

## Chapter 2

# Conduct of business obligations

## 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*, *equivalent third country* or *optional exemption business*, other *ancillary services*.

**2.4.2** **G** This section is not relevant to, nor does it affect:

- (1) the question of who is the *firm's* counterparty for prudential purposes; or
- (2) any obligation a *firm* may owe to any other *person* under the general law; or
- (3) any obligation imposed on a *firm* by article 26 of *MiFIR* or RTS 22.

### Agent as client

**2.4.3** **R**

- (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 16.2 or ■ COBS 16A.3); and
  - (c) separate *periodic statements*.

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

2.4.4

**R**

- (1) This rule applies if a firm (F1), in the course of performing *MiFID* or *equivalent third country business*, receives an instruction to provide 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 suitability 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 26 of *MiFID*]

2.4.5

**G**

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

**Reliance on other insurance distributors**

2.4.5A

**R**

Where a firm carrying on *insurance distribution activities* in relation to an *insurance-based investment product* is required to perform an appropriateness assessment under ■ COBS 10A, it may rely upon:

- (1) a suitability assessment performed by another firm, if that other firm was subject to the requirements for assessing suitability in ■ COBS 9A or equivalent requirements in another *EEA State*; or

- (2) an appropriateness assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing appropriateness in ■ COBS 10A.2 or equivalent requirements in another *EEA State*,

in performing that assessment.

[Note: article 30(2) of the *IDD*]

**Reliance on others: other situations**

- 2.4.6 **R** (1) This *rule* applies if the applicable *rule* on reliance on other *investment firms* or *insurance distributors* (■ COBS 2.4.4 R and ■ COBS 2.4.5AR) does not apply.
  - (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*.
  
- 2.4.7 **E** (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 **G** It will generally be reasonable (in accordance with ■ COBS 2.4.6R (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 **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 **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*.