
  - (a) reasonable and is to enable a *person* to perform the proper functions of his employment, profession or duties; or
  - (b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or *takeover bid*; or
  - (c) reasonable and is for the purpose of facilitating any commercial, financial or *investment* transaction (including prospective underwriters or places of *securities*); or
  - (d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an *offer* which is subject to the *Takeover Code*; or
  - (e) in fulfilment of a legal obligation, including to *employee* representatives or trade unions acting on their behalf; or
- (3) whether:
  - (a) the information disclosed is *trading information*;



- (b) the disclosure is made by a person ("A") only to the extent necessary, and solely in order, to offer to dispose of the *investment* to, or acquire the *investment* from, the *person* receiving the information; and
- (c) it is reasonable for A to make the disclosure to enable him to perform the proper functions of his employment, profession or duties.

1.4.5A

FCA

G

■ MAR 1.4.5 E (3) is intended only to apply to an actual offer of the *investment*. It is not intended to apply to a disclosure of *trading information* to gauge potential interest in the *investments* to be offered or to help establish the likely price that will be obtained.

**Examples of market abuse (improper disclosure)**

1.4.6

FCA

G

The following are examples of *market abuse (improper disclosure)*.

- (1) X, a director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.
- (2) A, a *person discharging managerial responsibilities* in B PLC, asks C, a *broker*, to sell some or all of As shares in B PLC. C discloses to a potential buyer that A is a *person discharging managerial responsibilities* or discloses the identity of A, in circumstances where the fact that A is a *person discharging managerial responsibilities* or the identity of A, is *inside information*, other than in the circumstances set out in ■ MAR 1.4.4A C.

1.4.7

FCA

G

The following is an example of encouraging another to engage in *market abuse (improper disclosure)*:

X, an analyst employed by an investment bank, telephones the finance director at B PLC and presses for details of the profit and loss account from the latest unpublished management accounts of B PLC.

1.4.8

[Deleted]

1.4.9

[Deleted]

1.4.10

[Deleted]

1.4.11

[Deleted]

1.4.12

[Deleted]

1.4.13

[Deleted]

1.4.14

[Deleted]

1.4.15

[Deleted]

1.4.16

[Deleted]

1.4.17

[Deleted]

1.4.18

[Deleted]

1.4.19

[Deleted]

1.4.20

[Deleted]

1.4.21

[Deleted]

1.4.22

[Deleted]



|        |           |
|--------|-----------|
| 1.4.23 | [Deleted] |
| 1.4.24 | [Deleted] |
| 1.4.25 | [Deleted] |
| 1.4.26 | [Deleted] |
| 1.4.27 | [Deleted] |
| 1.4.28 | [Deleted] |
| 1.4.29 | [Deleted] |
| 1.4.30 | [Deleted] |
| 1.4.31 | [Deleted] |

## 1.5 Market abuse (misuse of information)

### 1.5.1

FCA



Table: section 118(4) of the Act:

"The third [type of *behaviour*] is where the [*behaviour*] (not [amounting to *market abuse (insider dealing)* or *market abuse (improper disclosure)*])-

- (a) is based on information
  - which is not generally available to those using the market but which, if available to a [*regular user*] of the market, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in [*qualifying investments*] should be effected; and
- (b) is likely to be regarded by a [*regular user*] of the market as a failure on the part of the person concerned to observe the standard of [*behaviour*] reasonably expected of a person in his position in relation to the market."

### 1.5.1A

FCA



Table: section 118(4) of the Act as modified by the RAP Regulations

The third [type of *behaviour*] is where the [*behaviour*] (not [amounting to *market abuse (insider dealing)* or *market abuse (improper disclosure)*):

- (a) is based on information
  - which is not generally available to those using the auction platform but which, if available to a [*regular user*] of the auction platform, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in [*qualifying investments*] should be effected, and
- (b) is likely to be regarded by a [*regular user*] of the auction platform as a failure on the part of the person concerned to observe the standard of [*behaviour*] reasonably expected of a person in his position in relation to the auction platform.

### Descriptions of behaviour that amount to market abuse (misuse of information)

1.5.2

FCA



The following *behaviours* are, in the opinion of the FCA, *market abuse (misuse of information)*:

- (1) *dealing or arranging deals in qualifying investments* based on *relevant information*, which is not generally available and relates to matters which a *regular user* would reasonably expect to be disclosed to users of the particular *prescribed market* or *prescribed auction platform*, but which does not amount to *market abuse (insider dealing)* (whether because the *dealing* relates to a *qualifying investment* to which section 118(2) does not apply or because the *relevant information* is not *inside information*); and
- (2) a *director* giving *relevant information*, which is not generally available and relates to matters which a *regular user* would reasonably expect to be disclosed to users of the particular *prescribed market*, to another otherwise than in the proper course of the exercise of his employment or duties, in a way which does not amount to *market abuse (improper disclosure)* (whether because the *relevant information* is not *inside information* or for some other reason).

1.5.3

FCA



The following *behaviours* are, in the opinion of the FCA, capable of amounting to *market abuse (misuse of information)*:

- (1) *dealing* in a *qualifying investment* based on *relevant information*, which is not generally available and is not *inside information*;
- (2) *behaviour*, other than *dealing* in a *qualifying investment* or a *related investment*, that is based on *relevant information* which is not generally available and is not *inside information*; and
- (3) entering into a transaction, which is not a *qualifying investment* or a *related investment*, based on *relevant information* which is not generally available and is not *inside information*.

### Factors to be taken into account: "generally available"

1.5.4

FCA



The factors taken into account in deciding whether or not information is generally available for the purposes of the definition of *inside information* (see ■ MAR 1.2.12 E - ■ MAR 1.2.13 E) will also be relevant when considering whether or not *behaviour* amounts to *market abuse (misuse of information)*.

### Factors to be taken into account: "based on"

1.5.5

FCA



The factors taken into account in deciding whether or not a *person's behaviour* is "on the basis of" *inside information* (see ■ MAR 1.3.3 E - ■ MAR 1.3.5 E) will also be relevant when considering whether or not *behaviour* is "based on" *relevant information* which is not generally available to those using the market.

1.5.6

FCA

**Factors to be taken into account: "relevant information"**

In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not a *regular user* would regard information as *relevant information*, and are indications that he would:

- (1) the extent to which the information is reliable, including how near the *person* providing the information is, or appears to be, to the original source of that information and the reliability of that source; or
- (2) if the information differs from information which is generally available and can therefore be said to be new or fresh information; or
- (3) in the case of information relating to possible future developments which are not currently required to be disclosed but which, if they occur, will lead to a disclosure or announcement being made whether the information provides, with reasonable certainty, grounds to conclude that the possible future developments will, in fact, occur; or
- (4) if there is no other material information which is already generally available to inform users of the market.

**Factors to be taken into account: standards of behaviour**

1.5.7

FCA



In the opinion of the *FCA*, the following factors are to be taken into account when considering whether a *regular user* would reasonably expect the *relevant information* to be disclosed to users of the particular *prescribed market* or *prescribed auction platform*, or to be announced, and accordingly whether *behaviour* is likely to be regarded by a *regular user* as failing to meet the expected standard and are indications that he would:

- (1) if the *relevant information* has to be disclosed in accordance with any legal or regulatory requirement, such as:
  - (a) information which is required to be disseminated under the *Takeover Code* (or its equivalent in the relevant jurisdiction) on, or in relation to, *qualifying investments*; or
  - (b) information which is required to be disseminated under the *Part 6 rules* (or their equivalents in the relevant jurisdiction); or
  - (c) information required to be disclosed by an *issuer* under the laws, rules or regulations applying to the *prescribed market* on which its issued *qualifying investments* are traded or admitted to trading; or

- (2) if the *relevant information* is routinely the subject of a public announcement although not subject to any formal disclosure requirement, such as:
  - (a) information which is to be the subject of official announcement by governments, central monetary or fiscal authorities or a *regulatory body* (financial or otherwise, including exchanges); or
  - (b) changes to published credit ratings of *issuers* of *qualifying investments*; or
  - (c) changes to the constituents of a *securities* index, where the *securities* are *qualifying investments*; or
- (3) if *behaviour* is based on information relating to possible future developments, if it is reasonable to believe that the information in question will subsequently become of a type within (1) or (2).

#### Descriptions of behaviour that does not amount to market abuse (misuse of information)

1.5.8

FCA

G

*Behaviour* falling within the description of *behaviour* which amounts to *market abuse* (*insider dealing*) or *market abuse* (*improper disclosure*) is not *market abuse* (*misuse of information*).

1.5.9

FCA

C

*Behaviour* falling within the descriptions of *behaviour* that do not amount to *market abuse* (*insider dealing*) (■ MAR 1.3.6 C, ■ MAR 1.3.7 C, ■ MAR 1.3.12 C and ■ MAR 1.3.17 C), or that would fall within those descriptions, if the references in those descriptions to *inside information* included a reference to *relevant information*, also do not amount to *market abuse* (*misuse of information*).

#### Examples of market abuse (misuse of information)

1.5.10

FCA

A

The following *behaviour* may amount to *market abuse* (*misuse of information*):

- (1) X, a director at B PLC, has lunch with a friend, Y. X tells Y that his company has received a takeover offer. Y places a fixed odds bet with a bookmaker that B PLC will be the subject of a bid within a week, based on his expectation that the take over offer will be announced over the next few days.
- (2) Informal, non-contractual icing of *qualifying investments* by the manager of a proposed issue of convertible or exchangeable bonds, which are to be the subject of a public marketing effort, with a view to subsequent borrowing by it of those *qualifying investments* based on *relevant information* about the forthcoming issue:
  - (a) which is not generally available; and
  - (b) which a *regular user* would reasonably expect to be disclosed to users of the relevant *prescribed market*;

where this has the effect of withdrawing those *qualifying investments* from the lending market in order to lend it to the issue manager in such a way that other market participants are disadvantaged.

- (3) An employee of B PLC is aware of contractual negotiations between B PLC and a customer. Transactions with that customer have generated over 10% of B PLC's turnover in each of the last five financial years. The employee knows that the customer has threatened to take its business elsewhere, and that the negotiations, while ongoing, are not proceeding well. The employee, whilst being under no obligation to do so, sells his shares in B PLC based on his assessment that it is reasonably likely that the customer will take his business elsewhere.

|        |           |
|--------|-----------|
| 1.5.11 | [Deleted] |
| 1.5.12 | [Deleted] |
| 1.5.13 | [Deleted] |
| 1.5.14 | [Deleted] |
| 1.5.15 | [Deleted] |
| 1.5.16 | [Deleted] |
| 1.5.17 | [Deleted] |
| 1.5.18 | [Deleted] |
| 1.5.19 | [Deleted] |
| 1.5.20 | [Deleted] |
| 1.5.21 | [Deleted] |
| 1.5.22 | [Deleted] |
| 1.5.23 | [Deleted] |
| 1.5.24 | [Deleted] |
| 1.5.25 | [Deleted] |
| 1.5.26 | [Deleted] |
| 1.5.27 | [Deleted] |
| 1.5.28 | [Deleted] |
| 1.5.29 | [Deleted] |

## 1.6 Market abuse (manipulating transactions)

### 1.6.1

FCA



Table: section 118(5) of the Act

"The fourth [type of *behaviour*] ... consists of effecting transactions or orders to trade

(otherwise than for legitimate reasons and in conformity with [*accepted market practices*] on the relevant market)

which -

- (a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of one or more [*qualifying investments*] or
- (b) secure the price or one or more such investments at an abnormal or artificial level."

### 1.6.1A

FCA



Table: section 118(5) of the Act as modified by the RAP Regulations

The fourth [type of *behaviour*] ...consists of effecting transactions, bids or orders to trade

(otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant auction platform)

which:

- (a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or
- (b) secure the price of one or more such investments at an abnormal or artificial level.

### Descriptions of behaviour that amount to market abuse (manipulating transactions): false or misleading impressions

### 1.6.2

FCA



The following *behaviours* are, in the opinion of the FCA, *market abuse* (*manipulating transactions*) of a type involving false or misleading impressions:

- (1) *buying or selling qualifying investments* at the close of the market with the effect of misleading investors who act on the basis of

closing prices, other than for legitimate reasons; [Note: Article 1.2(c) *Market Abuse Directive*]

- (2) wash trades - that is, a sale or purchase of a *qualifying investment* where there is no change in beneficial interest or market risk, or where the transfer of beneficial interest or market risk is only between parties acting in concert or collusion, other than for legitimate reasons;
- (3) painting the tape - that is, entering into a series of transactions that are shown on a public display for the purpose of giving the impression of activity or price movement in a *qualifying investment*;
- (4) entering orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, and withdrawing them before they are executed, in order to give a misleading impression that there is demand for or supply of the *qualifying investment* at that price, and
- (5) buying or selling on the secondary market of *qualifying investments* or related derivatives prior to the auction with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders in the auctions, other than for legitimate reasons. [Note: Article 1.2(c) *Market Abuse Directive* and Article 36(1) and Article 37(b) *auction regulation*]

## 1.6.3

FCA

G

For the avoidance of doubt a stock lending/borrowing or repo/reverse repo transaction, or another transaction involving the provision of collateral, do not constitute a wash trade under ■ MAR 1.6.2E (2).

### Descriptions of behaviour that amount to market abuse (manipulating transactions): price positioning

## 1.6.4

FCA

A

The following *behaviours* are, in the opinion of the FCA, *market abuse (manipulating transactions)* involving securing the price of a *qualifying investment*:

- (1) transactions or orders to trade by a *person*, or *persons* acting in collusion, that secure a dominant position over the supply of or demand for a *qualifying investment* and which have the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions, other than for legitimate reasons; [Note: Article 1.2(c) *Market Abuse Directive*]
- (2) transactions where both buy and sell orders are entered at, or nearly at, the same time, with the same price and quantity by the same party, or different but colluding parties, other than for legitimate reasons, unless the transactions are legitimate



- trades carried out in accordance with the rules of the relevant trading platform (such as crossing trades);
- (3) entering small orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, in order to move the price of the *qualifying investment*, other than for legitimate reasons;
  - (4) an abusive squeeze - that is, a situation in which a *person*:
    - (a) has a significant influence over the supply of, or demand for, or delivery mechanisms for a *qualifying investment* or *related investment* or the underlying product of a derivative contract;
    - (b) has a position (directly or indirectly) in an *investment* under which quantities of the *qualifying investment*, *related investment*, or product in question are deliverable; and
    - (c) engages in *behaviour* with the purpose of positioning at a distorted level the price at which others have to deliver, take delivery or defer delivery to satisfy their obligations in relation to a *qualifying investment* (the purpose need not be the sole purpose of entering into the transaction or transactions, but must be an actuating purpose);
  - (5) parties, who have been allocated *qualifying investments* in a primary offering, colluding to purchase further tranches of those *qualifying investments* when trading begins, in order to force the price of the *qualifying investments* to an artificial level and generate interest from other investors, and then sell the *qualifying investments*;
  - (6) transactions or orders to trade employed so as to create obstacles to the price falling below a certain level, in order to avoid negative consequences for the *issuer*, for example a downgrading of its credit rating;
  - (7) trading on one market or trading platform with a view to improperly influencing the price of the same or a related *qualifying investment* that is traded on another *prescribed market*, and
  - (8) conduct by a *person*, or *persons* acting in collusion, that secure a dominant position over the demand for a *qualifying investment* which has the effect of fixing, directly or indirectly, auction clearing prices or creating other unfair trading conditions, other than for legitimate reasons. [Note: Article 1.2(c) *Market Abuse Directive* and Article 36(1) and Article 37(b) *auction regulation*]

**Factors to be taken into account: "legitimate reasons"**

1.6.5

FCA



In the opinion of the *FCA* the following factors are to be taken into account when considering whether *behaviour* is for "legitimate reasons", and are indications that it is not:

- (1) if the *person* has an actuating purpose behind the transaction to induce others to trade in, bid for or to position or move the price of, a *qualifying investment*;
- (2) if the *person* has another, illegitimate, reason behind the transactions, bid or order to trade; [Note: Recital 20 *Market Abuse Directive*]
- (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.

1.6.6

FCA



In the opinion of the *FCA* the following factors are to be taken into account when considering whether *behaviour* is for "legitimate reasons", and are indications that it is:

- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
- (2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently;
- (3) the extent to which the transaction generally opens a new position, so creating an exposure to market risk, rather than closes out a position and so removes market risk; and
- (4) if the transaction complied with the rules of the relevant *prescribed markets* or *prescribed auction platform* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).

1.6.7

FCA



It is unlikely that the *behaviour* of market or auction platform users when dealing at times and in sizes most beneficial to them (whether for the purpose of long term investment objectives, risk management or short term speculation) and seeking the maximum profit from their dealings will of itself amount to distortion. Such *behaviour*, generally speaking, improves the liquidity and efficiency of markets or auction platforms.

1.6.8

FCA



It is unlikely that prices in the market which are trading outside their normal range will necessarily be indicative that someone has engaged in behaviour with the purpose of positioning prices at a distorted level. High or low prices relative to a trading range can be the result of the proper interplay of supply and demand.

**Factors to be taken into account: behaviour giving a false or misleading impression**

1.6.9

FCA



In the opinion of the FCA, the following factors are to be taken into account in determining whether or not a *person's behaviour* amounts to *market abuse (manipulating transactions)*: [Note: Article 4 2003/124/EC and Article 36(1) *auction regulation*]

- (1) the extent to which orders to trade given, bids submitted or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market* or *prescribed auction platform* concerned, in particular when these activities lead to a significant change in the price of the *qualifying investment*;
- (2) the extent to which orders to trade given, bids submitted or transactions undertaken by *persons* with a significant buying or selling position in a *qualifying investment* lead to significant changes in the price of the *qualifying investment* or related derivative or underlying asset admitted to trading on a regulated market;
- (3) whether transactions undertaken lead to no change in beneficial ownership of a *qualifying investment* admitted to trading on a *regulated market*;
- (4) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market* concerned, and might be associated with significant changes in the price of a *qualifying investment* admitted to trading on a *regulated market*;
- (5) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
- (6) the extent to which orders to trade given change the representation of the best bid or offer prices in a *financial instrument* admitted to trading on a *regulated market*, or more generally the representation of the order book available to market participants, and are removed before they are executed; and
- (7) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

1.6.10

FCA



### Factors to be taken into account: behaviour securing an abnormal or artificial price level

In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* amounts to *market abuse (manipulating transactions)*:

- (1) the extent to which the *person* had a direct or indirect interest in the price or value of the *qualifying investment* or *related investment*;
- (2) the extent to which price, rate or *option* volatility movements, and the volatility of these factors for the *investment* in question, are outside their normal intra-day, daily, weekly or monthly range; and
- (3) whether a *person* has successively and consistently increased or decreased his bid, offer or the price he has paid for a *qualifying investment* or *related investment*.

### Factors to be taken into account: abusive squeezes

1.6.11

FCA



In the opinion of the *FCA*, the following factors are to be taken into account when determining whether a *person* has engaged in an abusive squeeze:

- (1) the extent to which a *person* is willing to relax his control or other influence in order to help maintain an orderly market, and the price at which he is willing to do so; for example, *behaviour* is less likely to amount to an abusive squeeze if a *person* is willing to lend the *investment* in question;
- (2) the extent to which the *person's* activity causes, or risks causing, settlement default by other market users on a multilateral basis and not just a bilateral basis. The more widespread the risk of multilateral settlement default, the more likely that an abusive squeeze has been effected;
- (3) the extent to which prices under the delivery mechanisms of the market diverge from the prices for delivery of the *investment* or its equivalent outside those mechanisms. The greater the divergence beyond that to be reasonably expected, the more likely that an abusive squeeze has been effected; and
- (4) the extent to which the spot or immediate market compared to the forward market is unusually expensive or inexpensive or the extent to which borrowing rates are unusually expensive or inexpensive.

1.6.12

FCA



Squeezes occur relatively frequently when the proper interaction of supply and demand leads to market tightness, but this is not of itself abusive. In addition, having a

significant influence over the supply of, or demand for, or delivery mechanisms for an investment, for example, through ownership, borrowing or reserving the investment in question, is not of itself abusive.

1.6.13

FCA

G

The effects of an abusive squeeze are likely to be influenced by the extent to which other market users have failed to protect their own interests or fulfil their obligations in a manner consistent with the standards of behaviour to be expected of them in that market. Market users can be expected to settle their obligations and not to put themselves in a position where, to do so, they have to rely on holders of long positions lending when they may not be inclined to do so and may be under no obligation to do so.

1.6.14

A

[deleted]

### Examples of market abuse (manipulating transactions)

1.6.15

FCA

A

The following are examples of behaviour that may amount to *market abuse (manipulating transactions)*:

- (1) a trader simultaneously *buys* and *sells* the same *qualifying investment* (that is, trades with himself) to give the appearance of a legitimate transfer of title or risk (or both) at a price outside the normal trading range for the *qualifying investment*. The price of the *qualifying investment* is relevant to the calculation of the settlement value of an option. He does this while holding a position in the *option*. His purpose is to position the price of the *qualifying investment* at a false, misleading, abnormal or artificial level, making him a profit or avoiding a loss from the *option*;
- (2) a trader *buys* a large volume of *commodity futures*, which are *qualifying investments*, (whose price will be relevant to the calculation of the settlement value of a *derivatives* position he holds) just before the close of trading. His purpose is to position the price of the *commodity futures* at a false, misleading, abnormal or artificial level so as to make a profit from his *derivatives* position;
- (3) a trader holds a short position that will show a profit if a particular *qualifying investment*, which is currently a component of an index, falls out of that index. The question of whether the *qualifying investment* will fall out of the index depends on the closing price of the *qualifying investment*. He places a large *sell* order in this *qualifying investment* just before the close of trading. His purpose is to position the price of the *qualifying investment* at a false, misleading, abnormal or artificial level so that the *qualifying investment* will drop out of the index so as to make a profit; and
- (4) a fund manager's quarterly performance will improve if the valuation of his portfolio at the end of the quarter in question is higher rather than lower. He places a large order to *buy* relatively illiquid *shares*, which are also components of his portfolio, to be

executed at or just before the close. His purpose is to position the price of the *shares* at a false, misleading, abnormal or artificial level.

1.6.16

FCA



The following is an example of an abusive squeeze:

A trader with a long position in bond *futures buys* or borrows a large amount of the cheapest to deliver bonds and either refuses to re-lend these bonds or will only lend them to parties he believes will not re-lend to the market. His purpose is to position the price at which those with short positions have to deliver to satisfy their obligations at a materially higher level, making him a profit from his original position.

1.6.17

[Deleted]

1.6.18

[Deleted]

1.6.19

[Deleted]

## 1.7 Market abuse (manipulating devices)

### 1.7.1

FCA



Table: section 118(6) of the Act

**"The fifth [type of *behaviour*] ... consists of effecting transactions or orders to trade**

**which employ fictitious devices or any other form of deception or contrivance."**

### 1.7.1A

FCA



Table: section 118(6) of the Act as modified by the RAP Regulations

**The fifth [type of *behaviour*] ... consists of effecting transactions, bids or orders to trade which employ fictitious devices or any other form of deception or contrivance.**

### Descriptions of behaviour that amount to market abuse (manipulating devices)

### 1.7.2

FCA



The following *behaviours* are, in the opinion of the FCA, *market abuse (manipulating devices)*:

- (1) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a *qualifying investment* (or indirectly about its *issuer*, if applicable) while having previously taken positions on, or submitted bids in relation to, that *qualifying investment* and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way; [**Note:** Article 1.2 *Market Abuse Directive*]
- (2) a transaction or series of transactions that are designed to conceal the ownership of a *qualifying investment*, so that disclosure requirements are circumvented by the holding of the *qualifying investment* in the name of a colluding party, such that disclosures are misleading in respect of the true underlying holding. These transactions are often structured so that market risk remains with the seller. This does not include nominee holdings;

- (3) pump and dump - that is, taking a long position in a *qualifying investment* and then disseminating misleading positive information about the *qualifying investment* with a view to increasing its price;
- (4) trash and cash - that is, taking a short position in a *qualifying investment* and then disseminating misleading negative information about the *qualifying investment*, with a view to driving down its price.

**Factors to be taken into account in determining whether or not behaviour amounts to market abuse (manipulating devices)**

1.7.3

FCA



In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not a fictitious device or other form of deception or contrivance has been used, and are indications that it has:

- (1) if orders to trade given, bids submitted or transactions undertaken in *qualifying investments* by *persons* are preceded or followed by dissemination of false or misleading information by the same *persons* or *persons* linked to them;
- (2) if orders to trade are given, bids submitted or transactions are undertaken in *qualifying investments* by *persons* before or after the same *persons* or *persons* linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest. [Note: Article 5 2003/124/EC]

- 1.7.4
- 1.7.5
- 1.7.6
- 1.7.7
- 1.7.8
- 1.7.9
- 1.7.10
- 1.7.11
- 1.7.12
- 1.7.13

- [Deleted]
- [Deleted]
- [Deleted]
- [Deleted]
- [Deleted]
- [Deleted]
- [Deleted]
- [Deleted]
- [Deleted]
- [Deleted]



## 1.8 Market abuse (dissemination)

1.8.1

FCA



Table: section 118(7) of the Act

" The sixth [type of *behaviour*] ... consists of the dissemination of information by any means

which gives, or is likely to give, a false or misleading impression as to a [qualifying investment]

by a person who knew or could reasonably be expected to have known that the information was false or misleading."

1.8.2

FCA



Table: section 118A(4) of the Act

"For the purposes of section 118(7), the dissemination of information by a person acting in the capacity of a journalist

is to be assessed taking into account the codes governing their profession unless he derives, directly or indirectly, any advantage or profits from the dissemination of the information."

### ..... Descriptions of behaviour that amount to market abuse (dissemination) .....

1.8.3

FCA



The following *behaviours* are, in the opinion of the FCA, *market abuse (dissemination)*:

- (1) knowingly or recklessly spreading false or misleading information about a *qualifying investment* through the media, including in particular through an *RIS* or similar information channel;
- (2) undertaking a course of conduct in order to give a false or misleading impression about a *qualifying investment*.

### ..... Factors to be taken into account in determining whether or not behaviour amounts to market abuse (dissemination) .....

1.8.4

FCA



In the opinion of the FCA, if a normal and reasonable *person* would know or should have known in all the circumstances that the information was false or misleading, that indicates that the *person* disseminating the information knew or could reasonably be expected to have known that it was false or misleading.

1.8.5

FCA



In the opinion of the *FCA*, if the individuals responsible for dissemination of information within an organisation could only know that the information was false or misleading if they had access to other information that was being held behind a *Chinese wall* or similarly effective arrangements, that indicates that the *person* disseminating did not know and could not reasonably be expected to have known that the information was false or misleading.

**Examples of market abuse (dissemination)**

1.8.6

FCA



The following are examples of *behaviour* which may amount to *market abuse (dissemination)*:

- (1) a *person* posts information on an Internet bulletin board or chat room which contains false or misleading statements about the takeover of a *company* whose *shares* are *qualifying investments* and the *person* knows that the information is false or misleading;
- (2) a *person* responsible for the content of information submitted to a *regulatory information service* submits information which is false or misleading as to *qualifying investments* and that *person* is reckless as to whether the information is false or misleading.

1.8.7

[Deleted]

1.8.8

[Deleted]

1.8.9

[Deleted]

1.8.10

[Deleted]



**1.9 Market abuse (misleading behaviour) & market abuse (distortion)**

1.9.1

FCA



Table Table: section 118(8) of the Act:

|  |  |
|--|--|
| "The seventh [type of <i>behaviour</i> ] is where the [ <i>behaviour</i> ] (not [amounting to <i>market abuse (manipulating transactions)</i> ], <i>market abuse (manipulating devices)</i> , or <i>market abuse (dissemination)</i> ])                |  |
| (a)  | is likely to give, a [ <i>regular user</i> ] of the market a false or misleading impression as to the supply of, demand for or price or value of, [ <i>qualifying investments</i> ] [ <i>market abuse (misleading behaviour)</i> ]; or   |
| (b)  | would be, or would be likely to be, regarded by a [ <i>regular user</i> ] of the market as [ <i>behaviour</i> ] that would distort, or would be likely to distort, the market in such an investment [ <i>market abuse (distortion)</i> ] |
| and ... is likely to be regarded by a [ <i>regular user</i> ] of the market as a failure on the part of the person concerned to observe the standard of [ <i>behaviour</i> ] reasonably expected of a person in his position in relation to the market |  |

1.9.1A

FCA



Table: section 118(8) of the Act as modified by the RAP Regulations

|  |   |
|--|---|
| "The seventh [type of <i>behaviour</i> ] is where the [ <i>behaviour</i> ] (not [amounting to <i>market abuse (manipulating transactions)</i> ], <i>market abuse (manipulating devices)</i> or <i>market abuse (dissemination)</i> ])  |   |
| (a)  | is likely to give a [ <i>regular user</i> ] of the auction platform a false or misleading impression as to the supply of, demand for or price or value of, [ <i>qualifying investments</i> ] [ <i>market abuse (misleading behaviour)</i> ], or     |
| (b)  | would be, or would be likely to be, regarded by a [ <i>regular user</i> ] of the auction platform as [ <i>behaviour</i> ] that would distort, or would be likely to distort, the auction of such an investment [ <i>market abuse (distortion)</i> ] |
| and the behaviour is likely to be regarded by a [ <i>regular user</i> ] of the auction platform as a failure on the part of the [ <i>person</i> ] concerned to observe the standard of [ <i>behaviour</i> ] reasonably expected of a [ <i>person</i> ] in his position in relation to the market." |   |

**Descriptions of behaviour that amount to market abuse (misleading behaviour) under section 118(8)(a) or market abuse (distortion) under section 118(8)(b)**

1.9.2

FCA



The following *behaviours* are, in the opinion of the FCA, *market abuse (misleading behaviour)* if they give, or are likely to give, a *regular user* of the market a false or misleading impression:

- (1) the movement of physical *commodity* stocks, which might create a misleading impression as to the supply of, or demand for, or price or value of, a *commodity* or the deliverable into a *commodity futures* contract; and
- (2) the movement of an empty cargo ship, which might create a false or misleading impression as to the supply of, or the demand for, or the price or value of a *commodity* or the deliverable into a *commodity futures* contract.

1.9.2A



(1) [deleted]

(2) [deleted]

[deleted]

1.9.2B



[deleted]

**Short selling in relation to financial sector companies**

1.9.2C



(1) [deleted]

(2) [deleted]

(3) [deleted]

(4) [deleted]

1.9.2D



(1) [deleted]

(2) [deleted]

(a) [deleted]

(b) [deleted]

(2A) [deleted]

(3) [deleted]

(4) [deleted]

(5) [deleted]

1.9.2E G [deleted]1.9.3 C [deleted]**Factors to be taken into account: false or misleading impressions**

1.9.4 A In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not *behaviour* is likely to give a *regular user* a false or misleading impression as to the supply of or the demand for or as to the price or value of one or more *qualifying investments* or *related investments*:

FCA

- (1) the experience and knowledge of the users of the market or auction platform in question;
- (2) the structure of the market or auction platform, including its reporting, notification and transparency requirements;
- (3) the legal and regulatory requirements of the market or auction platform concerned;
- (4) the identity and position of the *person* responsible for the *behaviour* which has been observed (if known); and
- (5) the extent and nature of the visibility or disclosure of the *person's* activity.

**Factors to be taken into account: standards of behaviour**

1.9.5 A In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not *behaviour* that creates a false or misleading impression as to, or distorts the market or auction platform for, a *qualifying investment*, has also failed to meet the standard expected by a *regular user*:

FCA

- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
- (2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently; or
- (3) the characteristics of the market or auction platform in question, including the users and applicable rules and codes of conduct (including, if relevant, any statutory or regulatory obligation to disclose a holding or position, such as under ■ DTR 5);
- (4) the position of the *person* in question and the standards reasonably to be expected of him in light of his experience, skill and knowledge;

- (5) if the transaction complied with the rules of the relevant *prescribed markets* or *prescribed auction platform* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions); and
- (6) if an *organisation* has created a false or misleading impression, whether the individuals responsible could only know they were likely to create a false or misleading impression if they had access to other information that was being held behind a *Chinese wall* or similarly effective arrangements.

## 1.10 Statutory exceptions

### Behaviour that does not amount to market abuse (general): buy-back programmes and stabilisation

1.10.1

FCA

G

- (1) *Behaviour* which conforms with articles 3 to 6 of the *Buy-back and Stabilisation Regulation* (see ■ MAR 1 Annex 1) will not amount to *market abuse*.
- (2) See ■ MAR 2 in relation to *stabilisation*.
- (3) *Buy-back programmes* which are not within the scope of the *Buy-back and Stabilisation Regulation* are not, in themselves, *market abuse*.

### FCA rules

1.10.2

FCA

G

There are no *rules* which permit or require a *person* to behave in a way which amounts to *market abuse*. Some *rules* contain a provision to the effect that *behaviour* conforming with that *rule* does not amount to *market abuse*:

- (1) the control of information *rule* (■ SYSC 10.2.2 R (1) (see ■ SYSC 10.2.2 R (4))); and
- (2) those parts of the *Part 6 rules* which relate to the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information (see in particular the *Disclosure Rules* and *Transparency Rules*).

### Takeover Code

1.10.3

FCA

G

There are no rules in the *Takeover Code*, which permit or require a *person* to behave in a way which amounts to *market abuse*.

1.10.4

FCA

C

*Behaviour* conforming with any of the rules of the *Takeover Code* about the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information, does not, of itself, amount to *market abuse*, if:

- (1) the rule is one of those specified in the table in ■ MAR 1.10.5 C;
- (2) the *behaviour* is expressly required or expressly permitted by the rule in question (the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the relevant rule for these purposes); and

1.10.5

FCA



(3) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to that rule.

Table: Provisions of the Takeover Code conformity with which will not, of itself, amount to market abuse (This table belongs to MAR 1.10.4C):

| <i>Takeover Code</i> provisions:                           |   |
|--|---|
| Disclosure of information which is not generally available | 1(a)<br>2.1 plus notes, 2.5, 2.6, 2.9 plus notes<br>8<br>19.7<br>20.1, 20.2, 20.3<br>28.4<br>37.3(b) and 37.4(a)  |
| Standards of care  | 2.8 first sentence and note 4<br>19.1, 19.5 second sentence and note 2, 19.8<br>23 plus notes<br>28.1   |
| Timing of announcements, documentation and dealings        | 2.2, 2.4(b)<br>5.4<br>6.2(b)<br>7.1<br>11.1 note 6 only<br>17.1<br>21.2<br>30<br>31.6(c), 31.9<br>33 (in so far as it refers 31.6(c) and 31.9 only)<br>38.5 |
| Content of announcements                                   | 2.4 (a) and (b)<br>19.3   |



1.10.6

FCA

**C** Behaviour conforming with Rule 4.2 of the *Takeover Code* (in relation to restrictions on *dealings* by *offerors* and concert parties) does not, of itself, amount to *market abuse*, if:

- (1) the *behaviour* is expressly required or expressly permitted by that rule (the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the rule for these purposes); and
- (2) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to the rule.



**1.11 [Deleted]**

## Provisions of the Buy-back and Stabilisation Regulation relating to buy-back programmes

**FCA**

**1.1.1 G** The effect of article 8 of the *Market Abuse Directive* and section 118A(5)(b) of the *Act* is that behaviour which conforms with the buy-back provisions in the *Buy-back and Stabilisation Regulation* will not amount to *market abuse*.

**1.1.2 G** As the *Buy-back and Stabilisation Regulation* is not directed at the protection of shareholder interests, *issuers* will also need to consult both the *Companies Act 2006* and the *Part 6 rules* for the shareholder protection requirements applying to a proposed buy-back.

**1.1.3 EU** Table: Article 3 of the *Buy-back and Stabilisation Regulation*

### Article 3

#### Objectives of buy-back programmes

In order to benefit from the exemption provided for in Article 8 of [the *Market Abuse Directive*], a [*buy-back programme*] must comply with Articles 4, 5 and 6 of this Regulation and the sole purpose of that [*buy-back programme*] must be to reduce the capital of an issuer (in value or in number of shares) or to meet obligations arising from any of the following:

- (a) debt financial instruments exchangeable into equity instruments;
- (b) employee share option programmes or other allocations of shares to employees of the issuer or of an associate company.

**1.1.4 EU** Table: Relevant Recitals (Article 3) from the *Buy-back and Stabilisation Regulation*

### Recital 3

... the exemptions created by this Regulation only cover behaviour directly related to the purpose of the buy-back and stabilisation activities. Behaviour which is not directly related to the purpose of the buy-back and stabilisation activities shall therefore be considered as any other action covered by [the *Market Abuse Directive*] and may be the object of administrative measures or sanctions, if the competent authority establishes that the action in question constitutes market abuse.

**1.1.5 EU** Table: Article 4 of the *Buy-back and Stabilisation Regulation*

### Article 4

#### Conditions for *buy-back programmes* and disclosure

1. The [*buy-back programme*] must comply with the conditions laid down by Article 19(1) of [the *PLC Safeguards Directive*].

2. Prior to the start of trading, full details of the programme approved in accordance with Article 19(1) of [the *PLC Safeguards Directive*] must be [adequately disclosed to the public] in Member States in which an issuer has requested admission of its shares to trading on a [regulated market].

Those details must include the objective of the programme as referred to in Article 3, the maximum consideration, the maximum number of shares to be acquired and the duration of the period for which authorisation for the programme has been given.

Subsequent changes to the programme must be subject to [adequate public disclosure] in Member States.

3. The issuer must have in place the mechanisms ensuring that it fulfils trade reporting obligations to the competent authority of the [regulated market] on which the shares have been admitted to trading. These mechanisms must record each transaction related to [buy-back programmes], including the information specified in Article 20(1) of the [ISD].
4. The issuer must publicly disclose details of all transactions as referred to in paragraph 3 no later than the end of the seventh daily market session following the date of execution of such transactions.

**1.1.6 G** The information specified in article 20(1) of the *ISD* is the names and numbers of the instruments bought or sold, the dates and times of the transactions, the transaction prices and means of identifying the investment firms concerned.

**1.1.7 G** Article 19(1) of the *PLC Safeguards Directive* is implemented in Great Britain by section 701 of the Companies Act 2006.

**1.1.8 G** The *FCA* accepts disclosure through a *regulatory information service* as *adequate public disclosure*.

**1.1.9 EU** Table: Article 5 of the *Buy-back and Stabilisation Regulation*

#### Article 5

#### Conditions for trading

1. In so far as prices are concerned, the issuer must not, when executing trades under a [buy-back programme], purchase shares at a price higher than the higher of the price of the last independent trade and the highest current independent bid on the trading venues where the purchase is carried out.

If the trading venue is not a [regulated market], the price of the last independent trade or the highest current independent bid taken in reference shall be the one of the [regulated market] of the Member State in which the purchase is carried out.

Where the issuer carries out the purchase of own shares through derivative financial instruments, the exercise price of those derivative financial instruments shall not be above the higher of the price of the last independent trade and the highest current independent bid.

2. In so far as volume is concerned, the issuer must not purchase more than 25% of the average daily volume of the shares in any one day on the [*regulated market*] on which the purchase is carried out.  

The average daily volume figure must be based on the average daily volume traded in the month preceding the month of public disclosure of that programme and fixed on that basis for the authorised period of the programme.

Where the programme makes no reference to that volume, the average daily volume figure must be based on the average daily volume traded in the 20 trading days preceding the date of purchase.
3. For the purposes of paragraph 2, in cases of extreme low liquidity on the relevant market, the issuer may exceed the 25 % limit, provided that the following conditions are met:
  - (a) the issuer informs the competent authority of the relevant market, in advance, of its intention to deviate from the 25 % limit;
  - (b) the issuer [*makes an adequate public disclosure of*] the fact that it may deviate from the 25 % limit;
  - (c) the issuer does not exceed 50 % of the average daily volume.

1.1.10 EU Table: Relevant recitals (Article 5) from the *Buy-back and Stabilisation Regulation*

Recital 9

In order to prevent market abuse the daily volume of trading in own shares in buy-back programmes shall be limited. However, some flexibility is necessary in order to respond to given market conditions such as a low level of transactions.

Recital 10

Particular attention has to be paid to the selling of own shares during the life of a [*buy-back programme*] to the possible existence of closed periods within issuers during which transactions are prohibited and to the fact that an issuer may have legitimate reasons to delay public disclosure of inside information.

- 1.1.11 G Whether a case of extreme low liquidity exists for the purposes of article 5(3) will depend on the circumstance of each case. *Issuers* and their advisers may wish to approach the *FCA* and seek further individual *guidance* on cases that come within article 5(3).

1.1.12 EU Table: Article 6 of the *Buy-back and Stabilisation Regulation*

Article 6

Restrictions

1. In order to benefit from the exemption provided by Article 8 of [*the Market Abuse Directive*], the issuer shall not, during its participation in a [*buy-back programme*], engage in the following trading:
  - (a) selling of own shares during the life of the programme;
  - (b) trading during a period which, under the law of the Member State in which trading takes place, is a closed period;

- (c) trading where the issuer has decided to delay the public disclosure of inside information in accordance with Article 6(2) of [the *Market Abuse Directive*].
2. Paragraph 1(a) shall not apply if the issuer is an [*investment firm*] or [*credit institution*] and has established effective information barriers (Chinese Walls) subject to supervision by the competent authority, between those responsible for the handling of [*inside information*] related directly or indirectly to the issuer and those responsible for any decision relating to the trading of own shares (including the trading of own shares on behalf of clients), when trading in own shares on the basis of such any decision.
- Paragraphs 1(b) and (c) shall not apply if the issuer is an [*investment firm*] or [*credit institution*] and has established effective information barriers (Chinese Walls) subject to supervision by the competent authority, between those responsible for the handling of inside information related directly or indirectly to the issuer (including trading decisions under the "buy-back" programme) and those responsible for the trading of own shares on behalf of clients, when trading in own shares on behalf of those clients.
3. Paragraph 1 shall not apply if:
- (a) the issuer has in place a [*time-scheduled buy-back programme*]; or
  - (b) the buy-back programme is lead-managed by an [*investment firm*] or a [*credit institution*] which makes its trading decisions in relation to the issuer's shares independently of, and without influence by, the issuer with regard to the timing of the purchases.

**1.1.13 G** For the purposes of article 6(1)(b) of the *Buy back and Stabilisation Regulation*, a close period in the *United Kingdom* is the period during which purchases or early redemptions by a company of its own securities may not be made under the *Part 6 Rules*.

**1.1.14 G** Article 6(2) of the *Market Abuse Directive*, referred to in article 6(1)(c) of the *Buy-Back and Stabilisation Regulation*, is implemented in the *United Kingdom* by the *Disclosure Rules* and *Transparency Rules*.

## Accepted Market Practices

**FCA****Table: Part 1 - General**

- |    |   |  |
|----|---|--|
| 1. | G | <p>An <i>accepted market practice</i> features in section 118 in the following ways:</p> <ol style="list-style-type: none"> <li>(1) it is an element in deciding what is <i>inside information</i> in the commodity markets (and see MAR 1.2.17 G to MAR 1.2.19 UK);</li> <li>(2) it provides a defence for <i>market abuse (manipulating transactions)</i>.</li> </ol>  |
| 2. | G | <p>The <i>FCA</i> will take the following non-exhaustive factors into account when assessing whether to accept a particular market practice:</p> <ol style="list-style-type: none"> <li>(1) the level of transparency of the relevant market practice to the whole market;</li> <li>(2) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand (taking into account the impact of the relevant market practice against the main market parameters, such as the specific market conditions before carrying out the relevant market practice, the weighted average price of a single session or the daily closing price);</li> <li>(3) the degree to which the relevant market practice has an impact on market liquidity and efficiency;</li> <li>(4) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;</li> <li>(5) the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant <i>financial instrument</i> within the whole <i>EEA</i>;</li> <li>(6) the outcome of any investigation of the relevant market practice by any competent authority or other authority mentioned in Article 12(1) of the <i>Market Abuse Directive</i>, in particular whether the relevant market practice breached rules or regulations designed to prevent <i>market abuse</i>, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the <i>EEA</i>; and</li> <li>(7) the structural characteristics of the relevant market including whether it is regulated or not, the types of <i>financial instruments</i> traded and the type of market participants, including the extent of retail investors participation in the relevant market.</li> </ol> |

[deleted]





---

**[Deleted]**

**1**



---

**[Deleted]**

**1**



# Chapter 2

## Stabilisation

## 2.1 Application and Purpose

### Application

2.1.1

FCA

R

This chapter applies to every *firm*.

2.1.2

FCA

G

This chapter is available to every *person* who wishes to show that he acted in conformity with:

- (1) the *Buy-back and Stabilisation Regulation*, in accordance with section 118A(5)(b) of the *Act*; or
- (2) *rules*, in accordance with section 118A(5)(a) of the *Act*; or
- (3) the *price stabilising rules*, for the purposes of paragraph 5(1) of Schedule 1 to the Criminal Justice Act 1993 (Insider Dealing); or
- (4) the *price stabilising rules*, for the purposes of section 397(4) or (5)(b) of the *Act* (Misleading statements and practices).

2.1.3

FCA

R

This chapter:

- (1) so far as it provides a defence for any *person*, has the same territorial application as the provision which is alleged to have been contravened: and
- (2) in its application to a *firm* for purposes other than those falling within (1), applies to the *firm's* business carried on from an establishment in the *United Kingdom*.

### Purpose

2.1.4

FCA

G

The purpose of this chapter is to describe the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *market abuse* under the *Buy-back and Stabilisation Regulation* (see ■ MAR 2.2 and ■ MAR 2.3), and to specify by rules the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *market abuse (misuse of information)*, *market abuse (misleading behaviour)* or *market abuse (distortion)* (see ■ MAR 2.2 and ■ MAR 2.4), or for the criminal offences referred to in ■ MAR 2.1.2 G (3) and ■ MAR 2.1.2 G (4) (■ MAR 2.3 - ■ MAR 2.5).

2.1.5

FCA

G

*Stabilisation* transactions mainly have the effect of providing support for the price of an offering of *relevant securities* during a limited time period if they come under selling pressure, thus alleviating sales pressure generated by short term investors and maintaining an orderly market in the *relevant securities*. This is in the interest of those investors having subscribed or purchased those *relevant securities* in the context of a *significant distribution*, and of *issuers*. In this way, *stabilisation* can contribute to greater confidence of investors and *issuers* in the financial markets. [Note: Recital 11 of the *Buy-back and Stabilisation Regulation*]

2.1.6

FCA

G

*Stabilisation* activity may be carried out either on or off a *regulated market* and may be carried out by use of *financial instruments* other than those admitted or to be admitted to the *regulated market* which may influence the price of the instrument admitted or to be admitted to trading on a *regulated market*. [Note: Recital 12 *Buy-back and Stabilisation Regulation*]

2.1.7

[Deleted]

2.1.8

[Deleted]

2.1.9

[Deleted]

## 2.2 Stabilisation: general

### Permitted stabilisation

2.2.1

FCA

R

*Stabilisation or ancillary stabilisation* may be carried out by a *firm* in relation to a *significant distribution of securities*, if:

- (1) they are *relevant securities* that have been admitted to trading on a *regulated market* or a request for their admission to trading on such a market has been made, and the *stabilisation* is carried out in accordance with the *Buy-back and Stabilisation Regulation* (see ■ MAR 2.3); or
- (2) the *securities* are not within (1) and they:
  - (a) have been admitted to trading on a market, exchange or other institution included in ■ MAR 2 Annex 1 R; or
  - (b) a request for their admission to trading on such a market, exchange or institution has been made; or
  - (c) are or may be traded under the rules of the International Securities Markets Association; and

the *stabilisation or ancillary stabilisation* is carried out in accordance with the provisions in ■ MAR 2.4.

2.2.2

FCA

G

*Relevant securities* include *financial instruments* that become fungible after an initial period because they are substantially the same, although they have different initial dividend or interest payment rights. [Note: Recital 13 *Buy-back and Stabilisation Regulation*.]

### Scope of stabilisation "safe harbours" for market abuse

2.2.3

FCA

R

For the purposes of section 118A(5)(a) of the *Act*, *behaviour* (whether by a *firm* or not) conforming with the ■ MAR 2.2.1 R (2) does not amount to *market abuse*.

2.2.4

FCA

G

The effect of article 8 of the *Market Abuse Directive* and section 118A(5)(b) of the *Act* is that *behaviour* by any *person* which conforms with the *stabilisation* provisions in the *Buy-back and Stabilisation Regulation* (see ■ MAR 2.3) will not amount to *market abuse*.



**2.2.5**  
**FCA** **G** However, the mere fact that *stabilisation* does not conform with the *stabilisation* provisions in the *Buy-back and Stabilisation Regulation* (see ■ MAR 2.3) or with) ■ MAR 2.2.1 R (2) will not of itself mean that the *behaviour* constitutes *market abuse*. [Note: Recital 2 *Buy-back and Stabilisation Regulation*]

### Block trades

**2.2.6**  
**FCA** **G** In relation to *stabilisation*, block trades are not considered as a *significant distribution of relevant securities* as they are strictly private transactions. [Note: Recital 14 *Buy-back and Stabilisation Regulation*]

### Behaviour not related to stabilisation

**2.2.7**  
**FCA** **G** On the other hand, the exemptions created by the *Buy-back and Stabilisation Regulation* only cover *behaviour* directly related to the purpose of *stabilisation* activities. *Behaviour* which is not directly related to the purpose of *stabilisation* activities is therefore considered in the same way as any other action covered by the *Market Abuse Directive* and may result in sanctions, if the competent authority establishes that the action in question constitutes *market abuse*. [Note: Recital 3 *Buy-back and Stabilisation Regulation*]

**2.2.8**  
**FCA** **G** In order to avoid confusion of market participants, *stabilisation* activity should be carried out by taking into account the market conditions and the offering price of the *relevant security* and transactions to liquidate positions established as a result of *stabilisation* activity should be undertaken to minimise market impact having due regard to prevailing market conditions. [Note: Recital 18 *Buy-back and Stabilisation Regulation*]

### Rights of action for damages

**2.2.9**  
**FCA** **R** A contravention of the *rules* in ■ MAR 2 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).

## 2.3 Stabilisation under the Buy-back and Stabilisation Regulation

### Conditions for stabilisation: general

2.3.1

FCA



Table: Article 7 of the Buy-back and Stabilisation Regulation

#### Article 7

##### Conditions for stabilisation

**In order to benefit from the exemption provided for in Article 8 of [the *Market Abuse Directive*], [stabilisation] of a [financial instrument] must be carried out in accordance with Articles 8, 9 and 10 of this Regulation [see MAR 2.3.4 E, MAR 2.3.5 EU and MAR 2.3.6 G].**

2.3.2

FCA



Article 8 of the *Market Abuse Directive* is implemented in the *United Kingdom* in section 118A(5)(b) of the *Act*.

2.3.3

FCA



For the purposes of article 2(8) of the *Buy-back and Stabilisation Regulation* the standards of transparency of the markets, exchanges and institutions referred to in ■ MAR 2.2.1 R (2) are considered by the *FCA* to be adequate.

### Time related conditions for stabilisation

2.3.4

FCA



Table: Article 8 of the Buy-back and Stabilisation Regulation

#### Article 8

##### Time related conditions for stabilisation

1. [Stabilisation] shall be carried out only for a limited time period.
2. In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of an initial offer publicly announced, start on the date of commencement of trading of the [relevant securities] on the [regulated market] and end no later than 30 calendar days thereafter.

Where the initial offer publicly announced takes place in a Member State that permits trading prior to the commencement of trading on a [regulated market], the time period referred to in paragraph 1 shall start on the date of [adequate public disclosure] of the final price of the [relevant securities] and end no later than 30 calendar days thereafter, provided that any such

trading is carried out in compliance with the rules, if any, of the [regulated market] on which the [relevant securities] are to be admitted to trading, including any rules concerning public disclosure and trade reporting.

3. In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of a secondary offer, start on the date of [adequate public disclosure] of the final price of the [relevant securities] and end no later than 30 calendar days after the date of [allotment].
4. In respect of bonds and other forms of securitised debt (which are not convertible or exchangeable into shares or into other securities equivalent to shares), the time period referred to in paragraph 1 shall start on the date of [adequate public disclosure] of the terms of the offer of the [relevant securities] (i.e. including the spread to the benchmark, if any, once it has been fixed) and end, whatever is earlier, either no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of [allotment] of the [relevant securities].
5. In respect of securitised debt convertible or exchangeable into shares or into other securities equivalent to shares, the time period referred to in paragraph 1 shall start on the date of [adequate public disclosure] of the final terms of the offer of the [relevant securities] and end, whatever is earlier, either no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of [allotment] of the [relevant securities].

#### Disclosure and reporting conditions for stabilisation

Table: Article 9 of the Buy-back and Stabilisation Regulation

##### Article 9

#### Disclosure and reporting conditions for stabilisation

1. The following information shall be [adequately publicly disclosed] by issuers, [offerors], or entities undertaking the [stabilisation] acting, or not, on behalf of such persons, before the opening of the offer period of the [relevant securities]:
  - (a) the fact that [stabilisation] may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time;
  - (b) the fact that [stabilisation] transactions are aimed to support the market price of the [relevant securities];
  - (c) the beginning and end of the period during which [stabilisation] may occur;

2.3.5

FCA



- (d) the identity of the [*stabilisation*] manager, unless this is not known at the time of publication in which case it must be publicly disclosed before any [*stabilisation*] activity begins;
- (e) the existence and maximum size of any [*overallotment facility*] or [*greenshoe option*], the exercise period of the [*greenshoe option*] and any conditions for the use of the [*overallotment facility*] or exercise of the [*greenshoe option*].

The application of the provisions of this paragraph shall be suspended for offers under the scope of application of the measures implementing [the *Prospectus Directive*], from the date of application of these measures.

2. Without prejudice to Article 12(1)(c) of [the *Market Abuse Directive*], the details of all [*stabilisation*] transactions must be notified by issuers, [*offerors*], or entities undertaking the [*stabilisation*] acting, or not, on behalf of such persons, to the competent authority of the relevant market no later than the end of the seventh daily market session following the date of execution of such transactions.
3. Within one week of the end of the [*stabilisation*] period, the following information must be adequately disclosed to the public by issuers, [*offerors*], or entities undertaking the [*stabilisation*] acting, or not, on behalf of such persons:
  - (a) whether or not [*stabilisation*] was undertaken;
  - (b) the date at which [*stabilisation*] started;
  - (c) the date at which [*stabilisation*] last occurred;
  - (d) the price range within which [*stabilisation*] was carried out, for each of the dates during which [*stabilisation*] transactions were carried out.
4. Issuers, [*offerors*], or entities undertaking the [*stabilisation*], acting or not, on behalf of such persons, must record each [*stabilisation*] order or transaction with, as a minimum, the information specified in Article 20(1) of [the *ISD*] extended to *financial instruments* other than those admitted or going to be admitted to the *regulated market*.
5. Where several [*investment firms*] or [*credit institutions*] undertake the [*stabilisation*] acting, or not, on behalf of the issuer or [*offeror*], one of those persons shall act as central point of inquiry for any request from the competent authority of the *regulated market* on which the [*relevant securities*] have been admitted to trading.

2.3.6

FCA

G

The FCA accepts as *adequate public disclosure*:

- (1) disclosure through a *regulatory information service* or otherwise in accordance with *Part 6 rules*; or
- (2) the equivalent disclosure mechanism required to be used in relation to the relevant *regulated market*.

2.3.7

FCA

G

Market integrity requires the *adequate public disclosure* of *stabilisation* activity by *issuers* or by entities undertaking *stabilisation*, acting or not on behalf of these *issuers*. Methods used for *adequate public disclosure* of such information should be efficient and can take into account market practices accepted by competent authorities. [Note: Recital 16 *Buy-back and Stabilisation Regulation*]

2.3.8

FCA

G

There should be adequate coordination in place between all *investment firms* and *credit institutions* undertaking *stabilisation*. During *stabilisation*, one *investment firm* or *credit institution* shall act as a central point of inquiry for any regulatory intervention by the competent authority in each Member State concerned. [Note: Recital 17 *Buy-back and Stabilisation Regulation*]

2.3.9

FCA

G

For the purposes of article 9(2) of the *Buy-back and Stabilisation Regulation*, the FCA is the competent authority of those markets listed as *regulated markets* at <http://www.fsa.gov.uk/register/exchanges.do>. *Persons* undertaking *stabilisation* will be taken to have notified the FCA for the purposes of article 9(2) if they email details of all their *stabilisation* transactions to [stabilisation@fca.org.uk](mailto:stabilisation@fca.org.uk) clearly identifying the offer being *stabilised* and the contact details for the *persons* undertaking the *stabilisation*.

### Specific price conditions

2.3.10

FCA

EU

Table: Article 10 of the Buy-back and Stabilisation Regulation

#### Article 10

##### Specific price conditions

1. In the case of an offer of shares or other securities equivalent to shares, [*stabilisation*] of the [*relevant securities*] shall not in any circumstances be executed above the offering price.
2. In the case of an offer of securitised debt convertible or exchangeable into instruments as referred to in paragraph 1, [*stabilisation*] of those instruments shall not in any circumstances be executed above the market price of those instruments at the time of the public disclosure of the final terms of the new offer.

### Conditions for ancillary stabilisation

2.3.11

FCA

EU

Table: Article 11 of the Buy-back and Stabilisation Regulation

#### Article 11

##### Conditions for ancillary stabilisation

**In order to benefit from the exemption provided for in Article 8 of [the *Market Abuse Directive*], [ancillary stabilisation] must be undertaken in accordance with Article 9 of this Regulation and with the following:**

- (a) [relevant securities] may be overallocated only during the subscription period and at the offer price;
- (b) a position resulting from the exercise of an [overallotment facility] by an [investment firm] or [credit institution] which is not covered by the [greenshoe option] may not exceed 5 % of the original offer;
- (c) the [greenshoe option] may be exercised by the beneficiaries of such an option only where [relevant securities] have been overallocated;
- (d) the [greenshoe option] may not amount to more than 15% of the original offer;
- (e) the exercise period of the [greenshoe option] must be the same as the [stabilisation] period required under Article 8;
- (f) the exercise of the [greenshoe option] must be disclosed to the public promptly, together with all appropriate details, including in particular the date of exercise and the number and nature of [relevant securities] involved.

2.3.12

FCA

G

*Overallotment facilities* and *greenshoe options* are closely related to stabilisation, by providing resources and hedging for *stabilisation* activity. [Note: Recital 19 *Buy-back and Stabilisation Regulation*]

2.3.13

FCA

G

Particular attention should be paid to the exercise of an *overallotment facility* by an *investment firm* or a *credit institution* for the purpose of *stabilisation* when it results in a position uncovered by the *greenshoe option*. [Note: Recital 20 *Buy-back and Stabilisation Regulation*.]

## 2.4 Stabilisation when the Buy-back and Stabilisation Regulation does not apply

- 2.4.1** **R** To comply with ■ MAR 2.2.1 R (2) a *firm* must comply with the provisions in articles 8, 9, 10 and 11 of the *Buy-back and Stabilisation Regulation* (see ■ MAR 2.3) subject to the modifications set out in the remainder of this section.
- 2.4.2** **R** For the purposes of the application of article 2(6) of the *Buy-back and Stabilisation Regulation* to this section, references to "*relevant securities*" are to be taken as references to *securities* which are within ■ MAR 2.2.1 R (2).
- 2.4.3** **R** For the purposes of the application of article 2(8) of the *Buy-back and Stabilisation Regulation* to this section, the requirement for the competent authority to agree to the standards of transparency does not apply.
- 2.4.4** **R** Article 8 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:
- (1) the references to "*adequate public disclosure*" are to be taken as including any public announcement which provides adequate disclosure of the fact that *stabilisation* may take place in relation to the offer, for example:
    - (a) in the case of a screen-based announcement, wording such as "stabilisation/FCA"; or
    - (b) in the case of a final offering circular or prospectus, wording such as "In connection with this [issue][offer], [name of *stabilisation* manager] [or any *person* acting for him] may over-allot or effect transactions with a view to supporting the market price of [description of *relevant securities* and any associated investments] at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there may be no obligation on [name of *stabilisation* manager] [or any agent of his] to do this. Such stabilising, if commenced, may be discontinued at any time, and must be brought to an end after a limited period."; and
  - (2) a *person* is taken to comply the requirements of article 9(1) of the *Buy-back and Stabilisation Regulation* for these purposes if a



public announcement before the opening of the offer period indicates (in whatever terms) the fact that *stabilisation* may take place so long as any preliminary or final offering circular (or prospectus) contains the information specified in that article (other than information on the maximum size of any overallotment facility).

2.4.5

FCA

**R** Article 9 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:

- (1) the references to "*adequate public disclosure*" are to be taken as including any public announcement which complies with ■ MAR 2.4.4 R;
- (2) article 9(2) does not apply;
- (3) article 9(3) does not apply; and
- (4) in article 9(4) the phrase "order or" does not apply.

2.4.6

FCA

**R** Article 10 of the *Buy-back and Stabilisation Regulation* is modified so that the reference to "public disclosure" is to be taken as including any public announcement which complies with ■ MAR 2.4.4 R.

2.4.7

FCA

**R** Article 11 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:

- (1) the reference to "disclosure to the public" is to be taken as including any public announcement which complies with ■ MAR 2.4.4 R and
- (2) article 11(b) and (d) do not apply.



## 2.5 The Price Stabilising Rules: overseas provisions

### 2.5.1

FCA

R

- (1) A person who in any place outside the *United Kingdom* acts or engages in conduct:
  - (a) for the purposes of *stabilising* the price of *investments*;
  - (b) in conformity with the provisions specified in (2), (3) or (4); and
  - (c) in relation to an offer which is governed by the law of a country (or a state or territory in a country) so specified;is to be treated for the purposes of section 397(5)(b) of the *Act* (misleading statements and practices) as acting or engaging in conduct for that purpose and in conformity with the *price stabilising rules*.
- (2) In relation to the United States of America, the specified provisions are:
  - (a) Regulation M made by the Securities and Exchange Commission (17 CFR 242, # 100-105).
- (3) In relation to Japan, the specified provisions are
  - (a) The Securities and Exchange Law of Japan, (Law No 25, April 13 1948), Article 159, paragraphs 3 and 4;
  - (b) Cabinet Orders for the Enforcement of the Securities and Exchange Law of Japan (Cabinet Order 321, September 30, 1965), Articles 20 to 26;
  - (c) Ministerial Ordinance concerning the Registration of Stabilisation Trading (Ordinance of the Ministry of Finance No 43, June 14, 1971);
  - (d) Ministerial Ordinance concerning rules and otherwise governing the soundness of securities companies (Ordinance of the Ministry of Finance, No 60, November 5, 1965), Article 2.
- (4) In relation to Hong Kong, the specified provisions are:

2.5.2

FCA

R

A *person* who is treated under ■ MAR 2.5.1 R (1) as acting or engaging in conduct in conformity with the *price stabilising rules* is also to be treated to an equivalent extent as so acting or engaging for the purposes of:

- (1) ■ MAR 2.2.1 R (2) and ■ MAR 2.2.2 G, provided that the *investments* concerned are not admitted to trading on a *regulated market* and there has been no request for admission to trading on a *regulated market*;
- (2) Part XIV (Disciplinary measures); and
- (3) Part XXV (Injunctions and Restitution) of the *Act*.

2.5.3

[Deleted]

2.5.4

[Deleted]

2.5.5

[Deleted]

2.5.6

[Deleted]



2.6

[Deleted]

2



2.7

[Deleted]



2.8

[Deleted]

2



**List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1R(2))****FCA*****Any prescribed market which is not a regulated market******Any recognised overseas investment exchange*****American Stock Exchange (AMEX)****Australian Stock Exchange****Bolsa Mexicana de Valores****Canadian Venture Exchange****Hong Kong Stock Exchange****Johannesburg Stock Exchange****Korea Stock Exchange****Midwest Stock Exchange****Montreal Stock Exchange****New York Stock Exchange (NYSE)****New Zealand Stock Exchange****Osaka Securities Exchange (OSE)****Pacific Stock Exchange****Philadelphia Stock Exchange****Singapore Exchange Securities Trading Limited****Tokyo Stock Exchange (TSE)****Toronto Stock Exchange**





---

**[Deleted]**



---

**[Deleted]**



# Chapter 3

[Deleted]



[Chapter Deleted]

## Chapter 4

# Support of the Takeover Panel's Functions



## 4.1 APPLICATION AND PURPOSE

### Application

---

4.1.1  
FCA

R

This chapter applies to every *firm* whose *permission* includes, or ought to include, any *designated investment business*, except as set out in ■ MAR 4.4.1 R.

4.1.2  
FCA

G

■ MAR 4.1.1 R applies regardless of whether the *firm's* activity:

- (1) is a *regulated activity*;
- (2) is carried on from an office of the *firm* in the *United Kingdom*; or
- (3) is in respect of a *client* in the *United Kingdom*.

### Purpose

---

4.1.3

G

[deleted]

4.1.4

G

[deleted]





4.2

- 4.2.1
- 4.2.2
- 4.2.3
- 4.2.4
- 4.2.5

[Deleted]  
[Deleted]  
[Deleted]  
[Deleted]  
[Deleted]



### 4.3 SUPPORT OF THE TAKEOVER PANEL'S FUNCTIONS

4.3.1  
FCA

R

A *firm* must not act, or continue to act, for any *person* in connection with a transaction to which the *Takeover Code* applies (including a *transaction* subject to rule 8 (Disclosure of dealings during the offer period; also indemnity and other arrangements) of the *Takeover Code*) if the *firm* has reasonable grounds for believing that the *person* in question, or his principal, is not complying or is not likely to comply with the *Takeover Code* .

4.3.2  
FCA

G

- (1) The *Takeover Panel* publishes notices regarding compliance with the *Takeover Code* . It may also, from time to time, name in those notices *persons as persons* that, in the *Takeover Panel's* opinion, are not likely to comply with the *Takeover Code*. Any notices of this type will be available on the *Takeover Panel's* website (www.thetakeoverpanel.org.uk).
- (2) A *firm* should keep itself informed of *Takeover Panel* notices and take them into account in seeking to comply with ■ MAR 4.3.1 R. If the *Takeover Panel* were to name such a *person* in such a notice, the *FCA* would expect a *firm* to comply with ■ MAR 4.3.1 R by not acting or continuing to act for that *person*.
- (3) The *FCA* would not regard a *firm* as in breach of ■ MAR 4.3.1 R where the *Takeover Panel* has indicated that it is content for the *firm* to act in relation to that transaction.

4.3.3  
FCA

G

- (1) Where a restriction under ■ MAR 4.3.1 R applies, among other things the *firm* is prevented from carrying on any *designated investment business* activity, or *communicating* or *approving* any *financial promotion*, in connection with a transaction to which the *Takeover Code* applies.
- (2) Where a restriction under ■ MAR 4.3.1 R applies, the *firm* is not prevented from carrying on other activities (including *regulated activities*) in relation to that *person*. This includes *designated investment business* activity which is not in connection with a transaction to which the *Takeover Code* applies.

4.3.4  
FCA

G

- (1) Where a restriction under ■ MAR 4.3.1 R applies, an *authorised professional firm* is not prevented from providing professional advice or representation in any proceedings to the *person* where that falls within section 327(8) of the *Act*. This means that the *person* can obtain legal advice or representation

in any proceedings from a law firm and accounting advice from an accounting firm: see ■ MAR 4.4.1 R (2).

- (2) While the FCA recognises the duty of *authorised professional firms* to act in the best interests of their clients, the duty cannot override the provisions of the *Takeover Code* so as to require the *authorised professional firm* to provide services in breach of, or enable breach of, the *Takeover Code* .

4.3.5  
FCA

**R** A *firm* must provide to the *Takeover Panel*:

- (1) any information and documents in its possession or under its control which the *Takeover Panel* requests to enable the *Takeover Panel* to perform its functions; and
- (2) such assistance as the *Takeover Panel* requests and as the *firm* is reasonably able to provide to enable the *Takeover Panel* to perform its functions.

4.3.6  
FCA

**G** In ■ MAR 4.3.5 R, "documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to providing documents include references to producing a copy of the information in legible form.

4.3.7  
FCA

**G** As a result of section 413 of the *Act* (Limitation on powers to require documents), ■ MAR 4.3.5 R does not require a *firm* or an *authorised professional firm* to produce, disclose or permit the inspection of *protected items*.

This chapter is subject to the following exceptions:

- (1) this chapter does not require an *authorised professional firm* to contravene any rule or principle of, or requirement of a published guidance note relating to, professional conduct applying generally to members of the profession regulated by its *designated professional body*;
- (2) this chapter does not prevent an *authorised professional firm* from providing professional advice, that is, in accordance with section 327(8) of the *Act*, advice:
  - (a) which does not constitute carrying on a *regulated activity*; and
  - (b) the provision of which is supervised and regulated by a *designated professional body*;
- (3) this chapter does not have effect in relation to an *authorised professional firm* in respect of *non-mainstream regulated activity*; and
- (4) this chapter does not apply to:
  - (a) a *UCITS qualifier*; or
  - (b) an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*.

## Chapter 5

# Multilateral trading facilities (MTFs)



## 5.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access.

See [www.esma.europa.eu/system/files/esma\\_2012\\_122\\_en.pdf](http://www.esma.europa.eu/system/files/esma_2012_122_en.pdf)

5.1.1

FCA

R

This chapter applies to:

- (1) a *UK domestic firm* which operates an *MTF* from an establishment in the *United Kingdom* or elsewhere; or
- (2) an *overseas firm* which operates an *MTF* from an establishment in the *United Kingdom*.

5.1.2

FCA

R

In this chapter, provisions marked "EU" apply to an *overseas firm* as if they were *rules*.

5.1.3

[Deleted]



## 5.2 Purpose

### 5.2.1

FCA

G

The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *MTFs*, specifically articles 14, 26, 29 and 30 of *MiFID*. This chapter does not apply to bilateral systems, which are excluded from the *MTF* definition. It sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.

### 5.2.2

[Deleted]

### 5.2.3

[Deleted]

### 5.2.4

[Deleted]

### 5.2.5

[Deleted]

### 5.2.6

[Deleted]

### 5.2.7

[Deleted]

### 5.2.8

[Deleted]

5.3.1

FCA

R

A firm operating an *MTF* must have:

- (1) transparent and non-discretionary rules and procedures for fair and orderly trading;

[Note: Article 14(1) of *MiFID*]

- (2) objective criteria for the efficient execution of orders;

[Note: Article 14(1) of *MiFID*]

- (3) transparent rules regarding the criteria for determining the *financial instruments* that can be traded under its systems;

[Note: Subparagraph 1 of Article 14(2) of *MiFID*]

- (4) transparent rules, based on objective criteria, governing access to its facility, which rules must provide that its members or participants are *investment firms*, *BCD credit institutions* or other persons who:

- (a) are fit and proper;
- (b) have a sufficient level of trading ability and competence;
- (c) where applicable, have adequate organisational arrangements;
- (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the *firm* operating the *MTF* may have established in order to guarantee the adequate settlement of transactions; and

[Note: Article 14(4) and 42(3) of *MiFID*]

- (5) where applicable must provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgment, taking into account both the nature of the users and the types of instrument traded.



[Note: Subparagraph 2 of Article 14(2) of *MiFID*]

**Publication of pre and post-trade information for shares not admitted to trading on a regulated market**

5.3.2

FCA

G

In the case of shares not *admitted to trading* on a *regulated market*, the *FCA* expects that in order to fulfil the requirements in ■ MAR 5.3.1 R as regards fair and orderly trading, the *firm* operating the *MTF* will make public on reasonable commercial terms:

- (1) on a continuous basis during *normal trading hours*, information about the quotes and orders relating to these shares which the *MTF* displays or advertises to its users; and
- (2) as close to real time as possible, information about the price, volume and time of transactions in these shares executed under its systems.

5.3.3

FCA

G

The *firm* may make information about a large quote, order or transaction available under ■ MAR 5.3.2 G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction.

**Publication of post-trade information for financial instruments other than shares**

5.3.4

FCA

G

Where *financial instruments* other than shares are traded on an *MTF*, and the same or substantially similar instruments are also traded on a *UK RIE*, a *regulated market* or an *EEA commodities market*, the *FSA* expects that in order to fulfil the requirements in ■ MAR 5.3.1 R as regards fair and orderly trading, the *firm* operating the *MTF* will make public, on reasonable commercial terms and as close to real time as possible, the price, volume and time of the transactions executed under its systems.

5.3.5

FCA

G

For large transactions in *debt securities*, an indication that volume exceeded a certain figure (not being less than £7 million or its equivalent) instead of the actual volume is sufficient transparency of the volume of a trade.

5.3.6

FCA

G

The *firm* may make information about a large quote, order or transaction available under ■ MAR 5.3.4 G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction.

**Operation of a primary market in shares not admitted to trading on a regulated market**

5.3.7

FCA

G

The *FCA* will be minded to impose a variation on the *Part 4A Permission* of an *MTF* operator that operates a primary market in shares not *admitted to trading* on a *regulated market* in order to ensure its fulfilment of the requirements in ■ MAR 5.3.1 R as regards fair and orderly trading.

5.3.8

FCA

R

**Transferable securities traded without issuer consent**

Where a *transferable security*, which has been *admitted to trading* on a *regulated market*, is also traded on an *MTF* without the consent of the *issuer*, the *firm* operating the *MTF* must not make the *issuer* subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that *MTF*.

[Note: Article 14(6) of *MiFID*]



## 5.4 Finalisation of transactions

5.4.1

FCA

R

A firm operating an *MTF* must:

- (1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in that *MTF*; and
- (2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[Note: Article 14(5) of *MiFID*]

5.4.2

[Deleted]

5.4.3

[Deleted]

5.4.4

[Deleted]

5.4.5

[Deleted]

5.4.6

[Deleted]

5.4.7

[Deleted]

5.4.8

[Deleted]



## 5.5 Monitoring compliance with the rules of the MTF

5.5.1

FCA

R

A *firm* operating an *MTF* must:

- (1) have effective arrangements and procedures, relevant to the *MTF*, for the regular monitoring of the compliance by its users with its rules; and
- (2) monitor the transactions undertaken by its users under its systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

[Note: Article 26(1) of *MiFID*]

5.5.2

[Deleted]

5.5.3

[Deleted]

5.6 Reporting requirements

5.6.1

FCA

R

A *firm* operating an *MTF* must:

- (1) report to the *FCA*:
  - (a) significant breaches of the *firm's* rules;
  - (b) disorderly trading conditions; and
  - (c) conduct that may involve market abuse;
- (2) supply the information required under this *rule* without delay to the *FCA* and any other authority competent for the investigation and prosecution of market abuse; and
- (3) provide full assistance to the *FCA*, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of market abuse occurring on or through the *firm's* systems.

[Note: Article 26(2) of *MiFID*]

5.7.1

FCA

R



## 5.7 Pre-trade transparency requirements for shares

- (1) Unless (2),(3) or (4) applies, in respect of shares *admitted to trading on a regulated market*, a *firm* operating an *MTF* must make public, on reasonable commercial terms and on a continuous basis during *normal trading hours*:
- (a) the current bid and offer prices which are advertised through its systems; and
  - (b) the depth of trading interests at those prices.

[Note: Article 29(1) of *MiFID*]

- (2) Paragraph (1) does not apply to systems operated by an *MTF* to the extent that those systems satisfy one of the criteria in (a) or (b), subject to (c):
- (a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
  - (b) they formalise negotiated transactions, each of which meets one of the criteria in (i) and (ii), subject to the provisions in (iii) and (iv):
    - (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 *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.
    - (iii) For the purposes of (b), the other conditions specified in the rules of the *MTF* for a transaction of this kind must also have been fulfilled.

(iv) Negotiated transaction has the meaning given in Article 19 of the *MiFID Regulation*.

[Note: Article 19 of the *MiFID Regulation* is reproduced in ■ MAR 5.7.9 EU.]

(c) In the case of systems having functionality other than as described in (a) or (b), the disapplication does not apply to that other functionality.

(3) Paragraph (1) does not apply in relation to orders held in an order management facility maintained by the *MTF* pending their being disclosed to the market.

(4) (a) Paragraph (1) does not apply in relation to orders that are large in scale compared to normal market size for the share or type of share in question.

(b) An order will be considered to be large in scale if it meets the criteria set out in Article 20 of the *MiFID Regulation*.

[Note: Article 20 of the *MiFID Regulation* is reproduced in ■ MAR 5.7.10 EU.]

**Pre-trade information**

5.7.2

FCA



1. **An investment firm or market operator operating an *MTF* or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [of the *MiFID Regulation*], make public the information set out in paragraphs 2 to 6.**
2. **Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its *normal trading hours* the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.**
3. **Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its *normal trading hours* the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.**

**The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.**

5

- In exceptional market conditions, however, one-way prices may be allowed for a limited time.
4. Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its *normal trading hours* the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
  5. Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraph 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share. In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.
  6. A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II [of the *MiFID Regulation*].
- [Note: Article 17 of the *MiFID Regulation*]

**Table 1: Information to be made public in accordance with Article 17**

5.7.3  
FCA



| Type of system                               | Description of system   | Summary of information to be made public, in accordance with Article 17   |
|--|---|---|
| Continuous auction order book trading system | A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis | The aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels |
| Quote-driven trading system                  | A system where transactions are concluded on the basis of firm quotes that are continuously   | The best bid and offer by price of each market maker in that share, together with the vol-  |

PAGE  
12



| Type of system                                 | Description of system  | Summary of information to be made public, in accordance with Article 17  |
|--|--|--|
|  | made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself | umes attaching to those prices   |
| Periodic auction trading system                | A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention  | The price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price   |
| Trading system not covered by first three rows | A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first three rows                  | Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit |

[Note: Table 1, Annex II of the *MiFID Regulation*]

**Publication of pre-trade information**

5.7.4  
FCA



1. A regulated market, MTF or systematic internaliser shall be considered to publish pre-trade information on a continuous basis during *normal trading hours* if that information is published as soon as it becomes available during the *normal trading hours* of the regulated market, MTF or systematic internaliser concerned, and remains available until it is updated.
2. Pre-trade information ... shall be made available as close to real time as possible. ...

[Note: Article 29(1) and (2) of the *MiFID Regulation*]

5.7.5  
FCA



Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.

[Note: Recital (18) to the *MiFID Regulation*]

5.7.6  
FCA



### Disapplication of the pre-trade transparency requirements

The obligation in ■ MAR 5.7.1 R (1) to make public certain pre-trade information is disappplied in ■ MAR 5.7.1 R (2) based on the market model or the type and size of orders in the cases identified in the *MiFID Regulation*, and as reproduced for reference in ■ MAR 5.7.8 EU, ■ MAR 5.7.9 EU, ■ MAR 5.7.10 EU and ■ MAR 5.7.11 EU. In particular, the obligation is disappplied in respect of transactions that are large in scale compared with the normal market size for the share or type of share in question.

[Note: Article 29(2) of *MiFID* and Recital 12 and Articles 18, 19, 20, 33 and 34 of the *MiFID Regulation*]

5.7.7  
FCA



If granting waivers in relation to pre-trade transparency requirements, or authorising the deferral of post-trade transparency obligations, *competent authorities* should treat all *regulated markets* and *MTFs* equally and in a non-discriminatory manner, so that a waiver or deferral is granted either to all *regulated markets* and *MTFs* that they authorise under [the *MiFID*] Directive 2004/39/EC, or to none. *Competent authorities* which grant the waivers or deferrals should not impose additional requirements.

[Note: Recital 12 to the *MiFID Regulation*]

5.7.8  
FCA



1. Waivers in accordance with Article 29(2) and 44(2) of [the *MiFID*] Directive 2004/39/EC may be granted by the *competent authorities* for systems operated by an *MTF* or a *regulated market*, if those systems satisfy one of the following criteria:
  - (a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
  - (b) they formalise negotiated transactions, each of which meets one of the following criteria:
    - (i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the *regulated market* or *MTF* operating that system or, where the share is not traded contin-

uously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;

- (ii) it is subject to conditions other than the current market price of the share.

For the purposes of point (b), the other conditions specified in the rules of the regulated market or *MTF* 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 [the *MiFID*] Directive 2004/39/EC based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the *regulated market* or the *MTF* pending their being disclosed to the market.

[Note: Article 18 of the *MiFID Regulation*]

5.7.9

FCA



For the purpose of Article 18(1)(b) [of the *MiFID Regulation*] a negotiated transaction shall mean a transaction involving members or participants of a *regulated market* or an *MTF* which is negotiated privately but executed within the *regulated market* or *MTF* 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 *client*;
- (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 *client* order.

[Note: Article 19 of the *MiFID Regulation*]

5.7.10

FCA



An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [of the *MiFID Regulation*]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33 [of the *MiFID Regulation*].

[Note: Article 20 of the *MiFID Regulation*]

**Table 2: Orders large in scale compared with normal market size**

5.7.11  
FCA



| Class in terms of average daily turnover (ADT)                                      | ADT < €500 000 | €500 000 ≤ ADT < €1 000 000 | €1 000 000 ≤ ADT < €25 000 000 | €25 000 000 ≤ ADT < €50 000 000 | ADT ≥ €50 000 000 |
|---|----------------|-----------------------------|--------------------------------|---------------------------------|-------------------|
| Minimum size of order qualifying as large in scale compared with normal market size | €50 000        | €100 000                    | €250 000                       | €400 000                        | €500 000          |

[Note: Table 2, Annex II of the *MiFID Regulation*]

5.7.12  
FCA



The FCA will publish on its website the calculations and estimates for shares *admitted to trading* on a *regulated market*, made by the FCA under the provisions in Articles 33 and 34 of the *MiFID Regulation*.



## 5.8 Provisions common to pre- and post-trade transparency requirements for shares

5.8.1

FCA



For the purposes of Articles 27, 28, 29, 30, 44 and 45 of [the *MiFID*] Directive 2004/39/EC and of this [*MiFID*] Regulation, pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

[Note: Article 30 of the *MiFID Regulation*]

5.8.2

FCA



Any arrangement to make information public, adopted for the purposes of Articles 30 and 31 [of the *MiFID Regulation*], shall satisfy the following conditions:

- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
- (b) it must facilitate the consolidation of the data with similar data from other sources;
- (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

[Note: Article 32 of the *MiFID Regulation*]

5.8.3

FCA



The FCA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see ■ MAR 5.8.2 EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.

5.8.4

FCA



- (1) In respect of arrangements facilitating the consolidation of data as required in ■ MAR 5.8.2 EU(b), the FCA considers information as being made public in accordance with ■ MAR 5.8.2 EU(b), if it:

- (a) is accessible by automated electronic means in a machine-readable way;
  - (b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and
  - (c) is accompanied by instructions outlining how users can access the information.
- (2) The *FCA* considers that an arrangement fulfils the 'machine-readable' criteria where the data
- (a) is in a physical form that is designed to be read by a computer;
  - (b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
  - (c) is in a format that is known in advance by the party wishing to access the data.
- (3) The *FCA* considers that publication on a non-machine-readable website would not meet the *MiFID* requirements.
- (4) The *FCA* considers that information that is made public in accordance with **■ MAR 5.8.2 EU** should conform to a consistent and structured format based on industry standards. *Firms* operating an *MTF* can choose the structure that they use.



## 5.9 Post-trade transparency requirements for shares

5.9.1

FCA

R

- (1) In respect of shares *admitted to trading on a regulated market*, unless ■ MAR 5.9.1 R (2) applies and ■ MAR 5.9.7 R is satisfied, a *firm* operating an *MTF* must make public, on reasonable commercial terms and as close to real-time as possible, the price, volume and time of the transactions which are advertised through its systems. This requirement does not apply to the details of a transaction executed on an *MTF* that is made public under the systems of a *regulated market*.

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

- (2) A *firm* may defer publication of trade information required in (1) for no longer than the period specified in Table 4 in Annex II of the *MiFID Regulation* for the class of share and transaction concerned, provided that the following criteria in (a) and (b) are satisfied and subject to the provision in (c):
- (a) the transaction is between an *investment firm dealing on own account* and a *client* of that *firm*;
  - (b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.
  - (c) In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares *admitted to trading on a regulated market* must be classified in accordance with their average daily *turnover* to be calculated in accordance with Article 33 of the *MiFID Regulation*.

Note: Table 4 of Annex II of the *MiFID Regulation* is reproduced in ■ MAR 7 Annex 1 EU.

5.9.2

PAGE  
19

FCA



Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional

cases where the systems available do not allow for a publication in a shorter period of time.

[Note: Recital 18 to the *MiFID Regulation*]

#### Post-trade information

5.9.3

FCA



1. *Investment firms, regulated markets and investment firms and market operators operating an MTF shall, with regard to transactions in respect of shares admitted to trading on regulated markets concluded by them or, in the case of regulated markets or MTFs, 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 [of the *MiFID Regulation*];
- (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;
- (c) an indication that the trade was a negotiated trade, where applicable;
- (d) any amendments to previously disclosed information, where applicable.

Those details shall be made public either by reference to each transaction or in a form aggregating the volume and price of all transactions in the same share taking place at the same price at the same time.

[Note: Article 27(1) of the *MiFID Regulation*]

#### Publication of post-trade information

5.9.4

FCA



2. ... post-trade information relating to transactions taking place on trading venues within *normal trading hours*, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.

3. Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent transaction shall be assessed separately for the purpose of determining whether deferred publication in respect of that transaction is available under Article 28 [of the *MiFID Regulation*].

4. Post-trade information relating to transactions taking place on a trading venue but outside its *normal trading hours* shall be made public before the opening of the next trading day of the trading venue on which the transaction took place.

[Note: Article 29 (2) to (4) of the *MiFID Regulation*]



5.9.5

FCA



1. ... A reference to the opening of the trading day shall be a reference to the commencement of the *normal trading hours* of the trading venue....

[Note: Article 4(1) of the *MiFID Regulation*]

**Deferred publication of post-trade information**

5.9.6

FCA



The deferred publication of information in respect of transactions may be authorised, for a period no longer than the period specified in Table 4 in Annex II [of the *MiFID Regulation*] [reproduced in [MAR 7 Annex 1 EU](#)] for the class of share and transaction concerned, provided that the following criteria are satisfied:

- (a) the transaction is between an *investment firm dealing on own account* and a *client* of that firm;
- (b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 [of the *MiFID Regulation*].

[Note: Article 28 of the *MiFID Regulation*]

5.9.6A

FCA



The deferred publication of information, referred to in [MAR 5.9.6 EU](#), is authorised by the *FCA*, to the extent set out in that provision, and, in particular, is given effect in [MAR 5.9.1 R \(2\)](#).

5.9.7

FCA



An *MTF* must obtain the prior approval of the *FCA* to proposed arrangements for deferred post-trade publication and must clearly disclose such arrangements to market participants and the investing public.

[Note: Article 30(2) of *MiFID*]



---

**[Deleted]**



## Chapter 6

# Systematic Internalisers

 **6.1 Application**

6.1.1

**FCA****R**

Except as regards the reporting requirement in ■ MAR 6.4.1 R, this chapter applies to:

- (1) a *MiFID investment firm* which is a *systematic internaliser* in shares when dealing in sizes up to standard market size; or
- (2) a *third country investment firm* which is a *systematic internaliser* in shares when dealing in the *United Kingdom* in sizes up to standard market size.

6.1.2

**FCA****R**

The *systematic internaliser* reporting requirement in ■ MAR 6.4.1 R applies to an *investment firm* which is authorised by the *FCA* .

6.1.3

**FCA****R**

In this chapter, provisions marked "EU" apply to a *third country investment firm* which is a *systematic internaliser* as if they were *rules*.



## 6.2 Purpose

### 6.2.1

FCA

G

The purpose of this chapter is to implement Article 27 of *MiFID*, which deals with the requirements on *systematic internalisers* for pre-trade transparency in shares, the *execution of orders on behalf of clients* and standards and conditions for trading. It also provides a rule requiring *investment firms* to notify the *FCA* when they become, or cease to be, a *systematic internaliser*, and which gives effect to Article 21(4) of the *MiFID Regulation*. The chapter sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.

6



## 6.3 Criteria for determining whether an investment firm is a systematic internaliser

6.3.1

FCA



1. Where an *investment firm deals on own account* by executing *client orders outside a regulated market or an MTF*, it shall be treated as a *systematic internaliser* if it meets the following criteria indicating that it performs that activity on an organised, frequent and systematic basis:
  - (a) the activity has a material commercial role for the *firm* and is carried on in accordance with non-discretionary rules and procedures;
  - (b) the activity is carried on by personnel, or by means of an automated technical system, assigned to that purpose, irrespective of whether those personnel or that system are used exclusively for that purpose;
  - (c) the activity is available to *clients* on a regular or continuous basis.
2. An *investment firm* will cease to be a *systematic internaliser* in one or more shares if it ceases to carry on the activity specified in paragraph 1 in respect of those shares, provided that it has announced in advance that it intends to cease that activity using the same publication channels for that announcement as it uses to publish its quotes or, where that is not possible, using a channel which is equally accessible to its *clients* and other market participants.
3. The activity of *dealing on own account* by executing *client orders* shall not be treated as performed on an organised, frequent and systematic basis where the following conditions apply:
  - (a) the activity is performed on an ad-hoc and irregular bilateral basis with wholesale counterparties as part of business relationships which are themselves characterised by dealings above standard market size;
  - (b) the transactions are carried out outside the systems habitually used by the *firm* concerned for any business that it carries out in the capacity of a *systematic internaliser*.



[Note: Article 21(1) to (3) of the *MiFID Regulation*]

6.3.2



FCA

An activity should be considered as having a material commercial role for an *investment firm* if the activity is a significant source of revenue, or a significant source of cost. An assessment of significance for these purposes should, in every case, take into account the extent to which the activity is conducted or organised separately, the monetary value of the activity, and its comparative significance by reference both to the overall business of the firm and to its overall activity in the market for the share concerned in which the firm operates. It should be possible to consider an activity to be a significant source of revenue for a firm even if only one or two of the factors mentioned is relevant in a particular case.

[Note: Recital 15 to the *MiFID Regulation*]

6



## 6.4 Systematic internaliser reporting requirement

6.4.1

FCA

R

An *investment firm*, which is authorised by the *FCA* , must promptly notify the *FCA* in writing of its status as *asystematic internaliser* in respect of shares *admitted to trading* on a *regulated market*:

(1) when it gains that status; or

(2) if it ceases to have that status.

[Note: Article 21(4) of the *MiFID Regulation*]

6.4.2

FCA

G

The notification under ■ MAR 6.4.1 R can be addressed to the *firm's* usual supervisory contact at the *FCA* .

## 6.5 Obligations on systematic internalisers in shares to make public firm quotes

6.5.1

FCA

R

A *systematic internaliser* in shares when dealing in sizes up to standard market size must publish a firm quote in relation to any share *admitted to trading* on a *regulated market* for which it is:

- (1) a *systematic internaliser* in that share; and
- (2) there is a liquid market for that share.

[Note: Subparagraphs 1 and 2 of Article 27(1) of *MiFID*]

6.5.2

FCA

R

Where there is no liquid market for a share, the *systematic internaliser* must disclose quotes to its clients on request.

[Note: Subparagraph 1 of Article 27(1) of *MiFID*]

6.5.3

FCA

R

A *systematic internaliser* may:

- (1) update a quote at any time; and
- (2) under exceptional market conditions, withdraw a quote.

[Note: Subparagraph 1 of Article 27(3) of *MiFID*]

 **6.6** Size and content of quotes

6.6.1

FCA

**R**

- (1) A *systematic internaliser* may decide the size or sizes at which it will quote.
- (2) The quote can be up to standard market size for the class of shares to which the share belongs.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.6.2

FCA

**R**

Each quote must include:

- (1) a firm bid price; or
- (2) a firm offer price;

in respect of each size for which the *systematic internaliser* quotes.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.6.3

FCA

**G**

A *systematic internaliser* is not obliged to publish firm quotes in relation to transactions above standard market size.[Note: Recital 51 to *MiFID*]

## 6.7 Prices reflecting prevailing market conditions

6.7.1

FCA

R

A firm bid or offer price in respect of a particular share must reflect the prevailing market conditions for that share.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.7.2

FCA

EU

A *systematic internaliser* shall, for each liquid share for which it is a *systematic internaliser*, maintain the following:

- (a) a quote or quotes which are close in price to comparable quotes for the same share in other trading venues; and
- (b) a record of its quoted prices, which it shall retain for a period of 12 months or such longer period as it considers appropriate.

The obligation laid down in point (b) is without prejudice to the obligation of the *investment firm* under Article 25(2) [implemented at SUP 17.4.6 G] of [the *MiFID*] Directive 2004/39/EC to keep at the disposal of the competent authority for at least 5 years the relevant data relating to all transactions it has carried out. [Note: Article 24 of the *MiFID Regulation*]

## 6.8 Liquid market for shares, share class, standard market size and relevant market

6.8.1

FCA

G

A *systematic internaliser* will need to refer to the provisions in ■ MAR 6.8.3 EU , ■ MAR 6.8.4 EU, ■ MAR 6.8.5 EU, ■ MAR 6.8.6 EU and ■ MAR 6.8.7 EU and the material the FCA publishes in relation to those provisions to determine:

- (1) whether there is a liquid market for a share;
- (2) the class to which a share should be allocated;
- (3) the standard market size for each class of shares; and
- (4) the relevant market for a share.

[Note: Article 27(1), (2) and (7) of *MiFID*]

6.8.2

FCA

G

The FCA will publish on its website the material referred to in ■ MAR 6.8.1 G as regards liquid market for shares, share class, standard market size and the relevant market for a share.

6.8.3

FCA



**Shares not traded daily should not be considered as having a liquid market for the purposes of [the *MiFID*] Directive 2004/39/EC. However, if, for exceptional reasons, trading in a share is suspended for reasons related to the preservation of an orderly market or force majeure and therefore a share is not traded during some trading days, this should not mean that the share cannot be considered to have a liquid market.**

[Note: Recital 16 to the *MiFID Regulation*]

6.8.4

FCA



1. The most relevant market in terms of liquidity for a financial instrument which is *admitted to trading on a regulated market*, hereinafter "the most relevant market", shall be determined in accordance with paragraphs 2 to 8.
2. In the case of a share or other transferable security covered by Article 4(1)(18)(a) of [the *MiFID*] Directive 2004/39/EC or of a unit in a collective investment undertaking, the most relevant market shall be the Member State where the share or the unit was first *admitted to trading on a regulated market*. ...

**8.** Where a financial instrument covered by paragraphs 2 ... was first *admitted to trading* on more than one *regulated market* simultaneously, and all those *regulated markets* share the same home Member State, that Member State shall be the most relevant market.

Where the *regulated markets* concerned do not share the same home Member State, the most relevant market in terms of liquidity for that instrument shall be the market where the turnover of that instrument is highest.

For the purposes of determining the most relevant market where the turnover of the instrument is highest, each competent authority that has authorised one of the *regulated markets* concerned shall calculate the turnover for that instrument in its respective market for the previous calendar year, provided that the instrument was *admitted to trading* at the beginning of that year.

Where the turnover for the relevant financial instrument cannot be calculated by reason of insufficient or non-existent data and the issuer has its registered office in a Member State, the most relevant market shall be the market of the Member State where the registered office of the *issuer* is situated.

However, where the *issuer* does not have its registered office in a Member State, the most relevant market for that instrument shall be the market where the turnover of the relevant instrument class is the highest. For the purposes of determining that market, each *competent authority* that has authorised one of the *regulated markets* concerned shall calculate the turnover of the instruments of the same class in its respective market for the preceding calendar year.

The relevant classes of financial instrument are the following:

(a) shares; ...

[Note: Article 9(1),(2) and (8) of the *MiFID Regulation*]

6

6.8.5

FCA



**1.** A share admitted to trading on a *regulated market* shall be considered to have a liquid market if the share is traded daily, with a free float not less than EUR 500 million, and one of the following conditions is satisfied:

(a) the average daily number of transactions in the share is not less than 500;

(b) the average daily turnover for the share is not less than EUR 2 million.

However, a Member State may, in respect of shares for which it is the most relevant market, specify by notice that both those conditions are to apply. That notice shall be made public.

2. A Member State may specify the minimum number of liquid shares for that Member State. The minimum number shall be no greater than five. The specification shall be made public.
3. Where, pursuant to paragraph 1, a Member State would be the most relevant market for fewer liquid shares than the minimum number specified in accordance with paragraph 2, the *competent authority* for that Member State may designate one or more additional liquid shares, provided that the total number of shares which are considered in consequence to be liquid shares for which that Member State is the most relevant market does not exceed the minimum number specified by that Member State.
- The *competent authority* shall designate the additional liquid shares successively in decreasing order of average daily turnover from among the shares for which it is the relevant *competent authority* that are *admitted to trading on a regulated market* and are traded daily.
4. For the purposes of the first subparagraph of paragraph 1, the calculation of the free float of a share shall exclude holdings exceeding 5% of the total voting rights of the *issuer*, unless such a holding is held by a collective investment undertaking or a pension fund.
- Voting rights shall be calculated on the basis of all the shares to which voting rights are attached, even if the exercise of such a right is suspended.
5. A share shall not be considered to have a liquid market for the purposes of Article 27 of [the *MiFID*] Directive 2004/39/EC until six weeks after its first *admission to trading on a regulated market*, if the estimate of the total market capitalisation for that share at the start of the first day's trading after that admission, provided in accordance with Article 33(3) [of the *MiFID Regulation*], is less than EUR 500 million.
6. Each *competent authority* shall ensure the maintenance and publication of a list of all liquid shares for which it is the relevant *competent authority*.
- It shall ensure the list is current by reviewing it at least annually.
- The list shall be made available to the Committee of European Securities Regulators. It shall be considered as published when it is published by the Committee of European Securities Regulators in accordance with Article 34(5) [of the *MiFID Regulation*].
- [Note: Article 22 of the *MiFID Regulation*]





ders executed in accordance with Table 3 in Annex II [of the *MiFID Regulation*].

[Note: Article 23 of the *MiFID Regulation*]

6.8.7

FCA



Table 3: Standard market sizes

| Class in terms of average value of transactions (AVT) | AVT < €10 000 | €10 000 < AVT < €20 000 | €20 000 < AVT < €30 000 | €30 000 < AVT < €40 000 | €40 000 < AVT < €50 000 | €50 000 < AVT < €70 000 | €70 000 < AVT < €90 000 | Etc |
|---|---------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-----|
| Standard market size                                  | €7 500 000    | €15 000 000             | €25 000 000             | €35 000 000             | €45 000 000             | €60 000 000             | €80 000 000             | Etc |

[Note: Table 3 of Annex II of the *MiFID Regulation*]

6.8.8

FCA



The FCA will publish on its website a link to the calculations and estimates for shares admitted to trading on a regulated market, made by the FCA under the provisions in Articles 33 and 34 of the *MiFID Regulation*.

## 6.9 Publication of quotes

6.9.1

FCA

R

Where a publication obligation arises under ■ MAR 6.5.1 R , a *systematic internaliser* must make its quotes public:

- (1) on a regular and continuous basis during normal trading hours; and
- (2) in a manner which is easily accessible to other market participants on a reasonable commercial basis.

[Note: Subparagraphs 1 and 2 of Article 27(3) of *MiFID*]

6.9.2

FCA



1. **A regulated market, MTF or systematic internaliser shall be considered to publish pre-trade information on a continuous basis during *normal trading hours* if that information is published as soon as it becomes available during the *normal trading hours* of the regulated market, MTF or systematic internaliser concerned, and remains available until it is updated.**
2. **Pre-trade information, and post-trade information relating to transactions taking place within *normal trading hours*, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.**
3. **Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent transaction shall be assessed separately for the purposes of determining whether deferred publication in respect of the transaction is available under Article 28 [of the *MiFID Regulation*].**

[Note: Article 29(1) to (3) of the *MiFID Regulation*]

6.9.3

FCA



**Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum**

6.9.4

FCA



**limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.**

**[Note: Recital 18 to the *MiFID Regulation*]**

**For the purposes of Articles 27, 28, 29, 30, 44 and 45 of [the *MiFID*] Directive 2004/39/EC and of this Regulation, pre- and post-trade information shall be considered to have been made public or available to the public if it is made available generally through one of the following to investors located in the Community:**

- (a) the facilities of a *regulated market* or an *MTF*;**
- (b) the facilities of a third party;**
- (c) proprietary arrangements.**

**[Note: Article 30 of the *MiFID Regulation*]**

6.9.5

FCA



**Any arrangement to make information public, adopted for the purposes of Articles 30 and 31 [of the *MiFID Regulation*] shall satisfy the following conditions:**

- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;**
- (b) it must facilitate the consolidation of the data with similar data from other sources;**
- (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.**

**[Note: Article 32 of the *MiFID Regulation*]**

6.9.6

FCA



For the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see ■ MAR 6.9.5 EU (a)), and in respect of arrangements facilitating the consolidation of data as required in ■ MAR 6.9.5 EU(b), the guidance in ■ MAR 5.8.3 G and ■ MAR 5.8.4 G applies equally to *firms* falling within this chapter, and should be read as if references to provisions and types of *firm* in ■ MAR 5 were references to the corresponding provisions and types of *firm* in this chapter.

## 6.10 Execution price of retail client orders

6.10.1

FCA

R

A *systematic internaliser* must, while complying with the obligation to execute orders on terms most favourable to the *client* set out in ■ COBS 11.2 , execute an order up to standard market size received from a *retail client* in relation to shares for which it is a *systematic internaliser*:

- (1) at the price quoted at the time of the reception of the order; or
- (2) if the order does not match the quotation size or sizes, in compliance with the execution price rules in ■ MAR 6.12.1 R or ■ MAR 6.12.2 R.

[Note: Subparagraphs 3 and 6 of Article 27(3) of *MiFID*]

## 6.11 Execution price of professional client orders

### 6.11.1

FCA

R

A *systematic internaliser* may execute an order up to standard market size received from a *professional client* in relation to shares for which it is a *systematic internaliser*:

- (1) at the price quoted at the time of the reception of the order; or
- (2) at a better price for the *professional client* where:
  - (a) this price falls within a published range close to market conditions; and
  - (b) the order is of a size bigger than the size customarily undertaken by a retail investor; or
- (3) at a different price which benefits the *professional client* where:
  - (a) execution in several securities is part of one transaction; or
  - (b) the order is subject to conditions other than the current market price.

[Note: Subparagraphs 4 and 5 of Article 27(3) of *MiFID*]

### 6.11.2

FCA

EU

For the purposes of the fourth subparagraph of Article 27(3) of [the *MiFID*] Directive 2004/39/EC, an order shall be regarded as being of a size bigger than the size customarily undertaken by a retail investor if it exceeds EUR 7 500.

[Note: Article 26 of the *MiFID Regulation*]

### 6.11.3

FCA

EU

1. For the purposes of the fifth sub-paragraph of Article 27(3) of [the *MiFID*] Directive 2004/39/EC, execution in several securities shall be regarded as part of one transaction if that one transaction is a portfolio trade that involves 10 or more securities.

For the same purposes, an order subject to conditions other than the current market price means any order which is neither an order

**for the execution of a transaction in shares at the prevailing market price, nor a *limit order*.**

**[Note: Article 25(1) of the *MiFID Regulation*]**

## 6.12 Execution price of client orders not matching quotation sizes

6.12.1

FCA

R

Where a *systematic internaliser* quotes:

- (1) in only one quote in a share; or
- (2) its highest quote is lower than the standard market size for the class of shares to which the share belongs;

and it receives a *client* order that is bigger than the quotation size, but lower than the standard market size, the order may be executed, but that part of the order which exceeds the quotation size must either be executed at the quoted price or, if it is a *professional client* order, as permitted under the execution price provisions in ■ MAR 6.11.1 R .

[Note: Subparagraph 6 of Article 27(3) of *MiFID*]

6.12.2

FCA

R

Where a *systematic internaliser* quotes in different sizes and it receives a *client* order between those sizes, the order may be executed:

- (1) at one of the quoted prices in compliance with the client order handling rules set out in ■ COBS 11.3, ■ COBS 11.4.1 R and ■ COBS 11.4.5 R; or
- (2) if it is a *professional client* order, as permitted under the execution price provisions in ■ MAR 6.11.1 R.

[Note: Subparagraph 6 of Article 27(3) of *MiFID*]

## 6.13 Standards and conditions for trading

### 6.13.1

FCA

R

A *systematic internaliser* must have clear standards which set out and govern the basis on which it will decide which investors are given access to its quotes. The standards must operate:

- (1) in an objective, non-discriminatory way within the categories of *retail* and *professional clients*; and
- (2) on the basis of its commercial policy, including considerations such as:
  - (a) investor credit status;
  - (b) counterparty risk; and
  - (c) final settlement of the transaction;

and a *systematic internaliser* may refuse to enter into or discontinue business relationships with investors on this policy basis.

[Note: Recital 50 and Article 27(5) of *MiFID*]

### 6.13.2

FCA

G

*Systematic internalisers* might decide to give access to their quotes only to *retail clients*, only to *professional clients*, or to both. They should not be allowed to discriminate within those categories of *clients*.

[Note: Recital 50 to *MiFID*]



## 6.14 Limiting risk of exposure to multiple transactions

6.14.1

FCA

R

A *systematic internaliser* may limit the number of transactions from the same *client* that it undertakes to enter at the published quote, provided it does so in a non-discriminatory way within the categories of *retail* and *professional clients*.

[Note: Recital 50 and Article 27(6) of *MiFID*]

6.14.2

FCA

R

A *systematic internaliser* may limit the total number of transactions from different *clients* at the same time that it undertakes to enter at the published quote, provided that it does so:

- (1) in a non-discriminatory way within the categories of *retail* and *professional clients*;
- (2) in accordance with the provisions of the *client* order handling rules set out in ■ COBS 11.3, ■ COBS 11.4.1 R and ■ COBS 11.4.5 R; and
- (3) that the number or volume of orders sought by *clients* considerably exceeds the norm.

[Note: Recital 50 and Article 27(6) of *MiFID*]

6.14.3

FCA



2. For the purposes of Article 27(6) of [the *MiFID*] Directive 2004/39/EC, the number or volume of orders shall be regarded as considerably exceeding the norm if a *systematic internaliser* cannot execute those orders without exposing itself to undue risk.

In order to identify the number and volume of orders that it can execute without exposing itself to undue risk, a *systematic internaliser* shall maintain and implement as part of its risk management policy under Article 7 of Commission Directive 2006/73/EC [the *MiFID implementing Directive*] a non-discriminatory policy which takes into account the volume of the transactions, the capital that the firm has available to cover the risk for that type of trade, and the prevailing conditions in the market in which the *firm* is operating.

3. Where, in accordance with Article 27(6) of [the *MiFID*] Directive 2004/39/EC, an *investment firm* limits the number or volume of orders it undertakes to execute, it shall set out in writing, and make available to *clients* and potential *clients*, the arrangements designed to ensure that such a limitation does not result in the discriminatory treatment of *clients*.

[Note: Article 25(2) and (3) of the *MiFID Regulation*]

## Chapter 7

# Disclosure of information on certain trades undertaken outside a regulated market or MTF



## 7.1 Application

### Who?

7.1.1  
FCA

**R** This chapter applies to:

- (1) a *MiFID investment firm*; and to
- (2) a *third country investment firm*.

### What?

7.1.2  
FCA

**R** A *firm*, which, either on its own account or on behalf of *clients*, concludes *transactions* in shares *admitted to trading* on a *regulated market* outside a *regulated market* or *MTF*, must make public the volume and price of those *transactions* and the time at which they were concluded.

[Note: article 28(1) of *MiFID*]

### Where?

7.1.3  
FCA

**R** This chapter applies in respect of *transactions* in shares (which are admitted to trading on a *regulated market*) executed in the *United Kingdom*.

7.1.4  
FCA

**G** Article 32 (7) of *MiFID* provides that the *competent authority* of the Member State in which a *branch* is located shall assume responsibility for ensuring that the services provided by the *branch* within its territory comply with the obligations under Article 28.

### Status of EU provisions as rules in certain instances

7.1.5  
FCA

**R** In this chapter, paragraphs marked "EU", including ■ MAR 7 Annex 1 EU, shall apply to a *third country investment firm* as if those provisions were *rules*.

## 7.2 Making post-trade information public

### Publication of information

7.2.1  
FCA

R

- (1) Unless (2) applies, the information required by ■ MAR 7.1.2 R shall be made public as close to real-time as possible, on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.

[Note: article 28(1) of *MiFID*]

- (2) A firm may defer publication of trade information required in (1), for no longer than the period specified in Table 4 in Annex II of the *MiFID Regulation* for the class of share and *transaction* concerned, provided that the criteria in (a) and (b) are satisfied, subject to the provision in (c):
- (a) the *transaction* is between an *investment firm dealing on own account* and a *client* of that *firm*;
  - (b) the size of the *transaction* is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.
  - (c) In order to determine the relevant minimum qualifying size for the purposes of (b), all shares *admitted to trading* on a *regulated market* must be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 of the *MiFID Regulation*.

[Note: Table 4 of Annex II of the *MiFID Regulation* is reproduced in ■ MAR 7 Annex 1 EU.]

7.2.2  
FCA

EU

### Details of information to be made public

A *firm* ... shall, with regard to *transactions* in respect of shares *admitted to trading on regulated markets* concluded by them ... make public the following details:

- (a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Annex I [of the *MiFID Regulation*];
- (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;

- (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 time.

[Note: article 27(1) of the *MiFID Regulation*]

#### Information requirements specific to systematic internalisers

7.2.3

FCA



By way of exception, a *systematic internaliser* shall be entitled to use the acronym 'SI' instead of the venue identification referred to in [MAR 7.2.2 EU \(a\)](#) in respect of a *transaction* in a share that is executed in its capacity as a *systematic internaliser* in respect of that share.

The *systematic internaliser* may exercise that right only as long as it makes available to the public aggregate quarterly data as to the *transactions* executed in its capacity as a *systematic internaliser* in respect of that share relating to the most recent calendar quarter, or part of a calendar quarter, during which the firm acted as a *systematic internaliser* in respect of that share. That data shall be made available no later than one month after the end of each calendar quarter.

It may also exercise that right during the period between 1 November 2007, or the date on which the firm commences to be a *systematic internaliser* in relation to a share, whichever is the later, and the date that aggregate quarterly data in relation to a share is first due to be published.

[Note: article 27(2) of the *MiFID Regulation*. The date, '1 November 2007', is specified in article 41(2) of the *MiFID Regulation*]

7.2.4

FCA



The aggregated quarterly data referred to in the second subparagraph of [MAR 7.2.3 EU](#) shall contain the following information for the share in respect of each trading day of the calendar quarter concerned:

- (a) the highest price;
- (b) the lowest price;
- (c) the average price;
- (d) the total number of shares traded;
- (e) the total number of *transactions*;
- (f) such other information as the *systematic internaliser* decides to make available.

[Note: article 27(3) of the *MiFID Regulation*]

7.2.5

FCA



### Arrangements between firms for making information public

Where the *transaction* is executed outside the rules of a *regulated market* or an *MTF*, one of the following ... *firms* shall, by agreement between the parties, arrange to make the information public:

- (a) the *firm* that sells the share concerned;
- (b) the *firm* that acts on behalf of or arranges the *transaction* for the seller;
- (c) the *firm* that acts on behalf of or arranges the *transaction* for the buyer;
- (d) the *firm* that buys the share concerned.

In the absence of such an agreement, the information shall be made public by the *firm* determined by proceeding sequentially from point (a) to point (d) until the first point that applies to the case in question.

The parties shall take all reasonable steps to ensure that the *transaction* is made public as a single *transaction*. For those purposes two matching trades entered at the same time with a single party interposed shall be considered to be a single *transaction*.

[Note: article 27(4) of the *MiFID Regulation*]

7.2.6

FCA



### Deferred publication of large transactions

The deferred publication of information in respect of *transactions* may be authorised, for a period no longer than the period specified in **MAR 7 Annex 1 EU** for the class of share and *transaction* concerned, provided that the following criteria are satisfied:

- (a) the *transaction* is between an investment *firm dealing on own account* and a *client* of that firm;
- (b) the size of the *transaction* is equal to or exceeds the relevant minimum qualifying size, as specified in **MAR 7 Annex 1 EU**.

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares *admitted to trading on a regulated market* shall be classified in accordance with their average daily *turnover* to be calculated in accordance with Article 33 of the *MiFID Regulation*.

[Note: article 28 of the *MiFID Regulation*]

7.2.6A

FCA



The deferred publication of information, referred to in **MAR 7.2.6 EU**, is authorised by the *FCA*, to the extent set out in that provision, and, in particular, is given effect in **MAR 7.2.1 R (2)**.

PAGE  
5

7.2.7

FCA



### Publication and availability of post trade transparency data

Post-trade information relating to *transactions* taking place on *trading venues* and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating to such *transactions* shall be made available in any case within three minutes of the relevant *transaction*.

[Note: article 29(2) of the *MiFID Regulation*]

7.2.8

FCA



Information relating to a *portfolio trade* shall be made available with respect to each constituent *transaction* as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent *transaction* shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under [MAR 7.2.6 EU](#).

[Note: article 29(3) of the *MiFID Regulation*]

7.2.9

FCA



Post-trade information relating to *transactions* taking place on a *trading venue* but outside its normal trading hours shall be made public before the opening of the next *trading day* of the *trading venue* on which the *transaction* took place.

[Note: article 29(4) of the *MiFID Regulation*]

7.2.10

FCA



For *transactions* that take place outside a *trading venue*, post-trade information shall be made public:

- (a) if the *transaction* takes place during a *trading day* of the most relevant market for the share concerned, or during the firm's normal trading hours, as close to real time as possible. Post-trade information relating to such *transactions* shall be made available in any case within three minutes of the relevant *transaction*;
- (b) in a case not covered by point (a), immediately upon the commencement of the firm's normal trading hours or at the latest before the opening of the next *trading day* in the most relevant market for that share.

[Note: article 29(5) of the *MiFID Regulation*]

7.2.11

FCA



Public availability of post-trade information

For the purposes of [MAR 7](#), post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

[Note: article 30 of the *MiFID Regulation*]

7.2.12

FCA



Arrangements for making information public

Any arrangement to make information public, adopted for the purposes of [MAR 7.2.11 EU](#), shall satisfy the following conditions:



- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
- (b) it must facilitate the consolidation of the data with similar data from other sources;
- (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

[Note: article 32 of the *MiFID Regulation*]

7.2.12A

FCA

G

- (1) The *FCA* considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see ■ MAR 7.2.12 EU(a)), and in respect of arrangements facilitating the consolidation of data as required in ■ MAR 7.2.12 EU(b), the guidance in ■ MAR 5.8.3 G and ■ MAR 5.8.4 G (subject to additional guidance in (2)) applies equally to *firms* falling within this chapter, and should be read as if references to provisions and types of *firm* in ■ MAR 5 were references to the corresponding provisions and types of *firm* in this chapter.
- (2) In addition to ■ MAR 5.8.4 G, as applied to *firms* in this chapter under (1), for the purposes of facilitating the consolidation of transparency data with similar data from other sources, the *FCA* considers information as being made public in accordance with ■ MAR 7.2.12 EU(b), if, in addition to ■ MAR 5.8.4 G (1)(a) to ■ (c), each trade is published through only one primary publication channel.

#### Publication of results of calculations and estimates made by the FCA

7.2.13

FCA

G

The information relating to 'minimum qualifying size' referred to in Article 28 of the *MiFID Regulation* (see ■ MAR 7.2.6 EU) and the results of calculations and estimates required to be published as a result of Articles 33 and 34 of the *MiFID Regulation* are available at [www.fca.org.uk](http://www.fca.org.uk) and at <http://mifiddatabase.esma.europa.eu/>.

#### Trade Data Monitors

7.2.14

FCA

G

The *FCA* considers that a *firm* will satisfy its obligations under ■ MAR 7.2.12 EU if:

- (1) in assessing the arrangements, the *firm* follows the guidelines published on the *FCA*'s website at <http://www.fca.org.uk/your-fca/documents/fsa-guidelines-tdm>; and
- (2) it has been confirmed that the arrangements will enable the *firm* to comply with the guidelines through either:
  - (a) a statement by the *FCA*; or
  - (b) a report by an external auditor to the provider of the arrangements which is made available to *firms* and, on request, to the *FCA*.

A "trade data monitor" is a provider of such arrangements which has been assessed by the *FCA* or an external auditor as having the capability to provide services and facilities to *firms* in accordance with the guidelines published on the *FCA*'s website at <http://www.fca.org.uk/your-fca/documents/fsa-guidelines-tdm>

Use of a trade data monitor does not affect a *firm's* obligations under ■ MAR 7.2.10 EU regarding the timing of the disclosure of post-trade information.

## Deferred publication thresholds and delays

FCA

Table 4: Deferred publication thresholds and delays

The table below shows, for each permitted delay for publication and each class of shares in terms of average daily *turnover* (ADT), the minimum qualifying size of *transaction* that will qualify for that delay in respect of a share of that type.

|  | Class of shares in terms of average daily turnover (ADT)   |                                    |                                      |                                     |
|--|--|------------------------------------|--------------------------------------|-------------------------------------|
|  | ADT < €100 000   | €100 000 ≤ ADT < €1 000 000        | €1 000 000 ≤ ADT < €50 000 000       | ADT ≥ €50 000 000                   |
|  | Minimum qualifying size of transaction for permitted delay |                                    |                                      |                                     |
| 60 minutes   | €10 000  | Greater of 5% of ADT and €25 000   | Lower of 10% of ADT and €3 500 000   | Lower of 10% of ADT and €7 500 000  |
| 180 minutes  | €25 000  | Greater of 15% of ADT and €75 000  | Lower of 15% of ADT and €5 000 000   | Lower of 20% of ADT and €15 000 000 |
| Until end of <i>trading day</i> (or roll-over to noon of next trading day if trade undertaken in final 2 hours of <i>trading day</i> ) | €45 000  | Greater of 25% of ADT and €100 000 | Lower of 25% of ADT and €10 000 000  | Lower of 30% of ADT and €30 000 000 |
| Until end of <i>trading day</i> next after trade   | €60 000  | Greater of 50% of ADT and €100 000 | Greater of 50% of ADT and €1 000 000 | 100% of ADT                         |
| Until end of second <i>trading day</i> next after trade  | €80 000  | 100% of ADT                        | 100% of ADT                          | 250% of ADT                         |
| Until end of third <i>trading day</i> next after trade   |  | 250% of ADT                        | 250% of ADT                          |                                     |



# Chapter 8

## Benchmarks



## 8.1 Application and purpose

### Application

8.1.1

FCA

R

This chapter applies to every *firm* which is a *benchmark submitter* or a *benchmark administrator*.

### Purpose

8.1.2

FCA

G

The purpose of this chapter is to set out the requirements applying to *firms* who are *benchmark submitters* or *benchmark administrators* when carrying out the activities of *providing information in relation to a specified benchmark* or *administering a specified benchmark*

### Actions for damages

8.1.3

FCA

R

A contravention of a rule in ■ MAR 8 does not give rise to a right of action by a private person under section 138D(2) of the *Act* (and each rule in ■ MAR 8 is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

## 8.2 Requirements for benchmark submitters

### Organisational and governance arrangements

8.2.1

FCA

R

*A benchmark submitter must establish and maintain adequate and effective organisational and governance arrangements for the process of making benchmark submissions.*

8.2.2

FCA

G

These arrangements should include:

- (1) appropriate oversight of the submission process by the *benchmark submitter's senior personnel*;
- (2) appropriate oversight of the submission process by the compliance function of the *firm* to ensure compliance with the *benchmark submitter's* obligations under this section; and
- (3) periodic internal audit reviews.

8.2.3

FCA

R

*A benchmark submitter who maintains an establishment in the United Kingdom must:*

- (1) **appoint a benchmark manager with responsibility for the oversight of its compliance with this chapter; and**
- (2) **ensure that its benchmark manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.**

8.2.4

FCA

G

The requirements in ■ MAR 8.2.3 R apply, regardless of the place from which *benchmark submissions* are made. The FCA expects that a benchmark manager will be based in the *United Kingdom*.

8.2.5

FCA

R

*A benchmark submitter must:*

- (1) **ensure that its *benchmark submissions* are determined using an effective methodology to establish the *benchmark submission* on the basis of objective criteria and relevant information; and**

- (2) review this methodology as and when market circumstances require, but at least every quarter, to ensure that its *benchmark submissions* are credible and robust.

8.2.6

FCA

G

An effective methodology for determining *benchmark submissions* in addition to quantitative criteria may include the use of qualitative criteria, such as the expert judgment of the *benchmark submitter*.

### Conflict management

8.2.7

FCA

R

A *benchmark submitter* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of making *benchmark submissions*.

8.2.8

FCA

G

In order to identify and manage conflicts of interest as set out in ■ MAR 8.2.7 R a *benchmark submitter* should:

- (1) establish, implement and maintain a *conflicts of interest policy* which
  - (a) identifies the circumstances that constitute, or may give rise to, a conflict of interest arising from its *benchmark submissions* or the process of gathering information in order to make *benchmark submissions*; and
  - (b) sets out the approach to managing such conflicts;
- (2) establish effective controls to manage conflicts of interest between the parts of the business responsible for the *benchmark submission* and those parts of the business who may use, or have an interest in, the benchmark rate; and
- (3) establish effective measures to prevent or limit any person from exercising inappropriate influence over the *benchmark submission*.

### Notification of suspicions of manipulation

8.2.9

FCA

R

A *benchmark submitter* who suspects that any person

- (1) is manipulating, or has manipulated, a *specified benchmark*;
- (2) is attempting, or has attempted, to manipulate a *specified benchmark*; or
- (3) is colluding, or has colluded, in the manipulation or attempted manipulation of a *specified benchmark*;

must notify the *FCA* without delay.

### Record keeping

8.2.10

FCA

R

A *benchmark submitter* must:

- (1) keep for at least five years:



- (a) records of its *benchmark submissions*, as well as all information used to enable it to make a *benchmark submission*; and
  - (b) reports on the key sensitivities the *benchmark submitter* may have regarding the *specified benchmark* it is submitting to, including (but not limited to) the *benchmark submitter's* exposure to instruments which may be affected by changes in the *specified benchmark*;
- (2) provide to the relevant *benchmark administrator* all information used to enable it to make a *benchmark submission* on a daily basis; and
  - (3) provide to the relevant *benchmark administrator*, on a quarterly basis, aggregate information which will allow the *benchmark administrator* to produce statistics relevant to the *specified benchmark* as required by ■ MAR 8.3.12 R.

8.2.11

FCA

G

The information provided to the *benchmark administrator* in accordance with ■ MAR 8.2.10R (2) should include:

- (1) a description of the methodology used to establish the *benchmark submission*; and
- (2) if applicable, an explanation of how any quantitative and qualitative criteria were used to establish the *benchmark submission*.

#### Auditor's report

8.2.12

FCA

R

A *benchmark submitter* must appoint an independent auditor to report to the FCA on the *benchmark submitter's* compliance with the requirements of this section on a regular basis.

8.2.13

FCA

G

- (1) The FCA expects the report required under ■ MAR 8.2.12 R to be issued annually, although the FCA may agree a longer period depending on the *benchmark submitter's* particular circumstances, including the nature and scale of its engagement in the *specified benchmark* and the internal framework for monitoring compliance with the requirements of this chapter.
- (2) A *benchmark submitter* which proposes to appoint an auditor to report to the FCA under ■ MAR 8.2.12 R on a less frequent than annual basis should notify the FCA explaining why it believes it would be appropriate to do so.

## 8.3 Requirements for benchmark administrators

- 8.3.1** **R** **FCA** A *benchmark administrator* must establish and maintain effective organisational and governance arrangements to enable it to carry out the activity of *administering a specified benchmark*.
- 8.3.2** **R** **FCA** In discharging its duties, the *benchmark administrator* must have regard to the importance of maintaining integrity of the market and the continuity of the *specified benchmark* including the need for contractual certainty for contracts which reference the *specified benchmark*.
- 8.3.3** **R** **FCA** A *benchmark administrator* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of administering a *specified benchmark*.
- 8.3.4** **G** **FCA** The arrangements described in **■** MAR 8.3.3 R should include measures designed to ensure the confidentiality of *benchmark submissions* and additional information received from *benchmark submitters* (to the extent that such submissions and information have not been made public by mutual agreement between the *benchmark administrator* and *benchmark submitter*), for example, through confidentiality agreements for the *benchmark administrator's* employees and members of the oversight committee.
- 8.3.5** **R** **FCA** A *benchmark administrator* must:
- (1) appoint a benchmark administration manager with responsibility for oversight of its compliance with this section; and
  - (2) ensure that its benchmark administration manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.
- 8.3.6** **R** **FCA** A *benchmark administrator* must:
- (1) have effective arrangements and procedures that allow the regular monitoring and surveillance of *benchmark submissions*:

- (2) monitor the *benchmark submissions* in order to identify breaches of its practice standards (set out in ■ MAR 8.3.10R (1)) and conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers and provide to the oversight committee of the *specified benchmark* timely updates of suspected breaches of practice standards and attempted manipulation; and
- (3) notify the FCA and provide all relevant information where it suspects that, in relation to the *specified benchmark* it administers, there has been:
  - (a) a material breach of the *benchmark administrator's* practice standards (set out in ■ MAR 8.3.10R (1));
  - (b) conduct that may involve manipulation or attempted manipulation of the *specified benchmark* it administers; or
  - (c) collusion to manipulate or to attempt to manipulate the *specified benchmark* it administers.

## 8.3.7

FCA

G

The arrangements and procedures referred to in ■ MAR 8.3.6 R (1) should include (but not be limited to):

- (1) carrying out statistical analysis of *benchmark submissions*, using other relevant market data in order to identify irregularities in *benchmark submissions*; and
- (2) an effective whistle-blowing procedure which allows any person on an anonymous basis to alert the *benchmark administrator* of conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers.

## 8.3.8

FCA

R

**Oversight committee**

A *benchmark administrator* must establish an oversight committee (which must be a committee of the *benchmark administrator*) which includes representatives of *benchmark submitters*, market infrastructure providers, users of the *specified benchmark* and at least two independent *non-executive directors* of the *benchmark administrator* approved to carry out the *non-executive director function*.

## 8.3.9

FCA

G

The oversight committee should be responsible for:

- (1) considering matters of definition and scope of the *specified benchmark*;
- (2) exercising collective scrutiny of *benchmark submissions* if and when required; and
- (3) notifying the FCA of *benchmark submitters* that fail on a recurring basis to follow the practice standards (as set out in ■ MAR 8.3.10R (1)) for the *specified benchmark*.

8.3.10

FCA

**R** The *benchmark administrator* through its oversight committee must:

- (1) develop practice standards in a published code which set out the responsibilities for *benchmark submitters*, the *benchmark administrator*, and its oversight committee in relation to the relevant *specified benchmark*;
- (2) undertake regular periodic reviews of:
  - (a) the practice standards mentioned in ■ MAR 8.3.10R (1);
  - (b) the setting and definition of the *specified benchmark* it administers;
  - (c) the composition of *benchmark submitter* panels; and
  - (d) the process of making relevant *benchmark submissions*; and
- (3) before making any changes as a result of such review:
  - (a) notify the *FCA*;
  - (b) after doing so, publish a draft of the proposed changes and a notice that representations about the proposed changes may be made to the *benchmark administrator* within a specified time; and
  - (c) have regard to any such representations.

#### Review of the benchmark and publication of statistics

8.3.11

FCA

**R** The *benchmark administrator* must provide to the *FCA*, on a daily basis, all *benchmark submissions* it has received relating to the *specified benchmark* it administers.

8.3.12

FCA

**R** A *benchmark administrator* must publish quarterly aggregate statistics outlining the activity in the underlying market relevant to the *specified benchmark*.

#### Adequate financial resources

8.3.13

FCA

**R** Notwithstanding any other financial resource requirements that may apply, a *firm* whose *permitted activities* include *administering a specified benchmark* must:

- (1) be able to meet its liabilities as they fall due; and
- (2) maintain, at all times, sufficient financial resources to be able to cover the operating costs of administering the *specified benchmark* for a period of at least six months.

8.3.14

FCA

**G** ■ MAR 8.3.13 R sets out the minimum amount of financial resources a *benchmark administrator* must hold in order to carry out *administering a specified benchmark*.

However, the *FCA* expects *benchmark administrators* to normally hold sufficient financial resources to cover the operating costs of administering the *specified benchmark* for a period of nine months.

## 8.3.15

FCA

G

The financial resources in respect of the requirement in ■ MAR 8.3.13 R (2):

- (1) can include liquid financial assets held on the balance sheet of the *benchmark administrator*, for example, cash and liquid financial instruments where the financial instruments have minimal market and credit risk and are capable of being liquidated with minimal adverse price effect, common stock, retained earnings, disclosed reserves and other instruments generally classified as common equity tier one capital or additional tier one capital; and
- (2) should not include holdings of the *benchmark administrator's* own securities or those of any undertaking in the *benchmark administrator's* group; any amount owed to the *benchmark administrator* by an undertaking in its group under any loan or credit arrangement, and any exposure arising under any guarantee, charge or contingent liability.

## 8.3.16

FCA

G

The *FCA* may use its powers under section 55L of the *Act* to impose on a *benchmark administrator* a requirement to hold additional financial resources to ■ MAR 8.3.13 R if the *FCA* considers it desirable to meet any of its *statutory objectives*.



## Market Conduct

### MAR TP 1 Transitional Provisions

**FCA**

*GEN* contains some technical transitional provisions that apply throughout the *Handbook* and which are designed to ensure a smooth transition at *commencement*. These include transitional provisions relevant to record keeping and *notification rules*.

#### 1) Transitional Provisions for The Code of Market Conduct - (MAR 1)

There are no transitional provisions for *The Code of Market Conduct* (*The Code of Market Conduct*).

#### 2) Transitional Provisions for Price stabilising rules (Price Stabilising Rules)

*SUP* contains transitional provisions which carry forward into *MAR 2* (Price stabilising rules) written concessions relating to pre-commencement provisions.

#### 3) Transitional provisions for *MAR 6* (*systematic internaliser reporting requirements*)

A provision giving effect to Article 21 (4) of the *MiFID Regulation* as regards creating the initial list of all *systematic internalisers*.

**FCA**

| (1) | (2) Material provision to which transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|-----|--|-----|----------------------------|--|---|
| 1   | MAR 2  | R   | Expired                    |  |   |
| 2   | MAR 6  | R   | Expired                    |  |   |





---

## Market Conduct

### Schedule 1 Record Keeping requirements

#### Sch 1.1 G

**FCA**

| Handbook reference | Subject of record        | Contents of record                   | When record must be made            | Retention period |
|--------------------|--------------------------|--------------------------------------|-------------------------------------|------------------|
| MAR 2.7R           | Price stabilising action | Full details as noted in MAR 2.7.2 R | On initiation of stabilising action | 3 years          |



## Market Conduct

### Schedule 2 Notification requirements

#### Sch 2.1 G

FCA

There are no notification requirements in *MAR* .



## Market Conduct

### Schedule 3 Fees and other required payments

#### Sch 3.1 G

FCA

There are no requirements for fees or other payments in *MAR*.



---

## Market Conduct

### Schedule 4 Powers Exercised

#### Sch 4.1 G

The following powers in the *Act* have been exercised by the *FSA* to make the *rules* in *MAR*:

- Section 118(8) (Market abuse)
- Section 138 (General rule-making power)
- Section 143 (Endorsement of codes etc.)
- Section 144 (Price stabilising rules)
- Section 145 (Financial promotion rules)
- Section 149 (Evidential provisions)
- Section 150(2) (Actions for damages)
- Section 156 (General supplementary powers)

#### Sch 4.2 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *MAR* (including the *guidance* comprising of the *Code of Market Conduct*):

- Section 119 (The code)
- Section 120 (Provisions included in the Authority's code by reference to the City Code)
- Section 121 (Codes: procedure)
- Section 157(1) (Guidance)





## Market Conduct

### Schedule 5 Rights of action for damages

#### Sch 5.1 G

**FCA**

1. The table below sets out the *rules* in *MAR* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
2. If a "yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D unless a "yes" appears in the column headed "Removed". A "yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. In accordance with the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a "*private person*" is:
  - i. any individual, except when acting in the course of carrying on a *regulated activity*; and
  - ii. any *person* who is not an individual, except when acting in the course of carrying on business of any kind; but does not include a government, a local authority or an international organisation.
4. The column headed "For other person?" indicates whether the rule is actionable by a *person* other than a *private person*, in accordance with those Regulations. If so, an indication of the type of *person* by whom the *rule* is actionable is given.

#### Sch 5.2 G

**FCA**

| Chapter / Appendix  | Section / Annex | Paragraph | For Private Person? | Removed                | For other person? |
|---|-----------------|-----------|---------------------|------------------------|-------------------|
| <i>MAR</i> 1 (no rules)   |                 |           |                     |                        |                   |
| All rules in <i>MAR</i> 2 except <i>MAR</i> 2.3.3 R and <i>MAR</i> 2.3.4 EU |                 |           | Yes                 | Yes <i>MAR</i> 2.1.9 R | No                |
| <i>MAR</i> 2.3.3 R, <i>MAR</i> 2.3.4 EU and <i>MAR</i> 2.3.5 EU             |                 |           | No                  |                        | No                |
| All rules in <i>MAR</i> 3 except <i>MAR</i> 3.5.7 E                         |                 |           | Yes                 | Yes <i>MAR</i> 3.1.5 R | No                |
| <i>MAR</i> 3.5.7 E  |                 |           | No                  |                        | No                |
| <i>MAR</i> 4 (all rules)  |                 |           | Yes                 | No                     | No                |



---

## Market Conduct

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

##### FCA

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

