

New Conduct of Business Sourcebook

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- 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 *guidance* on this).
- (2) This *rule* overrides every other *rule* in this sourcebook.
- 1.2 R In addition to the *EEA territorial scope rule*, the effect of the *Electronic 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 7.3 of Part 3 for *guidance* on this).
- [Note: article 3(3) of, and Annex to, the *Electronic Commerce Directive*]
2. Business with UK clients from overseas establishments
- 2.1 R (1) This sourcebook applies to a *firm* which carries on business with a *client* in the *United Kingdom* from an establishment overseas.
- (2) But the sourcebook does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:
- (a) would fall within the overseas *persons* exclusions in article 72 of the *Regulated Activities Order*; or
- (b) would not be regarded as carried on in the *United Kingdom*.
- 2.2 G One of the effects of the *EEA territorial scope rule* is to override the application of this sourcebook to the overseas establishments of *EEA firms* in a number of cases, including circumstances covered by *MiFID*, the *Distance Marketing Directive* or the *Electronic Commerce Directive*. See Part 3 for *guidance* on this.

Part 3: Guidance

1. The main extensions and restrictions to the general application rule
- 1.1 G The *general application rule* is modified in Parts 1 and 2 of Annex 1 and in certain chapters of the *Handbook*. The modification may be an extension of this *rule*. For example, COBS 4 (Communicating with clients, including financial promotions) has extended the application of the rule.
- 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 in a *UK establishment* for a *client* located in the *United Kingdom* in relation to a *United Kingdom* product. However, if there is a non-UK element, the *firm* should consider whether:

- (1) it is subject to the directive (in general, directives only apply to *UK firms* and *EEA firms*, but the implementing provisions may not treat *non-EEA firms* more favourably than *EEA firms*);
- (2) the business it is performing is subject to the directive; and
- (3) the particular *rule* is within the scope of the directive.

If the answer to all three questions is 'yes', 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. MiFID: effect on territorial scope
- 3.1 G **PERG 13** contains general *guidance* on the *persons* and businesses to which *MiFID* applies.
- 3.2 G This *guidance* concerns the *rules* within the scope of *MiFID* including those *rules* which are in the same subject area as the implementing *rules*. A *rule* is within the scope of *MiFID* if it is followed by a 'Note:' indicating the article of *MiFID* or the *MiFID implementing Directive* which it implements.
- 3.3 G For a *UK MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply to its *MiFID business* carried on from an establishment in the *United Kingdom*. They also generally apply to its *MiFID business* carried on from an establishment in another *EEA State*, 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 *MiFID*)
- 3.4 G For an *EEA MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply only to its *MiFID business* if that business is carried on from an establishment in, and within the territory of, the *United Kingdom*. (See article 32(1) and (7) of *MiFID*)
- 3.5 G However, the *rules* on *investment research* and *non-independent research* (**COBS 12.2** and **12.3**) and the *rules* on *personal transactions* (**COBS 11.7**) apply on a "home state" basis. This means that they apply to the establishments of a *UK MiFID investment firm* in the *United Kingdom* and another *EEA State* and do not apply to an *EEA MiFID investment firm*.
4. Insurance Mediation Directive: effect on territorial scope
- 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)).
- 4.2 G In the *FSA'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:

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 *FSA'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*; 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*)

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).

- (2) In the *FSA'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 are those in COBS 14 (Providing product information to clients) relating to the distribution of a *simplified prospectus* by the management company. Those *rules* are the responsibility of the *Home State* of the UCITS. The Directive explicitly permits other *EEA States* in which a UCITS is marketed to continue to apply rules, including marketing and advertising rules, outside the field governed by the Directive. The Directive also applies certain rules derived from *MiFID* to management companies in relation to certain business activities. (See articles 1(6) and 44 of the *UCITS Directive*)

9.2 G Accordingly, the territorial scope of this sourcebook is modified so that:

- (1) **the *rules* relating to the distribution of a *simplified prospectus* apply to the management company (*operator*) of a UCITS whose *Home State* is the *United Kingdom* when marketing in other *EEA States*;**
- (2) **those *rules* do not apply to a management company of a UCITS whose *Home State* is another *EEA State* when marketing in the *United Kingdom*; other *rules*, such as the *financial promotion rules* and the *information gathering and suitability rules* (see **COBS 9 Suitability** (including basic advice)) apply without modification of this territorial scope .**

9.3 G The Directive does not affect the territorial scope of *rules* as they apply to an intermediary selling a UCITS.

2.2 Information disclosure before providing services

2.2.1

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- (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) This *rule* applies in relation to *MiFID* or *equivalent third country business*.
- (4) The requirement to provide information about *designated investments* and proposed investment strategies also applies to a *firm* in relation to *designated investment business* other than *MiFID* or *equivalent third country business* carried on for a *retail client* in relation to a *derivative*, a *warrant* or *stock lending activity*.

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

2.2.2

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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.

2.3 Inducements

Rule on inducements

2.3.1

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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 *packaged product*;
 - (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*, 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*]

[Note: The Committee of European Securities Regulators (CESR) has issued recommendations on inducements under MiFID]

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

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

[Note: article 26 of the *MiFID implementing Directive*]

Guidance on inducements


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


2.3.4 **G** ■ 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 **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 **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*]

2.3.7  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  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.


Packaged products evidential provisions and guidance on inducements


2.3.9  The following *guidance* and *evidential provisions* provide examples of arrangements the FSA believes will breach the *client's best interests rule* if it sells, *personally recommends* or arranges the sale of a *packaged product* for a *retail client*.

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

2.3.12  (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 *packaged products*, except where the relevant transaction is between *persons* who are in the same *immediate group*.

2.4 Agent as client and reliance on others

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

2.4.2 **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 **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

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- (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

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- (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

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

- (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

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

Elective professional clients

3.5.3

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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;

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

Elective eligible counterparties

3.6.4 **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 3.5.2R (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 3.5.2R (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 **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 **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 **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*]

4.3 Financial promotions to be identifiable as such

4.3.1

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

[Note: article 19(2) of *MiFID*]

- (2) In the case of a *financial promotion* that relates to the *firm's MiFID or equivalent third country business*, this *rule* does not apply to the extent that a *financial promotion* is a *third party prospectus*.
- (3) In the case of a *financial promotion* that does not relate to the *firm's MiFID or equivalent third country business*, this *rule* applies to *communicating or approving a 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 *deposit* or to a *pure protection contract* that is a *long-term care insurance contract*.



4.4 Compensation information

4.4.1

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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

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The Credit Institutions (Protection of Deposits) Regulations 1995 may also apply in relation to a communication with a *client*.

4.5 Communicating with retail clients

Application

4.5.1

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

4.5.2

R

General rule

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

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

Comparative information

4.5.6 **R** (1) If information compares *relevant business, relevant investments, or persons* who carry on *relevant business*, a *firm* must ensure that:

- (a) the comparison is meaningful and presented in a fair and balanced way; and
- (b) in relation to *MiFID or equivalent third country business*;
 - (i) the sources of the information used for the comparison are specified; and
 - (ii) the key facts and assumptions used to make the comparison are included.

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

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

Referring to tax

4.5.7 **R** (1) 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) a *deposit* other than a *cash deposit ISA* or a *cash deposit CTF*;
or
 - (b) a *pure protection contract* that is a *long-term care insurance contract*.

Consistent financial promotions

4.5.8

R

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

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

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

4.6 Past, simulated past and future performance

Application

4.6.1

R

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

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

- (2) This section does not apply in relation to a communication by a *firm* in relation to its *MiFID or equivalent third country business*:
- (a) to the extent that the communication is a *third party prospectus*; or
 - (b) if it is *image advertising*.
- (3) This section does not apply in relation to a communication by a *firm* other than in relation to its *MiFID or equivalent third country business*:
- (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

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

G

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

4.6.4

G

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

4.6.4A

G

This Table belongs to ■ COBS 4.6.4 G

Percentage growth					
[Fund name]	Quarter/Year - Quar- ter/Year	Quarter/Year - Quar- ter/Year	Quarter/ Year - Quar- ter/Year	Quarter/ Year - Quar- ter/Year	Quarter/ Year - Quarter/ 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

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* or *simplified prospectus* drawn up in accordance with *COLL*.

4.6.5

G

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

Simulated past performance

4.6.6

R

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

- (1) it relates to an investment or a financial index;
- (2) the simulated past performance is based on the actual past performance of one or more investments or financial indices which are the same as, 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

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

G

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

4.6.9

R

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

4.7 Direct offer financial promotions

4.7.1

R

- (1) Subject to (3) and (4), a *firm* must ensure that a *direct offer financial promotion* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client* contains:
 - (a) such of the information referred to in the *rules* on information disclosure (■ COBS 6.1.4 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) This *rule* does not apply in relation to a communication made by a *firm* in relation to *MiFID or equivalent third country business*:
 - (a) to the extent that it is a *third party prospectus*;
 - (b) if it is *image advertising*.
- (4) This section does not apply in relation to a communication that is not made by a *firm* in relation to *MiFID or equivalent third country business*:
 - (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 G Although ■ COBS 4.7.1R (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 G

- (1) ■ COBS 4.7.1R (2) allows a *firm* to *communicate* a *direct offer financial promotion* that does not contain all the information required by ■ COBS 4.7.1R (1), if the *firm* can demonstrate that the *client* has referred to the required information before the *client* makes or accepts an offer in response to the *direct offer financial promotion*.
- (2) A *firm* *communicating* or *approving* a *direct offer financial promotion* may also be subject to 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 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 COLL 4.6.12R requires an *authorised fund manager* to ensure that its *financial promotions*, which contain an invitation to purchase the *units* in a *UCITS scheme*, indicate that a *simplified prospectus* and a full *prospectus* exist, and the places where they may be obtained by the public or how the public may have access to them.



4.9 Financial promotions with an overseas element

Application

- 4.9.1 **R** (1) Subject to (2) and (3), this section applies to *financial promotions* that relate 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) This section does not apply to a communication by a *firm* other than in relation to its *MiFID or equivalent third country business*:
- (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 *deposit*;
 - (f) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

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

Financial promotions for the business of an overseas person

- 4.9.3 **R** A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a particular *relevant investment* or *relevant business* of an *overseas person*, unless:
- (1) the *financial promotion* makes clear which *firm* has *approved* or *communicated* it and, where relevant, explains:
 - (a) that the *rules* made under the *Act* for the protection of *retail clients* do not apply;

- (b) the extent and level to which the *compensation scheme* will be available, or if the scheme will not be available, a statement to that effect; and
 - (c) if the communicator wishes, the protection or compensation available under another system of regulation; and
- (2) the *firm* has no reason to doubt 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

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

R

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

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

4.9.6

R

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

6.1.14

R

Keeping the client up to date

- (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*]

6.1.15

G

Existing clients

- (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.

6.1.16

R

Compensation information

- (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*]

6.1.17

G

Record keeping: information about the firm and compensation information

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



6.2 Describing the breadth of a firm's personal recommendations

Application and introduction

- 6.2.1 **R** This section applies to a *firm* which makes a *personal recommendation* to a *retail client* to buy a *packaged product*.
- 6.2.2 **R** This section does not apply if a *firm* gives *basic advice* in accordance with the *basic advice rules*.
- 6.2.3 **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, 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 another *EEA state*.
- 6.2.4 **G** A *firm's scope of advice* relates to the *product providers* whose products it sells. Its *range* relates to which products from those providers it sells.
- 6.2.5 **G** A *firm* may operate on the basis of recommending only a subset of the *packaged products* (its *range*) selected from the *product providers* within its *scope*.
- 6.2.6 **G** In order to comply with the *rule* on information disclosure before providing services (**COBS 2.2.1R (1)(a)**) and, if applicable, the *rule* on information to be provided by an *insurance intermediary* (**COBS 7.2.1R (2)**) a *firm's disclosures* to a *client* should include whether it expects its *scope* to be:
- (1) the whole of the market;
 - (2) limited to several product providers;
 - (3) limited to a single product provider.

- 21.2.8 **R** A *firm* must notify the *FSA* in writing as soon as it becomes aware of any failure to meet the requirements of this section.
- 21.2.9 **G** In considering what action to take in response to written notification of a failure to meet the requirements of this section, the *FSA* 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 **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 **G** 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.

21.3.3 **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.

New Conduct of Business Sourcebook

Schedule 1 Record keeping requirements

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

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

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 2.3.17R (1)	Fee, commission or non-monetary benefit under COBS 2.3.1R (2)(a)(ii)	Each fee, commission or non-monetary benefit given	When benefit is given	5 years from date of benefit
COBS 2.3.17R (2)	Reasonable indirect benefits	Each benefit given to another <i>firm</i> in accordance with COBS 2.3.14 G	When benefit is given	5 years from date of benefit
COBS 3.8.2R (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 3.8.2R (3))
COBS 3.8.2R (2)	<i>Client</i> categorisation	<i>Client</i> categorisation and supporting information, evidence of dispatch to client of any notice (the notice itself where this differs from standard form) and a copy of any agreement entered into	From time of categorisation	Relevant period from when the <i>firm</i> ceases to carry on business with or for that client (see COBS 3.8.2R (3))
COBS 4.11.1R (1)	<i>Financial promotion</i>	<i>A financial promotion communicated or approved</i> (subject to exemptions)	When <i>communicated</i> or <i>approved</i>	See COBS 4.11.1R (3)

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 4.11.1R (2)	Telemarketing scripts	Copy of any script used	Date script used	See COBS 4.11.1R (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 6.2.12 R	Information about the <i>firm</i> , services and information: <i>packaged products</i>	<i>Scope</i> and <i>range</i> of <i>packaged products</i>	<i>Firm's scope</i> and <i>range</i> - from date on which superseded by more up-to-date record <i>Client-specific</i> records - from date of communication of <i>personal recommendation</i> .	5 years 5 years
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
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</i> of <i>basic advice</i> (<i>stakeholder products</i>)	<i>Scope</i> of <i>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 ap-	Date of assessment	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		propriateness assessment		
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 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 <i>clients</i>	Copy of a confirmation	From date of despatch to <i>client</i>	<i>MiFID</i> or equivalent <i>third country business</i> - 5 years Other business - 3 years
COBS 16.3.11 R	<i>Periodic statements</i>	A copy of a <i>periodic statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	<i>MiFID</i> or equivalent <i>third country business</i> - 5 years 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 <i>participants</i>	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 <i>client</i>	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 20.3.1 R	<i>PPFMs</i>	Each version of the <i>PPFM</i>	Date on which the <i>PPFM</i> is relevant	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS TP 1.8R	<i>Client</i> categorisation transitional	Categorisation or re-categorisation under TP1	Date of categorisation/ re-categorisation	See COBS 3.8.2R (2)
COBS TP 2.4E	<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 2.8C	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

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Schedule 2 Notification requirements

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 21.2	Any failure to meet the requirements of COBS 21.2	Breach of COBS 21.2	As soon as the <i>firm</i> becomes aware of the failure

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Schedule 3 Fees and other required payments

There are no requirements for fees or other payments in *COBS*.

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Schedule 4 Powers exercised

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 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);

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *COBS*:

- Section 157(1) (Guidance)

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Schedule 5 Rights of action for damages

The table below sets out the *rules* in *COBS* contravention of which by an *authorised person* may be actionable under section 150 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 150 (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 *FSA* 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.

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.

Chapter/ Appendix	Section/Annex	Paragraph	Right of action under section 150		
			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 150 of the *Act*.

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Schedule 6 Rules that can be waived

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its rules.

