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## Conduct of Business Sourcebook and MiFID

Our new Conduct of Business Sourcebook for investment business (COBS) came into effect on 1 November. COBS is simpler and shorter than the previous sourcebook, representing a major step towards more principles based regulation focusing on high-level outcomes rather than detailed rules.

Over the past year we have publicised the changes that COBS will have on financial advisers business at our roadshows and surgeries, and in August we published a guide to COBS for small firms.

The guide sets out the key changes in areas such as client categorisation, communications and financial promotions, client agreements, Initial Disclosure Document (IDD) and Menu, suitability, preparing and providing product information, training and competence, and complaints. So, for instance: the IDD and menu became guidance rather than rules on 1 November; this means that you can now develop your own disclosure material to satisfy the new requirements if you wish; and some specific time limits

concerning staff training and complaints have now been removed or replaced with broader principles.

If you want to read more about the key changes please take a look at the COBS guide we have produced which can be found here on the Small Firms website:  
[http://www.fsa.gov.uk/pages/Doing/small\\_firms/advisers/pdf/newcob.pdf](http://www.fsa.gov.uk/pages/Doing/small_firms/advisers/pdf/newcob.pdf)

In addition, we've also been running training events focusing on COBS. There are still a handful of events scheduled to take place in November and December in London, Southampton, Belfast and Norwich. Details about the events and how to book can be found here: [http://www.fsa.gov.uk/pages/Doing/Events/workshops/cobs\\_sf.shtml](http://www.fsa.gov.uk/pages/Doing/Events/workshops/cobs_sf.shtml)

The introduction of COBS was also influenced by the need to meet the requirements of the Markets in Financial Instruments Directive (MiFID), which itself came into effect on 1 November.

Note that although financial advisers are not automatically subject to MiFID (see overleaf), COBS – and its more principles based approach – applies to all financial advisers.

MiFID was introduced to develop a single market in financial services across the EU and for the first time investment advice must be regulated in all EEA States.

The UK secured an opt-out from MiFID for financial advisers. This means that UK financial advisers are not automatically subject to MiFID obligations.

However, where a UK financial adviser is advising clients located in another EEA state it must ensure it satisfies the legal requirements of that state. It can opt in to MiFID to obtain a passport for such services. This will prevent it possibly needing authorisation in other Member States for those matters covered by the passport.

MiFID also affects the way your permissions and approved persons are recorded in the FSA Register.

If you would like more information about passporting, we produced a factsheet in August that you may find useful: [http://www.fsa.gov.uk/pubs/forms/passporting\\_factsheet.pdf](http://www.fsa.gov.uk/pubs/forms/passporting_factsheet.pdf)

## Final Salary Pension Transfers

Arising from some recent case-work with individual firms, we would like to remind firms of their obligations when carrying out final salary pension transfers via direct offer financial promotions.

Pension transfers are not prohibited via direct financial promotion.

However, firms that go down this route must consider our financial promotion principle to be clear, fair and not misleading in the light of the fact that we have kept detailed rules on pension transfers (because of the potential for consumer detriment in this area). Any direct financial promotion pack will need to cover all the material required by these detailed rules – such as a comparison of benefits. The information provided should be clear and easy to understand so the member can make an informed decision.

This is not a simple exercise, as firms need to take account of a number of variables, such as the level of comprehension each scheme member has and how to couch complicated financial concepts in simple and clear language. In setting out the information, firms must also take into account our overriding Treating Customers Fairly principle.

Firms will also want to consider how best to help deferred members make a decision on what is best for them without the need for advice. Scheme members will need to be provided with a clear explanation of the yield required by the new scheme to beat the benefits promised by the final salary scheme. In addition this information must be unbiased and short enough to maintain the interest of the member.

We remind firms that the initial presumption with any pension transfer is that it is not suitable. Any advice, and therefore any communication, to members of final salary schemes should take this presumption into account.

## Pension Reform and Client Advice

You are probably aware of the pension reforms the government is planning for 2012. These reforms will have a significant impact on the pensions environment, even before they are implemented. The reforms are still in the early stages of development with a Bill to establish the legislation for the reforms due to be published by the end of the year.

For an individual seeking advice today there may be many unknowns about what their circumstances will be when the legislation comes into force. We are aware that there are concerns among some advisers about the implications of the proposed reforms on giving advice to clients in the period before 2012.

We have written a short article on this issue which may be of interest to advisers generally, and we encourage advisers to remain aware of developments as they happen to enable them to make reasonable assumptions when giving advice. The article can be found on the FSA website at: [http://www.fsa.gov.uk/Pages/Library/Other\\_publications/Pensions/index.shtml](http://www.fsa.gov.uk/Pages/Library/Other_publications/Pensions/index.shtml)

## Prudential rules for personal investment firms

We published a discussion paper (DP07/04) in July looking at how we might change our prudential requirements for personal investment firms that are not subject to the Markets in Financial Instruments Directive (MiFID).

This covers two main areas:

- Capital resources requirements – the amount a firm must hold in reserves (small personal investment firms need to hold at least £10,000); and
- Professional indemnity insurance (PII) – the insurance we require firms to hold so they can meet valid compensation claims from customers.

There are a number of reasons why we are reviewing these requirements, including:

- concerns that the rules are not fit for purpose, in particular that the £10,000 'own funds' requirement is too low;
- the need to simplify our approach, consistent with principles-based regulation and
- failures in the sector.

Our paper considers whether changing our current capital resources and PII requirements could have a positive effect by reducing the likelihood of mis-selling; the impact of mis-selling by a firm that is still in business; and the impact of mis-selling by a firm that is no longer operating.

It also looks at whether we should adjust our prudential requirements for small firms to ensure that they have sufficient financial resources to wind up their business in an orderly manner.

A number of options in the discussion paper would change and simplify the prudential requirements and rules. These options include risk-based capital resource requirements, more effectively drafted and more accurately priced PII, and measures such as run-off PII for firms that leave the industry.

We are very keen to receive feedback from personal investment firms. These issues may have an impact on your firm and this is your opportunity to influence our thinking. We encourage you to read the discussion paper and let us know your thoughts. The deadline for responses is 7 January.

The paper and an on-line response form can be found here on the FSA website: [http://www.fsa.gov.uk/pages/Library/Policy/DP/2007/07\\_04.shtml](http://www.fsa.gov.uk/pages/Library/Policy/DP/2007/07_04.shtml)

## Multi-Manager Update

As we set out in our September Newsletter, we recently carried out some exploratory work about multi-manager funds following an increase in the number of small firms recommending them to clients. We asked firms questions on:

- their reasons for recommending multi-manager funds;
- charges and
- treating customers fairly.

Having completed our analysis of this work, we are now able to provide a summary of our findings.

All the firms we visited were able to give reasons for their recommendations. Some of these reasons were robust and had been thought through. In

other cases, firms were unable to support the reasons they had given, or to adequately demonstrate why these reasons were relevant to particular clients' circumstances and objectives. Findings such as these indicated that some firms did not have sufficient understanding of multi-manager funds. It was also evident that, on occasion, firms had made insufficient comparison with the alternatives that were available.

Firms generally understood that the charges levied by multi-manager funds were higher than those of single manager funds. But some firms were unaware of the full level of charges carried by funds they had recommended until we pointed this out to them. This was also the case with firms who told us that they would not recommend multi-manager if total charges exceeded a

particular level. Overall, there was insufficient appreciation of the effect that the total charges of multi-manager could have on the ultimate performance of the investment.

Some firms produced good suitability letters that clearly set out the reasons for their recommendation of a multi-manager fund. In most cases, though, suitability letters contained insufficient information on the pros and cons of multi-manager for clients to enable clients to reach an informed decision on the firm's recommendation.

As a result of the findings from this exploratory work, we may carry out further multi manager work in the future.