

Chapter 4

Communicating with clients, including financial promotions

4.1 Application

Who? What?

4.1.1

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This chapter applies to a *firm*:

- (1) communicating with a *client* in relation to its *designated investment business* (other than *MiFID, equivalent third country or optional exemption business*);
- (1A) communicating with a *client* in relation to its *MiFID, equivalent third country or optional exemption 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); or
 - (d) a *financial promotion* in relation to a *credit agreement, a consumer hire agreement or a credit-related regulated activity*; or
 - (e) a *financial promotion* in relation to a *funeral plan contract or a regulated funeral plan activity*.
- (3) when a *MiFID investment firm* or a *credit institution* is communicating in connection with selling, or advising *clients* in relation to, *structured deposits* as specified by ■ COBS 1.1.1AAR.

4.1.1A

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

4.1.1B

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- (1) *TP firms* must comply with the *rules* in (3) and (4) to the extent that those *rules* do not already apply to those *TP firms* as a result of ■ GEN 2.2.26R.
- (2) *Gibraltar-based firms* must comply with the *rules* in (3) and (4) to the extent that those *rules* do not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R.
- (3) The *rules* are those in:

- (a) ■ COBS 4.5.2R (communicating with retail clients – general rule);
 - (b) ■ COBS 4.10 (approving and confirming compliance of financial promotions); and
 - (c) ■ COBS 4.11 (Record keeping: financial promotion).
- (4) The *rules* are those in this chapter in so far as they relate to the *communication and approval of financial promotions* relating to *qualifying cryptoassets*.
- 4.1.1C** G ■ COBS 4.12A.3R and ■ COBS 4.12B.1R apply the *rules* on promoting *restricted mass market investments* and *non-mass market investments* to *TP firms* and *Gibraltar-based firms*.
- 4.1.1D** G A *firm* is reminded of its obligations under the *naming and marketing rules* in ■ ESG 4.3 (in particular, ■ ESG 4.3.1R) when it:
- (1) *communicates or approves a financial promotion* that references the *sustainability characteristics* of a product or service; or
 - (2) undertakes *sustainability in-scope business* in relation to a *sustainability product*.
- 4.1.2** 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** 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** G
- (1) In ■ COBS 4.3.1 R, the defined term "*financial promotion*" includes:
 - (a) in relation to *MiFID, equivalent third country or optional exemption business*, all communications that are marketing communications within the meaning of *MiFID*; and
 - (b) in relation to *insurance distribution*, all communications that are marketing communications within the meaning of *IDD*.
 - (2) In the case of *MiFID, equivalent third country or optional exemption business*, certain requirements in this chapter are subject to an exemption for the communication of a *third party prospectus* in certain circumstances (see recital 73 of the *MiFID Org Regulation*). 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 **G** 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*).

4.1.6 **G** Approving a *financial promotion* without communicating it (which includes causing it to be communicated) is not *MiFID, equivalent third country or optional exemption 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, equivalent third country or optional exemption business* to which the *financial promotion* relates, is also not *MiFID, equivalent third country or optional exemption business*. Further guidance on what amounts to *MiFID business* may be found in ■ *PERG 13*.

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

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

What? Modification relating to the KII Regulation

4.1.7A **R** The rules in this chapter do not apply in relation to the form or content of a *key investor information document*, an *EEA key investor information document* or a *NURS-KII document*.

4.1.7B **G**

- (1) The *KII Regulation* specifies in an exhaustive manner the form and content of the *key investor information document* for a *UCITS scheme*.
- (2) The form and content of a *NURS-KII document* is specified by ■ *COLL 4.7.3AR* (Form and content of a *NURS-KII document*) and in ■ *COLL Appendix 2R* (Modifications to the *KII Regulation* for *KII-compliant NURS*).

[Note: see article 3(1) of the *KII Regulation*]

Who? What? Application to registered persons promoting qualifying cryptoassets

4.1.7C **R**

- (1) This chapter applies to a *registered person communicating a financial promotion* relating to one or more *qualifying cryptoassets* (in reliance on the exemption in article 73ZA of the *Financial Promotion Order*) as it applies to an *authorised person communicating a financial promotion* relating to one or more *qualifying cryptoassets*.
- (2) For the purpose of (1), relevant references in this chapter to a *firm* include reference to a *registered person*.

4.1.7D

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- (3) Where a *rule* in the *Handbook* applies to a *registered person communicating a financial promotion* relating to one or more *qualifying cryptoassets*, relevant references to a *client* include reference to a *person* to whom a *financial promotion* is, or is likely to be, *communicated* by the relevant *registered person*.
- (4) A *registered person* must establish, implement and maintain adequate policies and procedures sufficient to ensure its compliance with its obligations under the *rules* when *communicating financial promotions* relating to *qualifying cryptoassets*.
- (1) ■ COBS 4.1.7CR(1) requires a *registered person* to comply with the relevant *rules* in this chapter on the form and content of *financial promotions* (including those in ■ COBS 4.12A). It also requires a *registered person* to make records of the *financial promotions* it *communicates* in compliance with the relevant *rules* in ■ COBS 4.11 (Record keeping: financial promotion).
- (2) There are other requirements outside this chapter which apply to *registered persons communicating financial promotions* relating to *qualifying cryptoassets*, including:
 - (a) *Principle 7* (Communications with clients);
 - (b) ■ GEN 1.2 (Referring to approval by the FCA); and
 - (c) ■ GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator).

4.1.7E

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The exemption in article 73ZA of the *Financial Promotion Order* does not give rise to a type of *excluded communication*.

Where? General position

4.1.8

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- (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*.

4.1.9 **G** [deleted]

4.1.10 **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

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- (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 *customer* in relation to *designated investment business* which is not *MiFID*, *equivalent third country* or *optional exemption business*, other than a *third party prospectus*;
 - (aa) a communication to an *eligible counterparty* that is in relation to:
 - (i) *MiFID* or *equivalent third country business* other than a *third party prospectus*; or
 - (ii) *insurance distribution*;
 - (ab) a communication by the *firm* to a *customer* in relation to *MiFID*, *equivalent third country* or *optional exemption 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*.
- (3) As part of complying with (1), a *firm* must take into account the nature of the *client*.

[**Note:** ,article 24(3) and article 30(1) of *MiFID*, article 17(2) of the *IDD* and article 77 of the *UCITS Directive*]

4.2.2

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, the information the communication is intended to convey and the nature of the *client* and of its business, if any. So a communication addressed to a *professional client* or an *eligible counterparty* 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*.

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

4.2.3

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

Fair, clear and not misleading financial promotions

4.2.4

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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

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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.

The reasonable steps defence to an action for damages

4.2.6

R

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

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

[**Note:** article 24(3) of *MiFID*, article 17(2) of the *IDD* and article 77 of the *UCITS Directive*]

(2) If a *financial promotion* relates to a *firm's MiFID, equivalent third country or optional exemption 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 article 22 of the *Prospectus Regulation* applies;
- (c) if it is *image advertising*;
- (d) if it is a *non-retail communication*;
- (e) [deleted]

(4) In the case of a marketing communication that relates to:

- (a) a *UCITS scheme*, or
- (b) *insurance distribution*,

(2) and (3) do not limit the application of this *rule*.



4.4 Compensation information

- 4.4.1** **R** A *firm* must ensure that any reference in advertising to an investor compensation scheme 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** **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 (non-MiFID provisions)

Application

4.5.1

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 *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 to a *firm* communicating in relation to its *MiFID, equivalent third country or optional exemption business*.
- (3) This section does not apply in relation to a communication:
- (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
 - (c) if it is *image advertising*.

General rule

4.5.2

R

A *firm* must ensure that information:

- (1) includes the name of the *firm* (and also, where relevant, the name of the *firm* that has confirmed the compliance of the *financial promotion* for the purposes of ■ COBS 4.10.9AR(3)(a));
- (1A) where relevant, includes the date on which the *financial promotion* was approved;
- (2) is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of *relevant business* or a *relevant investment*;
- (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;
- (4) does not disguise, diminish or obscure important items, statements or warnings.

- (5) uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout that ensures that such indication is prominent;
- (6) is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each *client*, unless the *client* has agreed to receive information in more than one language; and
- (7) is up-to-date and relevant to the means of communication used.

4.5.2A

R

- (1) This *rule* applies:
 - (a) to a *financial promotion communicated* by way of a website, mobile application or other digital medium; and
 - (b) where the format is such that, where relevant:
 - (i) the name of the *firm* that *approved* or confirmed the compliance of the *financial promotion*; or
 - (ii) the date on which the *financial promotion* was *approved*, cannot reasonably be included in the *financial promotion*.
- (2) The information in (1)(b) may be provided on a webpage to which a link is clearly provided in the *financial promotion*.
- (3) The link in (2) must be in the format: 'Approver FRN [*firm* reference number of the *firm* that *approved* or confirmed the compliance of the *financial promotion*]'

4.5.3

G

- (1) The effect of **COBS 4.5.2R(1)** is that, where relevant and subject to **COBS 4.5.2AR**, the name of the *firm* that *approved* or confirmed the compliance of a *financial promotion* must be included in that *financial promotion*.
- (2) 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 and, if different, the *firm* that *approved* or confirmed the compliance of the *financial promotion*.
- (3) The name of the *firm* (and any link provided pursuant to **COBS 4.5.2AR**) should be given sufficient prominence to enable the *retail client* to easily identify the *firm* responsible for the compliance of the *financial promotion* with applicable *rules*.

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 the information being insufficient, unclear,

unfair or misleading. When considering whether a fact should be included in the communication or omitted from it, a *firm* should bear in the mind the *guidance* in ■ COBS 4.2.2G to provide information which is appropriate and proportionate.

Comparative information

- 4.5.6 **R** If information compares *relevant business*, *relevant investments*, or persons who carry on *relevant business*, a *firm* must ensure that the comparison is meaningful and presented in a fair and balanced way

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.
 - (2) This *rule* applies in relation to a *financial promotion* except to the extent that it relates to 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*.
 - (2) This *rule* does not apply to a *financial promotion* to the extent that it relates a *pure protection contract* that is a *long-term care insurance contract*.

Innovative finance ISA

- 4.5.9 **G** Examples of information about relevant risks (■ COBS 4.5.2R) that a *firm* should give a *retail client* in relation to an *innovative finance ISA* include:
- (1) an explanation of the tax consequences if:
 - (a) the *innovative finance component* is a *P2P agreement* that is not repaid; and
 - (b) an *operator of an electronic system in relation to lending* which facilitates a *P2P agreement* fails;
 - (2) the procedure for, timing and tax consequences of:
 - (a) withdrawing a *P2P agreement* from the *innovative finance ISA*; and
 - (b) a request for transfer of all or part of the *innovative finance components* in the *innovative finance ISA*;
 - (3) a warning, as relevant, that it may, or will, not be possible to sell or trade *P2P agreements* at market value on a secondary market; and

- (4) an express warning that holding an *investment* within an *innovative finance ISA* does not reduce the risks associated with that *investment* or guarantee returns and that it is possible to lose all of the money invested. This warning should be additional to any more general warning that a product or service places a *client's* capital at risk (■ COBS 4.2.4G(1)).

- 4.5.10 **G** Operators of electronic systems in relation to lending and firms which advise on P2P agreements should also have regard to the guidance in ■ COBS 14.3.7AG and ■ COBS 14.3.7BG regarding the types of information they should provide to *clients* to explain the specific nature and risks of P2P agreements.

Lifetime ISA

- 4.5.11 **G** Information about relevant risks (■ COBS 4.5.2R) that a *firm* should give a *retail client* in relation to a *lifetime ISA* may include:

- (1) an explanation of:
- a *retail client's* eligibility to subscribe to a *lifetime ISA* (including annual subscription limits) and to claim the *lifetime ISA* government bonus;
 - (b) the *lifetime ISA* government withdrawal charge and the circumstances in which it might arise; and
 - (c) the process by which a *retail client* can transfer a *lifetime ISA*; and
- (2) warnings that, if the *retail client*:
- (a) incurs a *lifetime ISA* government withdrawal charge, the *retail client* may get back less than they paid in to a *lifetime ISA*;
 - (b) saves in a *lifetime ISA* instead of enrolling in, or contributing to a *qualifying scheme, occupational pension scheme, or personal pension scheme*:
 - (i) the *retail client* may lose the benefit of contributions by an employer (if any) to that scheme; and
 - (ii) the *retail client's* current and future entitlement to means tested benefits (if any) may be affected.

Authorised fund managers' communications in relation to benchmarks

- 4.5.11A **R** The rules in ■ COBS 4.5.12R to ■ COBS 4.5.15R apply to:

- (1) a *financial promotion* relating to an *authorised fund*;
- (2) a communication which contains a statement referring to or concerning the past performance of an *authorised fund*; and
- (3) any other communication about an *authorised fund* that refers in any way to the aims of the *fund* or describes the benefits or risks of investing in it.

4.5.11B **G** As a result of **■ COBS 4.5.11AR**, **■ COBS 4.5.12R** to **■ COBS 4.5.15R** would not normally be expected to apply to administrative communications if those communications do not refer in any way to the aims of an *authorised fund* or describe the benefits or risks of investing in it. Examples of such communications might include contract notes that simply set out details of the *unitholder's* purchase or *redemption of units*, statements of income distributions or accumulations, and confirmations of a change of *unitholder* registration details.

4.5.12 **R** Subject to **■ COBS 4.5.13R**, an *authorised fund manager* must include in any communication about an *authorised fund* to which this rule applies:

- (1) a short explanation, in terms consistent with the relevant *prospectus*, of the choice and use of every *target benchmark*, *constraining benchmark* or *comparator benchmark* used in relation to the *scheme*; or
- (2) where no *target benchmark*, *constraining benchmark* or *comparator benchmark* is referred to in the *prospectus*, a statement to that effect and a short explanation of how investors can assess the performance of the *scheme*.

4.5.13 **R** Where an *authorised fund manager* includes, in any communication about an *authorised fund* to which this rule applies, an indication of past performance for any *authorised fund* it manages, it must (in addition to complying with **■ COBS 4.6.2R** where applicable):

- (1) include the corresponding past performance record of any *target benchmark* or *constraining benchmark* referred to in the *prospectus* of the *scheme*; and
- (2) not include an indication of past performance for any index, indices or similar factor that is not referred to in the *prospectus* of the *scheme*.

4.5.14 **R**

- (1) Subject to paragraph (2), if a communication to which **■ COBS 4.5.13R** applies includes information comparing past performance of the *scheme* against one or more *comparator benchmarks*, the *authorised fund manager* must, for the period specified in paragraph (3) and in every subsequent communication it makes that is also subject to **■ COBS 4.5.13R**:
 - (a) include a comparison against the same *comparator benchmark* or *comparator benchmarks*; and
 - (b) not include a comparison against any other benchmark.
- (2) Paragraph (1) does not apply if such a comparison would not be compliant with **■ COBS 4.5.13R** as a result of a change to the *prospectus* of the *scheme*.
- (3) The period specified for the purposes of paragraph (1) is:
 - (a) twelve *months* after a one-off communication is made; or

(b) for as long as the communication remains available to the public in a *durable medium* and has not been superseded by a revised version.

4.5.15 **R** ■ COBS 4.5.12R to ■ COBS 4.5.14R do not apply in respect of any reference to a *comparator benchmark* that is not identified in the *prospectus* of the relevant *scheme* when that reference appears in a communication that is:

- (1) used exclusively in the course of a personal visit, telephone conversation or other interactive dialogue; or
- (2) in response to a specific unsolicited request by a *client* for past performance to be compared with a particular *comparator benchmark*.

Funds investing in inherently illiquid assets (FIAs)

4.5.16 **R** (1) This *rule* applies to any *financial promotion* relating to a *FIA* except the *FIA's prospectus*.

(2) A *firm* must ensure that the following risk warning is given:

"[Name of fund] invests in assets that may at times be hard to sell. This means that there may be occasions when you experience a delay or receive less than you might otherwise expect when selling your investment. For more information on risks, see the prospectus and key investor information document."

(3) If the *financial promotion* is a *non-real time financial promotion*, a *firm* must ensure that the risk warning is prominently placed in the *financial promotion* in a font size that is at least equal to the predominant font size used throughout the communication.

4.5.17 **G** The *rules* in ■ COBS 4.5 do not apply to the form or content of a *NURS-KII document* (see ■ COBS 4.1.7AR (Modification relating to the KII Regulation)).

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

Application

- 4.5A.1 **R** (1) This section applies to a *firm* in relation to:
- (a) the provision of information; or
 - (b) the *communication of a financial promotion*, which relates to the *firm's MiFID, equivalent third country or optional exemption business*.
- (2) This section does not apply to a communication:
- (a) to the extent that it is a *third party prospectus*; or
 - (b) if it is *image advertising*.

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

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

- 4.5A.2A **G** The effect of **■** GEN 2.2.22AR is that provisions in this section marked "UK" also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

General requirements

- 4.5A.3 **UK** 44(1) Investment firms shall ensure that all information they address to, or disseminate in such a way that it is likely to be received by, retail or professional clients or potential retail or professional clients, including marketing communications, satisfies the conditions laid down in paragraphs 2 to 8.
- 44(2) Investment firm shall ensure that the information referred to in paragraph 1 complies with the following conditions:
- (a) the information includes the name of the investment firm,
 - (b) the information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument,

(c) the information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout ensuring such indication is prominent,

(d) the information is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received,

(e) the information does not disguise, diminish or obscure important items, statements or warnings,

(f) the information is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each client, unless the client has accepted to receive information in more than one language,

(g) the information is up-to-date and relevant to the means of communication used.

[Note: article 44(1) and (2) of the *MiFID Org Regulation*]

4.5A.4 G The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *client* can identify the *firm* communicating the information.

4.5A.5 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.

4.5A.6 G When communicating information, a *firm* should consider whether omission of any relevant fact will result in the information being insufficient, unclear, unfair or misleading.

Comparative information.....

4.5A.7 UK 44(3) Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, investment firms shall ensure that the following conditions are satisfied:

(a) the comparison is meaningful and presented in a fair and balanced way;

(b) the sources of the information used for the comparison are specified;

(c) the key facts and assumptions used to make the comparison are included.

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

Referring to tax

4.5A.8 UK 44(7) Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.
 [Note: article 44(7) of the *MiFID Org Regulation*]

Consistent financial promotions

4.5A.9 UK 46(5) Investment firms shall ensure that information contained in a marketing communication is consistent with any information the firm provides to clients in the course of carrying on investment and ancillary services.
 [Note: article 46(5) of the *MiFID Org Regulation*]

Past performance

4.5A.10 UK 44(4) Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, investment firms shall ensure that the following conditions are satisfied:

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

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

4.5A.11 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 and ■ COBS 16A) may include past performance as its most prominent feature.

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

Simulated past performance

4.5A.12 UK

44(5) Where the information includes or refers to simulated past performance, investment firms shall ensure that the information relates to a financial instrument or a financial index, and the following conditions are satisfied:

44(5)(a) the simulated past performance is based on the actual past performance of one or more financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the financial instrument concerned;

44(5)(b) in respect of the actual past performance referred to in point (a), the conditions set out in points (a) to (c), (e) and (f) of paragraph 4 are satisfied;

44(5)(c) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

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

4.5A.13 G

For the purposes of ■ COBS 4.5A.12UK, the conditions referred to in article 44(5)(b) can be found reproduced in ■ COBS 4.5A.10UK.

Future performance

4.5A.14 UK

44(6) Where the information contains information on future performance, investment firms shall ensure that the following conditions are satisfied:

(a) the information is not based on or refer to simulated past performance;

(b) the information is based on reasonable assumptions supported by objective data;

(c) where the information is based on gross performance, the effect of commissions, fees or other charges is disclosed;

(d) the information is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specific types of instruments included in the analysis;

(e) the information contains a prominent warning that such forecasts are not a reliable indicator of future performance.

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

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

Information that uses the name of any competent authority.....

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

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

Funds investing in inherently illiquid assets (FIAs).....

- 4.5A.17** **R**
- (1) This *rule* applies to any *financial promotion* relating to a *FIA* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*, except the *FIA's prospectus*.
 - (2) A *firm* must ensure that the following risk warning is given:
“[Name of fund] invests in assets that may at times be hard to sell. This means that there may be occasions when you experience a delay or receive less than you might otherwise expect when selling your investment. For more information on risks, see the prospectus and key investor information document.”
 - (3) If the *financial promotion* is a *non-real time financial promotion*, the risk warning must be prominently placed in the *financial promotion* in a font size that is at least equal to the predominant font size used throughout the communication.

4.5A.18 **G** The *rules* in **■ COBS 4.5A** do not apply to the form or content of a *NURS-KII document* (see **■ COBS 4.1.7AR** (Modification relating to the KII Regulation)).

4.6 Past, simulated past and future performance (non-MiFID provisions)

Application

4.6.1

R

(1) Subject to (2) and (3), this section applies to a *firm* in relation to:

- (a) [deleted]
- (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 to a *firm* communicating in relation to its *MiFID*, *equivalent third country* or *optional exemption business*

(3) This section does not apply in relation to a communication:

- (a) to the extent that it is an *excluded communication*;
- (b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
- (c) if it is *image advertising*;
- (d) to the extent that it relates to a *deposit* that is not a *structured deposit* (see also ■ COBS 4.1.1R(3));
- (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 the 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 (where less than five years, or such longer period as the *firm* may decide), and in every case that performance information must be based on 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 pounds sterling, 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.

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 - 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*, *key investor information document* or *NURS-KII document* 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, substantially the same as, or underlie, the investment concerned;
- (3) in respect of the actual past performance referred to in (2), 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.

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) where the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed;
 - (ca) it is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specified types of investments included in the analysis; and
 - (d) it contains a prominent warning that such forecasts are not a reliable indicator of future performance.
- (2) This *rule* only applies in relation to *financial promotions* that relate to a *financial instrument* (or a financial index that relates exclusively to *financial instruments*) or a *structured deposit*.

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

Application

4.7.-2

R

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

- (1) to the extent that it is an *excluded communication*;
- (2) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
- (3) if it is *image advertising*;
- (4) to the extent that it relates to a *deposit* that is not a *cash deposit ISA*, *cash-only lifetime ISA* or *cash deposit CTF*;
- (5) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

4.7.-1

G

- (1) ■ COBS 4.7.-1AUK to ■ COBS 4.7.1R contain provisions on the communication of *direct offer financial promotions*.
- (2) In broad terms:
 - (a) ■ COBS 4.7.-1AUK is relevant to a *firm* communicating a *direct offer financial promotion* in relation to its *MiFID*, *equivalent third country* or *optional exemption business*;
 - (b) ■ COBS 4.7.1R is relevant to a *firm* communicating a *direct offer financial promotion* that does not relate to its *MiFID*, *equivalent third country* or *optional exemption business*; and
 - (c) the application of the other operative provisions in this section is not affected by reference to *MiFID*, *equivalent third country* or *optional exemption business*.
- (3) However, a *MiFID investment firm*, *third country investment firm* or *MiFID optional exemption firm* which is subject to the requirements in ■ COBS 4.7.-1AUK may be subject to the rule in ■ COBS 4.7.1R to the extent that it communicates a *direct offer financial promotion*:
 - (a) which is not a marketing communication; or
 - (b) which does not relate to its *MiFID*, *equivalent third country* or *optional exemption business*.

Direct offer financial promotions relating to MiFID, equivalent third country or optional exemption business

4.7.-1A **UK** 46(6) Marketing communications containing an offer or invitation of the following nature and specifying the manner of response or including a form by which any response may be made, shall include such of the information referred to in Articles 47 to 50 as is relevant to that offer or invitation:

(a) an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service with any person who responds to the communication;

(b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service.

However, the first subparagraph shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential client must refer to another document or documents, which, alone or in combination, contain that information.

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

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

4.7.-1B **R** Provisions in this section marked “UK” apply in relation to *MiFID optional exemption business* as if they were *rules* (see **■ COBS 1.2.2G**).

4.7.-1C **G** The effect of **■ GEN 2.2.22AR** is that provisions in this section marked “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

4.7.-1D **G** For the purposes of **■ COBS 4.7.-1AUK**, the provisions of articles 47 to 50 of the *MiFID Org Regulation* can be found reproduced in **■ COBS 6.1.2A** and **■ COBS 14.3A**.

Other direct offer financial promotions

4.7.1 **R** (1) Subject to (3) and (4), a *firm* must ensure that a *direct offer financial promotion* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client* contains:

(a) 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

(b) 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 marketing communication that relates to a *firm's MiFID, equivalent third country or optional exemption business*

(4) [deleted]

(5) [deleted]

Guidance

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

4.7.2A G

(1) ■ BCOBS 2A contains *rules and guidance* about the inclusion of a summary box in a *direct offer financial promotion* relating to a *cash deposit ISA* or *cash deposit CTF* provided by a *firm* other than a *credit union*.

(2) Where ■ BCOBS 2A applies, ■ COBS 4.7.1R(1)(b) does not require a *firm* to include information outside a summary box in a *direct offer financial promotion* to the extent that this would simply repeat information included in a summary box in the same *financial promotion*.

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:

(a) the *rules* on providing product information in ■ COBS 14.2, including the exceptions in ■ COBS 14.2.5R to ■ 14.2.9R; and

(b) the requirement in the *PRIPs Regulation* to provide a *key information document*.

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 *non-PRIP 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 G ■ COBS 4.13.2 R (Marketing communications relating to 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*

Warrants and derivatives

4.7.6 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 and ■ 10A);

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*.

4.7.6A G *Firms* are reminded of their obligations in relation to the marketing, distribution and sale of *restricted speculative investments* in ■ COBS 22.5.

4.7.6B G *Firms* are reminded of the prohibitions in relation to the marketing, distribution and sale of *cryptoasset derivatives* and *cryptoasset exchange traded notes* in ■ COBS 22.6.

4.7.6C R [deleted]

4.7.6D R [deleted]

4.7.6E R [deleted]

4.7.6F G [deleted]

4.7.6G G [deleted]

4.7.6H	R	[deleted]
4.7.6I	G	[deleted]
4.7.6J	R	[deleted]
4.7.6K	G	[deleted]
4.7.6L	R	[deleted]
4.7.6M	G	[deleted]
4.7.6N	R	[deleted]
4.7.6O	G	[deleted]
4.7.7	R	[deleted]
4.7.8	R	[deleted]
4.7.9	R	[deleted]
4.7.10	R	[deleted]
4.7.11	G	[deleted]
4.7.11A	G	
4.7.11A	G	[deleted]
4.7.12	G	[deleted]
4.7.13	G	[deleted]
4.7.14	R	[deleted]
4.7.15	G	[deleted]

4.8 Cold calls and other promotions that are not in writing

Application

4.8.1

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

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

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.

4.9 Financial promotions with an overseas element

Application

- 4.9.1 **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 article 22 of the *Prospectus Regulation* 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 **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 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

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:

- (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*;

4.9.7

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:

- (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*.

- (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 Approving and confirming compliance of financial promotions

Systems and controls

4.10.1 G The rules in ■ SYSC 3 (and also for *Solvency II firms*, the PRA Rulebook: *Solvency II firms: Conditions Governing Business*) 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, or an effective internal control system, in order to comply with the *rules* in this chapter.

Approving financial promotions

4.10.1A G The purpose of ■ COBS 4.10.2R is to ensure that a *firm* that *approves* a *financial promotion* for *communication* by an *unauthorised person*:

- (1) satisfies itself of the compliance of that *financial promotion* with the *financial promotion rules*; and
- (2) having *approved* that *financial promotion*, takes appropriate steps to ensure that the *financial promotion* remains compliant for the lifetime of its *communication*.

4.10.1B G

- (1) The effect of section 55NA of the *Act* is that, with effect from 7 February 2024, a *firm* is unable to *approve* a *financial promotion* unless:
 - (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
 - (b) an *approver permission exemption* applies.
- (2) ■ SUP 6A contains *guidance* on applying for *approver permission*.
- (3) The requirements in this section that apply to a *firm* after it has *approved* a *financial promotion* continue to apply even where the *firm* ceases to be entitled to *approve* that *financial promotion*, for example because it ceases to be a *permitted approver* in respect of that *financial promotion*. This includes the requirement to monitor continuing compliance of the *financial promotion*. In such a scenario, if the *firm* became aware that the *financial promotion* no longer complied with the *financial promotion rules*, it could withdraw its *approval* but could not *approve* amendments to the *financial promotion*.

4.10.2

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*.
- (1A) After a *firm* has complied with (1), and for as long as the *financial promotion* is communicated, the *firm* must take reasonable steps to monitor the continuing compliance of that *financial promotion* with the *financial promotion rules*.

[Note: for the FCA's guidance on 'Ongoing monitoring' see: <https://www.fca.org.uk/firms/financial-promotions-and-adverts/approving-financial-promotions>]

A *firm* that has approved a *financial promotion* issued, and for communication by, an *unauthorised person* must require from that *person*, a written quarterly attestation that there has been no material change:

 - (a) to the *financial promotion*; or
 - (b) in circumstances which might affect the continuing compliance of the *financial promotion* with the *financial promotion rules*.

For the purpose of (1B), a *firm* must:

 - (a) require the first attestation no less than 3 *months* after it approves the *financial promotion*; and
 - (b) thereafter, require attestations at least once every 3 *months* for as long as the *financial promotion* is communicated.
- (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*.

4.10.2A

R

- (1) This rule applies to a *firm* that approves:
 - (a) a *direct offer financial promotion* relating to a *restricted mass market investment*; or
 - (b) a *financial promotion* relating to a *non-mass market investment*, for communication to a *retail client*.
- (2) A *firm* must take reasonable steps to ensure, on a continuing basis:
 - (a) that the conditions specified in:
 - (i) ■ COBS 4.12A.15R(1)(b) are being satisfied in relation to each communication of the *direct offer financial promotion* relating to the *restricted mass market investment*;
 - (ii) ■ COBS 4.12B.10R(2)(b) are being satisfied in relation to each communication of the *financial promotion* relating to the *non-mass market investment*; and

- (b) if the *firm* will not itself carry out the appropriateness assessment required by ■ COBS 4.12A.28R, that the appropriateness assessments undertaken comply with the *rules* specified in ■ COBS 4.12A.28R.
- (3) If the *firm* is not satisfied that the relevant conditions are being satisfied or that the appropriateness assessments undertaken comply with the relevant *rules* then it must withdraw its *approval* of the *financial promotion* in accordance with ■ COBS 4.10.2R(2).
- 4.10.2B** G ■ COBS 4.11.6R requires a *firm* that *approves a direct offer financial promotion* relating to a *restricted mass market investment* for *communication to a retail client* to take reasonable steps to ensure that it is provided with, or has ready access to, information relating to the *communication* of the *direct offer financial promotion*. These records should assist the *firm* in complying with ■ COBS 4.10.2AR.
- 4.10.2C** G A *firm* is reminded of its obligations under ■ ESG 4.3.1R when it *communicates* or *approves a financial promotion* that makes reference to the *sustainability characteristics* of a product or service.
- 4.10.3** 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, equivalent third country or optional exemption 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.
 - (5) The *rules* in ■ COBS 4.12B prevent a *firm* from *approving a financial promotion* for a *non-mass market investment for communication to retail clients* unless an exemption applies. Where an exemption requires a preliminary assessment of suitability, the effect of ■ COBS 4.12B.7R is that this assessment must be undertaken by the *firm approving the financial promotion*.
 - (6) For the purposes of ■ COBS 4.10.2R(1B), a *financial promotion* should be considered to be issued by an *unauthorised person* where that

unauthorised person is responsible for the overall contents of the *financial promotion* (see also ■ PERG 8.6.1G).

(7) The effect of ■ COBS 4.10.2R(1A) and ■ (2) and ■ COBS 4.10.2AR(3) is that where a *firm* identifies that a *financial promotion* that it has *approved* is no longer compliant with the *financial promotion rules*, the *firm* must withdraw its *approval*.

(8) A *registered person* is not able to approve a *financial promotion*.

4.10.3A

G

If a *firm*:

(1) is unable to obtain an attestation required by ■ COBS 4.10.2R(1B), that *firm* should consider whether to withdraw its *approval*;

(2) in response to a request to provide an attestation, is informed of changes which indicate that the *financial promotion* no longer complies with the *financial promotion rules*, it must withdraw its *approval*,

in each case in accordance with ■ COBS 4.10.2R(2).

4.10.4

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

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

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

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.

4.10.7A

G

An *approved financial promotion* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client* is required to include the name of the *firm* that *approved* it and the date on which it was *approved* (■ COBS 4.5.2R).

Communicating financial promotions

4.10.8 **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 **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.

Competence and expertise

4.10.9A **R** (1) A *firm* must not *communicate* or *approve* a *financial promotion* unless the *individual* or *individuals* responsible for the compliance of the *financial promotion* with the *financial promotion rules* has or have appropriate competence and expertise.

(2) Appropriate competence and expertise for the purposes of (1) means competence and expertise in the *investment* or financial service to which the *financial promotion* relates. It does not necessarily, for example, require competence or expertise in the day-to-day commercial activities of a *company* issuing *securities* for the purposes of raising capital.

(3) If a *firm* (A) determines that it lacks appropriate competence and expertise in relation to a *financial promotion*, it must:

- (a) have another *firm* (B) confirm that the *financial promotion* complies with the *financial promotion rules* before A *communicates* that *financial promotion*; or
- (b) decline to *approve* that *financial promotion*.

(4) A *registered person* is not permitted to confirm the compliance of a *financial promotion* for the purpose of ■ COBS 4.10.9AR(3).

4.10.9B **R** A *firm* must not confirm the compliance of a *financial promotion* for the purpose of ■ COBS 4.10.9AR(3)(a) unless:

- (a) it is satisfied that the *financial promotion* complies with the *financial promotion rules*; and
- (b) the *individual* or *individuals* responsible for providing that confirmation has or have appropriate competence and expertise.

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

Relying on another firm's confirmation of compliance

4.10.10 **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;
- (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*; and
- (d) A takes reasonable care to establish that B did not breach the *approver permission requirement* in the context of confirming compliance.

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

4.10.11 **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.

Conflicts of interest

4.10.12 **R**

- (1) This *rule* applies to a *firm* that:
 - (a) *approves* a *financial promotion* for *communication* by an *unauthorised person*; or
 - (b) confirms the compliance of a *financial promotion* for the purposes of ■ COBS 4.10.9AR(3)(a).
- (2) A *firm* must take all appropriate steps to identify and to prevent or manage conflicts of interest between the *firm*, including its managers, employees and *appointed representatives* (or, where applicable, *tied agents*), or any *person* directly or indirectly linked to them by *control*, and a *person* for whom the *firm*:
 - (a) *approves* a *financial promotion*; or
 - (b) confirms the compliance of a *financial promotion*.



4.11 Record keeping: financial promotion

General

4.11.1

R

- (1) A *firm* must make an adequate record of any *financial promotion*:
 - (a) it *communicates*;
 - (b) it *approves*; or
 - (c) of which it confirms compliance (■ COBS 4.10.9AR(3)(a)), 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.
- (2A) [deleted] [*Editor's note*: This provision now appears with minor amendments at COBS 4.11.4R]
- (2B) In respect of each *financial promotion* in (1), a *firm* must make an adequate record demonstrating how it has satisfied itself that it has the necessary competence and expertise required by ■ COBS 4.10.9AR.
- (3) A *firm* must retain the record in relation to a *financial promotion* relating to:
 - (a) a *pension transfer, pension conversion, 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, equivalent third country or optional exemption 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 article 22 of the *Prospectus Regulation* 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*.

4.11.1A G A *MiFID investment firm, third country investment firm or MiFID optional exemption firm* should refer to the requirements on record keeping in the *MiFID Org Regulation* and ■ SYSC 9.

4.11.2 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 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.

Promotions of restricted mass market investments and non-mass market investments

4.11.4 R If a *firm communicates or approves a financial promotion* which relates to a *non-mass market investment* where that *financial promotion* is addressed to or disseminated in such a way that it is likely to be received by a *retail client*:

- (1) the *person* allocated the *compliance oversight function* in the *firm* must make a record at or near the time of the *communication or approval* certifying that the promotion complies with the restrictions set out in section 238 of the *Act* and in ■ COBS 4.12B, as applicable;
- (2) the making of the record required in (1) may be delegated to one or more *employees* of the *firm* who report to and are supervised by the *person* allocated the *compliance oversight function*, provided the process for certification of compliance has been reviewed and approved by the *person* allocated the *compliance oversight function* no more than 12 *months* before the date of the *communication or approval* of the promotion;
- (3) as part of the record required in (1), the *firm* must make a record of which exemption was relied on for the purposes of the promotion, together with the reason why the *firm* is satisfied that that exemption applies;
- (4) where the *firm* relies on an exemption that requires investor certification and warnings to investors, the record required in (1) must include a record of any certificate or investor statement (as signed by the investor) and of any warnings or indications required by the exemption;
- (5) if the *rules* in ■ COBS 4.12B do not apply because the promotion is an *excluded communication* (■ COBS 4.12B.4R), the *firm* must identify in

the record required in (1) which type of *financial promotion* defined as an *excluded communication* corresponds to the promotion being made, including, where applicable, which article in the *Financial Promotion Order* or in the *Promotion of Collective Investment Schemes Order* was relied on for the purposes of the promotion, together with the reason why the *firm* is satisfied that the exemption applies.

- 4.11.5** **R** (1) This *rule* applies to a *firm* that *communicates* or may *communicate* a *direct offer financial promotion* in relation to a *restricted mass market investment* to which **■ COBS 4.12A.15R** applies.
- (2) A *firm* must make an adequate record of:
- (a) the categorisation of each *retail client* (**■ COBS 4.12A.21R**) and the evidence obtained in support of that categorisation;
 - (b) where an appropriateness assessment is undertaken (**■ COBS 4.12A.28R**):
 - (i) the total number of assessments undertaken;
 - (ii) the number of assessments resulting in a determination that the *investment* was appropriate;
 - (iii) the number of assessments resulting in a determination that the *investment* was not appropriate;
 - (iv) in respect of each *retail client*, the outcome of the appropriateness process; and
 - (v) in respect of each *retail client*, the number of times that *retail client* was subject to an appropriateness assessment in respect of the same *investment*.

- 4.11.6** **R** A *firm* that *approves* a *direct offer financial promotion* in relation to a *restricted mass market investment* to which **■ COBS 4.12A.15R** applies must take reasonable steps to ensure that:

- (1) adequate records of the information required by **■ COBS 4.11.5R** are made in connection with the *communication* of the *direct offer financial promotion*; and
- (2) the *firm* is provided with, or otherwise has ready access to, the records in (1).

- 4.11.7** **R** A *firm* must retain the records required by **■ COBS 4.11.4R** and **■ COBS 4.11.5R** for 5 years.

- 4.11.8** **R** Where a *firm* is required by **■ COBS 4.12A.44R(2)(b)** or **■ COBS 4.12B.13R(2)(b)** to maintain a record of its grounds for using an alternative form of risk summary, it must retain the record of its decision for 5 years.



4.12 [deleted]

[Editor's note: The substance of the provisions in COBS 4.12 are now incorporated in, and appear at, COBS 4.12B.]

4.12A Promotion of restricted mass market investments

Purpose

- 4.12A.1 **G** The *rules* in this section:
- (1) require that any *financial promotion* relating to a *restricted mass market investment*:
 - (a) includes a prescribed form of risk warning;
 - (b) does not include any form of incentive to invest; and
 - (2) restrict the *communication and approval of direct offer financial promotions* in relation to *restricted mass market investments* except where certain conditions are satisfied.

Application

- 4.12A.2 **R** This section applies to a *firm* when *communicating a financial promotion, or approving a financial promotion for communication, to a retail client* in relation to a *restricted mass market investment*.
- 4.12A.3 **R** In this section, reference to a *firm* includes:
- (1) *TP firms*, to the extent that this section does not already apply to those *TP firms* as a result of ■ GEN 2.2.26R; and
 - (2) *Gibraltar-based firms*, to the extent that this section does not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R.
- 4.12A.4 **R** This section does not apply to:
- (1) *excluded communications*;
 - (2) *image advertising*; or
 - (3) *financial promotions* to the extent that they relate to *local authority securities*.
- 4.12A.5 **G** ■ COBS 4.12A.15R does not apply in relation to *credit union subordinated debt* or to deferred shares issued by a *credit union*. *Firms* are reminded that ■ CREDS 3A contains requirements regarding the retail distribution and *financial promotion* of these instruments.

4.12A.6 G The requirements in this section relating to the provision of risk warnings are in addition, and without prejudice, to *firms'* other obligations in relation to the provision of information.

Restrictions on monetary and non-monetary incentives

4.12A.7 R

- (1) A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *restricted mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive to invest.
- (2) The *rule* in (1) does not apply where the conditions in paragraph (3) are satisfied.
- (3) The conditions are that:
 - (a) the relevant incentive is a product or service produced or provided by the *person*, or a member of the *group* of the *person*, who will benefit from the proceeds of the investment; and
 - (b) the *financial promotion* relates to a *non-readily realisable security*, *P2P agreement*, *P2P portfolio* or a unit in a *long-term asset fund*.

4.12A.8 G For the purposes of ■ COBS 4.12A.7R, monetary and non-monetary incentives include, but are not limited to:

- (1) offering bonuses when investing in a *restricted mass market investment* for the first time;
- (2) offering bonuses where the *client* refers another *person*;
- (3) offering cashback when investing in a *restricted mass market investment*;
- (4) offering discounts when investing a particular amount in *restricted mass market investments*;
- (5) offering free gifts once an investment in a *restricted mass market investment* has been made such as laptops or mobile telephones; or
- (6) offering any additional free *investments* or offering discounts on *investments*.

4.12A.9 G Information and research tools do not constitute non-monetary incentives.

Risk warning

4.12A.10 R A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *restricted mass market investment* unless it contains a risk warning that complies with ■ COBS 4.12A.11R.

4.12A.11 R

- (1) For the purposes of ■ COBS 4.12A.10R, the *financial promotion* must contain:
 - (a) the following risk warning if the *financial promotion* relates to one or more *non-readily realisable securities*:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong.

- (b) the following risk warning if the *financial promotion* relates to one or more *P2P agreements* or *P2P portfolios*:

Don't invest unless you're prepared to lose money. This is a high-risk investment. You may not be able to access your money easily and are unlikely to be protected if something goes wrong.

- (c) the following risk warning if the *financial promotion* relates to a *unit* in a *long-term asset fund*:

This is a high-risk investment, and assets may take a long time to buy and sell. Only invest if you can wait (possibly several years) to get your money back. You do not have protection against poor performance.

the following risk warning if the *financial promotion* relates to one or more *qualifying cryptoassets*:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you should not expect to be protected if something goes wrong.

- (2) Where the number of characters contained in the risk warning in (1) exceeds the number of characters permitted by a third-party marketing provider:

- (a) the following risk warning must be used if the *financial promotion* relates to one or more *non-readily realisable securities* or *qualifying cryptoassets*:

Don't invest unless you're prepared to lose all the money you invest.

- (b) the following risk warning must be used if the *financial promotion* relates to one or more *P2P agreements* or *P2P portfolios*:

Don't invest unless you're prepared to lose money.

- (c) the following risk warning must be used if the *financial promotion* relates to a *unit* in a *long-term asset fund*:

This is a high-risk investment, so only invest if you can wait to get your money back.

- (3) Where the *financial promotion* is, or is to be, *communicated* by way of a website, mobile application or other digital medium:

- (a) the risk warning in (1) or (2) must also include a link:

- (i) in the form of the text: Take 2 mins to learn more; and
- (ii) which, when activated, delivers an appropriate risk summary in a pop-up box (or equivalent) relating to the type of *investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R;

- (b) the link required by (3)(a) need not be:

- (i) in the form required by (3)(a)(i) if the inclusion of that additional text would exceed the number of characters permitted by a third-party marketing provider;

- (ii) provided if the medium of communication does not allow the incorporation of a link.
- (4) Where the *financial promotion* is communicated other than by way of a website, mobile application or other digital medium (and including where the *financial promotion* is a *real time financial promotion*), the risk warning in (1) must be:
 - (a) provided:
 - (i) in a *durable medium*; or
 - (ii) if the medium of communication means that the risk warning cannot be provided in a *durable medium*, in a manner appropriate to the medium of communication; and
 - (b) however the *financial promotion* is communicated, accompanied by an appropriate risk summary:
 - (i) in a *durable medium*; and
 - (ii) relating to the type of *investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R, unless it is not possible to obtain the information necessary to enable the risk summary to be provided in a *durable medium*.
- (5) (a) A *firm* must omit the words “and you are unlikely to be protected if something goes wrong” from the risk warnings required by (1)(a), (1)(b) or (1)(d) if the conditions in (5)(b) apply.
 - (b) The conditions are that:
 - (i) the *financial promotion* relates to an *investment*:
 - (A) that is issued by; or
 - (B) the provision of which involves a, *participant firm* or an *appointed representative* of a *participant firm*; and
 - (ii) the activity of the *person* in (i) is of a type that could give rise to a *protected claim*.
 - (c) A *firm* that omits the words in (a) must make a record of the basis on which the conditions in (b) are met.
- (6) The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with ■ COBS 4.12A.36R and ■ COBS 4.12A.38R.
- (7) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12A.40R and ■ COBS 4.12A.42R.
- (8) Where the *financial promotion* relates to a *unit* in a *long-term asset fund*, the appropriate risk summary required by (3)(a)(ii) or (4)(b) (see ■ COBS 4 Annex 1R(7) (Risk summary for units in a long-term asset fund)) must be adapted to reflect the characteristics of the relevant *LTAf*, particularly the *dealing* arrangements for the *LTAf* and the applicable *notice period*.
- (1) Reference in ■ COBS 4.12A.11R(5)(b)(i)(B) to the ‘provision’ of an *investment* is to a *person* developing, managing or packaging an *investment* such as an *operator*. It does not refer to *persons* involved

4.12A.12 G

in distributing, or intermediating the sale of, an *investment* such as a financial adviser, a *person arranging investments* or an *operator of an electronic system in relation to lending*.

- (2) A *firm* relying on ■ COBS 4.12A.11R(5) should consider obtaining external legal advice (from legal advisers with relevant expertise and experience) on the appropriateness of omitting the words in that *rule* from a risk warning. Any such advice should be recorded as part of the *firm's* compliance with ■ COBS 4.12A.11R(5)(c).

4.12A.13 G

- (1) Even where it is not possible to provide a risk warning in a *durable medium* (for example, because the *financial promotion* is a *real time financial promotion*), the recipient of the *financial promotion* must still ordinarily be provided with an appropriate risk summary in a *durable medium* at or around the time that the *financial promotion* is *communicated* (■ COBS 4.12A.11R(4)(b)).
- (2) It is unlikely to be possible to comply with ■ COBS 4.12A.11R(4)(b) where the *financial promotion* is *communicated* by means of (without limitation) a television or radio broadcast. In such a case, the *financial promotion* must still include the relevant risk warning specified in ■ COBS 4.12A.11R(1).

Direct offer financial promotions

4.12A.14 G

- (1) ■ COBS 4.12A.15R to ■ COBS 4.12A.35G apply in relation to *direct offer financial promotions to retail clients* in relation to *restricted mass market investments*.
- (2) A *firm* may *communicate* information about a *P2P agreement* or a *P2P portfolio* to a *retail client* before ■ COBS 4.12A.15R applies, provided that the defining elements of a *direct offer financial promotion* are not present in that communication. This information may comprise, without limitation, mandatory disclosures applicable to that *firm*, such as those set out in ■ COBS 18.12.24R to ■ COBS 18.12.28R, including information about:
 - (a) the identity of the borrower(s);
 - (b) the *price* or *target rate*, provided they are accompanied by a fair description of the anticipated actual return, taking into account fees, default rates and taxation;
 - (c) the term;
 - (d) the risk categorisation; and
 - (e) a description of any security interest, insurance, guarantee or other risk mitigation measures adopted by the *firm*.
- (3) ■ COBS 4.12A.18R (First condition: cooling off period) does not apply where a *direct offer financial promotion* to a *retail client* relates only to a *unit* in a *long-term asset fund*.

4.12A.15 R

- (1) Unless permitted by ■ COBS 4.12A.17R and subject to (2), (3) and (4), a *firm* must not:
 - (a) *communicate* a *direct offer financial promotion* relating to a *restricted mass market investment* to a *retail client* unless the

conditions in ■ COBS 4.12A.18R (cooling off period), ■ COBS 4.12A.20R (personalised risk warning), ■ COBS 4.12A.21R (categorisation) and ■ COBS 4.12A.28R (appropriateness) are satisfied; or

(b) *approve a direct offer financial promotion relating to a restricted mass market investment for communication to a retail client unless the firm is satisfied that the conditions in ■ COBS 4.12A.18R (cooling off period), ■ COBS 4.12A.20R (personalised risk warning), ■ COBS 4.12A.21R (categorisation) and ■ COBS 4.12A.28R (appropriateness) will be satisfied in relation to each communication of the direct offer financial promotion.*

- (2) The conditions in ■ COBS 4.12A.18R (cooling off period) and ■ COBS 4.12A.20R (personalised risk warning) do not need to be satisfied if the *retail client* has previously received a *direct offer financial promotion* relating to a *restricted mass market investment* from the same *person* as would otherwise need to satisfy them.
- (3) The condition in ■ COBS 4.12A.28R (appropriateness) does not need to be satisfied if the specific type of *restricted mass market investment* to which the *direct offer financial promotion* relates has previously been assessed as appropriate for the *retail client* by the same *person* as would otherwise need to undertake the assessment.
- (4) Where the *direct offer financial promotion* relates only to a *unit* in a *long-term asset fund*:
 - (a) the condition in ■ COBS 4.12A.18R (cooling off period) does not apply; and
 - (b) the condition in ■ COBS 4.12A.20R (personalised risk warning) does not need to be satisfied if the *retail client* has previously received a *direct offer financial promotion* relating to a *unit* in a *long-term asset fund* from the same *person* that would otherwise need to satisfy the condition.

4.12A.16 G The effect of ■ COBS 4.12A.15R and related provisions in this section is that:

- (1) a personalised risk warning and cooling off period are only required on the first occasion that a *firm*, or other *person communicating an approved direct offer financial promotion*, communicates a *direct offer financial promotion* relating to a *restricted mass market investment* (other than a *unit* in a *long-term asset fund*) to a particular *retail client*;
- (1A) where a *direct offer financial promotion* relates only to a *unit* in a *long-term asset fund*:
 - (a) a personalised risk warning is required only on the first occasion that a *firm*, or other *person communicating an approved direct offer financial promotion*, communicates a *direct offer financial promotion* to a particular *retail client*; and
 - (b) a cooling off period is not required;
- (2) an appropriateness assessment is only required on the first occasion that a particular *retail client* responds to a *direct offer financial promotion* relating to a specific type of *restricted mass market investment* (although a *firm* should consider whether it would be in

the best interests of the *retail client* for a further assessment to be undertaken, for example due to lapse of time, even where this is not required); and

- (3) in any case, a *direct offer financial promotion* relating to a *restricted mass market investment* can only be *communicated* to a *retail client* who has a current statement (completed and signed within the period of 12 months ending with on the day on which the *communication* is to be made) of a type falling within ■ COBS 4.12A.22R and which applies to the type of *restricted mass market investment* to which the *direct offer financial promotion* relates.

4.12A.17 R

A *firm* may *communicate* or *approve* a *direct offer financial promotion* relating to a *restricted mass market investment* to, or for *communication* to, a *retail client* if:

- (1) the *firm* itself will comply with the *suitability rules* (■ COBS 9 and ■ 9A) in relation to the *investment promoted*; or
- (2) the *retail client* has confirmed before the *promotion* is made that they are a *retail client* of another *firm* that will comply with the *suitability rules* (■ COBS 9 and ■ 9A) in relation to the *investment promoted*; or
- (3) the *retail client* is a *corporate finance contact* or a *venture capital contact*.

First condition: cooling off period

4.12A.18 R

- (1) The first condition is that following the *retail client's* request to receive the *direct offer financial promotion*, the *firm*, or other *person communicating* the *direct offer financial promotion*:
 - (a) allows a period of at least 24 hours (the 'cooling off period') to elapse before *communicating* the *direct offer financial promotion*;
 - (b) following the lapse of time in (a), invites the *retail client* to specify whether they wish to:
 - (i) leave the *investment journey*; or
 - (ii) continue to receive the *direct offer financial promotion*; and
 - (c) the *retail client* specifies that they wish to continue to receive the *direct offer financial promotion*.
- (2) The options in (1)(b) must be presented with equal prominence.
- (3) This condition does not apply if the *direct offer financial promotion* relates only to *units* in a *long-term asset fund*.

4.12A.19 G

■ COBS 4.12A.18R does not prevent the *person* who is subject to it from engaging with the *retail client* during the cooling off period. This includes for the purposes of providing the *client* with the personalised risk warning required by ■ COBS 4.12A.20R and obtaining the information necessary to undertake the appropriateness assessment required by ■ COBS 4.12A.28R.

Second condition: personalised risk warning

4.12A.20 **R**

(1) Subject to (1A) below, the second condition is that before *communicating the direct offer financial promotion*, the *firm*, or other *person communicating the direct offer financial promotion*:

- (a) obtains the *retail client's* full name; and
- (b) having obtained the *retail client's* name, communicates to that *retail client* the following personalised risk warning:

[Client name], this is a high-risk investment. How would you feel if you lost the money you're about to invest? Take 2 mins to learn more.

(1A) Where the *direct offer financial promotion* relates to a *unit* in a *long-term asset fund*, the second condition is that before *communicating the direct offer financial promotion*, the *firm*, or other *person communicating the direct offer financial promotion*:

- (a) obtains the *retail client's* full name; and
- (b) having obtained the *retail client's* name, communicates to that *retail client* the following personalised risk warning:

[Client name], this is a high-risk investment, and assets may take a long time to buy and sell. Only invest if you can wait (possibly several years) to get your money back. You do not have protection against poor performance. Take 2 mins to learn more.

[Editor's note: The last sentence in this text will be underlined in the final rules.]

(2) If the *direct offer financial promotion* is, or is to be, *communicated* by means of a website, mobile application or other digital medium, the personalised risk warning in (1)(b) or (1A)(b) must:

- (a) be clearly brought to the *retail client's* attention by means of a pop-up box (or equivalent);
- (b) include a link which, when activated, delivers an appropriate risk summary in a further pop-up box (or equivalent):
 - (i) relating to the type of *restricted mass market investment* that is the subject of the *direct offer financial promotion*; and
 - (ii) selected from **■** COBS 4 Annex 1R; and
- (c) be accompanied by an invitation to the *retail client* to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *direct offer financial promotion*.

(3) If the *direct offer financial promotion* is, or is to be, *communicated* other than by means of a website, mobile application or other digital medium:

- (a) the personalised risk warning in (1)(b) or (1A)(b) must be:
 - (i) provided to the *retail client* omitting the words "Take 2 mins to learn more"; and
 - (ii) accompanied by an appropriate risk summary in a *durable medium* relating to the type of *restricted mass market*

investment that is the subject of the *direct offer financial promotion* selected from ■ COBS 4 Annex 1R; and

- (b) the *retail client* must then be invited to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *direct offer financial promotion*.
- (4) The options in (2)(c) and (3)(b) must be presented with equal prominence.
- (5) This condition:
 - (a) is only satisfied if the *retail client* specifies that they wish to continue to receive the *direct offer financial promotion*; and
 - (b) must be satisfied before steps are taken to satisfy the conditions in ■ COBS 4.12A.21R (categorisation) and ■ COBS 4.12A.28R (appropriateness).
- (6) The personalised risk warning required by (1)(b) or (1A)(b) and the risk summary required by (2)(b) must comply with ■ COBS 4.12A.40R and ■ COBS 4.12A.42R.
- (7) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12A.36R and ■ COBS 4.12A.38R.
- (8) Where the *financial promotion* relates to a *unit* in a *long-term asset fund*, the appropriate risk summary required by (2)(b) or (3)(a)(ii) (see ■ COBS 4 Annex 1R(7) (Risk summary for units in a long-term asset fund)) must be adapted to reflect the characteristics of the relevant *LTAf*, particularly the *dealing* arrangements for the *LTAf* and the applicable *notice period*.

Third condition: categorisation

4.12A.21 R

The third condition is that before *communicating* the *direct offer financial promotion*, the *firm*, or other *person communicating* the *direct offer financial promotion*, takes reasonable steps to establish that the *retail client* is:

- (1) certified as:
 - (a) a 'high net worth investor';
 - (b) a 'sophisticated investor'; or
 - (c) a 'restricted investor', or
- (2) if the *direct offer financial promotion* relates to a *non-readily realisable security*, a *P2P agreement*, a *P2P portfolio* or a *unit* in a *long-term asset fund*, self-certified as a 'sophisticated investor',

in each case in accordance with ■ COBS 4.12A.22R.

4.12A.22 R

- (1) A certified high net worth investor, a certified sophisticated investor, a self-certified sophisticated investor or a restricted investor is an individual:
 - (a) who has completed and signed, within the period of 12 *months* ending on the day on which the *communication* is made, a

statement in the terms set out in the applicable rule listed below and as modified by (2):

- (i) certified high net worth investor: ■ COBS 4 Annex 2R;
 - (ii) certified sophisticated investor: ■ COBS 4 Annex 3R;
 - (iii) self-certified sophisticated investor: ■ COBS 4 Annex 4R;
 - (iv) restricted investor: ■ COBS 4 Annex 5R; and
- (b) whose completion of the statement in (a) indicates that they meet the relevant criteria to be categorised as such.

(2) When used in relation to *P2P agreements* or a *P2P portfolio*, the statement in ■ COBS 4 Annex 4R (self-certified sophisticated investor) must be modified as follows:

- (a) the reference to “an unlisted company” must be replaced with a reference to “a P2P agreement or P2P portfolio”; and
- (b) the reference to “private equity, or in the provision of finance for small and medium enterprises” must be replaced with a reference to “the provision of finance, resulting in an understanding of the P2P agreements or P2P portfolios to which the promotions will relate”.

4.12A.23 E For the purposes of ■ COBS 4.12A.21R, a *firm* (or relevant other *person*) will have taken reasonable steps to establish the certification of a *retail client* where:

- (1) the *firm* (or other *person*) has obtained the relevant completed certificate from the *retail client*; and
- (2) the *retail client's* completion of the certificate evidences that the *retail client* meets the criteria to be certified as such.

4.12A.24 G Where the *direct offer financial promotion* will relate to more than one type of *restricted mass market investment*, the condition in ■ COBS 4.12A.21R may be satisfied by the *retail client* signing a combined statement that meets the requirements in ■ COBS 4 Annex 2R to ■ COBS 4 Annex 5R, as applicable, in respect of each type of *restricted mass market investment* to which the *direct offer financial promotion* will relate.

4.12A.25 G

- (1) Where the restricted investor statement (■ COBS 4 Annex 5R) refers to a restricted investor not investing more than 10% of their net assets, this refers to the *retail client's* aggregate investment across all types of *restricted mass market investment*.
- (2) However, a *retail client* may be informed that they need not include in the calculation referred to in (1) any investment in a *restricted mass market investment* made in response to a *direct offer financial promotion* for the purpose of which they were categorised as sophisticated (whether on a certified or self-certified basis).

4.12A.26 R A *firm* must not:

- (1) influence, or seek to influence, the information that a *retail client* provides when completing a certificate in ■ COBS 4.12A.22R; or

- (2) encourage a *retail client* to complete a further certificate in the event that a *client's* signed certificate indicates that they do not meet the criteria to be categorised as a high net worth, sophisticated or restricted investor, as applicable.

Fourth condition: appropriateness

4.12A.27 **G**

- (1) The fourth condition is relevant if the recipient of the *direct offer financial promotion* makes an application or order for a *restricted mass market investment* in response to that *direct offer financial promotion*.
- (2) The fourth condition requires a *restricted mass market investment* to be assessed as appropriate for a *retail client* before an application or order is processed. The *rules* and *guidance* are not prescriptive as to how such an assessment is undertaken. The condition is designed to ensure that *retail clients* are only able to invest in *restricted mass market investments* which they have the knowledge and experience to understand, particularly in relation to the risks. Appropriateness processes should be designed to this end.

4.12A.28 **R**

- (1) The fourth condition applies where the *firm* itself or the *person* who will:
 - (a) *arrange or deal* in relation to a *non-readily realisable security*;
 - (b) facilitate the *retail client* becoming a lender under a *P2P agreement* or a *P2P portfolio*; or
 - (c) *arrange or deal* in relation to a *unit* in a *long-term asset fund*, or *issue* such a *unit*; or
 - (d) transact in a *qualifying cryptoasset*,
 is aware, or ought reasonably to be aware, that an application or order is in response to the *direct offer financial promotion*.
- (2) The condition is that the *firm* or *person* in (1) will only process the application or order once it has assessed that the *restricted mass market investment* is appropriate for the *retail client* in compliance with the *rules* in ■ COBS 10 or ■ COBS 10A (as applicable) or equivalent requirements as modified and supplemented by ■ COBS 4.12A.30R to ■ COBS 4.12A.32R.

4.12A.29 **G**

- (1) If the *person* in ■ COBS 4.12A.28R(1) is not a *firm*, the effect of ■ COBS 4.12A.28R(2) is that the *person* is required to undertake that assessment as if the *rules* in ■ COBS 10 or ■ COBS 10A applied to them.
- (2) The *firm* or *person* in ■ COBS 4.12A.28R(1) can gather information for the purpose of assessing, and undertake its assessment of, whether a *restricted mass market investment* is appropriate for a *retail client* before the end of any 'cooling off period' required by ■ COBS 4.12A.18R.

4.12A.30 **R**

In the course of providing information regarding their knowledge and experience for the purpose of the appropriateness assessment required by ■ COBS 4.12A.28R, the *retail client* must not be provided with assistance, information, guidance or feedback which might affect the substance of the information that they provide.

4.12A.31 **R**

- (1) This *rule* applies if:
 - (a) a *restricted mass market investment* is assessed as not being appropriate for a particular *retail client*; and
 - (b) the assessment of appropriateness is based on a series of questions which the *retail client* is required to answer.
- (2) The *retail client* must not be informed of the particular answers which led to the *restricted mass market investment* being assessed as not appropriate for them.
- (3) Any further assessment of the appropriateness of that *restricted mass market investment* for that *retail client* must not be based on the same questions as were used for the purpose of a previous assessment of the appropriateness of that *restricted mass market investment* for that *retail client*.

4.12A.32 **R**

- (1) This *rule* applies where a *restricted mass market investment* has been assessed as not being appropriate for a particular *retail client* pursuant to two consecutive assessments.
- (2) Following the second determination that a *restricted mass market investment* is not appropriate for a *retail client*, any further assessment of the appropriateness of that *restricted mass market investment* for that *retail client* must not be undertaken for at least 24 hours.

4.12A.33 **G**

The effect of ■ COBS 4.12A.28R to ■ COBS 4.12A.32R is that:

- (1) *direct offer financial promotions* relating to *restricted mass market investments* may only be *communicated*, or *approved for communication*, to *retail clients* if any application or order received in response to that *direct offer financial promotion* will be fulfilled only where that *restricted mass market investment* has been assessed as being appropriate for that *retail client*;
- (2) if the assessment of appropriateness results in the provision of a warning (a determination that the *restricted mass market investment* is not appropriate for the *retail client* (■ COBS 10.3 or ■ COBS 10A.3)), then an order or application received in response to a *direct offer financial promotion* may not be fulfilled; and
- (3) the circumstances in which an assessment of appropriateness need not be undertaken (■ COBS 10.4 and ■ COBS 10A.4) are not relevant for the purpose of the fourth condition.

4.12A.34 **G**

When gathering information regarding a *retail client's* knowledge and experience for the purpose of assessing whether a *restricted mass market investment* is appropriate for that *retail client*, the *firm* or *person* undertaking the assessment should:

- (1) avoid asking the *retail client* questions that invite binary (yes/no) answers;
- (2) if asking multiple-choice questions, use questions which offer at least 3 plausible answers (excluding the option to answer 'do not know', or similar); and

4.12A.35 **G**

(3) ensure that questions address matters that are relevant to the specific type of *investment* in which the *retail client* has expressed interest (see also ■ COBS 10.2.2R).

- (1) A *retail client* should only be informed of the outcome of an appropriateness assessment once they have provided all of the information required for the assessment to be undertaken.
- (2) ■ COBS 4.12A.31R(2) does not prevent a *retail client* from being informed of the broad reasons for which a *restricted mass market investment* was assessed not to be appropriate for them or of the nature of the deficiencies identified in their knowledge or experience. The *rule* is intended to prevent a *retail client* from being informed only of the questions within an assessment which led to a *restricted mass market investment* being assessed not to be appropriate such that the *client* is able simply to change their answer in any subsequent assessment without improving their own understanding.
- (3) For the purposes of ■ COBS 4.12A.31R(3), any questions used to undertake a further assessment of appropriateness should be sufficiently different such that the *retail client* could not simply infer the answers that would lead to an assessment of appropriateness from the outcome of their responses to a previous set of questions.
- (4) A *firm* should consider whether the particular features of a *restricted mass market investment* mean that an interval of greater than 24 hours should be applied following a second assessment that that *investment* is not appropriate for a *retail client* (■ COBS 4.12A.32R(2)).
- (5) A *retail client* may be informed of the option to re-apply to *buy* a *restricted mass market investment* following a determination that the *restricted mass market investment* is not appropriate for them. However, the *retail client* should not be encouraged to do so.

Requirements of risk warnings and non-digital risk summaries

4.12A.36 **R**

- (1) The relevant risk warning in ■ COBS 4.12A.11R(1) or ■ (2) and the relevant risk summaries in ■ COBS 4.12A.11R(4)(b) and ■ COBS 4.12A.20R(3)(a)(ii) must:
 - (a) be prominent, taking into account the content, size and orientation of the *financial promotion* as a whole;
 - (b) except where the risk warning cannot be provided in writing, be clearly legible, contained within its own border and with bold and underlined text as indicated in ■ COBS 4.12A.11R or ■ COBS 4 Annex 1R.
- (2) The relevant risk warning in ■ COBS 4.12A.11R(1) or (2) must, if the *financial promotion* is, or is to be, *communicated* by means of:
 - (a) a website or mobile application:
 - (i) be statically fixed and visible at the top of the screen, below anything else that also stays static, even when the *retail client* scrolls up or down the webpage; and
 - (ii) be included as described in (i) on each linked webpage on the website or page on the application relating to the relevant *investment*;

(b) a television broadcast, be prominently fixed on the screen for the duration of the broadcast.

4.12A.37 **G**

- (1) The *FCA* expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing digital financial promotions and, in particular, how the risk warning will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>
- (2) *Firms* should have regard to the intended or likely recipients of a *financial promotion*. Where a *firm* considers that such *persons* are unlikely to have a good understanding of the English language, a risk warning or risk summary required by the *rules* in this section should be provided in an appropriate language in addition to English.

4.12A.38 **R**

The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the risk warning or risk summary.
 [Note: The *FCA* has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12A.39 **G**

For the purposes of **COBS 4.12A.38R**, design features which might reduce the visibility or prominence of a risk warning or risk summary include, but are not limited to:

- (1) using a font size for the risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *client* to read the text;
- (3) fading the text of the risk warning or risk summary;
- (4) placing the risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional links to be clicked in order for the full text of the risk warning to be seen;
- (6) using a font or background in the risk warning or risk summary in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning or risk summary in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk warning or risk summary from other forms of information.

Requirements of digital personalised risk warnings and digital risk summaries

4.12A.40 **R**

The relevant personalised risk warning in **COBS 4.12A.20R(2)** and the relevant risk summaries in **COBS 4.12A.11R(3)(a)(ii)** and **COBS 4.12A.20R(2)(b)** must be:

- (1) prominently brought to the *retail client's* attention, taking into account the content, size and orientation of the *financial promotion* as a whole;
- (2) clearly legible, contained within its own border and with bold and underlined text as indicated in ■ COBS 4.12A.20R(1)(b), ■ COBS 4.12A.20R(1A)(b) and ■ COBS 4 Annex 1R;
- (3) statically fixed and visible in the middle of the screen; and
- (4) the main focus of the screen.

4.12A.41 G

- (1) The *FCA* expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing digital financial promotions and, in particular, how the personalised risk warning or risk summary will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>
- (2) *Firms* should have regard to the intended or likely recipients of a *financial promotion*. Where a *firm* considers that such *persons* are unlikely to have a good understanding of the English language, a risk warning or risk summary required by the *rules* in this section should be provided in an appropriate language in addition to English.

4.12A.42 R

The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the personalised risk warning or risk summary.
 [Note: The FCA has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12A.43 G

For the purposes of ■ COBS 4.12A.42R, design features which might reduce the visibility or prominence of a personalised risk warning or risk summary include, but are not limited to:

- (1) using a font size for the personalised risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *retail client* to read the text;
- (3) fading the text of the personalised risk warning or risk summary;
- (4) placing the personalised risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional actions to be taken by the *retail client*, such as requiring additional links to be clicked in order for the full text of the personalised risk warning or risk summary to be seen;
- (6) using a font or background in the risk warning in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning in the same colour as other forms of disclosure and standard information; the colour of the

font and background should distinguish the personalised risk warning or risk summary from other forms of information.

Risk summaries

- 4.12A.44** **R** Where a *rule* in this section requires a *firm* to communicate a risk summary selected from ■ COBS 4 Annex 1R, the *firm* must either:
- (1) (subject to ■ COBS 4.12A.46R) provide the risk summary as it appears in ■ COBS 4 Annex 1R; or
 - (2) provide a version of the risk summary in ■ COBS 4 Annex 1R in appropriately amended form, provided that:
 - (a) the *firm* has a valid reason for each amendment;
 - (b) the *firm* makes a record of each amendment and the reason for it;
 - (c) any alternative or additional text is in plain English; and
 - (d) the amended risk summary does not take longer than around 2 minutes to read.
- 4.12A.45** **G** For the purposes of ■ COBS 4.12A.44R(2), the following reasons are considered to be valid:
- (1) the relevant part of the risk summary in ■ COBS 4 Annex 1R would be misleading in relation to the particular *investment*;
 - (2) the relevant part of the risk summary in ■ COBS 4 Annex 1R would be irrelevant in relation to the particular *investment*;
 - (3) the risk summary in ■ COBS 4 Annex 1R does not include a risk that is relevant to the particular *investment* and it is appropriate for that further risk to be included;
 - (4) the sole purpose of the relevant statement in the risk summary is to include a hyperlink to a webpage and the medium of communication does not permit the incorporation of a link;
 - (5) the *firm* is required to adapt the risk summary in accordance with ■ COBS 4.12A.11R(8) (Risk warning) or ■ COBS 4.12A.20R(8) (Second condition: personalised risk warning).
- This list is not exhaustive.
- 4.12A.46** **R** ■ COBS 4.12A.44R(1) does not apply to a *firm* which communicates a risk summary relating to *units* in an *LTAf* (see ■ COBS 4.12A.11R(8) (Risk warning) and ■ COBS 4.12A.20R(8) (Second condition: personalised risk warning)).
- 4.12A.47** **G** A *firm* communicating a risk summary relating to *units* in an *LTAf* (see ■ COBS 4 Annex 1R(7) (Risk summaries)) is required to adapt the risk summary to reflect the characteristics of the relevant *LTAf*, particularly the *dealing* arrangements for the *LTAf* and the applicable *notice period* (see ■ COBS 4.12A.11R(8) (Risk warning) and ■ COBS 4.12A.20R(8) (Second condition: personalised risk warning)). Other amendments may also be appropriate. When amending the risk summary, the *firm* will need to comply with ■ COBS 4.12A.44R(2).

4.12B Promotion of non-mass market investments

Application

- 4.12B.1** **R** This section applies to:
- (1) *firms*;
 - (2) *TP firms*, to the extent that this section does not already apply to those *TP firms* as a result of ■ GEN 2.2.26R; and
 - (3) *Gibraltar-based firms*, to the extent that this section does not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R,
- when *approving or communicating financial promotions* in relation to *non-mass market investments*.
- 4.12B.2** **G** In addition to the *persons* listed in ■ COBS 4.12B.1R, *persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:
- (1) Part 7 of the *EU Exit Passport Regulations*; or
 - (2) Part 4 of the *Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019* (SI 2019/1361),
- are required to comply with the *rules* in this section as a consequence of:
- (3) regulation 59 of the *EU Exit Passport Regulations*; or
 - (4) regulation 19 of the *Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019*.
- 4.12B.3** **R** Throughout this section, references to a *firm* include a *TP firm* and a *Gibraltar-based firm*.
- 4.12B.4** **R** This section does not apply to:
- (1) *excluded communications*; or
 - (2) *financial promotions* to the extent that they relate to *local authority securities*.

Purpose and overview of the rules

4.12B.5

G

- (1) The *rules* in this section are intended to ensure that *financial promotions* relating to *non-mass market investments* are not *communicated* to ordinary retail investors. They do not apply to *excluded communications*, to *financial promotions* to the extent that they relate to *local authority securities* or to *financial promotions* insofar as they are directed at *clients* other than *retail clients*.
- (2) The *rules* in this section reflect the often complex and high-risk nature of *non-mass market investments*.
- (3) The *rules* in this section therefore restrict *firms* from *approving* or *communicating financial promotions* in relation to *non-mass market investments* which are addressed to, or disseminated in such a way that they are likely to be received by, a *retail client*, subject to certain exemptions.
- (4) The exemptions referred to in (3) are set out in ■ COBS 4.12B.7R(5).
- (5) (a) *Firms* must also comply with ■ COBS 4.12B.7R(1)(b) and the *rules* in ■ COBS 4.12B.14R to ■ COBS 4.12B.30R (see (b) below) where:
 - (i) the *financial promotion* relates to a *non-mass market investment*; and
 - (ii) the *firm* wishes to rely on exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors).
 (b) ■ COBS 4.12B.7R(1)(b) and ■ COBS 4.12B.14R to ■ COBS 4.12B.31G cover:
 - (i) preliminary assessment of suitability (in relation to exemptions 9 and 11);
 - (ii) personalised risk warning, risk summary and cooling off period;
 - (iii) risk warnings; and
 - (iv) monetary and non-monetary incentives.
- (6) Where the *financial promotion* relates to a *speculative illiquid security*, *firms* must also comply with ■ COBS 4.12B.32R, ■ COBS 4.12B.33R and ■ COBS 4.12B.35R which relate to the disclosure of costs, charges and commission.
- (7) The table below explains how the *rules* apply and to which *non-mass market investments* the *rules* apply, after the provisions in ■ COBS 4.12B.4R have been applied.

Handbook provision	Description of the provision	Which investments does the provision apply to	When does the provision apply
COBS 4.12B.6R	<i>Firms</i> must not <i>communicate</i> or <i>approve financial promotions</i> in relation to <i>non-mass market investments</i> to <i>retail clients</i>	All <i>non-mass market investments</i> other than <i>units</i> in <i>unregulated collective investment schemes</i>	At all times.

Handbook provision	Description of the provision	Which investments does the provision apply to	When does the provision apply
COBS 4.12B.7R(1)(b)	<i>Firms must carry out a preliminary assessment of suitability</i>	All <i>non-mass market investments</i>	Before the <i>financial promotion</i> is communicated to a certified high net worth investor or self-certified sophisticated investor in reliance on the relevant exemption in COBS 4.12B.7R(5)
COBS 4.12B.14R and COBS 4.12B.15R	<i>Firms must ensure that a personalised risk warning and summary of the risks is made available to the client and a period of at least 24 hours (the 'cooling off period') is applied before the financial promotion is communicated</i>	All <i>non-mass market investments</i> except for <i>securities</i> in a <i>closed-ended investment fund</i> (i) applying for, or with, a <i>premium listing</i> and (ii) which complies with the requirements of LR 15	Before the <i>financial promotion</i> is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)
COBS 4.12B.17R	Restrictions on monetary and non-monetary benefits being included within the <i>financial promotions</i>	All <i>non-mass market investments</i>	At the time the <i>financial promotion</i> is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)
COBS 4.12B.20R, COBS 4.12B.21R, COBS 4.12B.24R, and COBS 4.12B.26R	<i>Firms must ensure that a risk warning is provided to the client</i>	All <i>non-mass market investments</i> except for <i>securities</i> in a <i>closed-ended investment fund</i> (i) applying for, or with, a <i>premium listing</i> ; and (ii) which complies with the requirements of LR 15	At the time the <i>financial promotion</i> is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)

Handbook provision	Description of the provision	Which investments does the provision apply to	When does the provision apply
COBS 4.12B.32R, COBS 4.12B.33R, and COBS 4.12B.35R	<i>Firms</i> must ensure that statements disclosing all costs, charges and commission are provided to the <i>client</i>	Only <i>speculative illiquid securities</i>	At the time the <i>financial promotion</i> is <i>communicated</i> to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)

(8) There is *guidance* in ■ COBS 4.12B.43G to ■ 4.12B.45G on the application of the exemptions set out in the table in ■ COBS 4.12B.7R(5).

Promotion of non-mass market investments

4.12B.6 **R**

- (1) A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *non-mass market investment* where that *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.
- (2) The restriction in (1) is subject to ■ COBS 4.12B.7R and does not apply to *units* in *unregulated collective investment schemes*, which are subject to a statutory restriction on promotion in section 238 of the Act.

Exemptions from the restrictions on the promotion of non-mass market investments

4.12B.7 **R**

- (1) The restriction in ■ COBS 4.12B.6R does not apply if the following conditions are met:
 - (a) the *financial promotion* falls within an applicable exemption in the first column in the table in (5) because either:
 - (i) it is made to, or directed at, only those recipients whom the *firm communicating* the *financial promotion* has taken reasonable steps to establish are *persons* in the second column of the table; or
 - (ii) the *firm approving* the *financial promotion* has taken reasonable steps to establish that the *financial promotion* will be made to, or directed at, only those recipients who are *persons* in the second column of the table;
 - (b) where the third column of the table refers to the need for a preliminary assessment of suitability, that assessment is undertaken before the *financial promotion* is made to or directed at the recipient;
 - (c) the *firm* complies with the relevant *rules* in ■ COBS 4.12B.14R to ■ 4.12B.35R relating to the use of exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors), as provided by ■ COBS 4.12B.7R(5).

- (2) For the purposes of ■ COBS 4.12B.7R(1)(a), a *firm* will have taken reasonable steps to establish that the recipients of the *financial promotion* are *persons* in the second column of the table where the *firm* has:
 - (a) obtained the relevant completed certificate from the *retail client*; and
 - (b) satisfied itself that the *retail client's* completion of the certificate evidences that the *retail client* meets the criteria to be certified as such.
- (3) Where a *firm* approves or communicates a *financial promotion* the preliminary assessment of suitability required by ■ COBS 4.12B.7R(1)(b) must be undertaken by that *firm*.
- (4) A *firm* may rely on more than one exemption in relation to the same *financial promotion*.

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
Exemptions applicable to promotions of non-mainstream pooled investments only:		
1. Replacement products and rights issues	A <i>person</i> who already participates in, owns, holds rights to or interests in, a <i>non-mainstream pooled investment</i> that is being liquidated or wound down or which is undergoing a rights issue. [See Note 1.]	1. A <i>non-mainstream pooled investment</i> which is intended by the operator or manager to absorb or take over the assets of that <i>non-mainstream pooled investment</i> , or which is being offered by the operator or manager of that <i>non-mainstream pooled investment</i> as an alternative to cash on its liquidation; or 2. <i>Securities</i> offered by the existing <i>non-mainstream pooled investment</i> as part of a rights issue.
2. Enterprise and charitable funds	A <i>person</i> who is eligible to participate or invest in an arrangement constituted under: (1) the Church Funds Investment Measure 1958 (available at www.legislation.gov.uk/ukcm/Eliz2/6-7/1/2014-01-01); (2) section 96 or 100 of the Charities Act 2011 (available at	Any <i>non-mainstream pooled investment</i> which is such an arrangement.

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
	<p>www.legislation.gov.uk/ukpga/2011/25/2014-01-01);</p> <p>(3) section 25 of the Charities Act (Northern Ireland) 1964 (available at www.legislation.gov.uk/apni/1964/33/section/25/2014-01-01);</p> <p>(4) the Regulation on European Venture Capital Funds ('EuVECA's) or the RVECA Regulation ('RVECA's'); or</p> <p>(5) the Regulation on European Social Entrepreneurship Funds ('EuSEFs') or the SEF Regulation ('SEFs').</p>	
3. Eligible employees	<p>An eligible employee, that is, a person who is:</p> <p>(1) an officer;</p> <p>(2) an employee;</p> <p>(3) a former officer or employee; or</p> <p>(4) a member of the immediate family of any of (1) – (3), of an employer which is (or is in the same group as) the firm, or which has accepted responsibility</p>	<p>1. A <i>non-mainstream pooled investment</i>, the instrument constituting which:</p> <p>A. restricts the property of the <i>non-mainstream pooled investment</i>, apart from cash and near cash, to:</p> <p>(1) (where the employer is a company) <i>shares</i> in and <i>debentures</i> of the <i>company</i> or any other connected <i>company</i>; [See Note 2.]</p> <p>(2) (in any case), any property, provided that the <i>non-mainstream pooled investment</i> takes the form of:</p> <p>(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</p> <p>(ii) a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable</p>

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
	<p>for the activities of the <i>firm</i> in carrying out the <i>designated investment business</i> in question.</p>	<p>to make any further payments (other than charges) for <i>investment</i> transactions earlier entered into, which the eligible <i>employee</i> was not aware of at the time he entered into them; and</p> <p>B. (in a case falling within A(1) above) restricts participation in the <i>non-mainstream pooled investment</i> to eligible <i>employees</i>, the employer and any connected <i>company</i>.</p> <p>2. Any <i>non-mainstream pooled investment</i>, provided that the participation of eligible employees is to facilitate their co-investment:</p> <p>(i) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer); or</p> <p>(ii) with one or more <i>clients</i> of such a <i>company</i>.</p>
<p>4. Members of the Society of Lloyd's</p>	<p>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.</p>	<p>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.</p>
<p>5. Exempt Persons</p>	<p>An exempt <i>person</i> (other than a <i>person</i> exempted only by section 39 of the Act (Exemption of appointed representatives) (available at www.legislation.gov.uk/ukpga/2000/8/section/39/2014-01-01) if the <i>financial promotion</i> relates to a <i>regulated activity</i> in respect of which the person is exempt from the gen-</p>	<p>Any <i>non-mainstream pooled investment</i>.</p>

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
6. Non-retail clients	<i>eral prohibition.</i> An <i>eligible counterparty</i> or a <i>professional client</i> .	Any <i>non-mainstream pooled investment</i> in relation to which the <i>client</i> is categorised as a <i>professional client</i> or <i>eligible counterparty</i> . [See Note 4.]
7. Solicited advice	Any <i>person</i> .	Any <i>non-mainstream pooled investment</i> , provided the communication meets all of the following requirements: (a) the communication only amounts to a <i>financial promotion</i> because it is a <i>personal recommendation</i> on a <i>non-mainstream pooled investment</i> ; (b) the <i>personal recommendation</i> is made following a specific request by that <i>client</i> for advice on the merits of investing in the <i>non-mainstream pooled investment</i> ; and (c) the <i>client</i> has not previously received a <i>financial promotion</i> or any other communication from the <i>firm</i> (or from a <i>person</i> connected to the <i>firm</i>) which is intended to influence the <i>client</i> in relation to that <i>non-mainstream pooled investment</i> [See Note 3.]
8. US persons	A <i>person</i> who is classified as a United States person for tax purposes under United States legislation or who owns a US qualified retirement plan.	Any investment <i>company</i> registered and operated in the United States under the Investment Company Act 1940.
Exemptions applicable to promotions of all non-mass market investments:		
9. Certified high net worth investor	An individual who meets the requirements set out in COBS 4.12B.38R or a <i>person</i> (or <i>persons</i>) legally empowered to make investment decisions on behalf of such an individual.	Any <i>non-mass market investment</i> the <i>firm</i> considers is likely to be suitable for that individual, based on a preliminary assessment of the <i>client's</i> profile and objectives. [See COBS 4.12B.9G(2).]

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
10. Certified sophisticated investor	An individual who meets the requirements set out in COBS 4.12B.39R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another <i>person</i> who is the <i>firm's client</i> .	Any <i>non-mass market investment</i> .
11. Self-certified sophisticated investor	An individual who meets the requirements set out in COBS 4.12B.40R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another <i>person</i> who is the <i>firm's client</i> .	Any <i>non-mass market investment</i> the <i>firm</i> considers is likely to be suitable for that individual, based on a preliminary assessment of the <i>client's</i> profile and objectives. [See COBS 4.12B.9G(2)].
The following Notes explain certain words and phrases used in the table above.		
Note 1	Promotion of <i>non-mainstream pooled investments</i> to a category of person includes any nominee company acting for such a person.	
Note 2	A <i>company</i> is 'connected' with another <i>company</i> if: they are both in the same <i>group</i> ; or one <i>company</i> is entitled, either alone or with another <i>company</i> in the same <i>group</i> , to exercise or control the exercise of a majority of the voting rights attributable to the <i>share</i> capital, which are exercisable in all circumstances at any general meeting of the other <i>company</i> or of its <i>holding company</i> .	
Note 3	A <i>person</i> is connected with a <i>firm</i> if it acts as an <i>introducer</i> or <i>appointed representative</i> for that <i>firm</i> or if it is any other <i>person</i> , regardless of <i>authorisation</i> status,	

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
Note 4	who has a relevant business relationship with the <i>firm</i> .	In deciding whether a promotion is permitted under the rules of this section or under section 238 of the <i>Act</i> , <i>firms</i> may use the client categorisation regime that applies to business other than <i>MiFID</i> or <i>equivalent third country business</i> . (This is the case even if the <i>firm</i> will be carrying on a <i>MiFID</i> activity at the same time as or following the promotion.)

4.12B.8 R 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 ■ COBS 4.12B.7R(5) and is in accordance with ■ COBS 4.12B.7R(1).

Advice and preliminary assessment of suitability

4.12B.9 G

(1) Where a *firm* communicates any promotion of a *non-mass market investment* in the context of advice, it should have regard to and comply with its obligations under ■ COBS 9 or ■ 9A (as applicable). *Firms* should also be mindful of the appropriateness requirements in ■ COBS 10 and ■ 10A which apply to a wide range of non-advised services.

(2) (a) The effect of ■ COBS 4.12B.7R(1)(b) is that where a *firm* wishes to rely on exemptions 9 (certified high net worth investors) or 11 (self-certified sophisticated investors), as provided by ■ COBS 4.12B.7R(5), the preliminary assessment of suitability must be undertaken before promotion of the *non-mass market investment* is made to or directed at *clients* (in addition to other requirements). Where a *firm* approves or communicates a financial promotion the preliminary assessment of suitability must be undertaken by that *firm* as required by ■ COBS 4.12B.7R(3).

(b) There is no duty to communicate the preliminary assessment of suitability 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 or ■ 9A (as applicable) on suitability.

(c) The requirement for a preliminary assessment of suitability does not extend to a full suitability assessment, unless advice is being offered in relation to the *non-mass market investment* being promoted, in which case the requirements in ■ COBS 9 or ■ 9A apply (as applicable). However, it requires that the *firm* takes reasonable steps to acquaint itself with the *client's* profile and objectives in order to ascertain whether the *non-mass market investment* under contemplation is likely to be suitable for that *client*. The *firm* should not promote the *non-mass market investment* to the *client* if it does not consider it likely to be suitable for that *client* following such preliminary assessment.

Promotions to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors

- 4.12B.10** **R** (1) ■ COBS 4.12B.10R to ■ COBS 4.12B.31G apply to *financial promotions* which:
- (a) relate to *non-mass market investments* ; and
 - (b) are *communicated*, or are to be *communicated*, to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors for the purposes of the exemptions in ■ COBS 4.12B.7R(5).
- (2) A *firm* may only rely on exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors) to:
- (a) *communicate a financial promotion* to which this rule applies if the *firm* has complied with the rules in ■ COBS 4.12B.14R to ■ COBS 4.12B.35R, as appropriate; or
 - (b) *approve for communication a financial promotion* to which this rule applies if the *firm* is satisfied that the rules in ■ COBS 4.12B.14R to ■ COBS 4.12B.35R, as appropriate, will be satisfied in relation to each *communication* of the *financial promotion*.
- (3) The conditions in ■ COBS 4.12B.14R (personalised risk warning) and ■ COBS 4.12B.15R (cooling off period) do not need to be satisfied if the *retail client* has previously received a *financial promotion* relating to a *non-mass market investment* from the same *person* as would otherwise need to satisfy them.

4.12B.11 **G** Where a *firm* is relying on exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors), in accordance with ■ COBS 4.12B.7R(1)(a), it must first take reasonable steps to establish that the *retail client* falls into one of those categories and then the *firm* must undertake a preliminary assessment of suitability in accordance with ■ COBS 4.12B.7R(1)(b), where relevant. Once a *firm* has completed these steps, it must comply with the rules in ■ COBS 4.12B.14R to ■ COBS 4.12B.35R.

4.12B.12 **G** The effect of ■ COBS 4.12B.10R(3) and related provisions in this section is that a personalised risk warning and cooling off period are only required on the first occasion that a *firm*, or other *person communicating a financial promotion*, communicates a *financial promotion* relating to a *non-mass market investment* to a particular *retail client*.

Risk summaries

- 4.12B.13** **R** Where a *rule* in this section requires a *firm* to communicate a risk summary selected from ■ COBS 4 Annex 1R, the *firm* must either:
- (1) provide the risk summary as it appears in ■ COBS 4 Annex 1R; or
 - (2) provide a version of the risk summary in ■ COBS 4 Annex 1R in appropriately amended form, provided that:
 - (a) the *firm* has a valid reason for each amendment;

- (b) the *firm* makes a record of each amendment and the reason for it;
- (c) any alternative or additional text is in plain English; and
- (d) the amended risk summary does not take longer than around 2 minutes to read.

4.12B.13A **G**

For the purposes of ■ COBS 4.12B.13R(2), the following reasons are considered to be valid:

- (1) the relevant part of the risk summary in ■ COBS 4 Annex 1R would be misleading in relation to the particular *investment*;
- (2) the relevant part of the risk summary in ■ COBS 4 Annex 1R would be irrelevant in relation to the particular *investment*;
- (3) the risk summary in ■ COBS 4 Annex 1R does not include a risk that is relevant to the particular *investment*, and it is appropriate for that further risk to be included;
- (4) the sole purpose of the relevant statement in the risk summary is to include a hyperlink to a webpage and the medium of communication does not permit the incorporation of a link.

This list is not exhaustive.

Prior conditions for communication to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors

4.12B.14 **R**

- (1) The first condition is that before *communicating* the *financial promotion*, the *firm*, or other *person communicating* the *financial promotion*:

- (a) obtains the *retail client's* full name; and
- (b) having obtained the *retail client's* name, communicates to that *retail client* the following personalised risk warning:

[Client name], this is a high-risk investment. How would you feel if you lost the money you're about to invest? Take 2 mins to learn more.

- (2) If the *financial promotion* is, or is to be, *communicated* by means of a website, mobile application or other digital medium, the personalised risk warning in (1)(b) must:
 - (a) be clearly brought to the *retail client's* attention by means of a pop-up box (or equivalent);
 - (b) include a link which, when activated, delivers an appropriate risk summary in a further pop-up box (or equivalent):
 - (i) relating to the type of *non-mass market investment* that is the subject of the *financial promotion*; and
 - (ii) selected from ■ COBS 4 Annex 1R; and
 - (c) be accompanied by an invitation to the *retail client* to specify whether they wish to:
 - (i) leave the investment journey; or

- (ii) continue to receive the *financial promotion*.
- (3) If the *financial promotion* is, or is to be, *communicated* other than by means of a website, mobile application or other digital medium:
 - (a) the personalised risk warning in (1)(b) must be:
 - (i) provided to the *retail client* omitting the words “Take 2 mins to learn more”; and
 - (ii) accompanied by an appropriate risk summary in a *durable medium* relating to the type of *non-mass market investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R; and
 - (b) the *retail client* must then be invited to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *financial promotion*.
- (4) The options in 2(c) and (3)(b) must be presented with equal prominence.
- (5) The condition is only satisfied if the *retail client* specifies that they wish to continue to receive the *financial promotion*.
- (6) This *rule* does not apply to a *financial promotion* of a *closed-ended investment fund* applying for, or with, a *premium listing* and which complies with the requirements of ■ LR 15.
- (7) The personalised risk warning required by (2)(a) and the risk summary required by (2)(b) must comply with ■ COBS 4.12B.28R and ■ COBS 4.12B.30R.
- (8) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12B.24R and ■ COBS 4.12B.26R.

4.12B.15 R

- (1) The second condition applies if a *retail client* requests to view a *financial promotion* of a *non-mass market investment* (including of a *security* in a *closed-ended investment fund* applying for, or with, a *premium listing* and which complies with the requirements of ■ LR 15).
- (2) The second condition is that, before *communicating* the *financial promotion*, the *firm* or other *person communicating* the *financial promotion*:
 - (a) allows a period of at least 24 hours (the ‘cooling off period’) to elapse;
 - (b) following the lapse of time in (a), invites the *retail client* to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *financial promotion*; and
 - (c) the *retail client* specifies that they wish to continue to receive the *financial promotion*.
- (3) The options in (2)(b) must be presented with equal prominence.

4.12B.16 G ■ COBS 4.12B.15R does not prevent the *person* who is subject to it from engaging with the *retail client* during the cooling off period. This includes for the purposes of providing the *client* with the personalised risk warning required by ■ COBS 4.12B.14R and obtaining the information necessary to undertake the preliminary assessment of suitability required by ■ COBS 4.12B.7R(1)(b).

Restrictions on monetary and non-monetary incentives

4.12B.17 R

- (1) A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *non-mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive to invest.
- (2) The *rule* in (1) does not apply to a product or service produced or provided by the *person*, or a member of the *group* of the *person*, who will benefit from the proceeds of the investment.

4.12B.18 G For the purposes of ■ COBS 4.12B.17R monetary and non-monetary incentives include, but are not limited to:

- (1) offering bonuses when investing in a *non-mass market investment* for the first time;
- (2) offering bonuses where the *client* refers another *person*;
- (3) offering cashback when investing in a *non-mass market investment*;
- (4) offering discounts when investing a particular amount in *non-mass market investments*;
- (5) offering free gifts once an investment in a *non-mass market investment* has been made such as laptops or mobile telephones; or
- (6) offering any additional free *investments* or offering discounts on *investments*.

4.12B.19 G Information and research tools do not constitute non-monetary incentives.

Risk warning to be included in the financial promotion

4.12B.20 R A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *non-mass market investment* unless it contains a risk warning that complies with ■ COBS 4.12B.21R.

4.12B.21 R

- (1) For the purposes of ■ COBS 4.12B.20R the *financial promotion* must contain the following risk warning:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong.
- (2) Where the number of characters contained in the risk warning in (1) exceeds the number of characters permitted by a third-party marketing provider, the following risk warning must be used:

Don't invest unless you're prepared to lose all the money you invest.

- (3) Where the *financial promotion* is, or is to be, *communicated* by way of a website, mobile application or other digital medium:
- (a) the risk warning in (1) or (2) must also include a link:
 - (i) in the form of the text: Take 2 mins to learn more; and
 - (ii) which, when activated, delivers an appropriate risk summary in a pop-up box (or equivalent) relating to the type of *non-mass market investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R;
 - (b) the link required by (3)(a) need not be:
 - (i) in the form required by 3(a)(i) if the inclusion of that additional text would exceed the number of characters permitted by a third-party marketing provider;
 - (ii) provided if the medium of communication does not allow the incorporation of a link.
- (4) Where the *financial promotion* is *communicated* other than by way of a website, mobile application or other digital medium (and including where the *financial promotion* is a *real time financial promotion*), the risk warning in (1) must be:
- (a) provided:
 - (i) in a *durable medium*; or
 - (ii) if the medium of communication means that the risk warning cannot be provided in a *durable medium*, in a manner appropriate to the medium of communication; and
 - (b) however the *financial promotion* is *communicated*, accompanied by an appropriate risk summary in a *durable medium* relating to the type of *non-mass market investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R.
- (5) (a) A *firm* must omit the words “and you are unlikely to be protected if something goes wrong” from the risk warning required by (1) if the conditions in (b) apply.
- (b) The conditions are that:
- (i) the *financial promotion* relates to an *investment*:
 - (A) that is issued by; or
 - (B) the provision of which involves a, *participant firm* or an *appointed representative* of a *participant firm*; and
 - (ii) the activity of the *person* in (i) is of a type that could give rise to a *protected claim*.
- (c) A *firm* that omits the words in (a) must make a record of the basis on which the conditions in (b) are met.
- (6) This *rule* does not apply to a *financial promotion* of a *closed-ended investment fund* applying for, or with, a *premium listing* and which complies with the requirements of ■ LR 15.
- (7) The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with ■ COBS 4.12B.24R and ■ COBS 4.12B.26R.
- (8) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12B.28R and ■ COBS 4.12B.30R.

- 4.12B.22 **G**
- (1) Reference in **COBS 4.12B.21R(5)(b)(i)(B)** to the 'provision' of an *investment* is to a *person* developing, managing or packaging an *investment* such as an *operator*. It does not refer to *persons* involved in distributing, or intermediating the sale of, an *investment* such as a financial adviser or a *person arranging investments*.
 - (2) A *firm* relying on **COBS 4.12B.21R(5)** should consider obtaining external legal advice (from legal advisers with relevant expertise and experience) on the appropriateness of omitting the words in that *rule* from a risk warning. Any such advice should be recorded as part of the *firm's* compliance with **COBS 4.12B.21R(5)(c)**.

- 4.12B.23 **G**
- Even where it is not possible to provide a risk warning in a *durable medium* (for example, because the *financial promotion* is a *real time financial promotion*), the recipient of the *financial promotion* must still be provided with an appropriate risk summary in a *durable medium* at or around the time that the *financial promotion* is *communicated* (**COBS 4.12B.21R(4)**).

Requirements of risk warnings and non-digital risk summaries

- 4.12B.24 **R**
- (1) The relevant risk warning in **COBS 4.12B.21R(1)** or **(2)** and the relevant risk summaries in **COBS 4.12B.14R(3)(a)(ii)** and **COBS 4.12B.21R(4)(b)** must:
 - (a) be prominent, taking into account the content, size and orientation of the *financial promotion* as a whole;
 - (b) except where the risk warning cannot be provided in writing, be clearly legible, contained within its own border and with bold and underlined text as indicated in **COBS 4.12B.21R** or **COBS 4 Annex 1R**.
 - (2) The relevant risk warning in **COBS 4.12B.21R(1)** or **(2)** must, if the *financial promotion* is, or is to be, *communicated* by means of a website or mobile application:
 - (a) be statically fixed and visible at the top of the screen, below anything else that also stays static, even when the *retail client* scrolls up or down the webpage; and
 - (b) be included as described in (a) on each linked webpage on the website or page on the application relating to the *non-mass market investment*.

- 4.12B.25 **G**
- The *FCA* expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing how the risk warning will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>

- 4.12B.26 **R**
- The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the risk warning or risk summary.
[Note: The *FCA* has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12B.27 **G** For the purposes of **COBS 4.12B.26R**, design features which might reduce the visibility or prominence of a risk warning or risk summary include, but are not limited to:

- (1) using a font size for the risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *client* to read the text;
- (3) fading the text of the risk warning or risk summary;
- (4) placing the risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional links to be clicked in order for the full text of the risk warning to be seen;
- (6) using a font or background in the risk warning or risk summary in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning or risk summary in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk warning or risk summary from other forms of information.

Requirements of digital personalised risk warnings and digital risk summaries

4.12B.28 **R** The relevant personalised risk warning in **COBS 4.12B.14R(2)** and the relevant risk summaries in **COBS 4.12B.14R(2)(b)** and **COBS 4.12B.21R(3)(a)(ii)** must be:

- (1) prominently brought to the *retail client's* attention, taking into account the content, size and orientation of the *financial promotion* as a whole;
- (2) clearly legible, contained within its own border and with bold and underlined text as indicated in **COBS 4.12B.14R(1)(b)** and **COBS 4 Annex 1R**;
- (3) statically fixed and visible in the middle of the screen; and
- (4) the main focus of the screen.

4.12B.29 **G** The *FCA* expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing how the personalised risk warning or risk summary will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>

4.12B.30 **R** The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the personalised risk warning or risk summary.
[Note: The *FCA* has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12B.31 G For the purposes of ■ COBS 4.12B.30R, design features which might reduce the visibility or prominence of a personalised risk warning or risk summary include, but are not limited to:

- (1) using a font size for the personalised risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *retail client* to read the text;
- (3) fading the text of the personalised risk warning or risk summary;
- (4) placing the personalised risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional actions to be taken by the *retail client*, such as requiring additional links to be clicked in order for the full text of the personalised risk warning or risk summary to be seen;
- (6) using a font or background in the risk warning in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the personalised risk warning or risk summary from other forms of information.

Further requirement to include a statement of costs, charges and commission where the financial promotion relates to speculative illiquid securities

4.12B.32 R A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *speculative illiquid security* to, or for *communication* to, a *retail client* unless it contains statements that comply with ■ COBS 4.12B.33R.

4.12B.33 R For the purposes of ■ COBS 4.12B.32R, the *financial promotion* must contain:

- (1) a statement which expresses as a percentage the total amount of the capital raised by the issue of the *speculative illiquid security* which will be paid out in costs, fees, charges and commissions and other expenses to any third party;
- (2) a statement which expresses as a cash sum the percentage referred to in (1) above; and
- (3) in addition to the statements in (1) and (2) above, a statement which provides a breakdown of the actual or potential expenditure to be paid out of an investor's capital and details of the third party (or parties) who will receive it.

4.12B.34 G

- (1) There is an illustration of how a *firm* should comply with ■ COBS 4.12B.33R(2) in (2) below.
- (2) Where a *firm* pays 30% of the total amount of capital raised by the issue of *speculative illiquid securities* towards costs, fees, charges and

commissions and other expenses to any third party, the statement should say: **“For every £100 you invest, £30 will be paid to third parties to meet costs, fees, charges and commissions.”**

4.12B.35 **R** The statements providing the percentage figure in **■ COBS 4.12B.33R(1)** and the cash sum in **■ COBS 4.12B.33R(2)** must:

- (1) be prominent;
- (2) be contained together within their own border and with bold text;
- (3) immediately follow the most prominent reference to the expected return on the *speculative illiquid security*; and
- (4) be published so that they are clearly legible against a neutral background.

4.12B.36 **G** The statement providing the breakdown of expenditure in **■ COBS 4.12B.33R(3)** should be included in the *financial promotion* in a clear and prominent way.

4.12B.37 **G** The purpose of the statements required by **■ COBS 4.12B.33R** is to enable an investor to consider the proportion of capital raised by an issue of a *speculative illiquid security* that will not be invested. This information should help the investor to assess the risk that the *issuer* will be unable to pay any advertised interest payments, other income or otherwise to repay the investor’s capital at maturity.

Definition of sophisticated and high net worth investors

4.12B.38 **R** A certified high net worth investor is an individual who has completed and signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the terms set out in **■ COBS 4 Annex 2R**, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

4.12B.39 **R** A certified sophisticated investor is an individual:

- (1) who has a written certificate signed within the last 36 *months* by a *firm* confirming they have been assessed by that *firm* as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in *non-mass market investments*; and
- (2) who has completed and signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the terms set out in **■ COBS 4 Annex 3R**, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

4.12B.40 **R** A self-certified sophisticated investor is an individual who has completed and signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the terms set out in **■ COBS 4 Annex 4R**, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

4.12B.41 **G** Where the *financial promotion* will relate to more than one type of *non-mass market investment*, the *retail client* may sign a combined statement that meets the requirements in **■ COBS 4 Annex 2R** to **■ COBS 4 Annex 4R**, as applicable, in respect of each type of *non-mass market investment* to which the *financial promotion* will relate.

4.12B.42 **R** A *firm* must not:

- (1) influence, or seek to influence, the information that a *retail client* provides when completing a certificate for the purposes of **■ COBS 4.12B.38R** to **■ COBS 4.12B.40R**; or
- (2) encourage a *retail client* to complete a further certificate in the event that a *client's* signed certificate indicates that they do not meet the criteria to be categorised as a certified high net worth investor, certified sophisticated investor or self-certified sophisticated investor, as applicable.

Sophisticated and high net worth investors: guidance on certification by authorised person and reliance on self-certification

4.12B.43 **G** (1) A *firm* which wishes to rely on any of the *certified high net worth investor* exemptions (see Part I of the Schedule to the *Promotion of Collective Investment Schemes Order*, Part I of Schedule 5 to the *Financial Promotion Order* and **■ COBS 4.12B.38R**) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should take reasonable steps to ascertain that the *retail client* does, in fact, meet the income and net assets criteria set out in the relevant statement for *certified high net worth investors*.

(2) In addition, the *firm* should consider whether the promotion of the *non-mass market investment* is in the interests of the *retail client* and whether it is fair to make the promotion to that *client* on the basis that the *client* is a *certified high net worth investor*, having regard to the generally complex nature of *non-mass market investments*. A *retail client* who meets the criteria for a *certified high net worth investor* but not for a *certified sophisticated investor* may be unable to properly understand and evaluate the risks of the *non-mass market investment* in question.

4.12B.44 **G** (1) A *firm* which is asked to or proposes to assess and certify a *retail client* as a *certified sophisticated investor* (see article 23 of the *Promotion of Collective Investment Schemes Order*, article 50 of the *Financial Promotion Order* and **■ COBS 4.12B.39R**) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should carry out that assessment with due skill, care and diligence, having regard to the generally complex nature of *non-mass market investments* and the level of experience, knowledge and expertise that the *retail client* being assessed must possess in order to be fairly and reasonably assessed and certified as a sophisticated investor.

(2) (a) For example, a *retail client* whose *investment* experience is limited to mainstream *investments* such as regularly traded *securities* issued by *listed companies*, *life policies* or *units* in

regulated collective investment schemes (other than qualified investor schemes) is generally unlikely to possess the requisite knowledge to adequately understand the risks associated with investing in non-mass market investments.

- (b) In exceptional circumstances, however, the *retail client* may have acquired the requisite knowledge through means other than their own investment experience, for example, if the *retail client* is a professional of several years' experience with the design, operation or marketing of complex investments such as *options, futures, contracts for differences* or *non-mass market investments*.

4.12B.45 G

- (1) A *firm* which wishes to rely on any of the *self-certified sophisticated investor* exemptions (see Part II of the Schedule to the *Promotion of Collective Investment Schemes Order*, Part II of Schedule 5 to the *Financial Promotion Order* and ■ **COBS 4.12B.40R**) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should consider whether the promotion of the *non-mass market investment* is in the interests of the *client* and whether it is fair to make the promotion to that *client* on the basis of self-certification.
- (2) For example, it is unlikely to be appropriate for a *firm* to make a promotion under any of the *self-certified sophisticated investor* exemptions without first taking reasonable steps to satisfy itself that the investor does in fact have the requisite experience, knowledge or expertise to understand the risks of the *non-mass market investment* in question. A *retail client* who meets the criteria for a *self-certified sophisticated investor* but not for a *certified sophisticated investor* may be unable to properly understand and evaluate the risks of a *non-mass market investment*.

One-off promotions

4.12B.46 G

- (1) A *firm* which wishes to rely on one of the *one-off promotion* exemptions provided by the *Promotion of Collective Investment Schemes Order* or the *Financial Promotion Order* to promote a *non-mass market investment* to a *retail client* should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should consider whether the *financial promotion* of the *non-mass market investment* is in the interests of the *client* and whether it is fair to make the *financial promotion* to that *client* on the basis of a *one-off promotion* exemption.
- (2) The *one-off promotion* exemptions permit the promotion of investments to *clients* under certain conditions (see ■ **PERG 8.14.3G** to ■ **PERG 8.14.13G** for *guidance* on the scope of the one-off exemptions in the *Financial Promotion Order*). *Firms* should note that, in the *FCA's* view, promotion of a *non-mass market investment* to a *retail client* who is not a *certified high net worth investor*, a *certified sophisticated investor* or a *self-certified sophisticated investor* is unlikely to be appropriate or in that *client's* best interests.

Qualified investor schemes

4.12B.47 G

- (1) A *firm* which wishes to promote *units* in a *qualified investor scheme* to a *retail client* in circumstances where the *firm* considers the

financial promotion to be an *excluded communication* (see ■ COBS 4.12B.4R(1)) should have regard to its duties under the *Principles* and the *client's best interests rule*.

- (2) As explained in ■ COLL 8.1, *qualified investor schemes* are intended only for *professional clients* and *retail clients* who are sophisticated investors. *Firms* should note that, in the *FCA's* view, promotion of *units* in a *qualified investor scheme* to a *retail client* who is not a *certified sophisticated investor* or a *self-certified sophisticated investor* is unlikely to be appropriate or in that *client's* best interests.

4.12B.48 G [deleted.]

Electronic documents

4.12B.49 G In this section:

- (1) any requirement that a document is signed may be satisfied by an electronic signature or electronic evidence of assent; and
- (2) any references to writing should be construed in accordance with ■ GEN 2.2.14R and its related *guidance* provisions.

Definition of speculative illiquid security

4.12B.50 R Subject to ■ COBS 4.12B.52R to ■ COBS 4.12B.54R, a *speculative illiquid security* is a *debenture* or *preference share* which:

- (1) has a denomination or minimum investment of less than £100,000 (or an equivalent amount as defined in ■ COBS 4.12B.51R); and
- (2) has been issued, or is to be issued, in circumstances where the *issuer* or a member of the *issuer's group* uses, will use or purports to use some or all of the proceeds of the issue directly or indirectly for one or more of the following:
- (a) the provision of loans or finance to any *person* other than a member of the *issuer's group*;
 - (b) *buying* or *acquiring specified investments* (whether they are to be held directly or indirectly);
 - (c) *buying* or *acquiring investments* other than *specified investments* (whether they are to be held directly or indirectly);
 - (d) *buying* real property or an interest in real property (whether it is to be held directly or indirectly);
 - (e) paying for or funding the construction of real property.

4.12B.51 R For the purposes of ■ COBS 4.12B.50R(1):

- (1) an equivalent amount in relation to an amount denominated in any currency other than sterling is an amount of equal value denominated wholly or partly in another currency; and
- (2) the equivalent amount is to be calculated at the latest practicable date before (but in any event not more than three *business days* before) the date of the issue of *debentures* or *preference shares*.

4.12B.52 **R** A *debenture or preference share* that does not otherwise fall within **■** COBS 4.12B.50R is not a *speculative illiquid security* by virtue only of the fact that the proceeds of the issue are used to *buy or acquire specified investments* as part of the ordinary cash management activities or treasury functions of an *issuer* (or its *group*) carrying on a general commercial or industrial purpose as defined in **■** COBS 4.12B.54R(1).

4.12B.53 **R** For the purposes of **■** COBS 4.12B.50R, and notwithstanding the exemption for *readily realisable securities* in **■** COBS 4.12B.54R(3)(d), a *debenture* is also a *speculative illiquid security* if:

- (1) it meets the conditions set out in **■** COBS 4.12B.50R; and
- (2) it:
 - (a) is admitted to official listing on an exchange in the *United Kingdom* or an *EEA State*; and
 - (b) is not regularly traded on or under the rules of such an exchange; or
- (3) it:
 - (a) is a newly issued *debenture* which can be reasonably expected to be admitted to official listing on an exchange in the *United Kingdom* or an *EEA State*; and
 - (b) cannot reasonably be expected to be regularly traded on or under the rules of such an exchange when it begins to be traded.

4.12B.54 **R** A *debenture or preference share* is not a *speculative illiquid security* where one or more of the exemptions in (1), (3) or (4) below applies.

- (1) This exemption applies where:
 - (a) the *issuer* or a member of the *issuer's group* uses the proceeds of the issue for the purpose of the activities in **■** COBS 4.12B.50R(2)(c) (*buying or acquiring investments other than specified investments*), (d) (*buying real property or an interest in real property*) or (e) (*paying for or funding the construction of real property*); and
 - (b) the relevant property or *investment* is or will be used by the *issuer* or a member of the *issuer's group* for a general commercial or industrial purpose which it carries on.
- (2) The exemption in (1) will not apply in respect of a *debenture or preference share* within **■** COBS 4.12B.50R(2)(d) or **■** (e) if the ability of the *issuer* to pay in relation to the *debenture or preference share*:
 - (a) any *coupon* or other income; and/or
 - (b) capital at maturity,is wholly or predominantly linked to, contingent on, highly sensitive to, or dependent, on a return generated as a result of the matters referred to in **■** COBS 4.12B.50R(2)(d) or **■** (e).
- (3) This exemption applies where the *debenture or preference share* is:
 - (a) issued, or to be issued, by a *credit institution*;
 - (b) issued, or to be issued, by an *investment trust*;

- (c) a *non-mainstream pooled investment*;
- (d) a *readily realisable security* except for a *debenture* within ■ COBS 4.12B.53R; or
- (e) a *P2P agreement*.

(4) This exemption applies where:

- (a) the *issuer* is:
 - (i) a *property holding vehicle*; or
 - (ii) a *single-company holding vehicle*;
- (b) any *financial promotions* made relating to the investment comply with ■ COBS 4.12A as appropriate; and
- (c) any *financial promotion* made relating to a *single-company holding vehicle* clearly and prominently states which *single company* the investment relates to.

4.12B.55 R

- (1) For the purposes of ■ COBS 4.12B.54R(1)(b), a general commercial or industrial purpose includes the following:
 - (a) a commercial activity, involving the purchase, sale and/or exchange of goods or commodities and/or the supply of services; or
 - (b) an industrial activity involving the production of goods; or
 - (c) a combination of (a) and (b).
- (2) For the purposes of ■ COBS 4.12B.54R(1)(b), a general commercial or industrial purpose does not include:
 - (a) investment to generate a pooled return;
 - (b) property development or construction services; and
 - (c) hiring, leasing or rental services.

Guidance on general commercial or industrial purpose

4.12B.56 G

- (1) ■ COBS 4.12B.50R provides that a *debenture* or *preference share* will fall within the definition of a *speculative illiquid security* where the proceeds of the issue are to be used by the *issuer* or a member of the *issuer's group* to fund various activities including *buying* or acquiring *investments* (other than *specified investments*) or the *buying* or construction of real property.
- (2) However, ■ COBS 4.12B.54R(1) provides an exemption in cases where the *investments* (other than *specified investments*) that are bought or acquired, or the property which is bought or constructed are or will be used by the *issuer* or a member of the *issuer's group* for a general commercial or industrial purpose which it carries on.
- (3) General commercial or industrial purpose is defined in ■ COBS 4.12B.55R.
- (4) The effect of the exemption in ■ COBS 4.12B.54R(1) is that a *debenture* or *preference share* will not be a *speculative illiquid security* where the proceeds of the issue are used by the *issuer* or a member of the *issuer's group* to buy or acquire *investments* (other than *specified*

investments), or to buy or construct real property, and the relevant *investments* or property are or will be used by the *issuer* or *group* member for the purposes of its own commercial or industrial activities. This is illustrated in the examples in (5) and (6) below.

- (5) In relation to ■ COBS 4.12B.50R(2)(c) (*buying* or *acquiring investments* other than *specified investments*):
- (a) where a *company* issues a *debenture* or *preference share* and uses the proceeds to purchase IT equipment for use in its business, to the extent that the IT equipment might be considered an *investment*, the *debenture* or *preference share* will benefit from the exemption because the IT equipment is used by the *company* for its own commercial activities (in this case, for use by its staff to provide services to customers);
 - (b) where a supermarket chain issues a *debenture* or *preference share* and uses the proceeds to purchase stock (for example wine) for sale as part of its retail business, to the extent that the wine might be considered an *investment*, the *debenture* or *preference share* will benefit from the exemption because the wine is used by the supermarket for its own commercial activities (in this case, to sell it on to its retail customers for a profit);
 - (c) where a *company* issues a *debenture* or *preference share* and uses the proceeds to buy or acquire art or fine wine as an investment, it will not benefit from the exemption because the art or fine wine will not be used by the *company* itself for its own commercial activities; if the art or fine wine is used to generate a pooled return, then the exemption would also not apply as a result of ■ COBS 4.12B.55R(2)(a); and
 - (d) where a *company* issues a *debenture* or *preference share* and uses the proceeds to purchase IT equipment for the purpose of hiring or leasing those out to another *company*, it will not benefit from the exemption because it is not using the IT equipment for its own commercial activities and hiring and leasing services are excluded from the definition of general commercial or industrial purpose as a result of ■ COBS 4.12B.55R(2)(c).
- (6) In relation to ■ COBS 4.12B.50R(2)(d) or ■ (e) (*buying* or *constructing* real property):
- (a) where a retailer issues a *debenture* or *preference share* and uses the proceeds to build a shop, the *debenture* or *preference share* will benefit from the exemption because the property is used by the retailer for its own commercial activities (in this case, the sale of goods);
 - (b) where a property developer issues a *debenture* or *preference share* and uses the proceeds to fund the costs of a property development or construction of property, which is intended to be sold or rented out for commercial purposes or as residential dwellings, it will not benefit from the exemption because the development will not be used by the developer itself, and property development and construction services are excluded from the definition of general commercial or industrial purpose (see ■ COBS 4.12B.55R(2)(b));
 - (c) where a *company* issues a *debenture* or *preference share* to fund the costs of constructing a power station which the *company*

intends to operate itself with a view to selling the electricity it produces, the *debenture* or *preference share* will benefit from the exemption (unless ■ COBS 4.12B.54R(2) applies). That is because it will use the property for its own commercial or industrial activities (generating electricity). However, *firms* should also consider ■ COBS 4.12B.54R(2) and the *guidance* in (7) below.

- (7) ■ COBS 4.12B.54R(2) provides that the general commercial or industrial purposes exemption does not apply where the ability of the issuer to pay the *coupon* or other income or to repay capital on maturity in relation to the *debenture* or *preference share* is wholly or predominantly linked to, contingent on, highly sensitive to, or dependent on, a return generated as a result of the matters referred to in ■ COBS 4.12B.50R(2)(d) or ■ (e) (buying or construction of real property).
- (8) The effect of the above is that where a *company* issues a *debenture* or *preference share* for the purpose of buying real property, an interest in real property or funding the construction of a particular project and the *company's* ability to pay interest on the *debenture* or *preference share* or repay capital depends on the success of that purchase or project, the exemption in ■ COBS 4.12B.54R(1) will not apply. In those circumstances, the *debenture* or *preference share* will be a *speculative illiquid security* unless one of the other exemptions in ■ COBS 4.12B.54R applies.



4.13 UCITS

Application

4.13.1

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- (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 fund*, the *prospectus*, the *key investor information* or the periodic reports and accounts of a *UCITS scheme*.

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

Marketing communications relating to UCITS schemes

4.13.2

R

- (1) A *firm* must ensure that a marketing communication that comprises an invitation to purchase *units* in a *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* for the *scheme*;
 - (b) indicates that a *prospectus* exists for the *scheme* and that the *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* may invest more than 35% of its *scheme property* in *transferable securities* and money market instruments issued or guaranteed by the *United Kingdom* or an *EEA State*, one or more of its local authorities, a third country or a public international body to which the *United Kingdom* or 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 *states*, local authorities 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* 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), 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 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

R

A *firm* must ensure that a marketing communication (other than a *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*]



4.14 [deleted]

[deleted]

Risk summaries

This Annex belongs to ■ COBS 4.12A.11R, ■ COBS 4.12A.20R, ■ COBS 4.12B.14R and ■ COBS 4.12B.21R.

Where a risk summary in this Annex includes two or three alternative formulations of text in square brackets, the first should be used where the *person* offering the *investment* is not an *authorised person* (including a *registered person*) and the second where the *person* offering the *investment* is an *authorised person*. The third alternative formulation should be used instead of the first or second formulations where the *investment* is a *unit* in an *unregulated collective investment scheme*. A *firm* should select the correct statement in the relevant section and omit the statement(s) in that section that are not appropriate. *Firms* should omit square brackets.

Where a risk summary in this Annex includes only one available statement in relation to *unregulated collective investment schemes*, *firms* should use this where the *investment* is a *unit* in an *unregulated collected investment scheme*. This text should not be used when the *investment* is not a *unit* in an *unregulated collective investment scheme*. *Firms* should omit square brackets.

Where a risk summary in this Annex includes a web address in square brackets:

- where the risk summary is provided through a digital medium, this web address and square brackets should be omitted, and the preceding underlined text should link to the web address specified in the square brackets;
- where the risk summary is provided through a non-digital medium, this web address and square brackets should be omitted and *firms* should amend the text to make it appropriate for the non-digital setting, pointing the reader to the relevant web address.

The risk summary in (1) is expected ordinarily to be used where a *financial promotion* will be *communicated* by a *firm* intermediating investment in *non-readily realisable securities* by way of an online platform. The risk summaries in (3) and (4) are expected ordinarily to be used where a *financial promotion* will be *communicated* by an *issuer* of *non-readily realisable securities* or a *firm* intermediating investment in *non-readily realisable securities* other than by way of an online platform.

1	<p>Risk summary for investments in <i>non-readily realisable securities</i> which are <i>arranged</i> by a <i>firm</i> by way of an online platform</p> <p>Estimated reading time: 2 min</p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p>What are the key risks?</p> <p>1.You could lose all the money you invest</p> <ul style="list-style-type: none">•Most investments are shares in start-up businesses or bonds issued by them. Investors in these shares or bonds often lose 100% of the money they invested, as most start-up businesses fail.•Certain of these investments can be held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all your money. It only means that any potential returns will be tax free.•Checks on the businesses you are investing in, such as how well they are expected to perform, may not have been carried out by the platform you are investing through. You should do your own research before investing. <p>2.You won't get your money back quickly</p>
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- Even if the business you invest in is successful, it will likely take several years to get your money back.
- The most likely way to get your money back is if the business is bought by another business or lists its shares on an exchange such as the London Stock Exchange. These events are not common.
- Start-up businesses very rarely pay you back through dividends. You should not expect to get your money back this way.
- Some platforms may give you the opportunity to sell your investment early through a 'secondary market' or 'bulletin board', but there is no guarantee you will find a buyer at the price you are willing to sell.

3. Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well. A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

4. The value of your investment can be reduced

- If your investment is shares, the percentage of the business that you own will decrease if the business issues more shares. This could mean that the value of your investment reduces, depending on how much the business grows. Most start-up businesses issue multiple rounds of shares.
- These new shares could have additional rights that your shares don't have, such as the right to receive a fixed dividend, which could further reduce your chances of getting a return on your investment.

5. You are unlikely to be protected if something goes wrong

- Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try the FSCS investment protection checker here. [<https://www.fscs.org.uk/check/investment-protection-checker/>]
- Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated platform, FOS may be able to consider it. Learn more about FOS protection here. [<https://www.financial-ombudsman.org.uk/consumers>].

If you are interested in learning more about how to protect yourself, visit the FCA's website [here](https://www.fca.org.uk/investsmart). [<https://www.fca.org.uk/investsmart>] For further information about investment-based crowdfunding, visit the FCA's website [here](https://www.fca.org.uk/consumers/crowdfunding). [<https://www.fca.org.uk/consumers/crowdfunding>]

2 Risk summary for P2P agreements or P2P portfolios

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1. You could lose the money you invest

- Many peer-to-peer (P2P) loans are made to borrowers who can't borrow money from traditional lenders such as banks. These borrowers have a higher risk of not paying you back.
- Advertised rates of return aren't guaranteed. If a borrower doesn't pay you back as agreed, you could earn less money than expected. A higher advertised rate of return means a higher risk of losing your money.
- These investments can be held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all

your money. It only means that any potential gains from your investment will be tax free.

2.You are unlikely to get your money back quickly

- Some P2P loans last for several years. You should be prepared to wait for your money to be returned even if the borrower repays on time.
- Some platforms may give you the opportunity to sell your investment early through a 'secondary market', but there is no guarantee you will be able to find someone willing to buy.
- Even if your agreement is advertised as affording early access to your money, you will only get your money early if someone else wants to buy your loan(s). If no one wants to buy, it could take longer to get your money back.

3.Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

4.The P2P platform could fail

- If the platform fails, it may be impossible for you to collect money on your loan. It could take years to get your money back, or you may not get it back at all. Even if the platform has plans in place to prevent this, they may not work in a disorderly failure.

5.You are unlikely to be protected if something goes wrong

- The Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover investments in P2P loans. You may be able to claim if you received regulated advice to invest in P2P, and the adviser has since failed. Try the FSCS investment protection checker here. [<https://www.fscs.org.uk/check/investment-protection-checker/>]
- Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated platform, FOS may be able to consider it. Learn more about FOS protection here. [<https://www.financial-ombudsman.org.uk/consumers>]

If you are interested in learning more about how to protect yourself, visit the FCA's website here. [<https://www.fca.org.uk/investsmart>]

For further information about peer-to-peer lending (loan-based crowdfunding), visit the FCA's website here. [<https://www.fca.org.uk/consumers/crowdfunding>]

3

Risk summary for *non-readily realisable securities* which are *shares*

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1.You could lose all the money you invest

- If the business you invest in fails, you are likely to lose 100% of the money you invested. Most start-up businesses fail.

2.You are unlikely to be protected if something goes wrong

- [The business offering this investment is not regulated by the FCA. Protection from the Financial Services Compensation Scheme (FSCS) only considers claims against failed regulated firms. Learn more about FSCS protection here. [<https://www.fscs.org.uk/what-we-cover/investments/>]] or

[Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try

the FSCS investment protection checker [here](https://www.fscs.org.uk/check/investment-protection-checker/). [<https://www.fscs.org.uk/check/investment-protection-checker/>]

- [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection [here](https://www.financial-ombudsman.org.uk/consumers). [<https://www.financial-ombudsman.org.uk/consumers>]

3.You won't get your money back quickly

- Even if the business you invest in is successful, it may take several years to get your money back. You are unlikely to be able to sell your investment early.

- The most likely way to get your money back is if the business is bought by another business or lists its shares on an exchange such as the London Stock Exchange. These events are not common.

- If you are investing in a start-up business, you should not expect to get your money back through dividends. Start-up businesses rarely pay these.

4.Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.

- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

5.The value of your investment can be reduced

- The percentage of the business that you own will decrease if the business issues more shares. This could mean that the value of your investment reduces, depending on how much the business grows. Most start-up businesses issue multiple rounds of shares.

- These new shares could have additional rights that your shares don't have, such as the right to receive a fixed dividend, which could further reduce your chances of getting a return on your investment.

If you are interested in learning more about how to protect yourself, visit the FCA's website [here](https://www.fca.org.uk/investsmart). [<https://www.fca.org.uk/investsmart>]

4 Risk summary for *non-readily realisable securities* which are *debentures*

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1.You could lose all the money you invest

- If the business you are investing in fails, there is a high risk that you will lose your money. Most start-up and early-stage businesses fail.

- Advertised rates of return aren't guaranteed. This is not a savings account. If the borrower doesn't pay you back as agreed, you could earn less money than expected. A higher advertised rate of return means a higher risk of losing your money. If it looks too good to be true, it probably is.

- These investments are sometimes held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all your money. It only means that any potential gains from your investment will be tax free.

2.You are unlikely to be protected if something goes wrong

- [The business offering this investment is not regulated by the FCA. Protection from the Financial Services Compensation Scheme (FSCS) only considers claims against failed regulated firms. Learn more about FSCS protection [here](https://www.fscs.org.uk/what-we-cover/investments/). [<https://www.fscs.org.uk/what-we-cover/investments/>]] or

[Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try the FSCS investment protection checker [here](https://www.fscs.org.uk/check/investment-protection-checker/). [https://www.fscs.org.uk/check/investment-protection-checker/]]

•[The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection [here](https://www.financial-ombudsman.org.uk/consumers). [https://www.financial-ombudsman.org.uk/consumers]

3.You are unlikely to get your money back quickly

•Many bonds last for several years, so you should be prepared to wait for your money to be returned even if the business you're investing in repays on time.

•You are unlikely to be able to cash in your investment early by selling your bond. You are usually locked in until the business has paid you back over the period agreed.

4.Don't put all your eggs in one basket

•Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.

•A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [https://www.fca.org.uk/investsmart/5-questions-ask-you-invest]

If you are interested in learning more about how to protect yourself, visit the FCA's website [here](https://www.fca.org.uk/investsmart). [https://www.fca.org.uk/investsmart]

5 Risk summary for *speculative illiquid securities*

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be very complex and high risk.

What are the key risks?

1.You could lose all the money you invest

•If the business offering this investment fails, there is a high risk that you will lose all your money. Businesses like this often fail as they usually use risky investment strategies.

•Advertised rates of return aren't guaranteed. This is not a savings account. If the issuer doesn't pay you back as agreed, you could earn less money than expected or nothing at all. A higher advertised rate of return means a higher risk of losing your money. If it looks too good to be true, it probably is.

•These investments are sometimes held in an Innovative Finance ISA (IFISA). While any potential gains from your investment will be tax free, you can still lose all your money. An IFISA does not reduce the risk of the investment or protect you from losses.

2.You are unlikely to be protected if something goes wrong

•[The business offering this investment is not regulated by the FCA. Protection from the Financial Services Compensation Scheme (FSCS) only considers claims against failed regulated firms. Learn more about FSCS protection [here](https://www.fscs.org.uk/what-we-cover/investments/). [https://www.fscs.org.uk/what-we-cover/investments/]] or

[Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try the FSCS investment protection checker [here](https://www.fscs.org.uk/check/investment-protection-checker/). [https://www.fscs.org.uk/check/investment-protection-checker/]]

•[The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it]. Learn more about FOS protection [here](https://www.financial-ombudsman.org.uk/consumers). [https://www.financial-ombudsman.org.uk/consumers]

3.You are unlikely to get your money back quickly

- This type of business could face cash-flow problems that delay interest payments. It could also fail altogether and be unable to repay investors their money.
- You are unlikely to be able to cash in your investment early by selling it. You are usually locked in until the business has paid you back over the period agreed. In the rare circumstances where it is possible to sell your investment in a 'secondary market', you may not find a buyer at the price you are willing to sell.

4.This is a complex investment

- This investment has a complex structure based on other risky investments. A business that raises money like this lends it to, or invests it in, other businesses or property. This makes it difficult for the investor to know where their money is going.
- This makes it difficult to predict how risky the investment is, but it will most likely be high.
- You may wish to get financial advice before deciding to invest.

5.Don't put all your eggs in one basket

- Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

If you are interested in learning more about how to protect yourself, visit the FCA's website [here](https://www.fca.org.uk/investsmart). [<https://www.fca.org.uk/investsmart>]

For further information about minibonds, visit the FCA's website [here](https://www.fca.org.uk/consumers/mini-bonds). [<https://www.fca.org.uk/consumers/mini-bonds>]

6

Risk summary for *non-mainstream pooled investments*

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be very complex and high risk.

What are the key risks?

1.You could lose all the money you invest

- If the business offering this investment fails, there is a high risk that you will lose all your money. Businesses like this often fail as they usually use risky investment strategies.
- Advertised rates of return aren't guaranteed. This is not a savings account. If the issuer doesn't pay you back as agreed, you could earn less money than expected or nothing at all. A higher advertised rate of return means a higher risk of losing your money. If it looks too good to be true, it probably is.
- These investments are very occasionally held in an Innovative Finance ISA (IFISA). While any potential gains from your investment will be tax free, you can still lose all your money. An IFISA does not reduce the risk of the investment or protect you from losses.

2.You are unlikely to be protected if something goes wrong

- [The business offering this investment is not regulated by the FCA. Protection from the Financial Services Compensation Scheme (FSCS) only considers claims against failed regulated firms. Learn more about FSCS protection [here](https://www.fscs.org.uk/what-we-cover/investments/). [<https://www.fscs.org.uk/what-we-cover/investments/>]] or

[Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Try the FSCS investment protection checker [here](https://www.fscs.org.uk/check/investment-protection-checker/). [<https://www.fscs.org.uk/check/investment-protection-checker/>]] or

[The Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover investments in unregulated collective investment schemes. You may be able to claim if you received regulated advice to invest in one, and the adviser has since failed. Try the FSCS investment protection checker [here](https://www.fscs.org.uk/check/investment-protection-checker/). [https://www.fscs.org.uk/check/investment-protection-checker/]]

•[The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection [here](https://www.financial-ombudsman.org.uk/consumers). [https://www.financial-ombudsman.org.uk/consumers]

3.You are unlikely to get your money back quickly

•This type of business could face cash-flow problems that delay payments to investors. It could also fail altogether and be unable to repay any of the money owed to you.

•You are unlikely to be able to cash in your investment early by selling your investment. In the rare circumstances where it is possible to sell your investment in a 'secondary market', you may not find a buyer at the price you are willing to sell.

•You may have to pay exit fees or additional charges to take any money out of your investment early.

4.This is a complex investment

•This kind of investment has a complex structure based on other risky investments, which makes it difficult for the investor to know where their money is going.

•This makes it difficult to predict how risky the investment is, but it will most likely be high.

•You may wish to get financial advice before deciding to invest.

5.Don't put all your eggs in one basket

•Putting all your money into a single business or type of investment for example, is risky. Spreading your money across different investments makes you less dependent on any one to do well.

•A good rule of thumb is not to invest more than 10% of your money in [high-risk investments](https://www.fca.org.uk/investsmart/5-questions-ask-you-invest). [https://www.fca.org.uk/investsmart/5-questions-ask-you-invest]

If you are interested in learning more about how to protect yourself, visit the FCA's website [here](https://www.fca.org.uk/investsmart). [https://www.fca.org.uk/investsmart]

[For further information about unregulated collective investment schemes (UCIS), visit the FCA's website [here](https://www.fca.org.uk/consumers/unregulated-collective-investment-schemes).] [https://www.fca.org.uk/consumers/unregulated-collective-investment-schemes]]

7

Risk summary for *units in a long-term asset fund*

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1.You should be ready to invest for the long term and, during this time, the value of your investment may go up or down. You may lose money on your investment.

•Assets in this fund may take a long time to buy and sell.

•Long-Term Asset Funds (LTAFs) can invest into fixed assets, infrastructure, or complex financial products, all of which are relatively hard to sell. Investors who do not remain invested for the long-term may not get back all of their money. It may take many years to make a profit on the investment.

•You should carry out your own research, so that you understand what you are investing in.

2.If you decide to exit early, you won't get your money back quickly

- This LTAF accepts requests to sell units only once a month and there is also a 90-day waiting period before the value of your units is determined and you receive your money. This means that:

o If you choose to sell your units on 2 January, and the trading day is the 15th of the month, you won't get any money back until approximately 20 April, assuming a few extra days for the trade to close and funds to transfer.

o The value of the units you sell will be at the price set on 15 April if it is a business day, or else the next business day after it.

- Once your redemption request has been approved, you cannot cancel your request.

3. It will take a long time to make profits

- If the assets the LTAF invests in are successful, it may still take a long time to get your money back and make a profit.

- You should not expect to get your money back as payments of income (unless the LTAF includes payments of income as an investment objective).

4. Don't put all your eggs in one basket

- Putting all your money into a single investment or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.

- A good rule of thumb is not to invest more than 10% of your money in high-risk investments.

5. You are unlikely to be protected if something goes wrong

- Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Learn more about FSCS protection here [<https://www.fscs.org.uk/check/investment-protection-checker/>].

- Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated platform, FOS may be able to consider it. Learn more about FOS protection here [<https://www.financial-ombudsman.org.uk/consumers/>].

8 Risk summary for *qualifying cryptoassets*

Estimated reading time: 2 min

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1. You could lose all the money you invest

- The performance of most cryptoassets can be highly volatile, with their value dropping as quickly as it can rise. You should be prepared to lose all the money you invest in cryptoassets.

- The cryptoasset market is largely unregulated. There is a risk of losing money or any cryptoassets you purchase due to risks such as cyber-attacks, financial crime and firm failure.

2. You should not expect to be protected if something goes wrong

- The Financial Services Compensation Scheme (FSCS) doesn't protect this type of investment because it's not a 'specified investment' under the UK regulatory regime – in other words, this type of investment isn't recognised as the sort of investment that the FSCS can protect. Learn more by using the FSCS investment protection checker here. [<https://www.fscs.org.uk/check/investment-protection-checker/>]

- [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated

firm, FOS may be able to consider it.] Learn more about FOS protection here. [<https://www.financial-ombudsman.org.uk/consumers>]

3.You may not be able to sell your investment when you want to

- There is no guarantee that investments in cryptoassets can be easily sold at any given time. The ability to sell a cryptoasset depends on various factors, including the supply and demand in the market at that time.
- Operational failings such as technology outages, cyber-attacks and comingling of funds could cause unwanted delay and you may be unable to sell your cryptoassets at the time you want.

4.Cryptoasset investments can be complex

- Investments in cryptoassets can be complex, making it difficult to understand the risks associated with the investment.
- You should do your own research before investing. If something sounds too good to be true, it probably is.

5.Don't put all your eggs in one basket

- Putting all your money into a single type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<https://www.fca.org.uk/investsmart/5-questions-ask-you-invest>]

If you are interested in learning more about how to protect yourself, visit the FCA's website here. [<https://www.fca.org.uk/investsmart>]

For further information about cryptoassets, visit the FCA's website here. [<https://www.fca.org.uk/investsmart/crypto-basics>]

Certified high net worth investor statement

This Annex belongs to ■ COBS 4.12A.22R and ■ COBS 4.12B.38R.

HIGH-NET-WORTH INVESTOR STATEMENT
<p>Please confirm whether you qualify as a high-net-worth investor on the basis that A or B apply to you.</p> <p>In the last financial year did you have:</p> <p>A) an annual income of £100,000 or more? Income does NOT include any one-off pension withdrawals.</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, please specify your income (as defined above) to the nearest £10,000 in the last financial year _____</p> <p>B) net assets of £250,000 or more? Net assets do NOT include: your home (primary residence), your pension (or any pension withdrawals) or any rights under qualifying contracts of insurance.</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, please specify your net assets (as defined above) to the nearest £100,000 in the last financial year _____</p> <p>OR</p> <p>C) None of these apply to me.</p> <p><input type="checkbox"/> Yes</p>
<p>I accept that being a high-net-worth investor will expose me to promotions for investment where there is a significant risk of losing all the money I invest. I am aware that it is open to me to seek professional advice before making any investment in a high-risk investment.</p> <p>Signature:</p> <p>Date:</p>

Certified sophisticated investor statement

This Annex belongs to ■ COBS 4.12A.22R and ■ COBS 4.12B.39R.

Firms must omit the notes and square brackets which appear in the following form of certificate.

SOPHISTICATED INVESTOR STATEMENT
<p>Please confirm whether you qualify as a sophisticated investor on the basis that in the last three years you have received a certificate from an authorised firm confirming you understand the risks involved with [type of investment] [Note 1].</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is the name of the authorised firm? _____</p> <p>OR</p> <p>This does not apply to me.</p> <p><input type="checkbox"/> Yes</p>
<p>I accept that being a sophisticated investor will expose me to promotions for investment where there is a significant risk of losing all the money I invest. I am aware that it is open to me to seek professional advice before making any investment in a high-risk investment.</p> <p>Signature:</p> <p>Date:</p>

Note 1: The *firm* must insert the type of *investment* in relation to which the *client* wishes to be categorised for the purpose of receiving *financial promotions*.

Self-certified sophisticated investor statement

This Annex belongs to ■ COBS 4.12A.22R and ■ COBS 4.12B.40R.

Firms must omit the notes and square brackets which appear in the following form of certificate.

SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT
<p>Please confirm whether you qualify as a self-certified sophisticated investor on the basis that A, B, C or D apply to you.</p> <p>In the last two years have you:</p> <p>A) worked in private equity or in the provision of finance for small and medium enterprises?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the business or organisation? _____</p> <p>B) been the director of a company with an annual turnover of at least £1 million?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the company? _____</p> <p>C) made two or more investments in an unlisted company?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, how many investments in unlisted companies have you made in the last two years? _____</p> <p>D) been a member of a network or syndicate of business angels for more than six months?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is the name of the network or syndicate? _____</p> <p>OR</p> <p>E) None of these apply to me.</p> <p><input type="checkbox"/> Yes</p> <p>I accept that being a self-certified sophisticated investor will expose me to promotions for investments where there is a significant risk of losing all the money I invest. I am aware that it is open to me seek advice from someone who specialises in advising on [type of investment] [Note 1].</p> <p>Signature:</p> <p>Date:</p>

Note 1: The *firm* must insert the type of *investment* in relation to which the *client* wishes to be categorised for the purpose of receiving *financial promotions*.

Restricted investor statement

This Annex belongs to ■ COBS 4.12A.22R.

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